

# PLANNING AND CLIMATE CHANGE

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### **The Aims and Aspirations**

1. There are many policy statements containing many fine words. In this paper I would like to explore whether and how those words are given effect when formulating planning policy and in determining planning applications.
2. There can be no doubt that tackling climate change is given priority in policy:
  - a. “Tackling climate change is a key Government priority for the planning system”<sup>1</sup>
  - b. “Climate change is the greatest long term challenge facing the world today.”<sup>2</sup>
3. The issue of concern is whether enough is being done, and whether it is being done with the urgency required.
4. In this paper I am going to concentrate on planning policy relating to planning applications in general. Although I refer to National Policy Statements designated under the Planning Act 2008, my focus is on the effect of national and local policy as it applies to applications made under the Town and Country Planning Act 1990.

### **Can policy statements make a difference?**

5. In this paper I intend to consider specific aspects of policy and to consider whether statements made in policy documents can be effective in responding to the challenges of climate change.
6. Other speakers are considering case law. I will concentrate on planning policy and its effect on planning application decision making.
7. As with many policy statements, they are easy to make and harder to implement. There is a great danger that fine words do not get translated into action.
8. There is no doubt that changes in national policy can have an effect on the way that planning decisions are made, and more importantly, on the way that we lead our lives.
9. To take an example when PPG13 was revised in 1994 the planning system was more concerned with accommodating the car, whether in car parks or on the roads, than in reducing the need to travel by private car. Although it did not have an immediate effect PPG13 has changed the way the planning system operates- we have moved from minimum to maximum parking standards, and high trip generating development which is not accessible by a choice of means of transport is no longer acceptable.
10. The ‘town centres first’ policy for retail development has, perhaps, had an even more dramatic effect. The days of Nicholas Ridley are long gone – the foodstore operators have

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<sup>1</sup> Introduction to Planning and Climate Change: Supplement to PPS1

<sup>2</sup> Paragraph 3 of the Practice Guide to accompany Planning and Climate Change: Supplement to PPS1

reacted to policy and a proposal for a new out of centre food superstore has become a rarity.

11. Those examples demonstrate that changes to policy can make a difference, although some people don't notice at first and it takes time. The same is likely to be the case for planning policy on climate change.
12. I cannot hope to cover the whole range of issues relating to planning and climate change. I will consider policy and then development management decisions. I will concentrate on:
  - a. Location and design
  - b. Renewable energy generation
  - c. Carbon capture and storage
  - d. Adapting to climate change

## Policy

### National Policy

13. Planning and Climate Change: Supplement to PPS1 (December 2007), and the accompanying practice guide.

Although it is too early to tell whether this policy statement has made a difference to development control decisions, it is to be replaced. The 2007 PPS is written in the language of 'objectives'<sup>3</sup> and 'principles'<sup>4</sup>. That language can deprive a policy document of the clear focus which is needed if it is to influence development control decisions<sup>5</sup>.
14. One clear requirement contained in the 2007 PPS is that local development framework policies should set out a target percentage of energy to be used in new development to come from decentralised and renewable or low carbon energy sources where it is viable(paragraph 26). That requirement is often implemented by the imposition of conditions; the Planning Inspectorate list of model conditions now includes one on decentralised energy supply which requires details to be submitted to and approved by the local planning authority.
15. In March 2010 DCLG published "Take up and application of policies in the planning policy statement on planning and climate change". It is significant to note that "The study was not intended to evaluate the success of PPS policies in terms of development 'on the ground', but only in terms of policy development and decision making."<sup>6</sup> One might be forgiven for thinking that the real test of whether a policy is effective is in terms of development 'on the ground'. The research made 159 key findings, and made 55 recommendations.
16. The results of the study appear to suggest that the policy is not having a significant impact on decision making.

