
ENVIRONMENT AGENCY PROTOCOL - WORKING TOGETHER IN TOWN AND COUNTRY PLANNING

1 SUMMARY

- 1.1 This report seeks Members' agreement for the Local Planning Authority to enter into a protocol with the Environment Agency (EA) on a framework for working together to help contribute towards the achievement of sustainable development, best practice and best value.

2 BACKGROUND

- 2.1 The EA and Local Government Association agreed and signed a plan called 'Working Better Together' on 15th December 1999. The EA is now seeking to agree local protocols with individual Local Authorities. A copy of the protocol is appended to this report.
- 2.2 The protocol outlines a framework for the EA and Local Authorities to work better together. Specific comments are included in Section 3 in respect of working arrangements with respect to both Forward Planning and Development Control.
- 2.3 Section 4 outlines the information to be shared between the EA and Local Authorities.

3 DISCUSSION

- 3.1 In principle, it is considered that the protocol does provide a helpful expression of a positive working relationship between the EA and the Council.
- 3.2 However, if Members were minded to sign this protocol, it is considered that two amendments are required.
- 3.3 Paragraph 3.34 specifies that the Authority will ensure the EA receives a copy of applications for assessment. Such an arrangement does not apply in Essex at the moment, since the EA operates on the basis of a visiting system and copies of relevant applications are obtained at the time of those visits. It is considered that this visiting arrangement is strength and that it should continue, and that details must be included in the protocol.
- 3.4 Paragraph 4.6 explains the information to be provided to the Authority that is relevant to a particular planning application. The protocol provides no indication of the time taken for the EA to respond to consultations. It is suggested that a time limit of 21 days be included in the protocol as an acceptable period for responses with any extension being formally agreed between the parties.

4 RECOMMENDATION

It is proposed that the Committee **RESOLVES**

That, subject to the amendments outlined in the report, Members consider whether they wish to sign-up to the Environment Agency's "Working Better Together" protocol. (HPS)

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Background Papers:

"Working Better Together" - July 2000

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APPENDIX 1**LOCAL PROTOCOL BETWEEN [The Authority]
AND THE ENVIRONMENT AGENCY
(PART 2)****WORKING BETTER TOGETHER IN TOWN AND COUNTRY
PLANNING****1.0 Introduction**

- 1.1 This local protocol for Town and Country Planning between [], hereafter called 'the Authority', and the Environment Agency, hereafter called 'the Agency', implements the broad principles agreed and signed by the (Welsh) Local Government Association and the Environment Agency (Wales) in Part 1, "Working Better Together in Town and Country Planning".
- 1.2 This local protocol is recognised as a framework operating within the emerging and changing context of regional and local governance, in particular, the progression to a more open and transparent process for the preparation of Regional Planning Guidance in England, and the expected new duties for promoting local community well being and modernising local government throughout England and Wales.
- 1.3 The town and country planning system provides the framework within which decisions on development in urban and rural areas are taken and the means through which competing demands between economic, social and environmental considerations are balanced and resolved in order to move towards sustainable development.
- 1.4 This local protocol encourages the Authority and the Agency to work together within a modern planning system to help contribute towards the achievement of sustainable development, best practice and best value.

2.0 Roles and Responsibilities within the Planning System**Local Planning Authorities**

- 2.1 The planning system is defined by the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 and is refined through case law. Local planning authorities have wide ranging powers and duties under Town and Country Planning legislation to regulate development and land use within England and Wales in the public interest. The introduction of section 54A into the Town and Country Planning Act 1990 signalled a commitment to a plan-led system whereby applications for planning permission or appeals should

be determined in accordance with the development plan unless material considerations indicate otherwise.

