

PPS 9: Biodiversity and Geological Conservation Planning Brief

PPS9 was published in August 2005 and replaces the existing PPG9, which had been in circulation since 1994.

PPS9 is essentially made up of three documents. The first part is the PPS itself, which sets out the Government's position on the role and importance of biodiversity and geological issues in the planning process. Secondly, the document is supplemented by a Circular prepared jointly between the ODPM and DEFRA (06/2005 and 01/2005 respectively) which provides detailed advice on the range of legislative provisions at the international and national levels that will have impacts on planning decisions in so far as they relate to biodiversity and geological conservation. The third part of the document will be a Good Practice Guide that provides advice on planning for biodiversity and geological conservation. This guide is expected to be published in early 2006.

Part 1 - PPS9: The Government's Objectives and Principles

The PPS sets out the Government's three objectives for planning in a biodiversity and geological context, these are:

- Promoting sustainable patterns of development through conservation of biological and geological resources and the enhancement of these as an integral part of the development process.
- The need to conserve, enhance and restore the diversity of England's wildlife and geology.
- Contribute to rural renewal and urban renaissance by enhancing biodiversity and green spaces in development, recognising that a healthy functional ecosystem can contribute towards a better quality of life.

In terms of how the Government's objectives are put into practice, the Statement requires that Regional Planning Bodies (RPBs) and Local Planning Authorities (LPAs) should adhere to a series of key principles in order to ensure that the potential impacts of planning decisions on biodiversity and geological concerns are fully considered.

These are summarised as follows:

- Basing development plan policies and planning decisions on up-to-date information about the environmental characteristics of their areas. It also requires LPAs to assess the potential of areas to sustain and enhance those resources. The PPS does not specify the precise nature of this information
- Attaching respective weight to designated sites of international, national and local importance. The Statement sets the aim that Plan policies and development decisions should maintain, and enhance, or restore or add to identified conservation interests.
- Adopt a strategic approach to conservation, enhancement and restoration in the formulation of development plan policies.
- Promote the incorporation of conservation interests within the design of development.
- Permit development proposals where the principle objective is to conserve biodiversity and geological conservation interest.
- Where development proposals harm biodiversity and geological conservation interests, the LPA needs to be satisfied that the development cannot be reasonably located on alternative sites resulting in less harm. In the absence of such sites, appropriate mitigation measures should be secured and if these

cannot, appropriate compensatory measures should be agreed. If appropriate mitigation or compensation cannot be implemented to avoid significant harm, then planning permission should be refused.

The Statement's requirements on content of RSS and LDFs

PPS9 provides guidance on how respective RSSs and LDFs should address the issues of biodiversity and geological conservation. At the RSS level, the Statement seeks the inclusion of policies on enhancement and conservation, as well as setting out means of addressing regional and sub regional conservation concerns through criteria based policies. It also requires the establishment of targets for restoration and indicators for monitoring biodiversity.

LDFs should identify designated sites at international, national and local levels, making clear distinctions between them. In addition, LDFs should identify sites for habitat restoration/creation in order to meet RSS targets.

What are the sites of biodiversity and geological value?

PPS9 identifies the following designations:

International Sites – These are designated as Ramsars, Special Areas of Conservation (SAC), Special Protection Areas (SPA), candidate SACs and potential SPAs. As a result of SACs and SPAs enjoying statutory protection, there is no need for specific policies in LDDs to protect them and they should only be identified on the proposals maps and if necessary reference in the supporting text. In relation to candidate SACs and potential SPAs, these are not afforded statutory protection but still need to be considered in the determination of planning applications as if they are classified or designated. Listed Ramsar sites should also receive the same protection as designated SPAs and SACs.

Tendring has a few International sites and include Ramsars, SACs, SPAs. These are mainly in the areas of the Stour Estuary, Hamford Water, and the Colne River.

SSSI – Many are recognised at the international level and are protected accordingly. Those that are not, should be given a high degree of protection, through appropriate policies in plans. Where development proposals within, or outside, a SSSI would lead to adverse effects on it, planning permission should not normally be granted. Exceptions should only be made where the benefits of the development clearly outweigh the impacts. LPA should use conditions and/or planning obligations to mitigate the harmful impacts.

Regional and Local Sites – LPAs should distinguish between the level of protection offered on these sites in relation to their national and international counterparts. PPS9 advocates the use of criteria based policies for evaluating development proposals affecting such sites. The Re-deposit Draft of the Replacement Plan includes protection policies (EN11a, EN11b and EN11c) that are based on the model policies of English Nature.