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<sup>3</sup> Paragraph 9 – Key Planning Objectives

<sup>4</sup> Paragraphs 10 and 11 set out "Decision-Making Principles"

<sup>5</sup> See page 83 of Take up and application of policies in the planning policy statement on planning and climate change, local authorities consider the key planning objectives in the climate change PPS to be "too broad and subjective to be a material consideration"

<sup>6</sup> Page 6 of Take up and application of policies in the planning policy statement on planning and climate change

17. 6% of local planning authorities reported that the key planning objectives contained in the PPS had been influential in over 90% of decisions. 68% of local planning authorities reported that the key planning objectives had been influential in under 10% of all applications<sup>7</sup>.
18. The study compared references in appeal decisions to the phrases 'climate change', 'renewable energy', 'low carbon energy', 'decentralised energy' and 'sustainable building' before and after the publication of the draft PPS on climate change in December 2006. Before publication 39 out of 13,368 appeal decisions included a reference to one or more of those phrases. Post publication the figure had increased to 154 out of total of 14,171 appeal decisions.
19. PPS4 has introduced an additional impact consideration against which proposals for economic development are to be assessed (policy EC10.2.a):

*“Whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change.”*

20. It has yet to be seen whether that impact consideration will be approached with the rigour that is applied when considering economic impacts on existing town centres.

#### **National Policy Statements**

21. The Planning Act 2008 sets out a complex procedure for designating national policy statements (“a NPS”).
22. A NPS must give reasons for the policy set out in the statement<sup>8</sup>. *“The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change”*<sup>9</sup>.
23. If the decision maker is the IPC Panel or the IPC Council *“The Panel or Council must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.”*<sup>10</sup>
24. The effect of those provisions of the Planning Act 2008 is to require the Secretary of State to explain how the policy set out in an NPS takes account of policy on climate change. NPSs are likely to be a more powerful policy instrument than PPSs have been, as decisions have, unless the exceptions apply, to be made in accordance with the NPS.
25. A NPS can be challenged by an application for judicial review<sup>11</sup>. Following the approach taken to the challenge to decision document on adding capacity at Heathrow<sup>12</sup>, it is likely that the explanation as to how an NPS takes account of policy on climate change is likely to come under particular scrutiny.
26. As a result of that scrutiny, the statutory requirement to provide the explanation and the requirement for decisions by the Panel and Council to be made in accordance with a

<sup>7</sup> Page 80 of Take up and application of policies in the planning policy statement on planning and climate change

<sup>8</sup> Section 5(7) Planning Act 2008

<sup>9</sup> Section 5(8) Planning Act 2008

<sup>10</sup> Section 104(3) Planning Act 2008

<sup>11</sup> Section 13(1) Planning Act 2008

<sup>12</sup> R (London Borough of Hillingdon) v. Secretary of State for Transport [2010] EWHC 626 (Admin)

relevant NPS, the system in place for consideration of Nationally Significant Infrastructure Projects (“NSIPs”) is likely to be more effective in implementing policy on climate change than has been the case with the previous decision making process (e.g. determinations on applications for consent under the Electricity Act 1989).

### **Local Policy**

27. Section 19(1A) of the Planning and Compulsory Purchase Act 2004 provides:

*“(1A)*

*Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.”*

28. The review of the supplement to PPS1, Take up and application of policies in the planning policy statement on planning and climate change, considered the extent to which local authorities had implemented the policy.

29. The approach to allocation of land is informative. The authors of the report state *“In many local authorities there appears to be a lack of routine familiarity with the land selection criteria of the PPS.”*<sup>13</sup> Although 59% of surveyed authorities considered the potential for access other than by the private car when considering land selection, only 25% considered the potential for decentralised and renewable/low carbon energy<sup>14</sup>.

30. The requirement to set targets for the percentage of energy to be used in a development to come from decentralised and renewable or low carbon energy sources (paragraph 26 of the PPS on climate change) has been carried forward to the plan making stage. The London Plan has been particularly effective in requiring the provision of decentralised and renewable energy<sup>15</sup>. Chapter 5 of the draft replacement London Plan sets out a full range of policies on London’s Response to Climate Change.

### **The draft PPS: Planning for a Low Carbon Future in a Changing Climate**

31. The consultation document Planning for a Low Carbon Future in a Changing Climate (March 2010) follows the new format for PPSs and sets out plan making policies and development management policies. The draft document seeks to address the perceived weaknesses of the current PPS on climate change.

32. Policies LCF4 (local planning approach for renewable and low-carbon energy and associated infrastructure), LCF5 (Local planning approach for adapting to a changing climate), LCF6 (Local planning approach for selecting sites for new development) and LCF7 (Local planning approach to setting requirements for using decentralised energy in new development) all set out specific requirements to be addressed in the plan making process.

