

www.peterbrett.com

inform

environews

AUTUMN 2009 - ISSUE 6

environews@peterbrett.com

pba
peterbrett

Contents

Proposed amendments to PPS25	4
Surface Water Management Plans	5
Awash with new ideas?	6
Asbestos: the hidden killer	7
Plan ahead for CRC Compliance	8
How well do you know your ROCs?	9
Air quality update	10
Building Regulations update: 2020 Carbon Reduction Targets	11
Climate Change Projections	12
EU Energy Performance of Buildings Directive	13
Sustainable tourism in England - a framework for action	14
High Levels of NO ₂	15
Contaminated Land: Litigation	16
What you need to know about Land Remediation Relief	17

Proposed amendments to PPS25

Since the introduction in the development control arena of the term ‘functional floodplain’ within PPG25 in 2001, there has been much controversy over how it should be delineated.

As functional floodplain represents the area of floodplain which is most restricted in terms of allowable land uses, it has been the subject of many planning appeals and subsequent public inquiries.

While the Environment Agency has struggled with the definition and delineation of such functional floodplain, it has found it judicious to simply define it as the 1:20 year floodplain. This approach is believed by many practitioners to be inappropriate in some circumstances and indeed such belief was reinforced by clarifications given last year in the Practice Guide to PPS25 (the current planning policy statement for development and flood risk).

The Government is currently consulting on proposed amendments to PPS25, the most important of which to clarify further that the 1:20 year floodplain is only the ‘starting point’ for delineation of functional floodplain. Such clarification is very welcome and should help reduce the load on the planning inspectorate. However, some consider that such clarification does not go far enough. Many practitioners feel that the functionality of flooding should be the key attribute of functional floodplain, rather than the simple probability parameter of 1:20 year flood extent.

There are also proposed changes to the appropriateness of certain types of development within the different flood probability zones, such as the inclusion of wind turbines in functional floodplain as essential infrastructure. These changes are also welcome. However, it does need to be clarified that decisions on allocating certain land uses in different flood zones, based on the flood vulnerability of such land uses, should be made in the light of the post-development zone and not the pre-development zone, which will become irrelevant.

Responses to the consultation process are due by the end of November so if you feel that the proposed amendments need to be reinforced or otherwise have comment then please contact:
marty.n.mance@communities.gov.uk.

Ben Mitchell
bmitchell@peterbrett.com



Surface Water Management Plans

Defra released in February 2009 its first draft guidance for Surface Water Management Plans (SWMPs), the Government's intended vehicle for delivery of integrated urban flood risk management.

The SWMP process is the culmination of several years work into the management of water, including publications such as 'Making Space for Water 2004', 'PPS25: Development and Flood Risk 2006' and 'Future Water 2008'.

Following Sir Michael Pitt's review of the summer floods in 2007 the draft Flood and Water Management Bill (FWMB), published in April 2009, now places new responsibilities on local authorities for the identification and management of flood risk.

So what does this all mean for private developers? Local authorities will be able to use the resulting flood hazard and risk mapping produced from the SWMP process to facilitate a range of planning related functions and responsibilities from the FWMB - all of which could affect a site's development potential.

The three main SWMP functions are:

1. Influence on land use allocations using all sources of flooding, not just the Environment Agency's fluvial flood maps.
2. Development of Core Strategy policies within the local development framework, which could place restrictions on development densities, drainage methods and requirements.

3. Determining areas of good SuDS drainage potential based on geological conditions and contamination records, which links to new SuDS Approval Board (SAB) responsibilities under the FWMB.
-

Major developers and land holders may also be asked to become stakeholders in the SWMP process and contribute to the plan development and proposed solutions, where appropriate.

“The 77 highest risk authorities are receiving funding of £9.7 million.”

There are six pilot study SWMPs currently being undertaken nationally with funding from Defra, while other proactive authorities are progressing their own SWMPs on a voluntary basis. In addition, a further funding announcement of £9.7M to the 77 highest risk authorities was made on 18 August, 2009. You can expect to see the influence of these plans emerging in the planning process from 2010.

