

DERRY CITY AND STRABANE DISTRICT COUNCIL

LOCAL DEVELOPMENT PLAN (LDP) 2032



POLICY REVIEW 2 **Planning Policy Statement 2: Natural Heritage** (May 2017)

This Document is one in a series, which builds up to form the 'evidence base' that informs the preparation of the Local Development Plan (LDP). The afore-mentioned evidence base will be continually updated, to additionally include the latest information, input from public engagement, statutory consultees, stakeholder groups, Sustainability Appraisal and from other Departments within the Council, including Community Planning.

The Evidence Base is published as a 'supporting document' in accordance with Article 10(a) and 15(a) of the Planning (LDP) Regulations (NI) 2015.



Purpose: To consider existing planning policies relating to Natural Heritage and to consider alternative policies which will inform the forthcoming Preferred Options Paper (POP) as part of the preparation of the Local Development Plan (LDP).

Content: The paper will provide information on:

- (i) The Context of Natural Heritage in Derry City and Strabane District and existing plan policies;
- (ii) Derry City and Strabane District Council (DCSDC) objectives for Natural Heritage and the linkages between DCSDC objectives for future growth and Sustainability Appraisal, Regional Planning Policy and Strategic Planning Policy objectives;
- (iii) Consider existing policies and consider preferred/alternative policy options for Natural Heritage within the Local Development Plan (LDP).

Recommendation: The findings shall be used to inform the Preferred Options Paper (POP) and strategic policies in the Local Development Plan (LDP).

1.0 Introduction to Paper

- 1.0 The purpose of this paper is to inform the Planning Committee of the current planning policies associated with natural heritage and assess whether or not the associated planning policies are sufficient and meet with the Council's objectives regarding the need to protect, conserve and enhance the natural environment through the new Local Development Plan.
- 1.1 This paper considers and assesses the relationship between existing planning policies relevant to natural heritage such as the Regional Development Strategy (RDS), Strategic Planning Policy Statement (SPPS), Sustainability Appraisal themes and DCSDC natural environment objectives, through the proposed LDP objectives.
- 1.2 The Northern Ireland Environment Agency has key responsibility for the designation and hierarchy of sites that are of nature conservation importance and it is Council's role to ensure the protection of these sites through the application of policy (PPS). Additionally, Council has the power to identify and designate Local Nature Reserves (LNR), Wildlife Refuges (WR) and Sites of Local Conservation Importance (SLNCI) through the development plan process, Council also possesses powers to protect visually significant trees and woodlands through the Tree Preservation Order (TPO) process.

2.0 Legislative Context

2.1 The protection of natural heritage is multi-faceted and influenced at local, national, European and global levels which are summarised in the following sections;

2.2 National Legislation

2.3 The relevant UK and NI legislation for transposing EC Directives in relation to natural heritage are as follows:

- The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (the 'Habitats Regulations') transpose the Birds Directive and the Habitats Directive into NI legislation
- The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 apply the EIA Directive to the planning process in Northern Ireland.
- The Water Environment (Water Framework Directive) Regulations (NI) 2003 transposes the Water Framework Directive.
- The Environmental Assessment of Plans and Programmes Regulations (NI) 2004 transpose the SEA Directive into NI legislation.
- The UK Marine Strategy Regulations 2010 transposes the Marine Strategy Framework Directive into UK legislation.

2.3.1 Other relevant UK and NI legislation includes:

- The Wildlife (NI) Order 1985
- Nature Conservation and Amenity Lands (NI) Order 1985
- Planning (NI) Order 1991 – Tree Preservation Orders
- Environment (NI) Order 2002 – for designating ASSI's
- The Wildlife and Natural Environment (NI) Act 2011
- UK Marine & Coastal Access Act 2009
- The Marine Act (Northern Ireland) 2013

