

Keith Taylor MEP for the South East of England
Jean Lambert MEP for London

Alan C Scott
National Planning Policy Framework
Department of Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU

14th October 2011

Dear Mr.Scott,

RE: UK GOVERNMENT CONSULTATION ON THE DRAFT NATIONAL PLANNING POLICY FRAMEWORK JULY 2011

Please accept the following response from the Office of Keith Taylor MEP for the South East of England and Jean Lambert MEP for London.

Summary

We have major areas of concern in relation to the core definition and approach to Sustainable Development within the NPPF document. This is the fundamental basis of our representation and we follow with detailed concerns regarding the impact of the policy on protected sites and the natural environment, air quality, water quality and renewable energy generation, with particular relevance to existing EU legislation covering the UK. This is important as the Government has included reform of the planning system in its report for the first European Semester (Europe 2020: UK National Reform Programme 2011) suggesting it as a way to better facilitate appropriate sustainable development. **We also have deep rooted concerns about the ability of citizens to influence and challenge decisions within the proposed framework.**

Whilst we appreciate that there are some opportunities for increased neighbourhood involvement in plan-making, these are outweighed by our concerns regarding the resources available for citizens to establish their own plan and the 'pro growth' stranglehold of the NPPF policy on communities. There are opportunities within the framework for the delivery of new housing, community and employment needs, however this must be placed within a stronger and 'fit for purpose' national planning framework and spatial plan. Only then will national policy provide the necessary leadership to ensure that the UK meets the challenges of climate change, harm to natural resources and deepening inequalities in health and well-being.

Sustainable Development

The document cites the Brundtland definition of Sustainable Development (DCLG 2011, p.3) but fails to give a robust explanation of what is meant by 'sustainable development' in practice. It fails to provide the necessary certainty and predictability for developers, the public and local authorities, a valued principle enshrined in the planning system. A 'fit for purpose' definition of Sustainable Development is needed which enables the UK to address the major challenges of climate change, damage to natural resources and deepening inequalities in health and well-being. The current suggestion is a weak interpretation of Sustainable Development which fails to adequately underpin economic and social well-being with the protection of natural resources. It places 'economic growth' above all other considerations and fails to adequately address the central question of whether 'growth' in the way defined is possible or indeed desirable given the challenges ahead.

This is a precarious 'presumption in favour of sustainable development' (para 13) with no concomitant description of what would be considered 'unsustainable development'. If out of town business parks, supermarket, cinema complexes and road side service stations are all considered 'sustainable development', perhaps the government could give clear examples of what it would consider to be 'unsustainable development'?

The proposed document states that:

'Decision makers at every level should assume that the default answer to development proposals is "yes", except where this would compromise the key sustainable development principles set out in this Framework.' (DCLG, 2011 p.5)

The 'sustainable development principles' in the proposal appear to be enshrined in the following statement:

'There is no necessary contradiction between increased levels of development and protecting and enhancing the environment, as long as development is planned and undertaken responsibly.' (DCLG, 2011 p. 3)

However, the document fails to adequately describe what is meant by 'responsible' development. This is an unashamedly 'pro-growth' document:

'The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. A positive planning system is essential because, without growth, a sustainable future cannot be achieved. Planning must operate to encourage growth and not act as an impediment. Therefore significant weight should be placed on the need to support economic growth throughout the planning system.' (DCLG 2011, p.4)

The proposed 'pro-growth' policy and weak definition of sustainable development leaves the UK planning system in a weak position to ensure it upholds key European Union priorities: protection of biodiversity, habitats and species, air quality, water quality, renewable energy and tackling climate change, community participation and fundamental rights.

It is not clear how the proposed 'sustainable growth' concept fits with the Government's own commitments to carbon reduction and the carbon budget it has adopted. Nor is it clear how it will deliver on the EU 2020 Strategy commitments of building a more competitive low-carbon economy that makes efficient, sustainable use of resources whilst protecting the environment, reducing emissions and preventing biodiversity loss.

