

CONSULTATION

Response Document



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Planning Policy Wales 10 (Welsh Government)

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Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 5,200 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network

Introduction

CIEEM broadly welcomes the consultation draft of PPW10, in that its aspiration is to bring Wales-wide planning policy in line with three key legislative documents: the Well-being of Future Generations (Wales) Act 2015, the Planning (Wales) Act 2015 and the Environment (Wales) Act 2016. By doing so, many elements of sustainable development can be integrated into planning and policy decisions, including protection of the environment, alongside supporting economic, social and cultural growth. Importantly it sets out in general terms how environmental enhancement (as well as protection) is required to maintain resilient ecosystems for the future.

The following comments have been collated by our Project Officer for Wales (Diana Clark) and Policy and Communications Manager (Jason Reeves), and are based on notes provided by CIEEM's Country Policy Working Group for Wales. This group comprises CIEEM members with a broad range of backgrounds.

It is our hope that these comments be considered and constructively incorporated into future iterations of PPW10. We would also very much welcome ongoing dialogue between CIEEM and Welsh Government on this policy matter, and indeed other policy work relevant to ecology and environmental management, so please do not hesitate to get in touch with us if you have any queries or questions.

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General Comments

Terminology

We would like to see clearer definition of terms such as ‘green networks’, ‘green infrastructure’, ‘biodiversity’ and ‘net gain’ early in the document, to ensure that these are used consistently throughout and thereby avoid confusion. Currently these are not clearly defined, or, where a definition is given, it is not clear whether this is the definition used throughout the document. Some terms also appear to be used inter-changeably (for example ‘net gain’ and ‘net benefit’), however their actual meanings may not be precisely the same. The infographic on page 18 lists key features of ‘sustainable places’ and National Placemaking Outcomes are listed on pages 20-22, however the term ‘sustainable places’ itself is not clearly or succinctly defined. ‘Ecosystem services’ are mentioned once at paragraph 5.69, but again the term is not defined.

The title of Chapter 5 is Distinctive and Natural Places, but the term “*natural and distinctive...*” is used throughout the body of the text. The terminology used should be amended so as to be consistent.

Strength of Wording

Paragraph 2.23 contains reference to circumstances where ‘must’ and ‘should’ are used in the document. We have some concerns over the use of these words, since one implies an action is mandatory and the other does not.

In our experience, where there is an opportunity for development to avoid *having* to do something (especially where this may carry additional burden, either financially or in terms of logistics, space or time commitment) this is very likely to be taken. It also makes requirements like this much harder to enforce by the Local Planning Authority and opens them up to legal challenge, such as in relation to what may be perceived as unreasonable planning conditions. Once a precedent has been set, this is difficult to undo in relation to future planning applications, which could have a significant knock-on effect and potentially undermine the ultimate aims of sustainable development – and the requirements of the legislation this policy document is designed to support.

Using the word ‘should’ implies the requirement is aspirational rather than essential, however if the Welsh Government considers a certain action is needed in order to achieve the relevant goal, consideration should be given to using the word ‘must’. Other possible wording options, where stronger wording is required, could use something like ‘Welsh Government expects that...’. We suggest a review of all uses of the words ‘must’ and ‘should’, with these comments in mind.

Paragraph 5.75 replicates paragraph 41(3) of the Conservation of Habitats and Species Regulations 2017, which reads: “(3) *The features of the landscape referred to in paragraph (1) are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as “stepping stones” (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.*” However, the term ‘essential’ is a very strict test, and can be difficult to prove. Such features which are ‘important’, ‘necessary’ or ‘significant’, though not necessarily ‘essential’, should also be protected (e.g. “*...features of the landscape (which) are or are likely to be of significant value or importance for the migration, dispersal etc...*”).

Biodiversity Net Gain

CIEEM, IEMA and CIRIA published *Biodiversity Net Gain: Good Practice Principles for Development* in 2016¹, however the term 'net gain' is used only once in PPW10 at paragraph 5.73. This term is well-established and should be used to define what is meant by enhancing biodiversity. The concepts of enhancement and biodiversity net gain, alongside 'no net loss', should be embedded throughout the document, and the wider benefits (ecosystem services provided by our natural assets supported by biodiversity) more clearly described.