2.4 European Legislation

2.4.1 The relevant European statutory framework consists:

- The Birds Directive - 1979 EC Directive on the Conservation of Wild Birds.
- Environmental Impact Assessment (EIA) Directive - 1985
- The Habitats Directive - 1992 EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora.
- Water Framework Directive – 2000
- Strategic Environmental Assessment (SEA) Directive 2001

- Marine Strategy Framework Directive - 2008

2.5 **European Designations / International Conventions**

2.5.1 The relevant European / International designated sites arising from the above legislation are as follows:

- European sites - Special Protection Areas (SPA's)
- European sites – Special Areas of Conservation (SAC's)
- Global networks – Ramsars

3.0 Planning Policy Statement (PPS) Review Parameters

3.1 **Regional Development Strategy 2035 (RDS):** The RDS sets out the spatial strategy of the Executive. Regionally, the guidance in the RDS seeks to conserve, protect and where possible, enhance our natural heritage (RD11). Spatial Framework Guidance 9 sets out the key concepts for the protection and enhancement of the quality of the setting of Londonderry City and the North-West and its environmental assets.

3.2 **Strategic Planning Policy Statement (SPPS) (September 2015):** Under the provisions of the SPPS, in the preparation of Local Development Plans (LDPs) and in the determination of planning applications, planning authorities should apply the precautionary principle when considering the impacts of a proposed development on nationally or internationally significant landscapes or natural heritage resources.

3.3 Derry City and Strabane District Council (DCSDC)

Position Paper 1 set out key baseline data and presented a potential growth strategy to stimulate thinking around how best future growth can be accommodated. It outlined a number of needs and policy goals that will assist in formulating the aims and objectives of the future LDP. One of the key objectives is to *enhance the environment and improve Infrastructure* by:

- Protecting and enhancing the natural and built environment;
- Protecting areas of high scenic value, undeveloped coastline and wetlands from development;
- Protecting and enhancing the network of open spaces in the North-West.

3.4 Sustainability Appraisal (SA) Objective

3.4.1 DCSDC has a statutory requirement in the preparation of its LDP to further sustainable development by ensuring that it is subject to a Sustainability Appraisal (SA) incorporating a Strategic Environmental Appraisal (SEA).

3.4.2 An SA/SEA is an appraisal of the economic, environmental and social effects of a plan from the outset of the preparation process to allow decisions to be made that align with sustainable development.

3.4.3 A key objective of the SA is to conserve and enhance biodiversity. Current planning policy should take account of the need to;

- Conserve and enhance habitats of the District or local importance and create habitats in areas of deficiency;
- Conserve and enhance species diversity and to avoid harm to protected species;

- Conserve and enhance sites designated for their nature conservation interest at regional or national level;
- Protect and enhance woodland cover and trees and promote their management; and
- Improve access to, and promote the educational value of sites of biodiversity value.

4.0 Review of Planning Policy Statement 2 (PPS 2) and Preferred Options

4.1 The purpose of this section is to assess the effectiveness of PPS 2 and to consider the following:-

- Do the policies contained within PPS 2 accord with the objectives of the SPPS and the LDP in relation to natural heritage?
- Will revisions be required to policies to ensure that they align with the SPPS?
- Are the current policies within the context of DCSDC fit for purpose or is there a need to modify policies which reflect the aims and objectives of the SPPS whilst taking account of local circumstances?

4.2 PPS 2 sets out the key planning policies for the protection, conservation and enhancement of our natural heritage which it defines as *'the diversity of our habitats, species, landscapes and earth science features'*. It embodies the Government's commitment to sustainable development and environmental stewardship.

4.3 In addition to the information gathered for the preparatory paper, views from Workshop 3, the views of experienced planning officers who regularly interpret and apply the policies were sought and form part of this assessment.

