

Biodiversity and the Revised NPPF

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Key themes

- Safeguarding biodiversity
- Planning for net gains for biodiversity
- Ancient woodland and aged/veteran trees
- Brownfield land and biodiversity
- The operation of the presumption

Policy change or change of emphasis? (1)

Consultation document

- “This chapter has been updated to align with the 25 Year Environment Plan. It includes additional policy on strengthening existing networks of habitats and taking air quality fully into account...”
- “Paragraph [175c] of the revised Framework strengthens protection for ancient woodland and other irreplaceable habitats... This policy strikes a balance between protecting these important natural assets, while allowing development to proceed in the very limited circumstances where it would have significant public benefits, but we welcome views on this during the consultation period.”

Policy change or change of emphasis? (2)

Response to consultation

“In response to the campaigns relating to this chapter and other responses received we have:

- Strengthened protection for ancient and veteran trees by including them as ‘irreplaceable habitats’, so that the ‘wholly exceptional reasons’ test in paragraph 175c) applies to both ancient woodland and ancient and veteran trees. ‘Aged trees’ has been changed to ‘ancient trees’ to align with existing terminology used by Natural England.
- Reinstated wording that makes clear that National Parks, the Broads and Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty, and made clear the scale of development that may be appropriate within them.
- Explicitly referred to locally designated wildlife sites in the policies relating to biodiversity.”

Safeguarding biodiversity

- “protecting and enhancing... sites of biodiversity... value” (in a manner commensurate with their statutory status or identified quality in the development plan) (paragraph 170)
- Plans should “safeguard” components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity (174(a))
- Includes “areas identified by national and local partnerships for habitat management, enhancement, restoration or creation”
- Mitigation hierarchy remains as per old NPPF

Planning for net gains (1)

- No longer optional?
- Old paragraph 109 “providing net gains in biodiversity *where possible*”
- Now “minimising impacts on and providing net gains for biodiversity” (170)
- Plans should “identify and pursue opportunities *for securing measurable net gains for biodiversity*” (174(b)) – previously “identify suitable indicators for monitoring biodiversity”

Planning for net gains (2)

- “opportunities to incorporate biodiversity improvements in and around developments should be encouraged, *especially where this can secure measurable net gains for biodiversity*”
- Note also reference to “recognising natural capital” (170)

Ancient woodland

- Apparent change of policy:
 - Previously refuse “unless the need for, and benefits of, the development in that location *clearly outweigh* the loss”
 - Now “should be refused, unless there are *wholly exceptional reasons* and a suitable compensation strategy exists”
 - FN58 intriguing (and confusing) “For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.”

Ancient woodland (2)

- Practical application of “clearly outweigh”
 - Benefits of woodland management/enhancement weighed in
 - Need for development and need for loss sufficient e.g. housing land supply shortfall plus loss required for site access
- Can the same approach be expected under Revised NPPF?

Brownfield land and biodiversity

- New paragraph 117 plus FN44 provides that “policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land... Except where this would conflict with other policies in this Framework, including *causing harm to designated sites of importance for biodiversity.*”
- Cf Old NPPF para 17 and 111 “re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value”
- Does reference to “designated sites” mean that the policy is more permissive of brownfield development where ecological loss would occur?

The presumption

- Paragraph 177 unchanged (“The presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined”)
- NB *People Over Wind* and Government’s decision not to accommodate the decision in the revised NPPF
- Footnote 6 (disapplication of presumption) mirrors old FN9 in respect of SSSIs (noting 175(b) “development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted”)

Conclusions

- A subtle shift on safeguarding and net gains
- A potentially important shift on ancient woodland
- Operation of presumption is unchanged in terms but in practice there are significant issues

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