33. Policy LCF11 provides a check on local authority requirements for decentralised energy and building sustainability. Such requirements are only to be imposed when they would not make a development unviable, or deter housing provision including affordable housing. If

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<sup>13</sup> Paragraph 3.9.3 on page 45 of Take up and application of policies in the planning policy statement on planning and climate change

<sup>14</sup> Figure 3.9 on page 44 of Take up and application of policies in the planning policy statement on planning and climate change

<sup>15</sup> London Plan policy 4A.7

that policy is to be implemented local plan policies for decentralised energy requirements will have to be supported by an economic viability appraisal. At the development control stage there may be an opportunity for developers to rely upon viability studies to avoid a requirement to provide decentralised renewable energy infrastructure.

34. Policy LCF13.3 would require applicants for major development to demonstrate compliance with the criteria in LCF13.2.
35. The consultation draft policy marks a significant change in Government policy. The draft moves from high minded objectives to specific requirements.

## Development Control/Management

36. Three main themes emerge from the national policy statements and in particular the consultation draft on Planning for a Low Carbon Future in a Changing Climate, they are location and design, power generation, and adapting to climate change<sup>16</sup>. I will also consider carbon capture readiness.

### Location and Design

37. The planning system is familiar with the objective of locating development in such a way as to reduce the need to travel by private car. Policy LCF13.2 in the draft adds to the existing requirements. For example, development is to be designed to reduce greenhouse gas emissions, and to create and secure opportunities for sustainable transport.
38. By requiring (LCF13.3) a proposal for major development to demonstrate compliance with the LCF13.2 criteria, the issues will have to be addressed and considered by applicants.

### Renewable energy generation

39. The Renewable Energy Strategy (2009) sets out a strategy for meeting the legally binding target<sup>17</sup> that 15% of energy should come from renewable sources by 2020.
40. In order to meet that renewable energy target it is estimated that a seven fold increase in renewable energy generation would have to be achieved in the eleven year period from the end of 2008<sup>18</sup>. If that increase is to be achieved a very significant number of applications will have to pass through the planning system. The larger projects (those with a capacity of more than 50 megawatts on shore and more than 100 megawatts offshore<sup>19</sup>) will be considered by the Infrastructure Planning Commission. The smaller projects (e.g. biomass plants, smaller windfarms etc..) will be considered by local planning authorities.
41. The urgent need to review the planning policy framework in order to assist in facilitating the massive investment needed is recognised in the Renewable Energy Strategy, where it is said that the Government will consult on a combined climate change PPS by the end of 2009<sup>20</sup>. Unfortunately, the end of 2009 became March 2010.

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<sup>16</sup> See for example Policy LCF2.1 in the consultation draft Planning for a Low Carbon Future in a Changing Climate

<sup>17</sup> See EU Directive 2009/28/EC

<sup>18</sup> consultation draft Planning for a Low Carbon Future in a Changing Climate, Impact Assessment paragraph 99

<sup>19</sup> See section 15 of the Planning Act 2008

<sup>20</sup> 4.25 Renewable Energy Strategy 2009

42. The approach taken in the draft PPS is to require ambitious targets to be set in the Regional Strategy (LCF2.2), and to seek to ensure that local policies do not set too harsh a test for renewable energy proposals (for example when considering impact on the landscape and townscape LCF4(ii)), and to give particular weight to the benefits of renewable energy in areas where targets have not been met (LCF14).
43. The Renewable Energy Strategy also makes plain that the Government intend to act to ensure that planning permissions are granted when they should be. The Secretary of State will recover jurisdiction in determining some appeals. The strength of the Secretary of State's resolve is demonstrated by the fact that 65% of the 48 renewable energy appeals in 2008-2009 were successful<sup>21</sup>, almost double the figure for all planning appeals in 2008-2009, of 34% of appeals being allowed<sup>22</sup>.
44. Draft policy LCF14 creates a favourable policy context for the consideration of renewable energy projects. The policy gives particular support in cases where renewable energy targets have not been met (LCF14.2(v)).
45. It is yet to be seen whether the proposed change in the policy context, both at the LDF policy making stage and the development management stage will be sufficient to ensure compliance with the 2020 targets.