Dan Hayes
dhayes@peterbrett.com

Awash with new ideas?

The draft Flood and Water Management Bill, released in April 2009 for consultation, recognises that the current approach to flood defence may not be sustainable. It names Local Authorities as those explicitly accountable for managing flood risks from surface and ground water, and the Environment Agency for rivers and sea.

The emphasis has changed from flood defence to flood risk management. If the probability of flooding cannot be reduced, the consequences need to be mitigated. Reservoirs will now be categorised based on their risk to life and reservoir managers may in future be required to establish a flood plan to manage risk in the event of a breach. Only with the consent of the SuDS Approving Body will developers be able to make an application for the right to connect to a public sewer.

While the Bill is written with the best of intentions, we feel that it is loosely worded in some aspects, which adds uncertainty and cost and potentially lessens accountability and transparency. PBA has responded directly to Defra in this regard. Specifically, we note that Local Authorities will need to develop strategies to manage and fund their new accountabilities, in order to address the current skills gap for flood risk professionals in the public sector. Developers will need to pay more attention to flood risk and drainage, and will inevitably need to resolve technical issues earlier in the planning process. Authorities will be able to designate certain features as protected for flood risk reasons. The detail of the appeals procedure is unclear at this time, which remains a concern.

More detail on the draft Flood and Water Management Bill can be found on the Defra website.

Paul Jenkin
pjenkin@peterbrett.com



Asbestos: the hidden killer

There remain some 600 million tonnes of asbestos in the UK built environment alone. Keeping close track of this hidden killer for the safety of the community at large requires the meticulous documentation of its presence as part of a robust Asbestos Management Plan.

Yet it is not uncommon to find Asbestos Management Plans buried under a mountain of paper files alongside the broader Health & Safety Manual.

Asbestos is the general term given to fibrous silicates by the Control of Asbestos Regulations, where there are more than trace amounts as defined in HSG248. For any work covered by the regulations, asbestos also includes materials or mixtures containing any of these fibrous silicates.

The three main types of asbestos are:

- Crocidolite (blue asbestos)
- Amosite (brown asbestos)
- Chrysotile (white asbestos)

Debris containing asbestos is also covered by these regulations. If it can be determined that the debris contains raw asbestos, asbestos insulation, asbestos coating or asbestos insulating board, then a licensed asbestos contractor will be required to carry out the work – even if the asbestos is no longer fulfilling its original intended purpose. Asbestos insulation, for example, was used for heat, sound and fire protection, including lagging and infill of spaces between floors. Asbestos coating was also used widely for surface fire protection.

Asbestos cement, mainly a mixture of chrysotile and cement, was moulded and compressed to produce products such as roofing sheets and sidings, flat sheet, drainpipes and pressure pipes. It was widely used on the exterior of buildings and for drainage products. As the asbestos fibres are mostly bound into the cement and not readily made airborne, work with asbestos cement does not carry the same risk as work with, say, asbestos insulating board and sprayed asbestos coatings. A competent experienced surveyor will normally be able to visually identify most asbestos cement products.

Work with textured decorative coatings will not normally need to be carried out by a person licensed to work with asbestos, as work with this material will usually fulfil the conditions for regulation 3(2) to apply. However as asbestos related disease claims more than 5,000 lives per year it would be prudent to check.

Checklist

- Ensure your Asbestos Management Plan is clearly marked and easily extracted from your H&S documentation files.
- Highlight any essential information, such as the type and location of asbestos, in an executive summary at the front of the documentation to assist your contractors.
- Remember to update your Asbestos Management Plan following any changes to the structure or composition of your buildings, however minor.
- Consider digital file management as an efficient alternative to traditional paper-based record keeping.

Don Rawson
drawson@peterbrett.com

Plan ahead for CRC Compliance

The Department for Energy and Climate Change (DECC) presented the responses on the consultation on the Draft Order to Implement the Carbon Reduction Commitment (CRC) on 7 October, 2009, which outlined its key responses to the consultation process.