The UK government refers to the requirement that plans should be prepared on the basis of "objectively assessed" (DCLG 2011, p.4) development needs. The NPPF however fails to respond adequately to the obvious need for a strong definition of Sustainable Development to ensure the resilience of the UK and the survival and well-being of human, animal and plant life.

The Renewed EU Sustainable Development Strategy (Council of the European Union 2006, p.2) provides a clearer definition and gives greater priority to the protection of natural resources and social justice:

'Sustainable development means that the needs of the present generation should be met without compromising the ability of future generations to meet their own needs, It is an overarching objective of the European Union set out in the Treaty, governing all the Union's policies and activities. It is about safeguarding the earth's capacity to support life in all its diversity and is based on the principles of democracy, gender equality, solidarity, the rule of law and respect for fundamental rights, including freedom and equal opportunities for all. It aims at the continuous improvement of the quality of life and well-being on Earth for present and future generations. To that end, it promotes a dynamic economy with full employment and a high level of education, health protection, social and territorial cohesion and environmental protection in a peaceful and secure world, respecting cultural diversity.' (CEU 2006, p.2)

Community Participation

The implementation of the proposed policy in practice would appear contrary to the principles of the Aarhus Convention (UNECE, 1998) particularly in relation to the right to challenge public decisions.

The proposed policy appears to be weighted away from the UK plan-led system and more towards an 'ad hoc' approach to decision making underpinned by the 'presumption in favour of sustainable development'. Local planning authorities are advised that they should 'plan positively for new development and approve all individual proposals where possible.' (DCLG 2011, p.4)

They are advised that their plans must be prepared on the basis that 'objectively assessed development needs' are met and 'with sufficient flexibility to respond to rapid shifts in demand or other economic changes'; they must 'approve development proposals that accord with statutory plans without delay' and they must 'grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date.' (DCLG 2011, p.4)

The policy states that:

Office of the Green MEPs, CAN Mezzanine, 49-51 East Road, Old Street, London N1 6AH phone: 0207250 8415

'All of these [above] policies should apply unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.' (DCLG 2011, p.4)

Local development plans must be 'consistent' with the National Planning Policy Framework and it is clear that if they are 'absent, silent, indeterminate' in relation to a development proposal, or policies are out of date, then planning applications must be granted.

This approach substantially reduces the ability of local people to be involved in decision making in two ways. First, it is likely that local planning authorities will struggle to bring their plans up to date to be 'consistent' with the new national policy in time to respond to developers' proposals in the immediate or shorter term, and at the same time to adequately involve local people in plan-making within the resources they have available. Councils have suffered significant cuts from the UK government austerity drive and in parallel there have been substantial cuts to the national budget which supports community involvement in planning.

Secondly, developer's proposals may come forward which local planning authorities are reluctant to refuse if there is a risk the proposal should be granted because the plan is 'absent, silent or indeterminate or where relevant policies are out of date' (DCLG 2011, p.4). Developers are increasingly likely to challenge local authority decisions leading to 'planning by appeal' or in the courts which would take decision making out of local hands. Government cuts to legal aid budgets are likely to exacerbate the 'inequality of arms' suffered by local people wishing to challenge public decisions. The absence of a 'third party right of appeal' for members of the public also restricts their opportunity to challenge.

The 'Access to Justice' principle enshrined in the Aarhus Convention, Article 9 (UNECE, 1998) makes it clear that the public must have adequate access to challenge environmental decision-making:

'5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.' (UNECE, 1998)

'Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.' (EU, 2000)

When looking at how the Aarhus Convention was being applied in the UK, the cost of court action, including the possible awarding of costs in the event of a case not being upheld, are seen as real barriers to the seeking of justice. It is not clear as to how the Government plans to address this issue.

Citizens also have a right to invoke the provisions of the Environmental Liability Directive EC 2004/35/EC on 'environmental liability with regard to the prevention and

remedying of environmental damage' which enshrines the 'polluter pays principle', placing the liability with the causer of environmental damage. Adequate access to legal aid and assistance should be made available for access to justice in these cases.

