

Consultation on Planning Policy Statement 9: Biodiversity and Geological Conservation

Response from Wildlife & Countryside Link

December 2004



BMC



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INTRODUCTION

1. Wildlife and Countryside Link (Link) brings together voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management and food production and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of over 7 million people in the UK, have a turnover of over £700 million and manage over 398,000 hectares of land. This statement is supported by:
 - Bat Conservation Trust
 - British Mountaineering Council
 - Buglife - The Invertebrate Conservation Trust
 - Butterfly Conservation
 - Campaign to Protect Rural England
 - Council for British Archaeology
 - Council for National Parks
 - Friends of the Earth
 - Herpetological Conservation Trust
 - National Federation of Badger Groups
 - National Federation of Biological Recorders
 - Plantlife International
 - Ramblers' Association
 - Royal Society for the Protection of Birds
 - The Wildlife Trusts
 - Woodland Trust
2. Link welcomes the publication of draft PPS9 and the accompanying Government Circular, which together with the forthcoming Good Practice Guidance, present the Government with an important opportunity to ensure that it helps to meet its biodiversity commitments through the operation of the planning system. In 2002 Defra published *Working with the Grain of Nature: a Biodiversity Strategy for England*, which aims to ensure that biodiversity considerations become embedded in all sectors of public policy. It lays out a programme for the next five years to make the changes necessary to conserve, enhance and work with, rather than against, the grain of nature and ecosystems. It sets a vision '*for a country – its landscapes and water bodies, coasts and seas, towns and cities – where wild species and habitats are part of a healthy functioning ecosystem; where we nurture, treasure and enhance our biodiversity, and where biodiversity is a natural consideration of policies and decisions, and in society as a whole*'¹. Link believes PPS9 should reiterate this statement and must provide a firm policy footing for the achievement of this vision.
3. Link also welcomes the parallel consultation on the draft Government Circular, and additional comments are provided on this accompanying document.

POINTS TO WELCOME

4. The following elements of draft PPS9 are welcomed:

¹ DEFRA 2002. *Working with the grain of nature. A biodiversity strategy for England*, page 7

- The recognition that the planning system has a significant part to play in meeting the Government's international commitments and domestic policies for habitats, species and ecosystems (page 6);
- Calls for planning to conserve, enhance & restore biodiversity in line with the England Biodiversity Strategy (page 6);
- The recognition of the contribution of healthy functioning ecosystems to quality of life (page 6);
- Calls for use of up to date information (paragraph 1(i));
- Statement that development plans should incorporate or reflect biodiversity objectives (paragraphs 3 and 5);
- The recognition of the role of Local Sites (paragraph 9);
- Calls for protection of ancient trees and woodland (paragraph 10);
- Calls for protection of networks of habitats (paragraph 11);
- Recognition that previously developed sites may have a significant biodiversity interest (paragraph 12);
- Policy encouragement for incorporation of biological and geological features in development (paragraph 13);

although in some cases we consider that the policy wording should be clarified or significantly strengthened, as discussed below.

KEY AREAS OF CONCERN

The following key areas of concern have been identified:

5. At only 14 paragraphs of policy, PPS9 is the shortest PPS issued to date. While Link supports ODPM's aim to simplify and streamline the planning process, the principle has been carried to such an extreme in the case of PPS9 that **brevity** has been achieved at the expense of clarity, resulting in ambiguity and insufficient policy direction being given to planning bodies. The brevity of PPS9 also suggests that biodiversity and geological conservation are not a high priority for ODPM, and is in sharp contrast to the recently published *PPS23: Planning and Pollution Control*.
6. The **balance** between the PPS and the circular and the status of each document is unclear. At the very least there is a need for better cross-referencing between the two documents. There are some parts of the circular that could justifiably be included within the PPS, since some of the content within the circular seems to be policy rather than legal interpretation (e.g. paragraph 86 of the circular on the types of policies that local development documents must include). Whilst it is understood that users of the planning system *should* refer to both PPS9 and the circular, we contend that PPS9 will be the first, and often only, port of call for most users and therefore that its policy content needs to be significantly enhanced.
7. Although the Government's objectives on page 6 state biodiversity should be enhanced wherever possible, the overall tone of the PPS is focussed on protecting the environment from harm, and contains little to encourage **positive planning** for biodiversity restoration and enhancement e.g. habitat creation opportunities. Such an approach is essential to enable government to meet the vision set out within the England Biodiversity Strategy². The new spatial planning system presents a great opportunity to take positive steps in the pursuit of biodiversity objectives, not merely to protect against adverse impacts. We suggest a separate section on biodiversity enhancement is therefore required, alongside a