PPS 2 – POLICY NH 1 – EUROPEAN AND RAMSAR SITES - INTERNATIONAL

4.4 Policy NH1 of Planning Policy Statement 2 that:-

'Planning permission will only be granted for a development proposal that either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on:

- *A European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or*
- *A listed or Proposed Ramsar Site....'*

4.5 The policy continues that *'where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, an appropriate assessment of the implications for the site in view of the sites conservation objectives'*. While both the SPPS and the PPS share similar approaches, the SPPS goes further by stating;

'The planning authority is required by law to carry out an appropriate assessment of the implications for the site in view of the site's conservation objectives. That, only after having ascertained that it will not adversely affect the integrity of the

site, can the planning authority agree to the development and impose appropriate mitigation measures in the form of planning conditions.'

- 4.6 While the essence of the policy lies within the above paragraph, the SPPS adopts a much clearer policy direction which spells out the duty placed on Council, which if not properly carried out could have legal implications.
- 4.7 Both the PPS and SPPS state that a development proposal which would adversely affect the integrity of a European Site or Ramsar site may only be permitted in exceptional circumstances as laid down in the relevant statutory provisions, which it references as a footnote, while PPS spells out the circumstances as follows:
- There are no alternative solutions;
 - The proposed development is required for imperative reasons overriding public interest; and
 - Compensatory measures are agreed and fully secured.
- 4.8 It is evident that the existing policy accords with the SPPS which appears to have updated and simplified PPS 2 making it much more user-friendly. It is considered at this interim stage of the review that no policy change, revisions or amendments are needed as PPS 2 already reflects those policies contained in the SPPS.

PPS 2 – POLICY NH2 – SPECIES PROTECTED BY LAW

- 4.9 This policy ensures that development proposals are sensitive to all species so as to prevent deterioration and destruction to their breeding sites and resting places.
- 4.10 In comparing the approaches adopted in both PPS 2 and the SPPS, it is evident once again that there is strong synergy in that the key elements are the same and the existing policy accords with the SPPS.
- 4.11 There is consensus that there is legislative strength behind the existing policy and it is felt that at this interim stage of the review, the existing policy should be adopted which reflects the duty and process of legislative requirements, takes account of, and has regard to the RDS, SPPS and sustainability objectives in providing adequate protection.

PPS 2 – POLICY NH 3 – SITES OF NATURE CONSERVATION IMPORTANCE (NATIONAL)

- 4.12 This is an ‘*all encompassing*’ policy which outlines that development proposals must not have adverse effects on the integrity and value of the habitat network including Areas of Special Scientific Interest (ASSI), a Nature Reserve (NR) or Marine Nature Reserve (MNR).
- 4.13 While there is little difference in the thrust of what Policy NH3 and the SPPS are saying, the SPPS does go into slightly more detail on a number of the following elements:-
- **An Area of Special Scientific Interest** – Sites of special interest by reason of their flora, fauna, geological and/or physiographical features are designated under Part IV of the Environment (Northern Ireland) Order 2002. There is a legal duty to take responsible steps to further the conservation and enhancement of the features by which the ASSI is of special scientific interest;
 - **A Nature of National Nature Reserve** – nature reserves can be of national (and sometimes international) importance. They are usually managed by the Department or by agreement with another Department, a council or a voluntary conservation body; or
 - **A Marine Conservation Zone** – sea areas, including inter-tidal zones designated by the DOE under Part 3 of the Marine Act (Northern Ireland) 2013. They are established for the conservation of marine flora and fauna, habitats and features of geological or geomorphological interest.
- 4.14 It further elaborates by stating that ‘*...Planning authorities should note that conservation sites selected as European sites under the Birds and Habitats Directives may also be underpinned, either wholly or in part by, sites selected at national level*’.
- 4.15 In regard to ASSI’s, PPS 2 states that these are given legal protection by virtue of Part IV of the Environment (Northern Ireland) Order 2002, the SPPS states that that there is a ‘*legal duty to take reasonable steps to further the conservation and enhancement of the features by which the ASSI is of special scientific interest*’.
- 4.16 With the exception of some minor differences in the policy wording, the provisions of both the PPS and SPPS largely accord with one-another.
- 4.17 In considering the policy wording in affording the appropriate levels of protection, NIEA consider that the wording provides adequate protection to nature conservation sites of national importance. Given the robustness of this policy

and the legal duty upon Councils, there is limited scope to relax this policy. Bearing this in mind, no options are being proposed at this interim stage.