There are some interesting u-turns on particular aspects, most notably what appears to be the scrapping of the “double payment” in April 2011. Previously, participants were required to buy allowance for the first year of April 2010 to April 2011 and also predicted allowances for the following year. The “Government has therefore decided, in order to facilitate the smooth introduction of the scheme, that the first compliance year of the Introductory Phase will be a reporting-only year. In April 2011 participants will only have to buy allowances to cover the year 2011/12”.

Due to the complexities regarding when renewable energy generation counts towards emission reduction within the CRC, the Government intends to publish participants’ on-site renewable energy generation alongside the league table figures. Most business struggle to develop on-site renewable energy due to planning constraints and therefore have to seek off-site solutions. These constraints to business are not considered in the CRC by DECC.

Many representations were made against the criteria of early action metrics, especially the monopoly held by the Carbon Trust accreditation process. DECC noted in its response to these representations that “Government has decided that equivalent accreditations to the Carbon Trust Standard will count towards the early action score and the Early Action metric will be given greater weighting in the second year of the scheme”. There are numerous caveats to the accreditation olive branch, but PBA believes it does allow adoption of BS EN16001 a chance to shine in the CRC and reduce operational costs through effective accredited energy management. Further guidance from DECC will need to be provided as to what they consider equivalent accreditations.

DEFRA and DECC have been extremely busy in the last month publishing a guidance on how businesses should report green house gas (GHG) emission including small business GHG reporting and defining “carbon neutrality”.

For further information on how the Government’s Carbon Agenda impacts your business please contact us at carbon@peterbrett.com.

“There are some interesting u-turns on particular aspects.”

Jonny Riggall
jriggall@peterbrett.com

How well do you know your ROCs?

The Energy Act 2008 indicates how the Renewables Obligation Order should be reformed. The major change is the introduction of Renewables Obligation Certificate (ROC) banding, which it is hoped will promote renewable technologies currently not being used.

A ROC shows that a supplier is providing its customers with some electricity generated from renewable sources. Under the new obligation, suppliers are now required to present a specific number of ROCs per MWh of electricity supplied and not, as before, proof that a certain percentage of their electricity is generated from renewable sources.

If a supplier does not have sufficient ROCs to meet their obligations, they are required to make a buy-out payment into a fund. The money that accumulates in this fund is given to those who hold the correct number of ROCs – a financial incentive of generating electricity from renewable sources. Small scale renewable energy generators (<50kW) can also receive ROCs.

The benefit of this is that ROCs are available to buy and sell on the open market. Therefore, individuals can sell surplus ROCs to larger suppliers who have failed to accumulate the required number. The fines imposed by not supplying enough ROCs become large for mainstream suppliers so investing in renewable electricity becomes more economic; this is the aim of the ROC scheme.

ROC banding came into force in April 2009. Although the original ROCs were successful at bringing forward some renewable technologies, less developed technologies were left behind. Some

technologies are low risk and mature in terms of development so have been 'banded down', and those of higher risk requiring further development have been 'banded up'. This has enabled more than one ROC per MWh to be issued when certain technologies are being utilised.

This banding system will promote all types of renewable electricity technologies, hopefully enabling the UK to become more diverse in the way it produces renewable electricity. In addition, the revenue created from fines for not presenting enough ROCs goes directly into the development of renewable electricity technologies.

One area that is neglected in current policy is small-scale renewable schemes. Although ROCs can be accrued from small-scale generators and sold, the money gained is insignificant when compared to microgeneration installation costs.

Overall, the implementation of banding ROCs will be incredibly useful in promoting and improving other large-scale renewable technologies. Although ROCs are currently important in the largescale production of renewable electricity, their success in the future is dubious and whether they will be relevant in the near future remains to be seen.

Patricia Joyce
pjoyce@peterbrett.com

Air quality update

Although there were no significant alterations made to the update of the Local Air Quality Management (LAQM) Technical Guidance (published in February 2009) from the consultation draft, there are several changes that will have an impact on air quality assessments we undertake for our clients.

Be aware that any assessments undertaken prior to February 2009 are likely to be rejected by environmental health departments, and therefore will need to be repeated using the new methods and tools.