² DEFRA 2002. *Working with the grain of nature. A biodiversity strategy for England*.

key principle calling for biodiversity enhancement as a routine requirement for development plans and development control.

8. **Integration with BAP process.** Although the PPS refers to the UK Biodiversity Action Plan and England Biodiversity Strategy etc, it is unclear how the BAP process should be integrated with the planning system. It is vital that PPS9 makes this relationship clear. At the minimum there should be clear cross referencing between the relevant parts of PPS9 and the details on the UK and Local BAPs that can be found in Part III of the circular, though it is further suggested that some of this detail might be more appropriately placed within the PPS. It is vital that planners consider the full range of BAP habitats and species.
9. Although the 'Key principles' indicate the importance of **reliable and up to date information**, we believe this element needs a much stronger policy emphasis to encourage Planning Authorities to provide adequate support for this mechanism. Local Authorities, and the planning process in general, have much to contribute to collection, collation and dissemination of data; they are also a major user of this information. Clear policy direction is needed to enable planning authorities to justify allocating sufficient input and support for obtaining and maintaining environmental information. This needs to link into other national schemes and to other data holding organisations, both to ensure that national and international obligations are achieved and also to ensure that there is sufficient support from these to feed into Plan Policies and planning decisions. PPS9 must provide a focus for the role of planning authorities to address the current inadequacies regarding environmental data.
10. Although Link welcomes paragraph 11 on habitat networks, it is felt more should be included on the **wider countryside** and the landscape scale approach to nature conservation. PPS9 has a strong focus on sites of biodiversity and geological conservation value, and while their protection is crucial, the importance of biodiversity in the wider environment needs more emphasis than is included within the current draft. It is vital that the spatial planning system provides an opportunity for landscape scale conservation since the quality of the landscape is directly related to the quality of the biodiversity it contains. Consideration of the wider countryside is not only important for meeting biodiversity objectives, but it will also be key to delivering the government's objectives for creating sustainable communities.
11. Link also has concerns regarding the **structure of the PPS**, and its inconsistency with the structure of the circular e.g. some of the issues covered under sections covering biodiversity outside of protected sites in the circular are included under sections on protected sites in the PPS. It is suggested that a separate section on habitats should be included in the PPS to incorporate paragraphs 10, 11 & 12.

OMISSIONS

12. PPS9 makes no reference to **environmental assessment** in any form, whether strategic environmental assessment, sustainability appraisal or environmental impact assessment. While acknowledging that these are all statutory requirements rather than policy issues, Link believes that PPS9 should at least refer to the importance of these techniques in biodiversity planning, with further detail provided within the circular. The issue of cumulative impacts upon biodiversity resources is particularly difficult, and both regional planning bodies and local planning authorities should be strongly encouraged to deal with it through the use of suitable assessment techniques.
13. **Climate Change** is widely viewed as the most serious long-term global threat to biodiversity. Given the severity of this threat, and the Government's commitment to

tackling climate change, Link was surprised to find but a passing reference to the issue within PPS9. While we acknowledge that these issues are addressed to some extent within PPS11 and PPS12, surely PPS9 should be the place for Government to provide more detailed policy on how regional planning bodies and local planning authorities should tackle the impacts of climate change on biodiversity?