EU Protected sites and the natural environment

There is grave concern that the UK government's proposed policy approach could irrevocably harm the conservation value of the Natura 2000 sites protected under the EC Directive on the Conservation of Wild Birds (79/409/EEC) and Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora.

The protection of sites designated under these Directives is specifically mentioned in the NPPF:

'Development likely to have a significant effect on the sites protected under the Birds and Habitats Directive would not be sustainable under the terms of the presumption in favour of development.' (DCLG 2011, p.4)

However the importance of protecting the surrounding area of these sites is not covered. It is evident that to fully protect sensitive sites consideration needs to be given to the surrounding area or setting as well as the site itself.

The sites cannot be viewed in isolation, the ecosystem should be regarded as a whole and there should be specific measures to address harm to the setting of protected sites in order to protect their important wildlife and biodiversity value.

Furthermore, the bias of the policy in favour of 'growth' apparently above virtually all else raises concerns regarding how 'significant effect on the sites' would be weighted in assessing development proposals. There is an emphasis on 'mitigation and adaptation' running through the document, rather than on the avoidance of harm.

Air pollution and air quality

The government will be aware of the joint submission by Keith Taylor MEP, Jean Lambert MEP, Caroline Lucas MP, Cllr Ian Davey and Jenny Jones AM to the government's updated draft air quality plans to meet EU nitrogen dioxide limit values in England. This criticises successive UK government's failure to act to meet nitrogen dioxide limit values set by the EU Directive on ambient air quality and cleaner air for Europe (2008/50/EC) and calls for robust action to address the devastating effect on mortality rates and the particular impact on children.

The proposed NPPF approach would be likely to increase air pollution and worsen air quality. It removes the 'town centre first' policy for new office developments and weakens the rules for leisure and retail developments. It also removes the 'brownfield development first' policy, taking away the national priority for previously developed land to be developed before greenfield sites are built on. These changes would be likely to lead to more out of town business parks, supermarkets and leisure complexes. Transport is by far the most significant source of air pollution and a move towards out

of town services will be very likely to increase the need for travel by car and bus and therefore increase air pollution.

A parallel government consultation proposes that no planning permission be required to change from commercial to residential use, apparently leaving local authorities with no opportunity to control the location of new residential development or to require associated sustainable infrastructure. The proposed NPPF also removes the ceiling for a maximum number of parking spaces and fails to adequately set out requirements to minimise car use and reduce the need to travel. This will be likely to undermine investment in cycling, walking and public transport infrastructure, deepening the adverse effects of air pollution.

In the UK 40 out of the 43 'air quality zones' do not comply with the legal limit for Nitrogen Dioxide and the UK has already been granted an EU time extension to comply with legal limits of PM10, as legal limits are being breached in London. The proposals put forward in the NPPF make it even less likely that the government will meet extended EU deadlines for better air quality, and therefore also increases the likelihood that the UK may face fines from the EU for breaching legal limits.

In addition, it is well known and documented that increased car travel will exacerbate global warming and climate change effects.

Water quality

There is concern that the government's pro-growth-at-all-costs approach would result in inappropriate development on areas vulnerable to flooding, or where water supply is under pressure. This could result in greater contamination of water resources and supplies, contrary to the requirements of the EC Water Framework Directive 2000/60/EC 'establishing a framework for the community action in the field of water policy.'

Renewable energy

The UK government have failed to put an alternative framework in place in the NPPF to replace Renewable Energy requirements in the soon to be abolished Regional Spatial Strategies and regional targets. This will be likely to reduce the number of renewable energy projects coming forward and the ability of the UK government to achieve their 15% Renewable Energy target by 2020. This target was set following the 2009 European Commission national renewable energy action plan (NREAP) framework which required member states to explain how they would meet a binding target of 20% of their energy consumption from renewable sources.