The Environment Act provides legislation for authorities *"to seek to maintain and enhance biodiversity in the exercise of their functions, and take account and promote resilience"*. Furthermore, they are required to report on this. PPW should more clearly outline the benefits of doing so, and refer back to wellbeing objectives, to planners and developers within the biodiversity and ecological networks section, as well as within sections 1-4 of the document. This would provide greater incentives to deliver biodiversity gain/enhancements which is required to reverse the decline of biodiversity and ensure ecosystem resilience. In addition, it should refer to methods that can be used to do this, for example ecosystem services evaluation and natural capital accounting, for which there is increasing development in methodology and best practice guidance.

In addition, the concept of the 'mitigation hierarchy' is not defined anywhere in the document, yet the term 'mitigation' is used often and it is a fundamental principle that should underly all development proposals, not least to ensure the Key Planning Principles can be met, including (in particular) 'the right development in the right place' and 'maximising environmental protection and limiting environmental impact'. The process is in fact outlined at paragraph 5.58 (a 'step-wise approach') but 'mitigation hierarchy' as a term is not mentioned, even though that is what this section is describing. Clear reference to avoidance, minimisation, mitigation and compensation should be a thread running through the whole document.

Public authorities are required to report on where there has been biodiversity net gain through Section 6 reporting (see paragraph 5.73). This should also be pulled into an earlier part of PPW10, to clearly show where accountability lies for biodiversity protection and enhancement, and thus give incentive to ensure these benefits are delivered by new development.

A note on proportionality. Whilst biodiversity net gain must be a key target for the Welsh Government in order to halt biodiversity loss and restore damaged habitats and species, development is not the only means to achieve it. The planning process can make a significant contribution to delivering biodiversity net gain (although even more could be achieved by incorporating the net gain approach into future agri-environment funding), but the requirements of developers must be proportionate to the scale/type of development and likely impact on biodiversity. This requires planners and decision-makers to be competent and confident in decision-making regarding biodiversity impacts (including cumulative impacts from developments) and likely gains.

This leads on to a more general point regarding biodiversity-related competence in planning authorities. In general, those local planning authorities with an in-house ecology team or access to ecological advice (e.g. through a service level agreement) are better able to properly take account of impacts on, and opportunities for, biodiversity from the planning process. A sustainable development approach to planning requires planning teams (and a Planning Inspectorate) that understand all aspects of sustainable development delivery, including maintaining a healthy natural environment. Investment in the training and continuing professional development of planners in these key areas of

¹ <https://www.cieem.net/biodiversity-net-gain-principles-and-guidance-for-uk-construction-and-developments>

competence, and in including ecological expertise in planning departments, is a crucial component in the ambition to halt biodiversity loss and achieve net gain.

In summary, the principles of ‘biodiversity net gain’, ‘no net loss’ and the ‘mitigation hierarchy’ should be key terms underpinning the entire document, and thus assisting local authorities to comply with the Section 6 duty relating to resilience.

Green Infrastructure and Ecosystem Resilience

Natural Resources Wales describes green infrastructure as *“a strategic network of high quality green spaces and other natural features, designed and managed to deliver the **ecological services** and quality of life benefits required by communities now, and in the future. Green Infrastructure includes established green spaces and new sites and should thread through and surround the built environment and connect the urban area to its wider rural hinterland”*.

In the last sentence of paragraph 5.13 we would prefer it read ‘...and multiple benefits **where appropriate** secured...’. Whilst it is generally preferable to seek that green infrastructure provides multiple benefits, there may be occasions where there is irreconcilable conflict between different uses or needs, such it is not appropriate to attempt to deliver all possible benefits.

Paragraph 5.41 states that NRAP supports the *“legislative requirement to reverse the decline in biodiversity and address the underlying causes of biodiversity loss **by putting nature at the heart of decision-making** and increasing the resilience of ecosystems by taking specific action focused around the 6 objectives for habitats and species”*.

