

The New National Planning Framework

What will it look like, what will it cover and how will it affect the Land Quality Sector?

Dr Bill Baker

Independent Environmental Consultant

Advisor to CIEH on land contamination issues

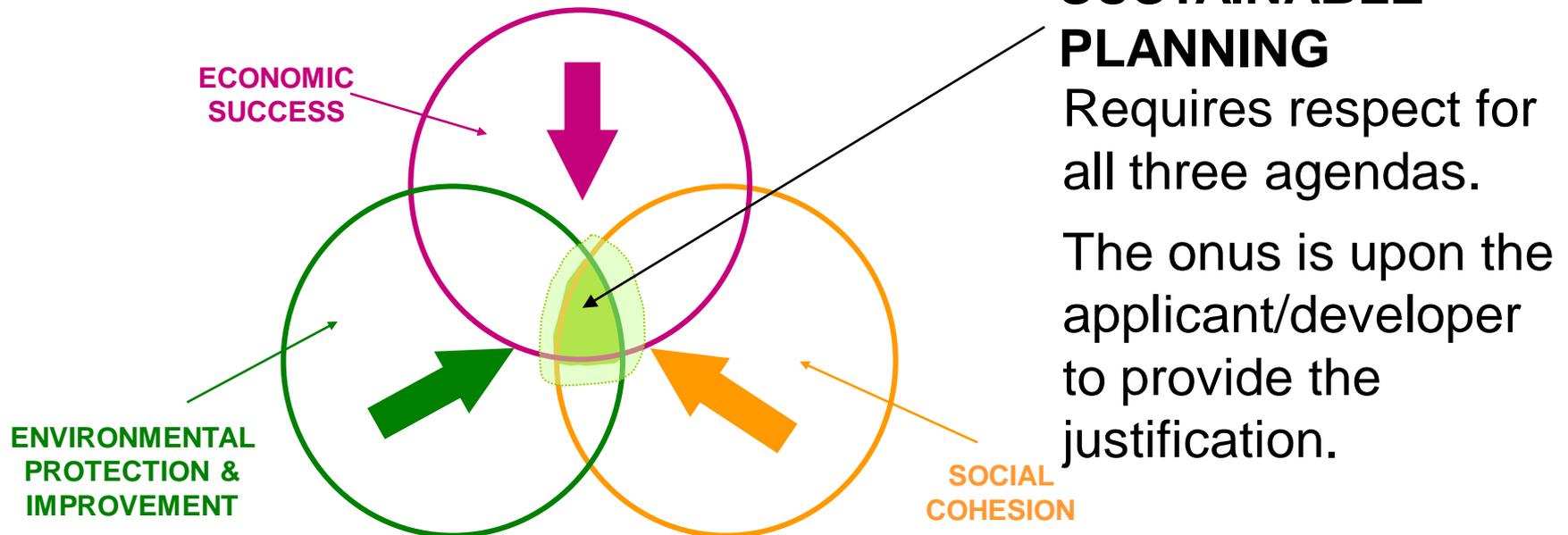
UK Groundwater Forum Conference

Outline

- Planning Regime
 - guide to current regime
 - Key players
 - Government Concerns & policies
- Localism Agenda
- New Planning Regime
- What are the likely effects on Land Quality Sector?
- What strategies can we pursue to maintain effective regulation?
- NB – This presentation has been compiled with the co-operation and advice of Dr Richard Boyle of the HCA to whom grateful thanks & acknowledgements are due.
- The opinions expressed are those of the presenter and are not necessarily held by other associated persons or groups.

