

Pollution, land contamination and groundwater

Environment Agency representations



Environment Agency position at proposed submission

The Environment Agency raised a number of specific and general soundness concerns regarding policy CS16 (PS1295) and the related policy CS14 (PS1297).

We commented that a core strategy style policy alone would struggle to provide a sufficiently robust and helpful policy basis for sustainable growth, whilst enabling an efficient, predictable development management process. This task has been made particularly challenging with the timing of a dramatically more succinct national planning policy context in respect of water infrastructure, land contamination, pollution (air, land and soil) and landfill gas.

The NPPF looks to local plans to fill voids and define the approach with regard to local circumstances – see paras 10, 17, 94, 113, 117, 121, 124, 157 and 165. Taken as a whole, the proposed submission did not do that, in our view.

Supplementary Planning Document

Since the proposed submission the Environment Agency has worked further with Fenland DC to incorporate suggested changes as minor modifications (MPC/6/001, MPC/6/002, MPC/6/003). For the Environment Agency's interests, the most significant modification is the intended production of a Supplementary Planning Document (MPC/5/004, MPC/7/008 and modifications to 7.1.5). This would now cover CS14 and CS16, which overlap.

We support a SPD as a means of helping developers, FDC planners and water management partners understand how to design and deliver development in a sustainable way. A SPD can illustrate how development proposals can:

- have regard to the Anglian River Basin Management Plan (NPPF para 165), and further to policies CS14 and CS16;
- Provide guidance on interpretation of CS16: b, c, l, m – words such as 'manages, mitigates etc';
- Through good practice, illustrate how enhancements can be achieved with wider benefits;
- Set out what types of information the developer is expected to submit as a minimum, and allow consistent appraisal of development proposals through check lists or templates.

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With much set to change in the natural environment with the Water and Natural Environment White Papers, and through enactment of SUDS approving bodies¹ (SABs) scheduled for April 2014, a SPD could capture and adapt to this context successfully, and in a way that is not open to the Local Plan, given timing.

In this context we have advocated succinct improvements to the plan to install the minimum policy hooks to make a SPD work as effective guidance, without the later temptation to usurp higher tier local plan policy. We set these out in our proposed submission representations, and below in answer to Matter questions.

Key partners involved in delivering a flood and water management (Anglian Water, Cambridgeshire County Council as Lead Local Flood Authority and FDC) have voiced support for a SPD covering both flooding and water management issues. We are therefore confident that the necessary commitment and value would be allocated to making it happen between partners.

We consider that the SPD is such a vital soundness element of delivering Water Framework Directive objectives in Fenland in an integrated way (with climate change and flood risk management), that timely delivery of the SPD is a vital issue for an effective and deliverable plan. Chapter 7 could address this through listing the SPD as a delivery indicator, as with the modifications (MPC/7/008 and Appendix 1 for 7.1.5) already proposed in respect of policy CS14.

Q1. Does the Core Strategy ensure that groundwater is satisfactorily protected from development risks, particularly now that PPS23 has been cancelled?

The submission did not in our view. In our representations we advised that NPPF (in para 121) sets out that planning policies and decisions should ensure that the site is suitable for its new use based on adequate information, and take account of any impacts on the natural environment.

The Environment Agency would like to clarify that we do not lead on health matters, but wish to comment that these may apply with equal validity (and in combination) with pollution effects. This is significant because land contamination and landfill gas are two of the few material planning considerations that can result in loss of life, or serious health issues.

Policy CS16 refers to pollution and land contamination being mitigated. Whilst mitigation can be a useful tool, in our view it is fundamentally significant that in

¹ In fulfilment of the Flood and Water Management Act 2010

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In addition there is reference to risk avoidance and management through a suitable assessment and remediation framework. Layout, phasing, ground preparation and monitoring can then be planned appropriately. This prevents a common 'condition trap' where planning conditions are applied to permissions to deal with the whole land contamination process pre-commencement. Here, at discharge of condition stage, it would frequently become apparent that some approved layouts would be unworkable because parts of the site are unsuitable for their intended use. This could be from sensitivity to contamination in the soil (e.g. gardens), inability to use piling for buildings or structures (creating pathways to aquifers), unviable drainage (foul or surface water infiltration) or inadequate space for ongoing remediation and monitoring infrastructure (e.g. for landfill gas).