In paragraph 5.50, the term ‘Green Infrastructure Assessment’ is used before it is properly introduced in paragraph 5.70. Therefore, there should be a signpost forward from 5.50 to the main Green Infrastructure Assessment section, or else a short description of the concept at 5.50.

We consider that if reversing decline and addressing biodiversity loss is at the heart of decision making, and if creating better green infrastructure is key to making this happen, much of this section should be located near the beginning of PPW10 so that its intentions feed into the remainder of the document, rather than being bolted on near the end.

The concepts of **ecosystem services and natural capital** are also not fully explained – paragraph 5.69 is the only place ecosystem services are mentioned – and yet they essentially support the idea that green infrastructure delivers multiple benefits to society and the environment, and thus underpin the entire ethos of the Well-being of Future Generations Act.

Paragraphs 5.69 notes that *“with careful planning and design, green infrastructure can embed the benefits of biodiversity and **ecosystem services** into new development and places, helping to overcome the potential for conflicting objectives, and contributing towards a variety of health and well-being outcomes”*.

Clearer emphasis needs to be placed on the positive impacts of our natural places on health and well-being, throughout PPW, including reference to specific habitats such as the coast, woodland, open water, meadows etc. Paragraph 5.67 briefly touches on links between green infrastructure and flooding, but needs strengthening so there is a clear, demonstrable link between specific habitats and natural flood management, for example. This in turn gives incentives for habitats (such as floodplains, peat bogs etc) to be retained, protected, enhanced, and continue to provide protection with minimal intervention. The positives very much need to be emphasised, so that developers are not put off with a lot of ‘you can’t do that’, but instead strive to create those ‘distinctive places’.

Designated Sites, Habitats & Species

PPW10 focuses heavily on protecting statutory designated sites, including SPAs, SACs, SSSIs etc. (paragraphs 5.49-5.56). This approach firstly does not take into account the actual and current value of such sites (i.e. what condition they are in, how they are monitored and managed – essentially making the assumption they are all in good shape), and secondly the impacts of development on non-statutory sites such as Sites of Importance for Nature Conservation (SINCs) appear rather overlooked. Many of these sites contain habitats and species of principle importance under Section 7 of the Environment Act and make a significant contribution to the green network and therefore ecosystem resilience.

Whilst paragraph 5.54 broadly notes *“planning authorities should consider opportunities to restore networks of habitats to a healthy condition”*, this needs to explicitly include reference to non-statutory sites as well as habitats listed as being of principle importance under Section 7 of the Environment Act. Reliance and focus on the qualities of statutory designated sites alone fails to acknowledge the contribution to ecosystem resilience of other designated sites, as well as valuable habitats that fall outside of any designation.

Paragraph 5.57 addresses this to a certain extent, and paragraph 5.47 also includes reference to designated sites more generally (*“planning approaches built on protecting **designated sites** and securing and enhancing green infrastructure will be key ways of addressing the attributes of ecosystems resilience”*), thus it is recognised that this may not be the intention.

However, the phrase *“policies for non-statutory sites should make it clear that such designations do not preclude appropriate developments”* appears to contradict the earlier phrase that they should be *“given adequate protection in policy and decision making”*. This is one example where reference to the mitigation hierarchy and net gain could be used to better explain and support this.

Paragraph 5.57 relates to SINCs, and it could be argued has strengthened the consideration of these sites in the planning system, with the new text reading *“Policies for non-statutory sites should make it clear that such designations do not preclude appropriate developments.”*, whereas it previously read *“Such designations should not unduly restrict acceptable development.”* in PPW 9. However, we question whether the last sentence in 5.57 is needed at all, when the preceding text provides adequate guidance on the importance and appropriate consideration of these sites.

With regards to ensuring such non-statutory sites are in favourable condition, presumably the planning and reporting requirement of S6 (briefly touched on in Welsh Government’s FAQs relating to S6) covers this in terms of the responsibilities of the local authority.

Reference to habitats that may be considered irreplaceable (such as ancient woodlands, peatland etc.) and the soils they contain, should also be included within PPW, and emphasis placed on such habitats as being of higher value. This is touched upon on paragraph 5.42 (*“policies and plans should [...] safeguard [...] existing biodiversity assets from impacts which directly affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as [...] soil”*), but needs strengthening.