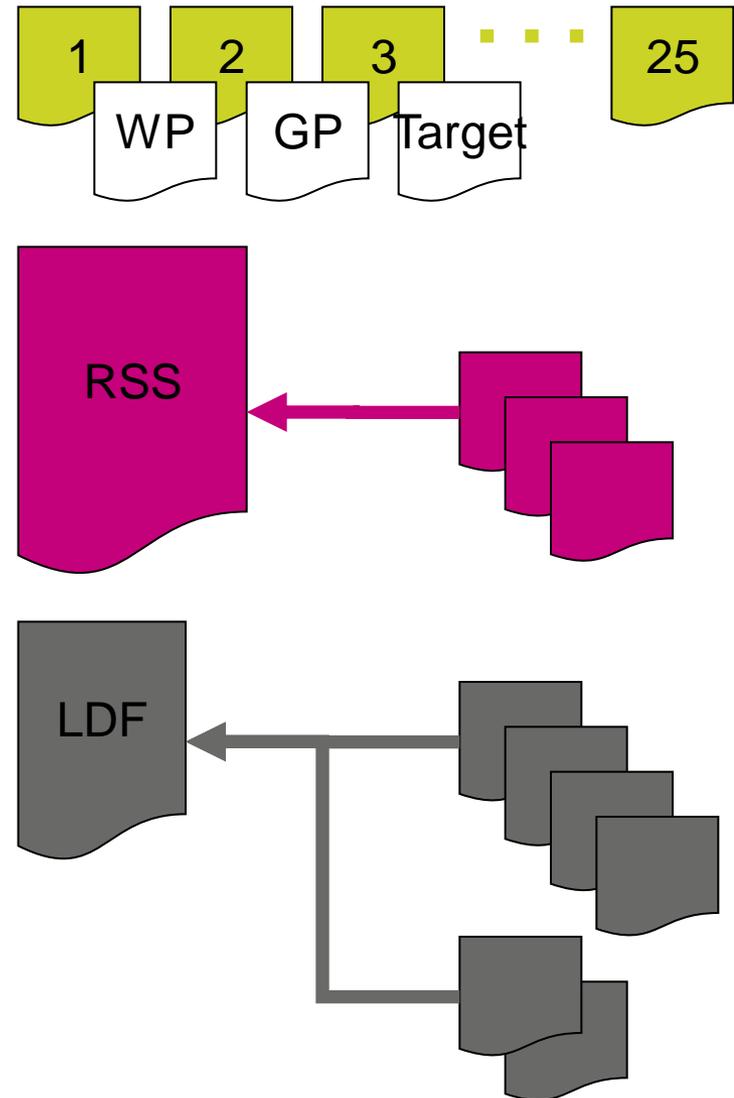
Existing Planning Policy

- “Old” planning policy aimed to avoid **demonstrable harm**. The LPA needed to show that there will not be **unavoidable consequences** from any development.
- 2004 planning policy still follows this line, but aims to encourage development to deliver **positive outcomes**.



Existing Planning Regime

- Central Government
 - PPS/PPG
 - Policies and targets
- Government Office for the Regions
 - Regional Spatial Strategy
 - Evidence base
 - All consulted on
- Local Planning Authority
 - Local Development Framework (Core Strategy)
 - Evidence base
 - SHLAA, ELR, OSR, etc
 - Retained policies
 - Consulted on
- Planning Applications



Land contamination Regulation & Guidance developed over the last 25 years

- Part 2A – Environmental protection Act 1990 introduced by section 57 of Environment Act 1995 introduced by the Statutory Guidance and Contaminated land regulations 2000
- Essential guidance from Environment Agency
- CLR 11, CLEA, CLR8/9, R&D 66, Remedial targets methodology & update etc.
- CIRIA reports
- European Directives
- BS 10175 – revised edition 2011
- Planning Policy Statement 23
- And much more!

PPS 23 – Roles & Responsibilities

- **“Contamination is a material planning consideration”**
- **“The Developer** must satisfy the Local planning Authority that any unacceptable risk from contamination is identified through an appropriate investigation & assessment of risks & will be successfully addressed without undue environmental impact before completion of the proposed development & will not be capable of determination under the Part 2A regime”
- The local authority **Contaminated Land Officer (CLO)** is responsible for the assessment of all planning proposals, associated risk assessment and remediation strategies to ensure safe & sustainable development on sites affected by contamination. The CLO is also responsible for the management of the Part 2A regulatory regime.
- The **Environment Agency** can be approached for advice where there is seen to be a requirement for the protection of groundwater or the water environment in the development context & with respect to designation of “special sites” under Part 2A.