14. The **precautionary principle** is currently only present in a weak form within PPS9, with key principles (iv) and (v) providing arguments in favour of development over protection and enhancement of biodiversity. Link believes this leaves the way open for combined and cumulative adverse impacts on nature. We strongly recommend that the balance needs to be redressed in the final PPS with a clear policy message to planners on the need to protect biodiversity.

SPECIFIC COMMENTS

The Government's objectives

15. The section on the government's objectives (page 6) is welcomed – this is the strongest part of the PPS. However, it is felt that subsequent sections do not adequately reflect these objectives.

Key Principles

16. The key principles require rewording to encourage more positive planning for biodiversity and geological interests, to more adequately reflect the Government's objectives on the previous page, and to further promote the use of a use of a sequential approach to planning. The following approach has been adapted from that advocated by the Royal Town Planning Institute³, and it is suggested that the key principles are re-drafted to reflect this:

- **Information and assessment** – is more information needed before decisions can be made on scheme/site selection and/or scheme design? Identify, protect and seek to enhance important environmental features. Consider potential impacts (direct, indirect and cumulative), on the environment likely to result from policy and development proposals (using Strategic Environmental Assessment (SEA), Environmental Assessment (EA) and Landscape Character Assessment where appropriate). In the absence of adequate information, decisions should be deferred or a precautionary approach applied.
- **Avoidance** – can all adverse impacts of development be avoided? Always seek to avoid adverse impacts, exploring all available alternative options, including not allowing the proposal. SEA should also be applied to alternative options.
- **Mitigation** – where adverse effects are unavoidable, can those effects be reduced?
- **Compensation** – where mitigation cannot resolve adverse effects, are compensatory measures appropriate and sufficient? Compensation should only be considered as a last resort. It should not be an afterthought if impacts cannot be avoided or mitigated. Compensation packages or schemes should not compromise other biodiversity assets.
- **New benefits** – are there opportunities to enhance wildlife and habitats? Always seek to improve the environment through new development or land use change. Enhancement should lead to genuine improvements on what exists already.

17. It is also suggested that two further key principles are required, the first emphasising the importance of planning authorities in delivering conservation objectives, and the second on the implications of climate change.

³ RTPI, 1999. *Planning for Biodiversity: Good practice guide*, page 33

Regional Spatial Strategies

18. Regional Spatial Strategies have a key role in positive planning for biodiversity, particularly through being able to identify, at a regional or sub-regional scale, broad locations for habitat restoration or creation.
19. This section places too much emphasis on the **current** distribution/occurrence of priority habitats species and sites, and makes no reference to biodiversity enhancement. Reference to climate change is imperative and useful, but the policy should also address the wider landscape and recognise that biodiversity is dynamic and needs space beyond protected sites.
20. Clearer integration is needed with BAPs. The planning system should consider the full range of BAP habitats and species. Regional Spatial Strategies have a particular role to play in identifying strategic opportunities for meeting BAP targets, providing a framework for Local Development Documents to incorporate local biodiversity objectives, and setting out a means of implementation on the ground. For example sub-paragraph (i) should be more explicit about positive and proactive 'enhancement' (this is implicit, but could be stronger); sub-paragraph (ii) should look to link 'criteria based polices' to national goals (such as the achievement of favourable conservation status) and sub-paragraph (iv) should look to suitable 'measures', and not simply 'indicators', for monitoring biodiversity (these should support the development of more local biodiversity monitoring and assessment programmes).

Local Development Documents

21. Local Development Documents are the key means of implementing biodiversity planning at the local level. In the past, local plans have adopted a range of biodiversity policies in order to provide guidance in what has become a complex and sophisticated area of planning.
22. The three sentences dealing with Local Development Documents in PPS9 are totally inadequate and inconsistent with PPS12. They fail to give local authorities the necessary policy steer in preparing Local Development Documents and could lead to the abandonment of key existing local plan policies. Link believes this entire section should be reworded to ensure that biodiversity conservation is actively taken on board in Local Development Documents and that planning is used as a mechanism for enhancing biodiversity at the local level.