- 2.2 The Government's statements of planning policy are contained in White Papers; Planning Policy Guidance Notes (PPG's), Mineral Planning Guidance Notes (MPG's), Regional Planning Guidance (RPG), Departmental Circulars, and Ministerial Statements. In Wales, the planning hierarchy is composed of Planning Guidance (Wales): Planning Policy, Planning Guidance (Wales): Unitary Development Plans and Technical Advice Notes (TAN's). The importance of the planning system is outlined in PPG1:General Policies and Principles (1997), which states that the planning system as a whole, and in particular the preparation of development plans, is the most effective way of reconciling the demand for development and the protection of the environment.
- 2.3 PPG12 and Planning Guidance (Wales): Unitary Development Plans requires local planning authorities to have regard to social, economic and environmental consideration when preparing development plans so as to effectively contribute towards sustainable development. The guidance expects local planning authorities to engage in close consultation with local communities, businesses and organisations at an early stage in the plan preparation process. In this respect, this protocol advocates sustainable development and the linking of the planning system to Local Agenda 21 strategies, incorporating public consultation, including consultation with the Environment Agency.
- 2.4 In the context of the Agency's interests, the Authority will help promote sustainable development through the planning process, for example, by encouraging such uses and practices as:-
- Sustainable urban drainage systems
 - Water efficiency measures
 - Recycling of brownfield land
 - Waste minimisation and recycling
 - Promotion of biodiversity

Environment Agency

- 2.5 The Agency has powers to engage in the town and country planning process as a planning consultee, providing information and advice in circumstances where the decisions of local planning authorities are seen as capable of facilitating, or being conducive to the carrying out of the Agency's functions. Its main functions can be summarised as follows:-
- Regulate industrial processes
 - Regulate disposal of radioactive waste
 - Regulate the treatment, keeping movement and disposal of controlled wastes

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- Preserve or improve the quality of rivers, estuaries and coastal waters
 - Protect water resources
 - Supervise all matters relating to flood defence
 - Maintain, improve and develop fisheries
 - Promote the conservation and enhancement of inland and coastal waters and their use for recreation
 - Maintain or improve non-marine navigation
 - Regulate remediation of contaminated land designated as special sites
 - Administer producer responsibility regulations

There are a number of principle consultation arrangements governing the Agency's role as a consultee:-

Forward Planning

- 2.6 The development plan system is acknowledged as the most effective mechanism of reconciling demands for development and the protection of the environment by providing a firm basis for consistent planning decisions. The introduction of section 54A, into the Town and Country Planning Act 1990, signalled a commitment to a plan-led system by requiring that applications for planning permission or an appeal should be determined in accordance with the development plan unless material considerations indicate otherwise.

Planning Applications

- 2.7 In accordance with Article 10(1) of the Town and Country Planning (General Development Procedure) Order 1995, the Agency is one of a number of bodies required to be consulted by planning authorities, before they grant planning permission, in respect of certain descriptions of development.
- 2.8 Applications for certain categories of development should be accompanied by an Environmental Impact Assessment in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 SI 293. Where the EIA procedure is invoked as part of a planning application the Agency, under regulation 2(1), is a statutory consultee as part of the process to ensure that the Agency's requirements have been (or will be) adequately considered and addressed within any Environmental Impact Assessment.
- 2.9 The Agency is also a statutory consultee on applications for hazardous substances consent made under the Planning (Control of Major Accidents) Regulations 1999 which updates Planning (Hazardous Substances) Regulations 1992 (Planning (Hazardous Substances) Act 1990). The Agency, along with the Health and Safety Executive, has been appointed as a competent authority for the implementation of the

COMAH Directive and are working up joint liaison arrangements in respect of town and country planning requirements of the Directive.

- 2.10 Government advice, contained in numerous planning policy guidance notes and TAN's recommends that planning authorities should also consult the Agency in respect of other categories of development which are likely to impact on the Agency's functional concerns, for example, in relation to development in areas at risk from flooding. The Agency has produced "Appendix 2", as part of its document entitled "Liaison with Local Planning Authorities", for use by local planning authorities, which outlines the developments on which the Agency wishes to be consulted.

3.0 Working better together in the planning process

As a basic premise the Authority and the Agency will facilitate each other's contribution to town and country planning by building on existing liaison practices.

