



DCLG Planning Practice Guidance on Renewable and Low Carbon Energy - What does it mean?

On 29th July the Department of Communities and Local Government (DCLG) issued new planning guidance on renewable energy intended to cover a range of onshore renewable and low carbon energy sources, including wind. At the same time it revoked the long-standing PPS22 Companion Guide. In this briefing we look at some of the implications of the guidance. As DCLG have used the presently fashionable “question and answer” format, we have done the same.

Is this just a consultation, or does it come into force immediately?

As with the recent Shale Gas Guidance, DCLG has opted to issue the guidance with immediate effect, with no consultation on its wording.

Where does this fit in terms of other policy?

This guidance is intended to sit alongside the National Planning Policy Framework and to be read together with it. The reference to the NPPF remaining as applicable guidance is particularly important given the encouragement in the NPPF for renewables.

Is this the guidance that carries into effect the Government’s “localism” agenda?

Yes. However, the influence that local communities are being offered in the guidance is based firmly in the requirement that local authorities make local plan provision for new renewable energy (RE) proposals and that in doing so they are reminded that their policies should maximise RE provision.

What about communities vetoing applications?

The influence of local communities will be in terms of shaping policies by which future applications will be determined, outside of this there is no mention of any veto.

What does “maximisation” of RE provision mean?

The guidance is clear that there is to be no quota of new RE provision for any local plan to deliver. In other words, no local targets. This is likely to become an important area for dealings with local authorities. Whilst there are no targets being imposed on local areas, there remain national targets for the UK to meet. Maximising RE provision is to be achieved by assessing

the capacity of an area to accommodate new development, including using objective processes like landscape character assessment. The unknown is the extent to which there is acceptance that if you maximise provision for renewable energy you have to be willing to be accepting of impacts.

Are there any sanctions underwriting the use of these RE development areas?

The guidance is that where areas for development are identified by local authorities they should not approve speculative applications outside those areas (where the impacts are unacceptable). This may be seen by some authorities as encouragement to apply restrictive policies outside of any areas that are identified for development.

Is it just these “Areas of Search” policies that are to be used by LPAs?

No, guidance is also given on the use of criteria based policies, although the criteria discussed do not raise any new issues. The criteria could also apply inside an area identified for development, meaning it is not a foregone conclusion that an application would be approved in such an area, hence their description as “Areas of Search”.

It is helpfully stated that criteria policies should be positively worded (the statement here is that such policies are “useful” when they are positively worded) although that does not prohibit the use of negative policies which simply indicate what types of development will not be allowed. Reading the guidance as a whole the adoption of policies has clearly got to meet the NPPF objective of an area maximising its RE potential. A local authority will not be maximising its RE potential if the only policies it adopts are negative towards renewable energy.

Is there anything about stand-off distances to protect sensitive receptors?

Buffer zones are addressed and a firm statement made that they are not appropriate, in any circumstance. Even in the context of National Parks and AONBs there is no support for any buffer around these areas preventing development. The reason given is that distance alone is not a necessary determinate of acceptable impact, which is a helpful explanation of why this frequently called for “protection” is not a useful tool.

continued overleaf

Is that all there is about community response to renewable energy?

The community theme is taken further by encouraging local authorities to offer policy support to community led initiatives. This, largely aspirational comment, envisages that such initiatives will become important provisions of new RE development, but leaves open the definition of what a community initiative is. Experience in the past has seen conflict between authorities and developers over what is considered a community scheme.

How does the guidance deal with specific issues affecting different RE technologies?

Specific guidance is given on types of development. Hydro power, active solar and large solar are all addressed (but interestingly not biomass or waste to energy, presumably because they are less common and are felt to be adequately addressed in the National Policy Statements). There is no guidance on anaerobic digestion plants.

The guidance given on wind power is five times as long as the guidance given on the other three types of development put together, indication that wind power is still seen as the development giving rise to the greatest number of planning issues.

What are the highlights of the issue specific guidance?

ETSU is confirmed again as the standard by which to judge the acceptability of noise impacts and positive endorsement is given to the recent Institute of Acoustics Good Practice Guide.

Safety, EMR (interference with broadcasts) and shadow flicker all effectively maintain the status quo.

Ecology is a very briefly stated reference to Natural England providing greater guidance. Similarly with cultural heritage whilst not explicit, the assumption has to be that the guidance is deferring to the NPPF (and wider English Heritage publications) for detail.

Energy output is addressed in a way similar to the approach in the PPS 22 Companion Guide, with the additional comment that capacity factor may be useful information in considering energy contribution from a development “*when a decision is finely balanced*”. This leaves open the question of whether there is any objective standard by which the acceptability of any capacity factor can be established.

Some lengthy guidance is given on cumulative landscape and visual impact and the information needed to support assessment although none of these could be said to be anything other than standard practice for landscape and visual assessment at the present time.

Is there anything new on decommissioning?

The final comment on decommissioning is no more than that local authorities may require decommissioning by condition.

Contacts

For more information on this subject please contact:



Elizabeth Dunn
Partner

+44(0)117 902 2738
elizabeth.dunn@burbes-salmon.com



Patrick Robinson
Partner

+44(0)117 902 2740
patrick.robinson@burbes-salmon.com

Burbes Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burbes-salmon.com

Burbes Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burbes Salmon LLP 2013. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burbes-salmon.com.