Paragraphs 4.219 and 4.220 relating to peat extraction are weak and require further clarity. More emphasis on using alternatives (avoiding), reducing areas worked (minimising), replacing loss of carbon sink through creation of other habitats (mitigating) and restoration/improvement of previously degraded areas (compensating) should be given in this section, together with implications for climate change. Peat bogs are also likely to be considered habitats of principle importance, as

listed under Section 7 of the Environment Act, and therefore should also be assigned higher value and impacts on them assessed as such.

Paragraphs 5.59 and 5.60 refer to protected species, both UK and European, however little mention of other notable species (for example red data book species, local BAP species, red/amber bird species etc.) is given. Local Biodiversity Action Plans are mentioned frequently in earlier sections of the document but not in the biodiversity section (although it may be more appropriate to refer to NRAP, since BAP/BARS is no longer used).

Having regard to protected species is important, but consideration of other species (and indeed their habitats) is also necessary in order to ensure ecosystems are resilient. *'Priority species including those on the section seven list'* are mentioned at paragraph 5.57, but little reference to such species is given elsewhere. At the very least, protected and Section 7 species need to be referred to throughout PPW, in particular in relation to specific habitats, development types and broader text around green infrastructure, not just mentioned in one place. To give an example, paragraphs 5.147-5.150 discuss lighting with a vague reference to 'wildlife', but there is no link made between the impacts of lighting on protected (and S7) species like bats.

A good understanding of the ecological complexities of sites is fundamental to sound decision-making and relies on the competence of the ecologist undertaking the assessments, reporting the information, designing the mitigation and overseeing the delivery. Achievement of a healthy natural environment can be undermined by poor ecological professional practice and unsound advice. As ecological management is not a statutorily regulated profession, CIEEM would like to see the Welsh Government clearly set out within the PPF10 its expectations that the ecological assessment and advice that underpins the planning decision-making should be provided by competent ecologists working to accepted industry standards and that planning authorities should be mindful of those standards when accepting such assessments and recommendations.

Technical Advice Notes (TANs) & SPG

Technical Advice Notes (TANs) are referred to in a number of places throughout the document. We would like to see an indication of when these documents may be updated to reflect the changes in PPW, to ensure up-to-date advice is provided on nature conservation in planning.

We would also like to have a better understanding of where these documents would fit in relation to the Development Management Manual and if there will be any overlap.

It would also be useful to understand the timescales/requirements for updating Supplementary Planning Guidance, again so that it accurately reflects the requirements of PPW10.

The 'Polluter Pays' Principle

The 'Polluter Pays' Principle (and other recognised environmental principles) are fundamentally important in securing environmental protection and justice. The Principle is referenced early in the document but how it is intended to be applied is not discussed further (e.g. in relation to air quality). This needs to be more clearly explained to provide clarity for developers and planners in relation to their respective responsibilities and to act as a deterrent against pollutive actions.

Surveys and Impact Assessments

The document makes brief reference to surveys in relation to protected species (paragraph 5.59), but none in relation to habitats. Habitat surveys, such as Preliminary Ecological Appraisal, identify the presence of S7 habitats and potential for protected species. Establishing the biodiversity baseline of a site is an essential component of understanding potential impacts (including impacts on the wider zone of influence) and opportunities. CIEEM is currently working with the Association of Local Government Ecologists on an initiative to introduce a proportionate survey and reporting requirement in areas of low biodiversity impact whilst maintaining high standards of ecological professional practice. It is hoped to publish this in 2019. However, it is imperative that the language in PPW10 is clear on the need for planning applications to be informed by up-to-date and high quality ecological information.

Paragraph 5.42 also refers to safeguarding protected species and existing biodiversity assets from impacts which directly affect their nature conservation interests. Indirect impacts should also be considered, as well as cumulative effects. Weak wording in relation to “*taking into account*” the need to seek enhancement of and improvements to ecosystem resilience by improving diversity, condition, extent and connectivity of ecological networks is likely to have little effect in improving outcomes. CIEEM strongly urges the Welsh Government to show real intent in delivery by using more precise and imperative language regarding the duty of planning authorities to seek enhancement, etc.

