

Implications of the revised NPPF for the environment

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The focus: Chapter 15

- Chapter 15: Conserving and enhancing the natural environment
- NPPF1 paragraphs 109-125 v NPPF2 paragraphs 170-173
- NPPF1: “...contribute to and enhance...”
- NPPF2: “...contribute to and enhance...”

Valued landscapes

- NPPF1 paragraph 109 1st bullet point
- NPPF2 paragraph 170a
- *Stroud DC v Secretary of State* [2015] EWHC 488 (Admin)
- But see now *CEG Land Promotions II Ltd v Secretary of State* [2018] EWHC 1799 (Admin); [2018] JPL 1362 (also Mr Justice Ouseley)
- *CEG* (NPPF1 paragraph 109 case) at [55]: “...[*Stroud*] was an extempore judgment and...late on a Friday afternoon.”
- *CEG*: “Valued landscape” is not coterminous with “designation” and it does not require “demonstrable physical attributes”
- “(in a manner commensurate with their statutory status or identified quality in the development plan)”

Some subtle differences

- NPPF1 paragraph 109: “protecting and enhancing valued landscapes, geological conservation interests and soils”
- NPPF2 paragraph 170a: “protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils...”
- NPPF1 paragraph 17: “...recognising the intrinsic character and beauty of the countryside...”
- NPPF2 paragraph 170b: “[contribute to and enhance...by] recognising the intrinsic character and beauty of the countryside...and of trees and woodland.”

More subtle differences

- NPPF1 paragraph 112: “...take into account the economic and other benefits of the best and most versatile agricultural land.”
- NPPF2 paragraph 170b: “[contribute to and enhance...by] recognising...the economic and other benefits of the best and most versatile agricultural land...”
- But NB footnote 53: Plan-making only sequential test?
- NPPF1 paragraph 109: “minimising impacts on biodiversity and providing net gains in biodiversity where possible...”
- NPPF2 paragraph 170d: “minimising impacts on and providing net gains for biodiversity...”

National Parks, the Broads and AONBs

- NPPF2 paragraph 172: “The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads.”
- Why not “great weight” in AONBs?
- “The scale and extent of development within these designated areas should be limited”
- “scale and extent”: what’s the difference?
- “within” (cf “in” at NPPF1 paragraph 116)
- *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567 (suggests the development within must be “major” for “exceptional circumstances” test to apply)

National Parks, the Broads and AONBs

- “these designated areas”: again excluding AONBs?
- “major development”: see footnote 55
- The NPPF paragraph 172 considerations to be assessed are non-exhaustive.
- For example, “meeting the need for it in some other way” may involve the consideration of alternative sites: *Wealden DC v Secretary of State* [2017] EWCA Civ 39; [2017] JPL 625

Viability

- NPPF 2 paragraphs 34 and 57
- “Plans should set out the contributions expected from development...policies should not undermine the deliverability of the plan.”
- Planning applications that comply with up-to-date policies setting out expected contributions should be assumed to be viable.
- Burden on the applicant to justify the need for a viability assessment at the application stage
- See the Planning Practice Guidance on Viability for circumstances in which this may be appropriate
- All viability assessments should be made publicly available