

THE NATIONAL PLANNING POLICY FRAMEWORK AND ITS EFFECTS ON THE MINERALS INDUSTRY IN THE UK

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ABSTRACT

The National Planning Policy Framework (the NPPF) was published in March 2012 and is intended to be a replacement for the existing Government planning policy and guidance documents. This paper examines whether or not it is an effective replacement and reports on how it has been received by aggregate producers in particular.

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INTRODUCTION

It seems that there are very few occasions when the land use planning system is not in the political firing line. It is not surprising, therefore, that planning matters featured in the lead-up to the last general election in 2010. Just a few weeks before the election, the Conservative Party published a green paper entitled Open Source Planning. The first message in that paper was that the planning system is vital for the delivery of:

- a strong economy,
- an attractive and sustainable environment, and
- a successful democracy.

From a mineral operator's perspective that recognition must be good. The trouble was that the second message from the Conservatives was that planning was failing to deliver any of those things.

So the planning system was vital.....but broken.

In their view, nothing short of a radical re-boot of that system would put things right. Immediately after the election, things started to happen in line with the objectives that were aired in Open Source Planning.

CHANGES IN STRATEGY

The new Government was clearly averse to anything with a 'regional' tag attached to it and most significantly, that meant that Regional Spatial Strategies (RSSs) had to go. Then, in the interests of a more successful democracy, a 'localism' agenda was being pursued and that meant the removal of any targets for development that were applied from the centre. All this found form in the provisions of Part 6 of the Localism Act, 2011.

This means that 'top down' approaches were out and 'bottom up' was in, including individual assessments of aggregate needs by each mineral planning authority

(Local Aggregate Assessments). Accommodating these ideas threatened major changes for strategic aggregates planning, as the Managed Aggregates Supply System (MASS) was based on the very 'centralist' National and Regional Aggregates Guidelines, which in turn had always had effect through policies in the RSSs and the work of the Regional Aggregate Working Parties (RAWPs). Further details on the MASS as it was can be found in Gunn et al (2008).

If the planning system is vital to the Nation, then the MASS is vital to aggregates producers because it is the only effective constraint on a system that would otherwise progressively under-provide for new extraction areas. Mineral working does not win votes and minerals can only be worked where they occur. Not many mineral planning authorities, if left to their own devices, would acknowledge the economic significance of mineral working, especially if it was largely to meet the needs of areas outside their own boundaries. The planning reform agenda, which was for the most part focused on speeding up the delivery of new houses, was in danger of jeopardising the delivery of the materials with which to build them.

There was also a perception that the planning system was broken because it had become too complex to deliver decisions speedily and in a transparent manner. The blame for that was based squarely at the door of planning policy and guidance. Over one thousand pages of documents, in the form of Planning Policy Statements (PPS), Minerals Policy Statements (MPS), Mineral Planning Guidance (MPG) notes and Government Circulars was just too much for the average person in the street to find their way around. Much of it, they believed, was also out-of-date. However it is apparent that many planning practitioners would not agree with the Government assumption that policy and guidance was

unwieldy or out-of-date. Many mineral planning practitioners would also point out that mineral planning policy and guidance is relatively fresh. It was streamlined as recently as 2006 when MPS1 was published (Department for Communities and Local Government (DCLG), 2006a). However, if it was the Government view that it should be streamlined then there was little point in resisting.

Some changes were and are being made to planning legislation but the focus for mineral operators was on protecting policy and guidance from the ravages of streamlining. It has to be said that early in this process, the Planning Minister took the point that the issues for minerals were different from other forms of development. Consequently, The Department for Communities and Local Government (DCLG) consulted very effectively during the streamlining process. The voices of the minerals industry and local authority planners were undoubtedly listened to through various formal and informal working groups.

NATIONAL PLANNING POLICY FRAMEWORK

At the end of March 2012 the National Planning Policy Framework (the NPPF) was published (DCLG, 2012). Over one thousand pages had been condensed to about fifty.

Job done? Well, perhaps not quite.

Improving the efficiency of policy documents is not just about how many pages they have; it's about the clarity and functionality of those documents as well. In the author's opinion the NPPF is not as well structured as it could be; it is not formed around a logical system of sections and headings. Policy statements do not necessarily appear where you would expect them to.

For the most part the NPPF shows that Government has still not grasped the essential difference between policy and guidance. The documents that were being streamlined contained both policy and guidance and this was an opportunity to separate the two. This is of fundamental importance because it has implications for the weight that is given to the contents of the NPPF in decision making. It professes to be a policy document but it still quite clearly contains guidance. To make matters more confusing, paragraph 13 states that "The National Planning Policy Framework constitutes guidance....."

