

SUSTAINABLE DEVELOPMENT AND THE PLANNING AND COMPULSORY PURCHASE BILL

Introduction and Overview

Wildlife and Countryside Link brings together 32 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practice and advocate environmentally sensitive land management and food production practices and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of over 6 million people in the UK.

Wildlife and Countryside Link believes that sustainable development should be the principal objective of a modern planning system. It is essential that the Government delivers the commitment by Barbara Roche who said “*we want a planning system that supports and promotes sustainable development*” (House of Commons Second Reading 17 Dec 2002 : Column 735).

Link members believe that currently the Planning and Compulsory Purchase Bill would not deliver a planning system that achieves sustainable development, but that this could be improved by amending clause 38. Link has obtained a legal opinion which both confirms our reservations about the current Clause 38 and proposes an amendment to increase its effectiveness. The amendment would make the achievement of sustainable development an 'objective' for decision makers as well requiring them to 'act under and follow guidance' as to the detailed definition of what is sustainable.

Clause 38 Sustainable development duty - Analysis of the Matrix legal opinion

The legal opinion was commissioned to answer a number of questions raised by the debate over Clause 38 of the Planning Bill. These were, in brief:

- 1) Would a more robust sustainable development duty lead to more litigation?
- 2) Would the application of this duty to development control inevitably result in more litigation?
- 3) How meaningful is the current definition of sustainable development?

The opinion gave the following answers:

- 1) A more robust definition within the Bill would not necessarily result in more litigation. However, wherever the definition of sustainable development sits, whether it is within the Bill or in guidance, it has the potential to generate

litigation. Therefore, future legal challenges might just as easily be taken against the failure to implement PPS1 as against a failure to implement a more defined clause 38. The opinion also identified the weak obligation on decision makers to implement sustainable development. The current wording 'with a view to' is almost meaningless. Furthermore, the current linkage to guidance within the Bill - 'must have regard to' - is also very weak.

- 2) The current duty would have little impact on development control decisions because policy is only one part of the decision making process. Extending the duty would help to extend the boundaries of sustainable development but may result in more litigation.
- 3) The current clause 38 is pretty meaningless because sustainable development is not defined and decision makers need only have 'regard' to (any definition in) national policy, advice or guidance. If clause 38 is not amended, then including a definition of sustainable development within guidance would help, but only marginally.

An amended clause 38

The legal opinion suggests a number of options for new language to help deal with two central problems. The two problems are as follows:

- If we want to achieve sustainable development then decision makers must consider achieving the clause 38 "duty" as a primary, not peripheral, concern. Of the possible options available, the words 'with the objective of.....' are not as strong as 'so as to achieve....'. However, a further consideration is that an 'objective' is a notion which has previously been litigated on, so the courts would not have to define what they mean by it. To include sustainable development as an "objective" would be a major step forward from 'with a view to contributing' in sub-clause (2), and the ancillary having 'regard to' guidance in sub-clause (3).
- If the definition of sustainable development is included in guidance, then the decision maker must act under and follow that guidance.

Therefore, Link considers that the following two amendments could best achieve the embedding of sustainable development within planning and decision-making:

- (2) The person or body must exercise the function with **the objective of achieving** ~~a view to contributing to the achievement of~~ sustainable development
- (3) For the purposes of subsection (2), the person or body **must act under and follow guidance, including as to the meaning of sustainable development,** ~~have regard to national policies and advice~~ issued by-

This statement is supported by the following organisations:

Bat Conservation Trust

British Mountaineering Council

Buglife, The Invertebrate Conservation Trust

Butterfly Conservation

Campaign to Protect Rural England

Council for British Archaeology

The Council for National Parks

Friends of the Earth

Herpetological Conservation Trust

Marine Conservation Society

National Federation of Badger Groups

National Trust

Open Spaces Society

Plantlife

Ramblers' Association

The Royal Society for the Protection of Birds

Wildfowl and Wetlands Trust

The Wildlife Trusts

Woodland Trust

Worldwide Fund for Nature

Youth Hostel Association