Some Problems with the Current Regime

- The standard of supporting consultants' reports is & their level of competence is often generally not acceptable and have to be referred back for reassessment.
- The scope of investigations is often inadequate due to the Developer's reluctance to invest sufficient resource into the process of assessment of risk to facilitate the development of sustainable and more affordable remediation strategies. Instead they prepare to find the extra costs of over remediation to satisfy the regulators.
- Post development verification reports are rare, and their absence can lead to unacceptable difficulties for householders when change of ownership of residential property is contemplated.
- Groundwater protection issues are often neglected by the developers' consultant and site specific advice and support is becoming more difficult to obtain from the Agency.
- Problems frequently arise from the presence of contamination in domestic gardens associated with elevated levels of arsenic, benzo(a)pyrene and the presence of asbestos in soil.

Why Is the Planning process Being Changed?

- Some quotes:
 - *“Town hall officials who take forever with those planning decisions that can be make or break for a business – and the investment and jobs that go with it”*
 - David Cameron, Prime Minister
 - *“If I am being completely frank ... it’s the drag anchor to growth”*
 - Eric Pickles, Secretary of State for Communities and Local Government
 - *“We want local communities to benefit from growth, and the standard answer to be yes, not no”*
 - Vince Cable, Business Secretary

Changes Already Made To Existing Planning Regime

- Seen as very cumbersome, slow and has been subject to Central Government 'bullying'
- 'Radical' changes already happened:
 - Central Government targets – Scrapped with immediate effect
 - e.g. 3M new houses by 2020, 2M by 2016
 - Regional Spatial Strategies – Scrapped with immediate effect
 - Split national targets into regions
 - Government Offices for the Regions – Scrapped by 2012
 - Worked out how to deliver the regional targets
 - Infrastructure Planning Commission – Scrapped by 2012
 - Forward planning issues for infrastructure of 'national importance', to be subsumed into CLG

Some 'Details' on New Planning Regime

- Speech by Chancellor in Budget 2011 in section called 'Planning for Growth':
 - “The planning system has a key role to play ... ensuring that the sustainable development needed to support economic growth is able to proceed as easily as possible”
 - “The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be “yes”, except where this would compromise the key sustainable development principles set out in national planning policy.” (consultation over what this wording means published in May 2011)
 - “Secretary of State for Communities and Local Government ... will attach significant weight to the need to secure economic growth and employment.”
 - “[so will the] SoS for Culture, Olympics, Media and Sport, the SoS for the Environment, Food and Rural Affairs, the SoS for Energy and Climate Change and the SoS for Transport.”
 - What does this mean?!

Some More ‘Details’ on New Planning Regime

- Open Source Planning (Conservative ‘Green Paper’ No 14) is being followed:
 - This will “Free” LAs from top down central control & encourage local authorities to work together to resolve issues
 - give neighbourhoods much greater ability to determine the shape of the places in which their inhabitants live
 - Each community to develop “Neighbourhood Development Plan” to shape area. When done LAs will have to honour them
 - Developers must consult before planning application and show how the elements of the NDP have been substantially taken into account
- So far this has been blamed (along with RSS withdrawal) for planning applications for some ~85,000 houses being withdrawn
- Been called a NIMBYs charter
- BANANA – Build Absolutely Nothing Anywhere Near Anything (or Anyone!)
- NOPE – Not On Planet Earth