The framework for addressing this existed in PPS23 until it was cancelled when NPPF came in and the onus was placed on local plans. Shortly after this time, Neighbouring Peterborough City Council (PCC) added a land contamination planning policy as a minor modification to their detailed policies DPD. This was accepted by the Inspector and is now adopted.

Suggested Way Forward

We advise that either a new policy would be required, or a significant addition to policy or background text in CS16. Our suggested policy below is very similar to PCC's adopted policy, inserted as follows after (I):

Land Contamination

[Justification text after 6.2.3]:.

6.2.4 Where pollution issues or risks from landfill gas are likely to arise or where land contamination may be reasonably suspected, intending developers should hold pre-application discussions with FDC, the relevant pollution control authority and stakeholders with a legitimate interest, for example drainage and SuDS Approving Bodies.

A preliminary risk assessment should be undertaken as the first stage in assessing these risks and is a requirement for validating relevant planning applications. All investigations should be carried out in accordance with CLR 11 'Model Procedures for the Management of Land Contamination' and the Land Contamination SPD, or as may be updated.

CLR 11 'Model Procedures for the Management of Land Contamination' is available at the following address:

<http://www.environment-agency.gov.uk/research/planning/33740.aspx>

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The Environment Agency documents Guiding Principles for Land Contamination are available at the following address:

<http://www.environment-agency.gov.uk/research/planning/121619.aspx>

Policy CS16 (l)

(l) Identifies, manages and mitigates against any existing or proposed risks from, sources of noise, emissions, pollution, contamination, odour and dust, vibration, landfill gas and protects from water body deterioration.”

(m) the site is suitable for its new use, layout and drainage, taking account of ground conditions, contamination and gas risks arising from previous uses and any proposals for land remediation.

Q2. In addition, is it clear to future developers what level of assessment and information will be required to accompany planning applications, to demonstrate that pollution prevention can be satisfactorily achieved, and when it will be necessary to do so, particularly having regard to:

(a) land contamination;

(b) landfill gas risks;

(c) water quality protection;

(d) odour and dust;

(e) noise.

Summary:

We commented at proposed submission stage our view that it was unclear on whom the burden of evidence and demonstrable harm for CS16 (and by default of NPPF and CS1's presumption in favour of sustainable development) may rest.

With the changes we suggest above under Q1 (l) and (m), and later with a SPD to illustrate how and when this should be demonstrated, we would support the plan.

This would facilitate a clear line of sight for developers when entering the planning application process. Applications would then progress more smoothly than a situation where technical information is sought mid-process with planning applications, typically resulting in application delays of months rather than weeks.

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(a & b) Land contamination and landfill gas

In terms of the timing of information, we were concerned that the information the developer is required to submit could fall into the condition trap as described above. Whilst this might be helpful to the landowner (by transferring risks to the developer), it could frequently lead to schemes being significantly delayed (typically two years plus) if land contamination is found during 'discharge of condition' stage. This would then need remediation, or revised layouts, new drainage or possibly 'piling-free' design. This would not be helpful to the developer, local authority, regulators or communities, in our view.

As policy CS16 stands, the requirement for solely 'mitigation' combined with viability pressure could also result in significant compromise on the effectiveness of remediation with significant risks of pollution and health issues.

We find that phasing is important because land contamination usually needs remediating across the whole 'cell' on site, and these can straddle two or more phases. These cells can affect phasing and pre-development conditions, and need remediating before land parcels are sold to competing developers, for example.

Suggested Way Forward:

We would welcome a system where developers are clear about what needs submitting (through a policy backed SPD) so that relevant information is submitted with the application to assess land use suitability (in principle) SUDS (for layout, design and SUDS adoption) the suitability of piling and groundworks, and how remediation timescales relate to phasing.

To support the plan, we recommend alterations to (l) and additions to (m) as set out in Q1 above.

(c) Water Quality

The Fenland Water Cycle Study tackles issues of water quality for the main Water Recycling Centres subject of development allocations and implicit growth from the settlement hierarchy. The WCS is a helpful document that gives us sufficient confidence to justify the plan. However, but we are ever mindful that the WCS is a snapshot in time, and is therefore of limited use when assessing planning applications. As is seen through Matter 2 (Wimblington and Doddington), Matter 9 (March) and Matter 11 (Whittlesey), the baseline situation in terms of water quality and infrastructure capacity is a moving picture. Windfall sites can significantly alter the picture as the plan period unfolds, and industrial activity expands / contracts.