#### **Carbon Capture and Storage**

46. Since the EU Directive on the Geological Storage of Carbon Dioxide<sup>23</sup> came into force on 23<sup>rd</sup> April 2009 DECC have been under a duty to ensure that all combustion plants with a rated electrical output of 300 megawatts or more are subject to an assessment of whether suitable storage sites are available, transport facilities are technically and economically feasible and whether it is technically feasible to retrofit for CO<sub>2</sub> capture. If those conditions are met the competent authority shall ensure that suitable space on the installation site for the equipment necessary to capture and compress CO<sub>2</sub> is set aside<sup>24</sup>.
47. Those promoting generating stations with a capacity of 300 megawatts or more have to address issues of carbon capture and storage. This can present difficulties as the technology has not been developed and the extent of the area to be set aside for the necessary equipment is unclear.
48. DECC have recently granted consent for 1,520 megawatt Combined Cycle Gas Turbine ("CCGT") power plant at Carrington, Manchester. That plant is the first to be consented with the new carbon capture readiness requirements<sup>25</sup>.
49. Other applications made under section 36 of the Electricity Act 1989 are also subject to the carbon capture readiness ("CCR") requirements. In some cases the consenting process has encountered delays as issues relating to the extent of land required for CCR are resolved.
50. The CCR provisions are supported by a requirement contained in a EU Directive. As a result there is an effective means of achieving the objective, and proposed operators are giving the necessary consideration to the need to consider retrofitting of the equipment needed and to set aside the land required. The requirement to consider indirect and secondary effects in

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<sup>21</sup> 4.27 Renewable Energy Strategy 2009

<sup>22</sup> Planning Inspectorate Statistical Report England 2008-2009, Table 1.2

<sup>23</sup> 2009/31/EC

<sup>24</sup> Article 9a of Directive 2001/80/EC as inserted by Article 33 of Directive 2009/31/EC

<sup>25</sup> DECC Press Release 1<sup>st</sup> April 2010

the environmental statement also ensures that consideration is given to the means of transporting CO<sub>2</sub> to storage sites.

51. The early experience of CCR demonstrates how effective EU legislation on climate change issues can be.

#### **Adapting to climate change**

52. The research on the effectiveness of the December 2007 PPS found that there was insufficient technical understanding about adaptation and that consideration of adaptation measures were often focused on flood risk<sup>26</sup>.
53. The approach taken in the draft PPS is to seek to include policies which ensure adaptation to flood risk at the plan making stage. The policies are expressed in general terms (LCF5 and LCF6) and it is difficult to see how they will have an immediate effect on decision making at the planning application stage.

#### **Applying the new policy**

54. Under the current planning policy regime consideration of adaptation to climate change is often restricted to flood risk, whereas other issues such as on site renewable energy generation and sustainable urban drainage are often left to be dealt with by conditions.
55. The most effective elements of the proposed new development management policies are likely to be LCF13.3 and LCF14.
56. The requirement to demonstrate compliance with the criteria in LCF13.2 will focus attention on those criteria. However it will be important for local authorities to scrutinise the assertions made in Design and Access Statements. At present it would be difficult to find a proposal which does not claim it can be considered a sustainable development- in future it will be important to avoid generalised statements that all relevant climate change criteria are complied with.
57. The national renewable energy generation target, combined with the requirements for regional targets and the policy that favourable consideration be given to proposals when targets have not been reached (LCF14.2(v)) is likely to provide effective support for renewable energy generation.

## **Conclusions**

58. There is no doubt that the planning system has an important role to play in responding to climate change, and that planning policy can and does make a difference to the way that our built environment develops.
59. The main point at which the planning system can have an effect is when development control/management decisions are made. By their very nature those decisions are limited to development projects and influence a very small proportion of the total emissions from and attributable to built development.

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<sup>26</sup> consultation draft Planning for a Low Carbon Future in a Changing Climate, impact assessment paragraph 104

60. The recent experience of the policy to transport and town centre uses demonstrates that a change to national policy can make an important contribution, but it takes time for people to recognise the change and to act on it.
61. Climate change issues associated with NSIPs are likely to be subject to particularly careful analysis.
62. The experience with CCR demonstrates that there are effective means of achieving policy goals; EU directives, supported by the approach taken by the ECJ have a very powerful effect.
63. Planning has a role to play, but it will take time and it needs to be complemented by many other measures, particularly in the fields of reducing the demand for energy and in power generation.
64. The current PPS, Planning and Climate Change (Supplement to PPS1) has not achieved enough. As recognised by the Government a new policy statement is needed if the urgent objectives are to be achieved. The draft PPS has a good prospect of achieving more than its predecessor but only time will tell whether it meets its own aspirations.

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