Paragraph 5.58 sets out a modified version of the traditional ‘mitigation hierarchy’, however it follows on from other sections which deal with the protection of, for example, designated sites in the planning system. It would seem natural that the mitigation hierarchy, which describes the procedure for securing avoidance-mitigation-compensation measures etc., should be introduced before any sections which set out how sites/features/species will be protected.

Climate Change

Paragraph 5.42 refers to “*...addressing the consequences of climate change should be a central part of any measures to conserve biodiversity and the resilience of ecosystems*”. The evidence base for the impacts of climate change on species and habitats is variable and in some cases contradictory. A strategic approach is more appropriate for addressing climate change impacts, the implementation of this could be facilitated at the local level through development control but this would need guidance provided by a strategic plan. We would suggest that this is something that could be included within the proposed National Planning Framework.

Cumulative Effects

The issue of cumulative effects needs to be addressed more broadly within PPW10. We frequently see losses of small areas of habitat to development, which taken alone are not significant, but which cumulatively erode the overall green infrastructure resource.

Cumulative effects are mentioned in various places, such as in relation to retail assessments (paragraph 3.78) and mineral extraction (paragraphs 4.215, 4.223 and 4.235), as well as air pollution and soundscapes (paragraph 5.133) and flooding (paragraph 5.174) but are completely absent from the sections relating to housing.

It may be appropriate to include broad reference to taking account of cumulative effects at paragraph 5.58, but it also needs to be referenced throughout the document, in particular in relation

to housing, and that in principle *“the cumulative impacts of development upon habitats, species, green infrastructure and ecosystem services should be a material consideration”*.

Conflicts Between Energy and Biodiversity

CIEEM welcomes efforts to increase the use of low carbon energy and to improve the energy efficiency of buildings as much as possible (paragraph 4.123), but would caution that this should not be done without consideration for the impact on biodiversity. Specific conflicts are well documented; such as the risks of mortality to birds and bats mortality caused by wind turbines, and also the emerging issue of bats being ensnared and killed on modern (breathable) roofing membranes of the types used to improve energy efficiency in homes. Both of these have been shown to have significant detrimental impacts in certain circumstances, but controls and alternatives exist than bring harmful effects to acceptable levels. We would like to see awareness of these safeguards built into the revised policy.

Additional Specific Paragraph Comments

2.63 – This is a sweeping statement that does not align with the content of paragraph 2.66, which states that not all previously developed land is suitable for development. Paragraph 2.54 (re ‘search sequence’) is rather simplistic, in that a search for potential sites for development is based on broad reference to green field, brown field and urban edge locations. Many brown field sites, particularly those that have been left untouched for a number of years, may have considerable nature conservation interest, and therefore can be more valuable than areas of greenfield land in terms of habitats, species and diversity of both. Reference to the **mitigation hierarchy** should be made here.

2.67 – Green wedges and green belt. *“The essential difference between them is that land within a Green Belt should be protected for a longer period than the relevant current development plan period, whereas green wedge policies should be reviewed as part of the development plan review process.”* Later paragraphs refer to ‘permanence’ and ‘long-term permanence’. Clarity required here.

2.72 – Other uses for green belt/wedge land. *“Green Belts and green wedges can have other beneficial effects including the provision of access to the countryside and sport and recreation opportunities. However, the extent to which the use of land fulfils these objectives is not a material factor in determining whether land should be included within a Green Belt or green wedge.”* CIEEM questions why this is not a material factor. These objectives are surely helpful in terms of prosperity (tourism), health and wellbeing.

4.127 – Renewable energy. This paragraph only refers to *“planning applications for renewable and low carbon energy generation development, which are in accordance with development plan policies, should be supported”*. It needs to still take into account other pressures, such as the natural environment, heritage etc. and not just proceed without consideration of this.

4.193 – *“Protect environmental and cultural characteristic of places, including those highly cherished for their intrinsic qualities, such as wildlife, landscapes, ancient woodlands and historic features, and to protect human health and safety and general well-being”*. This should be for any development, not just minerals.