Sites of biodiversity and geological conservation value

23. International sites – PPS9 states local planning authorities need to show the location of these on maps, but do not need to include specific policies on these sites as they enjoy statutory protection. Link is concerned about the lack of guidance on appropriate assessment of issues affecting Natura 2000 sites. As a minimum, cross-references to the circular are needed here.
24. SSSIs – It is not clear whether development plans should contain policies on the conservation and enhancement of SSSIs. Critically, there is no guidance on how local planning authorities should apply their s28G duties under the Wildlife & Countryside Act 1981 (as amended by the Countryside & Rights of Way Act 2000) to conserve and enhance SSSIs in preparing plans and taking decisions on planning applications. This is

essential if the PPS is truly to offer policy guidance. Guidance should also be given on how SEA should be used to test the plan to ensure it meets the requirements of s28G.

25. The caveat within paragraph 8 “*An exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs*” is unclear and consequently undermines this section. Detailed policy guidance is required on the tests to be applied when making these decisions, following the sequential approach explained in our response (see para 16 above). We urge greater clarity on the nature of the criteria or tests that should be used.
26. Regional & local sites – Link welcomes the statement of support for regionally and locally important wildlife sites and the important role they play. However, the terminology used needs to be consistent with Defra’s Local Sites guidance (third draft is due to be published shortly) – the draft PPS refers to Regionally Important Geological Sites when it should be referring to Local Geological Sites and it doesn’t refer to Local Wildlife Sites at all.
27. Link believes Local Authorities should be required to identify Local Sites and that these should be a material consideration in planning decisions and included on the proposals map. The term “criteria-based policies” is vague, and more detailed policy guidance is needed on the tests to be applied when making these decisions. Again, we urge greater clarity on the nature of the criteria or tests that should be used in development plan policies.
28. Important Plant Areas – Reference should be made in a separate sub-section to the importance of IPAs (Important Plant Areas) in delivering the Convention on Biological Diversity’s Global Strategy for Plant Conservation. IPAs are selected using globally recognised criteria, and represent the most botanically important areas for plants, fungi and their habitats in an international context. Whilst IPAs are not a designation, they are intended to support, inform and underpin existing protected areas such as Sites of Special Scientific Interest and Special Areas of Conservation. However, IPAs also exist beyond protected area networks. IPAs can be an effective mechanism to bridge the gaps between protected area networks and local sites, thereby adding to existing networks of habitats. IPAs provide opportunities for habitat restoration and the buffering of sensitive species and habitats. IPAs are a valuable resource for increasing the resilience of the wider countryside, providing a means to facilitate plant conservation on a landscape scale. The inclusion of the IPA network as a recognised system of sites with biodiversity value is therefore essential in the Government’s policies on planning.
29. Ancient Woodland – Paragraph 10 presents a major step forward for the protection of ancient trees and woodland. This is a welcome shift in policy, bringing England into line with Welsh and Scottish planning guidance in terms of protecting ancient woodland, and Link would like to see much of it retained. However, the use of the caveat “*unless the need for, and benefits of, the development in that location clearly outweigh the loss of the woodland habitat*” is unnecessary and it should be deleted. Ancient woodland should be provided with this level of protection because, as the PPS recognises, it is irreplaceable. It is also suggested that in addition to the protection afforded to ancient woodland, a further statement is needed to extend protection to all irreplaceable semi-natural habitats.
30. Networks of Natural Habitats – Link welcomes the recognition of the fact that important habitats exist outside of protected areas. However, it is suggested PPS9 should also call for planners to restore the links between habitats in a similar way to the Scottish guidance NPPG14: Natural Heritage.