Forward Planning

- 3.1 The Authority and the Agency will co-operate in all stages of the preparation and review of statutory and non-statutory plans in the land use planning system, from strategy and issue identification to appraisal and monitoring in order to obtain best value from the information held in both organisations, to identify areas where further investigation or research is required and to further the mutual aim of sustainable development.
- 3.2 Such partnerships will be enhanced through initial meetings at an early stage in plan preparation in order to establish the scope and type of issues to be considered, the information required and the programme for the provision of information.
- 3.3 The Authority will offer the Agency opportunities to contribute to plan preparation from the earliest stages, providing as much information as possible on policy options and allocations. This will include inviting Agency participation in setting strategies for the future of development plans, environmental appraisal, the preparation of issues papers, during the key stages of any review, when considering core policies, as well as during formal consultation stages.
- 3.4 The Authority will consult the Agency during formal consultation periods on development plan policies, options and allocations, providing the necessary information to enable a comprehensive response to be made and clearly stipulating the timetable for responses.
- 3.5 The Agency will ensure that its input into the development plan process, at both formal and informal stages of plan preparation, is timely, relevant and comprehensive by providing information and

advice regarding policies, proposals and options for the development of land in order to best facilitate the operation of the town and country planning system.

- 3.6 The Agency will identify planning liaison staff as a single point of contact for co-ordinating consultation on development plans and will ensure that its own policies are effectively communicated to the Authority.
- 3.7 The Agency will respond to further requests for additional information and advice during plan preparation and will attend meetings to discuss options and issues. When formally consulted the Agency will respond to the Authority indicating areas/issues that are supported and areas/issues of concern. The Agency may formally object to a development plan if it is considered that there is a fundamental issue that has been omitted or is contrary to Agency objectives.
- 3.8 The Agency will provide written statements or appear at Examinations in Public or Local Plan Inquiries to support the information and advice it has provided.

Development Control

- 3.9 The development control process operates within tight deadlines, therefore the efficient and effective processing of planning applications is of paramount importance for both the Authority and the Agency. The process involves pre-application discussions, determination of the application itself, implementation of consent and appeal.
- 3.10 The Agency will identify planning liaison staff as a single point of contact, relevant for the whole of the authority area, for all matters relating to development control.

Pre-application Advice

- 3.11 The Authority will make developers aware, as soon as possible, of any potential impacts on the Agency's responsibilities when approached by developers for advice prior to the submission of a planning application, and will offer the Agency an opportunity to be involved in pre-planning application discussion.
- 3.12 The Agency will provide relevant and timely advice at the pre-application stage, in order to facilitate the efficient working of the town and country planning system and to further its statutory functions and duties.
- 3.13 The Authority and the Agency will encourage applicants requiring planning permission and Agency authorisation/licence to consider applying for consent under the different regulatory regimes in parallel. When an application is made in parallel the Authority and the Agency

will adopt a partnership approach to the evaluation of the applications by means of co-ordinated consultation periods.

Planning Applications

- 3.14 The Authority will consult the Agency in excess of the minimum requirements set out under Article 10 of the GDPO to embrace developments identified in “Appendix 2: Development requiring consultation with the Environment Agency”, and in accordance with advice contained in Government PPG’s, TAN’s and Circulars.
- 3.15 The Authority will send comprehensive planning application information to the Agency within 2 days of registration of the application, or within an agreed timescale, by post or e-mail.
- 3.16 The Authority will ensure that the end of the consultation period is clearly identified and will provide details of target committee and delegated decision dates/cycles in order that the Agency can ensure responses arrive before relevant decisions are due to be made.
- 3.17 The Agency will endeavour to respond to planning application consultations within the timescale indicated on the consultation letter, which will not normally be less than 21 days. If it becomes evident to the Agency that it will not be able to respond in time the Agency will contact the Authority to agree an appropriate extension of time.
- 3.18 The Authority will ensure that information relating to the Agency’s functions and duties is complete and accurate enabling the Agency to make a full and comprehensive response.
- 3.19 The Agency will minimise time lost in requesting further information by copying such requests direct to applicants, following informal agreement with the Authority by telephone. The Authority will ensure that applicants are aware of the need to comply with such requirements. The Agency shall inform the Authority of instances when it makes its comments available, on request, to the public.
- 3.20 The Agency will consider the impacts on the environment and the risks in relation to its own remit and responsibilities and make a timely, relevant and comprehensive response to all relevant planning consultations in writing, by letter or e-mail.
- 3.21 The Agency will distinguish between information for the Authority and developer and advice that relates to the Agency’s opinion as to whether permission should be granted and under which terms and conditions. The Agency will always give reasoned justification for its advice to enable the response to be properly used by the Authority and to ensure its relevance in the town and country planning system.