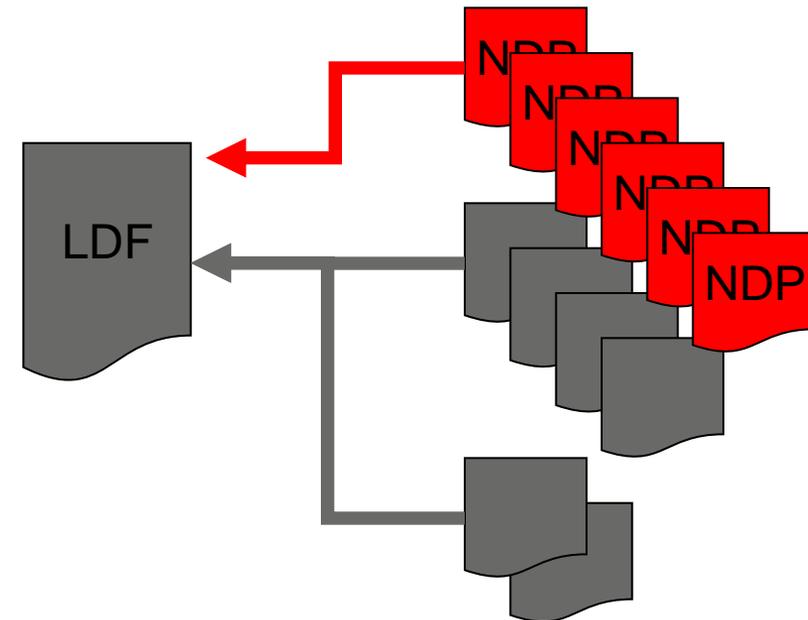
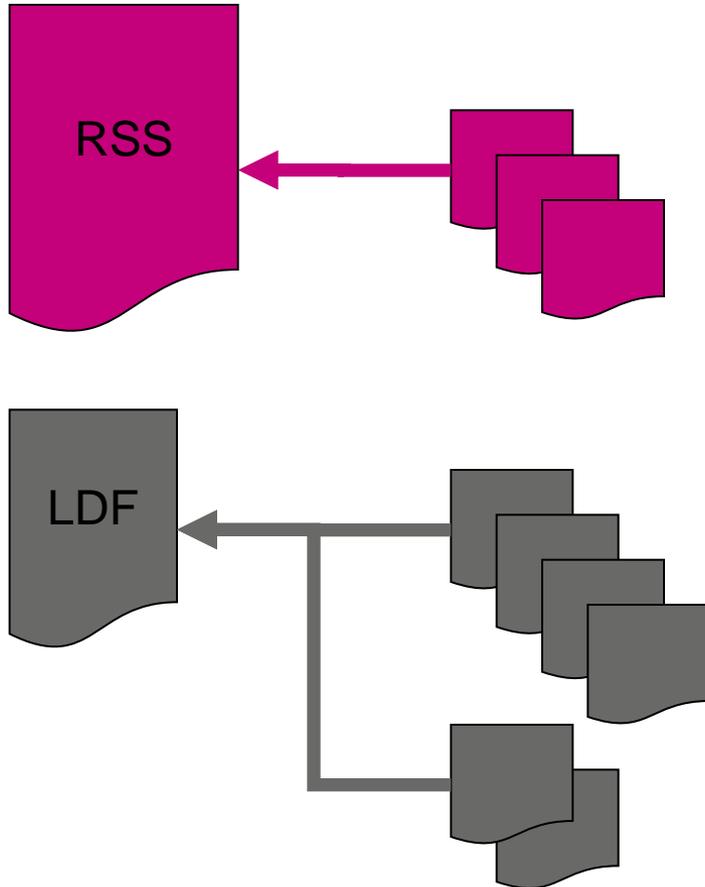
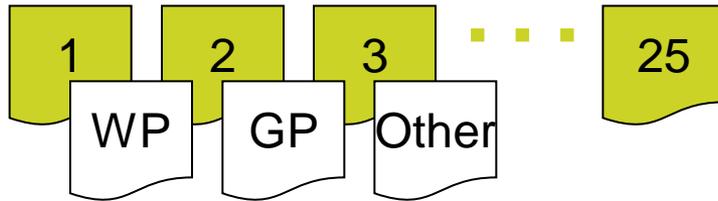
Further 'Details' on New Planning Regime

- “Reduction in bureaucracy” by:
 - New duty of cooperation on LAs (and other public bodies) to work together
 - 12 month guarantee for any planning application to be determined, including appeals made in a “timely fashion”
 - Scrapping change of use planning permission for turning premises and old houses into houses (*with big implications for contamination issues!*)
 - A “Neighbourhood Development Order” as established in the “Neighbourhood Development Plan” will grant automatic planning permission for any type of development if local referendum approves it.
 - What is “local”?
 - There are certain guidelines to which the development will have adhere, e.g. design standards, buildings regulations, etc
 - 60% target of new residential housing on Previously Developed Land has been scrapped
 - Considered to have created lots of properties of the wrong type
 - Considered to have encouraged Garden Grabbing, hence immediate change of PDL definition from PPS3 when Coalition came into power
 - *Research shows no proof that this has been widespread occurrence*

New Planning Regime

- Central Government should decide Planning Policy and Local Government should deliver, so:
 - There will be the withdrawal of Planning Policy Statements (PPS) and Guidance (PPG)
 - Biodiversity and Geological Conservation, PPS9
 - Flooding, PPS25
 - Contaminated Land, PPS23
 - They will be replaced with a short overarching policy (said to be only about 25 pages long)
 - None of these are therefore thought to be massively important considerations for planning
 - What space / emphasis will be given to them?

