



**CONSULTATION RESPONSE BY UKELA (UK ENVIRONMENTAL LAW
ASSOCIATION) TO THE NATIONAL PLANNING POLICY FRAMEWORK DRAFT
TEXT FOR CONSULTATION (March 2021)**

INTRODUCTION

1. UKELA (UK Environmental Law Association) comprises over 1,500 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response to the consultation on draft revisions to the National Planning Policy Framework (NPPF) has been prepared by the Planning and Sustainable Development Working Party. These submissions do not necessarily, and are not intended to, represent the views and opinions of all UKELA members but have been drawn together from a range of its members.
3. Given that the text of the NPPF has been revised primarily to implement policy changes in response to the Building Better Building Beautiful Commission “Living with Beauty” report, many of the proposed changes do not appear directly relevant to UKELA’s work. Likewise, the draft National Model Design Code (which will provide detailed guidance on the production of design codes, guides and policies to promote successful design) is not concerned directly with matters of UK environmental law and policy, and as such UKELA has made no comment on this. Page and paragraph references are to the revised NPPF (as proposed in the Consultation) unless otherwise stated.

COMMENTS ON THE PROPOSED CHANGES TO THE NPPF BY CHAPTER

Chapter 2. Achieving Sustainable Development

Paragraph 7

4. UKELA welcomes the update to paragraph 7, which now acknowledges both the societal role that sustainable development plays by reference to UN General Assembly Resolution 42/187¹ and the more recent development whereby members of the United Nations, including the UK, have agreed to pursue 17 Global Goals for Sustainable Development in the period to 2030, and which address social progress, economic well-being and environmental protection (in Transforming our World: the 2030 Agenda for Sustainable Development).

Paragraph 8 c)

5. UKELA welcomes the strengthening of the environmental objective at paragraph 8 c), subject to our comments on 'sustainable development' below.

Paragraph 11a)

6. UKELA welcomes the strengthening of the approach in plan-making, in the application of the presumption of sustainable development by recognising the need for plans to promote sustainable patterns of development in meeting the development needs of their area and in aligning growth and infrastructure. We also welcome recognition that sustainable development means requiring all plans to improve the environment and mitigate climate change (including by the effective use of land in urban areas). However, such observations are also subject to our comments on 'sustainable development' below.

¹ "The General Assembly, Concerned about the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development, Believing that sustainable development, which implies meeting the needs of the present without compromising the ability of future generations to meet their own needs, should become a central guiding principle of the United Nations, ... 1. Welcomes the report of the World Commission on Environment and Development entitled "Our Common Future"; ... 4. Agrees further that an equitable sharing of the environmental costs and benefits of economic development between and within countries and between present and future generations is a key to achieving sustainable development; ... 7. Calls upon all Governments to ask their central and sectoral economic agencies to ensure that their policies, programmes and budgets encourage sustainable development and to strengthen the role of their environmental and natural resource agencies in advising and assisting central and sectoral agencies in that task; ..." This is further developed in the report: Our Common Future (WCED, 1987) "*Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: • the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; an • the idea of limitations imposed by the state of technology and social organization the environment's ability to meet present and future needs.*"

Understanding sustainable development

7. Whilst the minor amendments to this chapter of the NPPF are welcome, the concerns UKELA raised in relation to this same definition of sustainable development in UKELA's consultation response to the Planning White Paper (October 2020) remain and are reiterated here.
8. As a concept, sustainable development focuses on present needs (with emphasis on the world's poor) and the notion of limits set by social organisation and environmental limits. This approach is alluded to in paragraph 8 and 11 of the NPPF, but even with the current amendments, this falls short of fully integrating what is considered to be the accurate definition of this fundamentally important concept. This is because the NPPF shifts from the original definition towards an unnecessarily myopic focus on buildings and physical structures (e.g. is this building 'sustainable?'). UKELA considers this problematic, as the use of 'sustainable development' to refer to physical form and structures frequently results in bad decision-making e.g. the existence of a bus stop in a proposed housing development is considered to amount to 'sustainability', but fails to consider whether the bus stop will be used in a manner that results in any material change in (for example) greenhouse gas emissions.
9. Until the NPPF specifically (and planning policy generally) integrates the notion of sustainable development as a societal concept (rather than linking its application to simplistic notions of physical development of land and buildings) then UKELA considers any attempt to meet critical environmental concerns including air pollution, biodiversity loss and climate change will fail to achieve truly sustainable development.
10. As such, UKELA regrets that the government is not using this opportunity to properly update the definitions of sustainable development within the NPPF to recognise this requirement.