31. Previously Developed Sites – Link supports the inclusion of a policy statement on previously developed sites and the recognition of their biodiversity value. However, we are concerned that the current wording is inadequate and could lead to misinterpretation. This policy implies that such sites should be developed with local authorities having only to 'look for ways' to retain significant interest. The indication that such brownfield sites with high biodiversity value should not generally be considered for development must be more clearly expressed. The key principle behind this policy statement should be that the nature conservation value of previously developed sites should be properly evaluated and protected where it is found to be of substantial value. Planning decisions should be based upon current and accurate information on the wildlife supported by a site, and not upon the degree to which the site has blended into the landscape.
32. Areas identified as Local Wildlife Sites that are found in brownfield areas should undergo the same impact assessment as any other Local Wildlife Sites, with sequential tests applied as outlined in paragraph 16 above.
33. Biodiversity within developments – This statement is also welcomed, but it is suggested the phrase “as far as is practical” is removed.

Species Protection

34. This section is weak and needs considerable strengthening. It fails to set out the serious implications of the presence of European protected species for a potentially damaging development. As a minimum, there should be cross-referencing to relevant parts of the circular, as well as some policy guidance given within the PPS on the relevant weight that should be applied to different categories of protected species.
35. PPG9 makes an explicit reference to protected species as material considerations for planning and for the need for the authority to advise developers of the requirements of the legislation relating to these. While arguably such a reference should be unnecessary, such a clear statement in PPS9 about the need to consider both protected and conservation priority species would help clarify the role that the planning authority has when considering applications and when advising developers of the application of the legislation and we suggest that this should be included.
36. The caveat “*unless the need for, and benefits of, the development clearly outweigh that harm*” is unclear and consequently undermines this section. Link suggests paragraph 14 should first cross-reference to the Government Circular and further, it requires considerable elaboration in guidance to explain how local authorities should assess “adverse effects” and how they should identify the weight to be attached to other benefits that may be sufficient to outweigh any impacts on the species or their habitats. We also feel that the last sentence should be reworded as follows “Planning authorities should refuse permission where harm to the species or their habitats **is likely** to result unless the need for, and benefits of, the development clearly outweigh that harm and it can be successfully mitigated for”. They should also refuse planning permission where an applicant has not provided sufficient information with which to determine the impacts on these species.
37. The reference to protection of Section 74 species is welcomed, but reference should also be made to enhancement since Section 74 relates to the promotion of Biodiversity Action Plans and is not just about stopping decline. This section should be reworded to promote the enhancement of protected species populations, and should be renamed “Species Conservation and Enhancement” to reflect this change of emphasis. As a matter of policy PPS9 should guide as to Government’s intention for S. 74 with regard to the role of

Planning Authorities. Planners should also be encouraged to consider the full range of BAP species, rather than exclusively focussing on those listed within S. 74.

COMMENTS ON THE GOVERNMENT CIRCULAR

38. In general, the publication of a detailed Government Circular is welcomed, though concerns are held that some of the detail within the circular would be more suitably placed within the PPS, and that there is a lack of cross-referencing between the two documents (see above).

39. The following overarching issues were identified:

- The criteria for what should be deemed as “overriding public interest” require clarification. Detailed policy guidance is required on the tests to be applied when making these decisions, following the sequential approach explained in our response (see para 16 above). We urge greater clarity on the nature of the criteria or tests that should be used.
- The circular needs to say how things have changed in light of CROW Act, including how Section 74 of CROW applies to local authorities.
- The Planning and Compulsory Purchase Act 2004 and the SEA Directive should be fully incorporated (for example, the Planning and Compulsory Purchase Act 2004 contains new monitoring requirements which have implications for biodiversity monitoring).
- The Hedgerow Regulations 1997 need to be included within the circular, and where they are important to the interpretation of the PPS they should be referenced.
- The inclusion of flow charts within some sections could help clarify certain points e.g. how to build in mitigation measures, licensing processes for protected species etc.