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- 3.22 The Agency will only raise an objection after careful consideration and where it is prepared to make representations in the event of an appeal. Whenever possible the Agency will suggest a course of action which would allow for the removal of the objection.

Appeals

- 3.23 The Agency will support its objections at Appeal by the provision of relevant technical information and sound scientific evidence. The Agency will provide expert witnesses at appeal hearings at the request of the Inspector, as well as to support its objection.

Major Developments Proposals

- 3.24 The Authority and the Agency will agree a timescale for certain applications which require significant Agency input at the outset of the planning application process
- 3.25 The Agency will participate in the Authority's Consultative Committees/Liaison Groups, involving operators / stakeholders, set up as a condition of approval for major developments.

Development Briefs

- 3.26 Development Briefs may be prepared as supplementary planning guidance (SPG) on significant sites. The Authority will involve the Agency in the preparation of SPG where environmental issues require definition in terms of the Agency's roles and responsibilities. The Agency will provide relevant and timely advice to facilitate this process.

Enforcement

- 3.27 The Agency will provide information in its possession, if required by the Authority, to support enforcement proceedings under town and country planning legislation.

Environmental Impact Assessment (EIA)

- 3.28 EIA introduces additional requirements for the Authority and the Agency over and above the development control principles already outlined.
- 3.29 Certain types of applications, which fall within the categories of Schedule 1 or Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 should be accompanied by an Environmental Statement. The regulations require EIA of development proposals falling within Schedule 1, while discretion is given to Local Planning Authorities to determine whether or not an EIA is required for Schedule 2 developments.

3.30 In assessing (screening) whether a Schedule 2 development is likely to have significant environment effects so as to require an EIA, Local Planning Authorities will take account of any views expressed by the Agency and consult them where there is doubt about the significance of the environmental effects of a development.

3.31 If the Local Planning Authority decides that an EIA is required the developer can request a scoping opinion. The Agency is one of a number of consultation bodies who must be consulted before the Local Planning Authority adopts a scoping opinion and must make information available to the developer for the purpose of preparing an Environmental Statement.

3.32 The interaction between EIA and IPPC is a key factor for the Agency, particularly where an EIA may be required for alterations to an activity which requires authorisation under IPPC. This necessitates the establishment of a clear view from the Authority and the Agency before a decision on the requirement for an EIA is made.

3.33 The Agency will respond in a comprehensive, relevant and timely manner to requests for information from the Authority regarding its screening and scoping opinions.

3.34 When the Authority decides that an EIA is required:-

- The Authority will ensure that the Agency receives a copy of the application and the Environmental Statement for consideration as early in the procedure as possible, and the consultation period will be extended in accordance with the EIA procedure.
- The Agency will respond to the technical content of an Environmental Statement through the provision of relevant technical information based on sound scientific evidence in accordance with its statutory functions and duties. It will provide reasoned justification for its advice.

4. The information to be shared

4.1 As a basic premise the Authority and the Agency will share all relevant information in a form which facilitates each other's contribution to town and country planning.

4.2 The Authority will provide the Agency with the necessary information to effectively participate in the town and country planning process, including planning weekly lists, and provide guidance on the expected timescales involved.

4.3 The Authority will utilise Appendix 2, LEAPS and other technical guidance notes produced by the Agency to inform the town and country planning process

4.4 The Agency will ensure that the information it provides to the Authority:-

- is clear and reliable technical information;
- is clearly explained in terms which applicants and the public can understand;
- is robust in the context of Town and Country Planning and can withstand being tested through EIP/Public Inquiry/Appeal process;
- is based on an overview of environmental capacity and infrastructure constraints to accommodate further development in settlements where such information and expertise is available;
- incorporates advice on applying the precautionary approach especially in terms of the appropriate planning response to climate change; and,
- includes detailed comments on development plan proposals and individual planning applications regarding any measures necessary to enable development to take place, in respect of its statutory functions and duties.