Chapter 8: Promoting Healthy and Safe Communities

Open Space and Recreation: paragraph 97

11. UKELA welcomes the recognition that high-quality open spaces can deliver wider benefits for nature and assist in efforts to address climate change.

Chapter 11: Making Efficient Use of Land

Achieving appropriate densities: paragraph 124

12. While UKELA welcomes the recognition that the efficient use of land should be made compatible with sustainable places, it is unclear whether sufficient consideration has been given here to how an 'efficient use' is measured and understood, and how environmental damage will be balanced against economic need and other pressures when applying this policy. UKELA considers that this is opaque and therefore is open to wide interpretation or misuse and needs to be looked at in the light of other policies within the NPPF (including paragraph 124 a)). UKELA recommends that there is greater explanation of what is meant by sustainable patterns of growth and efficiency.

Chapter 12: Achieving well-designed places

Paragraph 125

13. UKELA welcomes the inclusion of reference to 'sustainable buildings and places' as fundamental to what the planning and development process should achieve, but again cautions that for such an approach to succeed, sustainable development 'proper' as set out above needs to be more fully integrated throughout the NPPF and wider land use planning policy.

Paragraph 130

14. UKELA welcomes the recognition of the important contribution that trees make to the character and quality of urban environments, as well as in mitigating the effects of climate change.

Paragraph 133 b)

15. UKELA welcomes the commitment to give "significant weight" to outstanding or innovative designs which promote high levels of sustainability. However, once again, until the NPPF fully reflects the scientific consensus on the definition of which sustainability and sustainable development involves, this change in policy is unlikely to succeed in its efforts to genuinely promote high levels of sustainability.

Chapter 14: Meeting the challenges of climate change, flooding and coastal change

16. While UKELA welcomes the additional references to climate change throughout the draft NPPF, we note that Proposal 15 of the Planning White Paper (October 2020) states: *“We intend to amend the National Planning Policy Framework to ensure that it targets those areas where a reformed planning system can most effectively play a role in mitigating and adapting to climate change and maximising environmental benefits.”*
17. UKELA also notes the introduction to the draft NPPF’s publication which states the intention to revisit the NPPF in due course in the event that the proposals in the White Paper are brought forward. It is nevertheless disappointing to see that so few opportunities have been taken to ensure that the NPPF (a policy document central to the planning system) can operate effectively to help mitigate climate change and maximise environmental benefits. The absence is especially notable in this chapter (which deals specifically with climate change). Although, as a response to climate change involves all aspects of planning policy, we would also expect to see corresponding changes throughout the NPPF.
18. It is also noted that the NPPF continues to contain 12 references to ‘low carbon’, whereas following the Climate Change Act (2008)(2050 Target Amendment) Order 2019, the Climate Change Act 2008 was amended to introduce a target for at least 100% reduction in greenhouse gas emissions compared to 1990 levels in the UK by 2050. The phrase ‘net-zero’ is used in the Planning White Paper to describe this commitment and is also a description which accords with the current scientific consensus. UKELA urges the government to ensure that this change in definition is also reflected in the NPPF.

Planning and Flood Risk: paragraph 160 c)

19. UKELA welcomes the recognition that improvements in green infrastructure can reduce both the causes and impact of flooding. In particular, UKELA welcomes the emphasis on making ‘as much use as possible’ of natural flood management techniques as a part of an integrated approach to flood risk management, given the importance of such techniques not only for reducing flood risk, but also for increasing biodiversity.

Chapter 15; Conserving and enhancing the natural environment

Paragraph 175

20. UKELA welcomes the clarification that development within the setting of National Parks and Areas of Outstanding Natural Beauty should be designed in order to avoid adverse impacts on the designated landscape. However, given the heightened environmental sensitivities of these sites, a recognition of the wider need to avoid adverse “environmental impacts” in particular would be welcomed.

Annex 2: Glossary

21. UKELA welcomes the expansion of the definition of green infrastructure to include blue spaces and other natural spaces, as well as recognising that green infrastructure can provide a range of services including nature, climate, wellbeing and economic (prosperity). With a broader recognition of the value of green infrastructure brings, UKELA hopes to see these services properly valued when the benefits and costs of planning decisions are weighed.

Annex 3: Flood risk vulnerability classification

22. On a minor point, Annex 3 refers to the definition of landfill in Sch. 10 of the Environmental Permitting (England and Wales) Regulations 2010 which were repealed by Environmental Permitting (England and Wales) Regulations 2016/1154 Sch.28 para.1. It is recommended that an updated definition is referred to in Annex 3.

UKELA

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