New Planning Regime



Localism Agenda

- Driving force in Coalition:
 - Localism – Conservatives
 - Liberalism – Liberal Democrats
- This is **THE** National Vision!
- What does it mean?
 - “a term we use to include villages, towns, estates, wards or other relevant local areas”
 - Transfer away from Big Government to Big Society, has already stated that:
 - If considered nationally, it is ‘failing’
 - If considered at Local Authority level, it could be failing
 - Therefore, planning decisions must be taken and delivered at Parish Council or Community level? *Coupled with the abolition of the Standards Board which was established to regulate the behaviour of local councillors and their abuse of power & influence!*
- The Localism and Decentralisation Bill scheduled for 2011 is certain to be the largest and most wide-ranging piece of legislation to go through Parliament ever!

Some More Quotes

- Some other quotes on what the Planning Regime must do:
 - *“Deal the growing complexity and urgency of planning problems;”*
 - *“Be concerned not only with the use of land, but also to other matters which are vital to the proper planning of an area”*
 - *“With its positive approach will facilitate the creation of a good environment.”*
 - *“All of which requires a broader and more flexible arrangement of plans.”*
- These were all in the blurb accompanying the ... 1947 Town and Country Planning Act!
 - Planning regime has been changed ~20 times since then
 - Problem is, planning is a WIN-LOSE game, which is why it is difficult

Possible Effects on Land Quality Sector

- Vast majority of soil quality issues will still be assessed and remediated through the Planning Regime
- New Planning Regime is highly likely to include:
 - Soil quality should be considered during site Allocations
 - Land quality will still be a Material planning condition
 - Conditions will still be able to be prescribed, if necessary, on soil quality
 - Onus still on the developer to show “Suitable for Use”
 - Aim still to prevent new soil quality issues
 - After development, land should not be able to be Determined under Part 2A
- Will Localism mean community decisions will be made on:
 - Contaminated land risk assessments and remedial standards?
 - (Flood risk assessments?)
 - If so, what support will be provided?

Major Affects on LA Regulators

- Major issues for LAs:
 - Removal of significant planning policy guidance
 - How will we get agreement?
 - Faster decisions due to:
 - Maximum 12 month deadline for all planning permissions (including appeals)
 - New Homes Bonus (Central Government “carrot” to pay for 6 years Council Tax equivalent as up front payment for each new house +25% more for each new affordable house)
 - Localism agenda removing need for planning permissions in some circumstances
 - How will CL issues be considered and how will Conditions / safeguard be placed on development technically outside of the planning regime?

Two Things WE Must Do NOW

- Two major issues out for consultation at the moment that affect YOU:
- Consultation on removal of planning permission for some conversions of industrial / commercial properties to residential
 - <http://www.communities.gov.uk/publications/planningandbuilding/relaxationchangeconsultation>
- General consultation to remove burden on business, under its ‘Red Tape Challenge’, includes offer to rethink or remove ALL environmental legislation:
 - <http://www.redtapechallenge.cabinetoffice.gov.uk/environment>
 - For a greater understanding of policy read “A Plain English Guide to the Localism Bill” obtainable from - www.communities.gov.uk

What Are We Going To Do About It?

- **Cry!**
- Draw attention of Ministers & local MPs to the likely adverse effects of these proposed changes in the Planning process and the revised Part 2A Statutory Guidance
- Support the co-operation & liaison of our representative groups with other interested bodies to oppose these developments which could result in serious reduction in the effectiveness and relevance of land contamination regulation leading to increased likelihood of risks to the community from contamination on developed sites.
- Prepare an alternative guidance document based upon the principles upon which the current PPS23 was based which can be accepted and adopted by professional bodies and industry (*in line with the new policy from Defra which suggests that there will be no further guidance on land contamination issues published by government departments or agencies, but that they will accept guidance developed voluntarily by industry and other stakeholder groups*).