An improved method of calculation for the conversion of nitrogen oxides to nitrogen dioxides now includes contribution from road traffic and reactions with ozone – the two most significant contributions of nitrogen dioxide. As such, this improvement should theoretically give a more accurate estimation of annual average NO₂ concentrations.

“New background concentration maps avoid the issue of double counting when considering new development in rural areas close to motorways.”

The updated guidance includes new background concentrations maps for each year from 2006 to 2020 with estimates for different source contributions. This avoids the issue of ‘double-counting’ when considering new development in rural areas close to motorways.

The new guidance also provides advice on the assessment of biomass boilers with a thermal capacity of up to 20MW. Biomass boilers are increasingly being used in new developments as a low carbon technology and renewable energy source. However, a large increase in the use of biomass could lead to a detrimental effect on local air quality and therefore needs to be assessed at an early stage.

These changes will improve the content of air quality assessments and ensure that all potential impacts are fully considered. A copy of the new guidance can be found on the Defra website.

Claire Holman
cholman@peterbrett.com

Building Regulations update: 2020 Carbon Reduction Targets

Did you know there will soon be a greater emphasis on energy efficiency in new builds in order to meet building control requirements?

As part of meeting the Government's carbon reduction commitment, the Housing Minister, John Healey, published the proposed changes to Part L (Conservation of Fuel and Power) and Part F (Means of Ventilation) of the Building Regulations for consultation in June. These regulations affect the design, construction and commissioning of both new and refurbished buildings. The changes being made to the regulations are imperative if we are to reduce the effects of global warming.

To summarise the proposed changes:

- NCO₂ emissions of actual buildings to be compared with target emission rates of similar size and shape structures
- 25% carbon reduction on 2006 standards
- All new non-domestic buildings to be zero carbon by 2019
- Improved software for Standard Assessment Procedure (SAP) and Simplified Building Energy Model (SBEM) calculation methods
- Promoting greater use of renewable technologies on new builds
- Flexibility for new innovations so that leading edge design and technology can be judged on a case by case basis

- More emphasis on the efficient operation and maintenance of buildings using guidance from CIBSE TM31 "Building Log Book Tool Kit".

We have been working with the BSRIA team to review these proposals and provide a collective response. All comments and suggestions from the consultation process were submitted in September 2009 to enable the update to be issued in early 2010. It is therefore essential that you begin preparing now, for the increased energy efficiency and renewable energy requirements that will shortly be associated with Parts L and F of the Building Regulations.

“All new non-domestic buildings are to be zero carbon by 2019.”

Peter Karabin
pkarabin@peterbrett.com

Climate Change Projections

The UK Climate Projections 2009 (UKCP09) have been developed to help individuals and organisations consider the risks that a changing climate might pose, and to supply the evidence, alongside uncertainty, to help evaluate these risks. We will need to adapt to climate change as well as continue to mitigate our impacts.

UKCP09 goes beyond the previous UKCIP02 report by also assessing uncertainty systematically. Projections are given for three emissions scenarios - high, medium and low - and also for varying levels of probabilistic uncertainty. The potential impacts of climate change vary significantly on a regional basis and UKCP09 provides mapping tools to access this data.

From the results it is clear that most models and scenarios are consistent in their projections until around 2030, where these estimates then diverge as uncertainty increases. These changes in emissions between now and 2030 are unlikely to alter the outcomes of this initial time period but will alter the future projections and also further reduce uncertainty. It is therefore crucial that our adaptation strategy embraces the concept of resilience whereby greater changes than expected can be accommodated through pre-designed modifications to minimise potential impacts. For example, it is unlikely to be practical or cost effective to raise floor levels for new developments above the worst projection of climate change flood levels. However, by designing to the average projection level and using flood resilient construction up to the maximum projected level, the consequence of the more extreme projection would be reduced.

We will need to be increasingly creative in how we design our environment and learn from those who live in warmer countries. We must accept that our habits and culture may need to adjust in order to cope with these changes. For example, many of our public open spaces are designed to maximise the available light and sunshine. In a warmer climate we need to incorporate shade and refuge from what might be a more intense and potentially dangerous level of sunshine. How many supermarket car parks have any shade? The UKCP09 guidance provides us with the tools to understand potential impacts of climate change and will allow decision makers to be better informed when making choices in the future.