Ancient Woodlands and other important natural habitats – LPAs should identify ancient woodlands areas without statutory protection and protect them from development that would result in their loss or deterioration, unless the needs and benefits of the development, in that location, outweigh the loss of woodland habitats. LPAs should also encourage the conservation of veteran or aged trees outside ancient woodland for their biodiversity value. Policies in the Development plans should also conserve natural habitat types that have been identified in the

Countryside and Rights of Way Act 2000 (See policies EN5, EN11a, EN11b, EN11c, EN6a in the Re-deposit Draft Plan).

Networks of Natural Habitats – identified as a valuable resource, the fragmentation of such networks should be avoided and repair should be sought through policies in plans. Where development does take place in such networks, they should be protected and where possible, strengthened or integrated into it.

Previously Developed Land – The re-use of such land to assist in achieving sustainable patterns of development is recognised by the PPS. Where there are significant interests, in conservation terms, LPAs with the developer, should seek to retain this interest, or incorporate it into any development.

Biodiversity within Developments – Development proposals present opportunities for building in beneficial biodiversity or geological features as part of good design. LPAs are required to maximise such opportunities, using planning obligations where appropriate.

Species Protection

Many wildlife species are subject to statutory protection and specific policies for their protection are not necessary. Those species that are not protected but are identified by DEFRA are to be protected by policies in LDDs promoting the use of planning conditions or obligations. A list of these habitats and species can be viewed on the DEFRA website www.defra.gov.uk/wildlife-countryside/cl/habitats/habitats-list.pdf. If they cannot be protected, development should be refused, unless the need and benefit of the development outweighs the harm.

ODPM Circular 06/2005 and DEFRA 01/2005: Biodiversity and Geological conservation – statutory obligations and their impact within the planning system.

The circular aims to provide advice on legislation relevant to various nature conservation issues that planning authorities are likely to encounter. It is divided into five parts, each dealing with different conservation issues.

- **Part I deals with conservation of internationally designated sites:**
 - This section of the circular sets out the background and terms of internationally designated sites.
 - It explains how planning authorities should proceed with development proposals that will affect these sites.
 - It also explains how local planning authorities should apply tests and assessments before making a decision.
 - LPA should also consider all extant planning permissions that may affect a European site (including Ramsar sites). Review of permissions should be conducted as soon as reasonably possible. The circular provides details on how to proceed with such a review.
 - Development that are able to proceed under General Permitted Development Orders and would significantly affect a European site should not be allowed unless a LPA has ascertained (after consulting English Nature) that such development will not adversely affect the site. This regulation does not apply to Ramsar and pSPAs.
 - The circular at the moment states that development plans are not subject to assessment under regulations 48,49 or 53 of the Habitats Regulation 1994 because Development Plans are not considered to be plans or projects as defined by Regulation 48. Regulation 48 restricts the granting of planning permissions for development which may affect a European site and requires

that an appropriate assessment is first carried out of the implications of the development for the site's conservation objectives. Regulation 49 requires an authority proposing to allow development that it can not be ascertained will not adversely affect a European site to notify the First Secretary of State (SoS). The First SoS can then consider whether the application falls within the criteria for call-in. Regulation 53 also places a duty on the First SoS to secure any necessary compensatory measures where planning permission is granted in accordance with regulation 49. However, a European court case following a recent European Court ruling found that the UK government had not fully implemented the European Union's 1992 Habitats Directive. Therefore the circular will be amended to reflect the fact that Development Plans should take sufficient assessment of any proposal in a development plan likely to significantly affect a European site.

- **Part II deals with nationally designated sites and the consultation and notification process:**
 - A LPA has a general duty to conserve and enhance SSSIs and in doing so may need to consult English Nature. Further guidance on how LPA can comply with their general duty will be published in the Good Practice Guide.
 - The circular gives advice on how LPA should proceed when a proposal is likely to impact on a SSSI. It also provides details on consultation requirements and consultation periods. It specifically stipulated when a LPA should consult English Nature and when they need not.
- **Part III deals with planning for nature conservation outside of designated sites and areas:**
 - Habitats or species listed as priorities in Biodiversity Action Plan, Local Biodiversity Partnerships together with policies in the England Biodiversity Strategy needs to be taken into consideration when preparing LDDs and making planning decisions.
 - The Circular further refers to landscape features of importance for wild flora and fauna and how to promote the management thereof as well as protection of trees and hedgerows.
- **Part IV deals with protection of species:**
 - The circular provides further details on the protection of species and the relevant legislation protecting these species.
- **Part V highlights the duties LPAs have under other regulations such as EIA, SEA and the Waterframework Directive.**