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Throughout this period, the Water Framework Directive (WFD) is equally relevant. Like some other EU directives, its ‘no deterioration’ requirement operates irrespective of the NPPF and presumption in favour of sustainable development. Through the Localism Act 2011, EU sanctions can be passed from central to local government where there is local accountability for decisions. We advise that it is therefore in local and national interests to ensure that WFD standards are not breached, as is a potential risk from new development, whether through waste water infrastructure, point source pollution (e.g. employment, waste or agricultural development) or diffuse pollution, such as agriculture or hard engineered drainage systems.

Suggested Way Forward:

To address these risks (and those we identified in Matters 2, 9 and 11), we advise the following addition to CS16 (I) as set out in Q1 above:

Add ...” and protects from water body deterioration.”:

NB Pollution from surface water drainage is already addressed through policy CS14, and a SPD will inform interpretation of this policy.

Avoiding overlap with ‘other legislation’: Discharges to the environment from large and some medium sized process industry is regulated by the Environment Agency via environmental permits (see NPPF para 122). However, small and some medium scale development may not be directly regulated and would benefit from ‘preventative’ infrastructure. For example, open storage, wash down and spillage pollution entering surface water drains can be part mitigated through pollution traps which can be approved via the planning process.

(d & e) – Odour, dust and noise

Avoiding overlap with ‘other legislation’: Discharges to the environment from large and some medium sized process industry is regulated by the Environment Agency via environmental permits (see NPPF para 122). However, small and some medium scale development may not be.

The Environment Agency comments on waste sites and regulated industry likely to require a permit. By default we expect the permitting process to regulate emissions to an acceptable level to nearby residents and wildlife, but occasionally proximity is an issue for planning to address. Planning applications and permits are rarely twin tracked, despite good practice to do so. The Environment Agency seeks to maintain dialogue with LPA’s during this process to avoid duplication, but cannot insist on

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permit information being presented with planning applications. We can advise where extra separation would be helpful.

Issues such as flue stack heights can have planning implications, or waste in floodplains, in which case we comment wherever possible.

Suggested Way Forward:

The policy amendments to CS16 (I) as above under Q1 will help elicit this information when the need arises.

Q3. Will Policy CS16 (I) ensure any mitigation measures proposed are effective?

The submission version did not in our view - see answers above which covers effectiveness. In summary:

1. There are risks that land contamination / landfill gas information is submitted too late to inform land use, layout and design decisions;
2. Viability or significant delays can be at risk where land contamination and landfill gas information is submitted and approved after land transactions;
3. The pressure resulting from viability issues / delays has the potential to create a situation fertile to compromises in assessment and/or remediation standards for land contamination or landfill gas – this is not advisable where complex science combines with risks to loss of life and human health.
4. Whilst the NPPF in para 120 is clear that the responsibility lies with the developer [during development], if a ‘contaminated land’ site becomes vacant or an insolvent developer relinquishes an interest in the site (once all plots are sold), the Local Authority can become ultimately responsible for remediating the site under Part IIA of the Environmental Protection Act, irrespective of current ownership.

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Q4. Should the Core Strategy seek to ensure that existing business and employment sites will not be constrained in their future operations by new 'sensitive land use' developments? If so, how will this be achieved?

The Environment Agency recommend an additional para in CS16 regarding conflicts between proposed and existing land uses. This would help protect existing businesses and employers from facing tougher operating constraints should new residents be proposed nearby. This can threaten existing commercial viability and result in a loss of jobs. We consider this a potentially important impact to be considered in decision making, but did not raise a soundness concern.

We have seen several instances where permitted changes of use could affect business operation. In practice, existing businesses would have to be involved in the consultation process, and this policy would rely in part on their evidence, and advice from the Environment Agency, or Environmental Health teams.

Suggested Way Forward

We would support a new criterion (n) to Policy CS16 as follows:

(n) does not result in unreasonable constraint(s) or threaten the vitality and viability of existing nearby or adjoining businesses or employment sites by introducing sensitive land uses.

[End of representations]