The central conclusions of UKCP09:

Summer temperatures will rise between 3°C and 4°C by the 2080s. This will cause an increase in the frequency and severity of heat waves.

Summer rainfall will reduce, leading to a greater likelihood of water shortages.

Winter rainfall will increase, leading to an increase in the frequency and severity of flood events.

Sea levels will continue to rise and impact on the coastline. It is projected that the frequency and severity of storm surges will not increase significantly.

Paul Jenkin
pjenkin@peterbrett.com

EU Energy Performance of Buildings Directive

The aim of the EU Energy Performance of Buildings Directive is to reduce the amount of carbon produced by buildings to tackle climate change. It is hoped this will boost sustainable investment, encourage job creation and reduce energy consumption by 5-6%.

Under the Directive, an Energy Performance Certificate (EPC) must be produced for buildings that have to be constructed, rented or sold. The EPC indicates the energy efficiency of a building in addition to recommending how it can be improved. Public buildings larger than 1000m² are also required to produce and show a Display Energy Certificate (DEC) each year. In addition, inspections must be carried out for boiler and air conditioning unit installations.

Most member nations have assessment methods and tools for such buildings, e.g. BREEAM for the UK, which aid in complying with the Directive.

The EU Directive originally aimed to reduce greenhouse gas emissions by 20%, improve energy efficiency by 20% and derive 20% of their energy from renewable sources by the year 2020. However, the Directive was under consultation until the beginning of October to gather proposals to extend and re-evaluate these targets, clarify certain aspects and give the public sector a leading role in promoting energy efficiency.

Philip Nana Nyanod
pnana@peterbrett.com



Sustainable tourism in England - a framework for action

Earlier this year, the Department for Culture, Media and Sport released the document ‘Sustainable Tourism in England: A Framework for Action’.

It identifies six key challenges that must be addressed by the tourism industry: environment, transport, quality and accessibility, employment, community prosperity and seasonality of demand.

With hotels, leisure and tourism often forming an integral component of many mixed use development schemes, there is an opportunity to work with this new guidance to add value over and above the requirements of the planning system.

It was hoped that the Framework would help deliver the next generation of high quality, sustainable and home grown tourism developments for both local authorities and private sector clients. However, it is not legally binding and, more importantly, does not make a strong link with the planning system. As such, it is difficult to see how it would be implemented except by the most environmentally conscious developer.

The underlying concepts in the Framework compliment the Good Practice Guide on Planning for Tourism, which could potentially provide a more robust decision making framework for authority decision makers. Even so, as there is no obligation on developers to use the framework when applying for planning consent, it is unlikely that it can be used to its full potential. Nonetheless, we will continue to monitor its application in the field.

Alix Lightfoot
alightfoot@peterbrett.com



High Levels of NO₂

It is proving difficult for the UK to meet statutory air quality limits for nitrogen dioxide (NO₂). The culprit is traffic pollution.

Some 200 local authorities have declared Air Quality Management Areas for high levels of NO₂, and this number is growing. Defra has predicted that by 2010, exceedances of the NO₂ objective will occur along 2,500km of roads and by 2015, will still occur along 850km of roads. Even by 2020, it is predicted that some areas will still have elevated NO₂ levels.

These predictions are based on a 2005 model and more recent analysis suggests the picture may be worse. In addition, the modelling excludes some local pollution hotspots such as those in market towns. A drastic redirection in road transport is required to fully address this air quality problem and for many small towns the only option is a bypass.

A 2008 EU Directive allows for an extension of the NO₂ compliance date from 2010 to 2015 provided an action plan is prepared. The UK Government is expected to apply for such a postponement in the summer of 2010.

“New developments may be subject to greater scrutiny in future.”

This is early warning that new developments, which have an adverse impact on air quality, may be subject to greater scrutiny in the future.