4.5 The Authority will provide the Agency with the following information relating to individual planning applications:-

- the Authority's consultation letter/form, giving details of the application and the Ordnance Survey grid reference of the site
- a copy of the planning application form including complete responses to the questions on the disposal of foul sewage, surface water and past uses of the site
- the application type, including the nature of reserved matters or details pursuant to conditions
- a copy of any relevant supporting statement or submission, particularly site investigation reports and environmental statements
- a location plan, preferably on an Ordnance Survey base at a minimum 1:2500 scale, with the proposed site clearly identified in red and other land within the applicant's ownership edged in blue
- any other relevant plans submitted as part of the application.

4.6 The Agency will provide the Authority with information relating to its regulatory regimes (For example, Land Drainage Consents, Abstraction Licences, Discharge Consents, IPC Authorisations, Waste Site Licences, RAS) when relevant to a planning application.

4.7 The Agency and the Authority will co-operate, where relevant, to establish an agreed common information resource representing the best data available to both organisations Mechanisms will be established to update and correct this information for mutual benefit.

For example with regard to:-

- landfill sites notifiable under Section 10x of the GDPO,
- section 105 surveys and the provision of indicative flood plain maps
- statutory information concerning contaminated land

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- effectively communicating policy documents and draft research reports

Demonstrating Effectiveness Within the Planning System

- 4.8 Both the Authority and the Agency are guided by best value principles in recognition of the need to demonstrate effectiveness of participation in town and country planning. Each can help in this process through the effective sharing of information.
- 4.9 The Authority will send copies of Committee Reports, Minute and Decision Notices to the Agency for applications on which the Agency has recommended conditions or raised an objection. This will allow the Agency to monitor its effectiveness and improve its contribution to the planning system.

Maff High Level Targets

- 4.10 In November 1999 MAFF adopted a series of targets to provide a framework to demonstrate delivery of the Government's stated policy aims and objectives for flood and coastal defence. One of the key objectives to achieve the policy is "To discourage inappropriate development in areas at risk from flooding and coastal erosion".
- 4.11 Target 12 requires the Agency, in partnership with local planning authorities, to report to MAFF and DETR on:-
- those local authorities development plans upon which the Agency have commented, identifying plans which do, and do not, have flood risk statements or policies: and
 - the Agency's response to planning applications, identifying cases where the Agency sustained objections on flood risk grounds; and where final decisions, either by the LPA (Local Planning Authority) or on appeal, were in line with, or contrary to, Agency advice.
- 4.12 The report for 1999/2000 will cover the period October 1999 to March 2000 inclusive and thereafter reporting will be annually 1st April to 31st March. Reports are to be sent to MAFF in June each year.
- 4.13 In order to comply with target 12:-
- The Authority will provide the Agency with copies of all decision notices relating to Agency objections on flood risk grounds. The Authority will provide this information to the Agency within one month of the decision being taken, where this is possible
 - The Agency and the Authority will discuss and agree the reporting of applications which have been granted contrary to Agency advice.

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- The Agency and the Authority will discuss and agree the reporting of development plans which do not contain a policy or statement relating to flood risk.

5.0 Improving how information is Exchanged

- 5.1 It is in the interests of both the Authority and the Agency to make use of new technology to improve efficiency and effectiveness of communication, particularly in relation to consultations on planning applications.
- 5.2 The Authority and the Agency will exchange development plan and planning application information electronically, whenever possible, where technology is compatible.
- 5.3 The Authority and the Agency will promote the use of compatible IT systems and the use of the Internet and work towards technological solutions to improve information exchange.
- 5.4 The Authority and the Agency will make use of opportunities afforded by the Internet to share information such as planning application lists, applications, committee reports and decision notices.
- 5.5 The Authority and the Agency will make use of opportunities to share R&D, training and development of staff.

(This section could be developed further between individual authorities and EA Areas).

6.0 Monitoring and Review

- 6.1 The Authority and the Agency will review this protocol/agreement through an annual meeting between the Agency and the Local Planning Authorities and amend to take account of legislation changes, improved technology, the review and implementation of best practice and organisational changes.