The UK judiciary have held that the government must undertake a Strategic Environmental Assessment (SEA) of the revocation of Regional Spatial Strategies, in accordance with UK regulations required by EC Directive 2001/42/EC 'The Assessment of the Effects of Certain Plans and Programmes on the Environment'. The proposed NPPF and associated Localism Bill are being progressed without the availability of the SEA for the revocation of the Regional Spatial Strategies. If the environmental effects

of the revocation of the RSSs haven't yet been fully evaluated or understood, we would question whether policies and law can be considered which wholly or partly replace them.

On a separate point, any parallel decision to allow substantial change of use from commercial to residential use without planning permission could also mitigate against the ability of local planning authorities to require on site renewable energy infrastructure.

Conclusion

The NPPF as proposed undermines important existing commitments and objectives on carbon reduction, sustainable transport, renewable energy, air pollution, environmental protection, and local decision-making and community control.

By placing a presumption in favour of development above other considerations, the NPPF proposals offer a 'developers' charter'. The NPPF perversely equates sustainable development with development in general, and thereby strips sustainability from the planning regime.

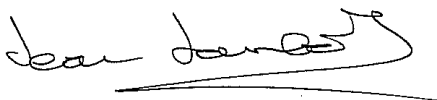
In particular, the proposed NPPF seriously compromises the UK's existing commitments on a range of EU obligations relating to carbon reduction/climate change, pollution and the environment, it is not in keeping with the EU approach to sustainability or the UK's international commitments on access to justice.

We urge the UK Government to rethink the fundamentals of this proposal as a matter of urgency.

Yours sincerely,



Keith Taylor, Green MEP for the South East of England



Jean Lambert, Green MEP for London

REFERENCES

Christian Aid, Greenpeace, Green Alliance, RSPB and WWF (2011) *Climate Check: An analysis of the government's delivery of its low carbon commitments* [Internet] Available at: http://www.green-alliance.org.uk/uploadedFiles/Publications/reports/Climate_check%20report%20September%202011.pdf (Accessed 2/10/11)

Council of the European Union (2006) *Review of the EU Sustainable Development Strategy (EU SDS)* [Internet] Available at: <http://register.consilium.europa.eu/pdf/en/06/st10/st10917.en06.pdf> (Accessed 5/10/11)

Department for Communities and Local Government (2011) *Draft National Planning Policy Framework* [Internet] Available at: <http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicyframework/> (Accessed 27/09/11)

EurActiv (2011) *EU on track to meet 2020 renewables targets* [Internet] Available at: <http://www.euractiv.com/climate-environment/eu-track-meet-2020-renewables-targets-news-5000975> (Accessed 3/10/11)

European Commission (2008), *Access to Justice in Environmental matters* at: http://ec.europa.eu/environment/aarhus/pdf/conference_summary.pdf

European Parliament and of the Council (2004) *Directive EC 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage* [Internet] Available at: http://europa.eu/legislation_summaries/other/28/07_en.htm (Accessed 5/10/11)

European Parliament and of the Council (2000) *Directive 2000/60/EC establishing a framework for the community action in the field of water policy* [Internet] Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT> (Accessed 6/10/11)

European Parliament and of the Council (2008) *Directive 2008/50/EC on ambient air quality and cleaner air for Europe* [Internet] Available at: <http://eur-lex.europa.eu/LexUriServ.do?uri=OJ:2008:152:0001:0044:EN:PDF> (Accessed 27/09/11)

European Union (2000) *Charter of Fundamental Rights of the European Union (2000/C 364/01)* [Internet] Available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf (Accessed 3/10/11)

Green Party of England and Wales (2011) *Consultation response to Government's updated draft air quality plans*

HM Government (2011), *Europe 2020: UK National Reform Programme 2011* at: http://ec.europa.eu/europe2020/pdf/nrp/nrp_uk_en.pdf

Stookes, P. and Razzaque, J. (2002) *Community Participation: The UK planning reforms and international obligations* Environmental Law Foundation: London

United Nations Economic Commission for Europe (1998) *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* [Internet] Available at: <http://ec.europa.eu/environment/aarhus/> (Accessed 27/09/11)