Claire Holman
cholman@peterbrett.com



Contaminated Land: Litigation

One of the highest profile UK contaminated land-related court cases to date, involving Corby Borough Council (CBC), remains in the news as it moves through the appeals process. We are monitoring the case closely with interest.

Whatever the eventual outcome, the case highlights the importance of adopting the highest standards of best practice and ensuring robust record keeping.

“Current best practice includes maintaining site diaries and retaining waste consignment notes.”

Examples of current best practice include, but are not restricted to:

- Ensure the appropriate method statements, risk assessments and strategy documents are in place before commencing remediation works.
- Use materials management plans and waste management plans to define where waste materials are to be used, stored or transported to – and which measures might be needed to ensure this happens safely.

- Ensure air quality, dust and/or water quality monitoring programmes are in place ahead of disturbing potentially contaminated soils.
- Maintain site diaries and retain waste consignment notes.
- Follow the Definition of Waste: Development Industry Code of Practice (CoP) where applicable, and ensure an appropriately qualified person completes the CoP Declaration.
- Complete and submit to the appropriate Regulators the completion reports (also known as validation or verification reports).

Darren Wilcox
dwilcox@peterbrett.com

What you need to know about Land Remediation Relief

If you have owned a derelict site since 1998, or are not the polluter for land that is contaminated, you could claim valuable tax incentives back from HMRC against your expenditure.

The Land Remediation Relief (LRR) scheme was introduced in 2001 to bring back into use land that had been blighted by previous industrial use.

The scheme is a valuable financial incentive for dealing with contaminated land. It provides tax relief to companies, provided such companies are not the polluters, for both capital and revenue expenditure for investigation and dealing with contamination on a site. This tax relief must be claimed within two years of the accounting period in which expenditure is incurred. The company can also claim an additional deduction against taxable profits of 50% of the expenditure it incurs; this has to be claimed within 6 years.

As exemption from landfill tax for the disposal of contaminated soil ended in November 2008, accessing this source of finance is even more critical for developers. At that time, HM Customs & Excise stopped receiving applications for landfill tax exemption. Sites that are registered already need to have been dealt with by March 2012.

It is worth bearing in mind, too, that landfill tax is currently set at £40 tonne for hazardous waste and £2.50 tonne for non-hazardous waste. The rate for hazardous material will escalate at £8 tonne until at least 2013, before reaching a heady figure of £72 tonne.

The Government has claimed that landfill tax exemption has affected the development and use of sustainable remediation methods, and it therefore wants to use instead the LRR scheme. A cynic would perhaps point out that removal of this exemption could provide £3.9 billion in revenue, although HMRC claims that this measure is intended to be revenue neutral.

From the 1 April, 2009, the Land Remediation Relief scheme has changed.

- It recognises that life forms can be contaminants, in particular Japanese Knotweed.
- Natural contaminants are restricted to arsenic and radon.
- The same 150% relief can be claimed for dealing with derelict land.

The government wants to incentivise bringing land back into use that has been contaminated or simply out of productive use and requires buildings or structures to be removed. The cost of removing structures such as foundations, basements and redundant services can now be claimed together with the costs of the investigation and assessment, including professional fees.

Is the extension to include derelict land as good as it sounds? To claim this relief the site must have been derelict since the earlier of:

- when the site was acquired by the claimant company
- 1 of April, 1998.

Recent stakeholder consultation has intimated that this date will be varied by Parliament, for which PBA has lobbied. It may be challenging to check if your site is derelict on the National Land Use Database, as our experience tells us that many local authorities did not return records to register land in their areas back in 1998. Stakeholder consultation indicates that land can still be considered derelict if sufficient evidence is available through other sources such as estate agents' literature and insurance returns. In practice, this may prove more difficult than it first appears.

Richard Puttock
rputtock@peterbrett.com

While Peter Brett Associates LLP has prepared this briefing document with care and diligence to inform its clients, the information provided reflects the views of the individual authors and does not constitute advice. Please contact us if you wish to discuss further how industry developments and legislation could impact your particular development or business.

environews@peterbrett.com
+44 (0)118 950 0761

www.peterbrett.com

pba
peterbrett