The subject of waste planning policy has not been addressed because that will be considered in the National Waste Management Plan and that causes some concern. The omission affects the integrity of the NPPF which should not only be a statement of overall planning policy but also a medium through which the justification for those policies is set out. Taking one development sector out of the mix prevents the issues of that sector being considered in the context of all the others. We must not forget that the NPPF places great emphasis on the need to deliver development which is sustainable. Sustainable development is all about weighing interests (economic, social and environmental) against one another in the planning process. For largely the same reasons there is also concern because the National Waste Management Plan will be something that is masterminded by the

Department for the Environment, Food and Rural Affairs (DEFRA) and not DCLG. DEFRA should not be charged with delivering planning policy.

Without waste planning policies the NPPF is unfinished business.

As a final point, considerable confusion has been caused by DCLG advice issued subsequent to the publication of the NPPF which advises that all existing good practice guidance, including the often quoted MPS1 Practice Guide (DCLG, 2006b) is still valid to the extent that it does not conflict with the NPPF.

THE EFFECT ON THE MINERALS INDUSTRY

Where has the NPPF left the minerals industry? Should we be worried?

On the face of it, the minerals sector, with the exception of the peat industry, has come out of it quite well. All of the essential elements of the existing documents, and notably MPS1, have been incorporated in the NPPF. Key points that have been retained include:

- A sufficient supply of minerals is essential to support economic growth.
- The MASS has been retained, including a pivotal role for Aggregate Working Parties, a National Aggregates Coordinating Group and Aggregates Guidelines. The change to accommodate localism, is that the MASS will function principally on the basis of Local Aggregate Assessments rather than the Guidelines.
- Local planning authorities should plan to source mineral supplies indigenously.
- The safeguarding of mineral resources remains an obligation.
- Mineral extraction is not necessarily inappropriate in the Green Belt.
- Sand and gravel working is not incompatible with flood plains.
- Restoration bonds or financial guarantees should only be sought in exceptional circumstances.

In addition, a number of new policy provisions have been made:

- A presumption in favour of development that is sustainable. However, a proper functioning definition of sustainable development has yet to appear in a Government publication. It is also unclear how this new presumption will sit alongside the existing statutory presumption in favour of development that accords with the development plan.
- Where the development plan is absent, silent or relevant policies are out-of-date, there is a presumption in favour of development that accords with the NPPF.
- A suggestion that authorities should return to a one document approach to development plans (the return of the Minerals Local Plan).
- 'Great weight' to be given to the benefits of mineral extraction.

- An obligation for planning authorities to identify areas for, and include policies for, the extraction of mineral resources of local and national importance. The definition of such resources includes aggregates, brick clay, silica sand, cement raw materials, gypsum, salt, fluorspar, oil and gas, tungsten, kaolin, ball clay and local minerals of importance to heritage assets and local distinctiveness.
- Clarification that landbanks relate only to aggregates and are the total permitted tonnages of aggregate resources held in a mineral planning authority area. The NPPF calls for reserves of other minerals (silica sand, brick clay and cement raw materials) at individual sites to be maintained above minimum levels but the term 'landbank' does not apply in that context.
- A presumption against new peat extraction.
- Statements about coal extraction (Paragraphs 147 and 149) which appear to soften the presumption against coal extraction, which was previously contained in MPG3 (DCLG, 1999).

CONCLUSION

Overall then, the outcome has not been as worrying as it might have been. Whilst it could be argued that an NPPF was not needed to make the planning system work better, all the ingredients are there to allow for the provision of a steady and adequate supply of minerals. The clarity provided by some of the statements might even represent an improvement.

However, whenever the number of words is reduced in a communication, greater importance has to be attached to those words that remain and this creates some doubts.

Proper functioning of the planning system relies on the consistent interpretation of policy and guidance statements by planning authorities and the planning inspectorate in particular. A very concise NPPF has left bigger 'gaps' for that interpretation. Existing planning guidance has evolved to a large extent to fill those gaps and the validity of most guidance is now in question. The situation is exacerbated by the failure to distinguish between policy and guidance and the relative weight that should be attached to each.

Sadly, it is not clear that we can rely on planning officers to apply the correct interpretations and to apply them consistently. Resources are often inadequate for meeting that challenge, as the more experienced officers with specialist minerals knowledge leave mineral planning authorities or have their input diluted by an increase in the scope of their duties. In the wake of less robust input from planning officers, keeping local political involvement on the straight-and-narrow will be more challenging.

The NPPF is OKBUT.

A lot of the responsibility for making it work and for taking the planning system to where the author believes Government wants it to be, as one of the staples of a recovering economy, has to fall on developers and that includes the minerals industry.

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