PPS 2 – POLICY NH 4 – SITES OF NATURE CONSERVATION IMPORTANCE (LOCAL)

- 4.18 The SPPS and Policy NH 4 are both very similar in their wording in that ‘*..a development proposal which could have a significant impact on a site of local importance may only be permitted where the benefits of the proposed development outweigh the value of the site. In such cases, appropriate mitigation and/or compensatory measures will be required.*’ Both state that councils can declare Local Nature Reserves and Wildlife Refuges under the provisions of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.
- 4.19 Given the requirement of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 to protect flora, fauna and geological features of the countryside from harmful effects, there is little or no scope to relax.
- 4.20 It is considered that as the existing policy meets with legislative requirements, takes account of regional policy contained in the RDS and SPPS and meets with the sustainability objectives, this is the preferred option in going forward.

PPS 2 – POLICY NH 5 – HABITATS, SPECIES OR FEATURES OF NATIONAL HERITAGE IMPORTANCE

- 4.21 Both Policy NH 5 and the SPPS adopt very similar approaches stating that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:-
- Priority Habitats
 - Priority Species
 - Active Peatland
 - Ancient and long established Woodland
 - Features of earth science conservation importance
 - Features of the landscape which are of major importance for wild flora and fauna
 - Rare or threatened native species
 - Wetlands including river corridors, or
 - Other natural heritage features
- 4.22 The policy goes on to state *that ‘a development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features, may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required’.*
- 4.23 In considering the effectiveness of this policy, NIEA has cited a number of appeal cases which would indicate that this policy is working effectively such as the following from the former Strabane District Council area:-
1. Appeal 2012/A0186 relating to application reference J/2011/0148 (EIA application) for a windfarm. In this instance, no detailed mitigation/compensation for the loss of blanket bog had been provided by the applicant/appellant resulting in an unsuccessful appeal.
 2. Similarly, a proposal for a single turbine under planning reference J/2012/0366/F went to appeal 2013/AO242 and was dismissed on the basis of its potential impact to a priority habitat.
- 4.24 These cases highlight the effectiveness of the existing policy and bearing in mind that it also aligns with the SPPS and sustainability objectives, it is proposed at this interim stage of the review to retain and adopt this policy approach.

PPS 2 – POLICY NH 6 – AREAS OF OUTSTANDING NATURAL BEAUTY

- 4.25 This policy requires development proposals in AONBs to be sensitive to the distinctive special character of the area and the quality of their landscape, heritage and wildlife.
- 4.26 Unlike PPS 2 which has a separate policy for AONB, the SPPS incorporates these within its Regional Strategic Policy for National Designations.
- 4.27 The policy is concerned primarily with design matters which could be applied across the whole district and indeed, Northern Ireland. Bearing this in mind, there are two possible approaches:-

APPROACH 1 – adopt the existing policy which meets legislative requirements and which takes into account the RDS, the SPPS and sustainability objectives, or;

APPROACH 2 – Devise a new policy which strengthens the desire to protect, conserve and enhance AONBs particularly in relation to high structures such as wind turbines and the cumulative effect of development.

5.0 Conclusion

- 5.1 While PPS 2 is a relatively new policy document published in 2013, the general feeling of Development Management is that there have been no significant issues with this policy document. However, while the existing policies within PPS 2 are felt to be by and large working effectively, there is some scope to tailor specific policies to take account of local circumstances such as would be the case with the NH 6 (AONB).

6.0 Recommendation

- 6.1 It is recommended that these approaches are considered as part of the POP public consultation and a specific policy approach developed for the LDP Plan Strategy which is subjected to the Sustainability Appraisal (SA), incorporating Strategic Environmental Assessment (SEA) process at that stage.