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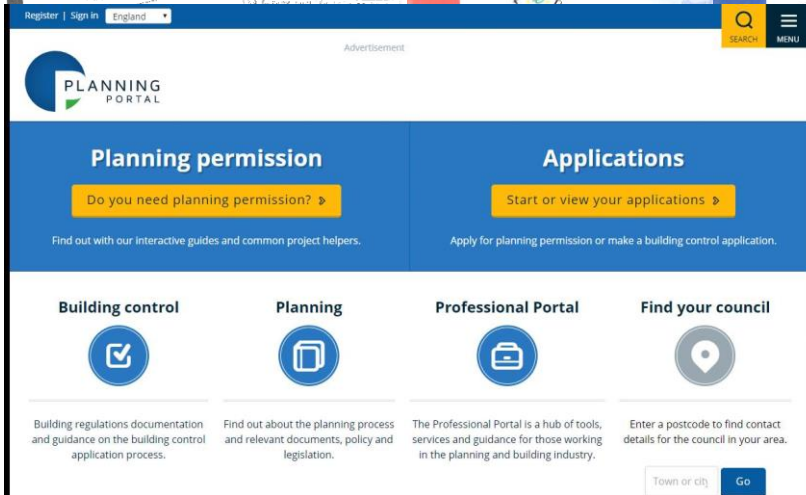
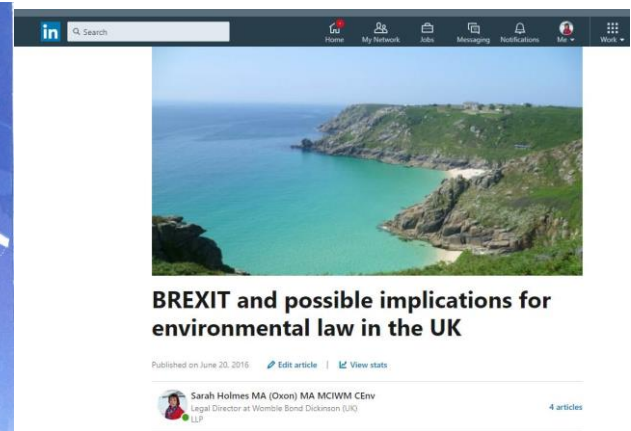
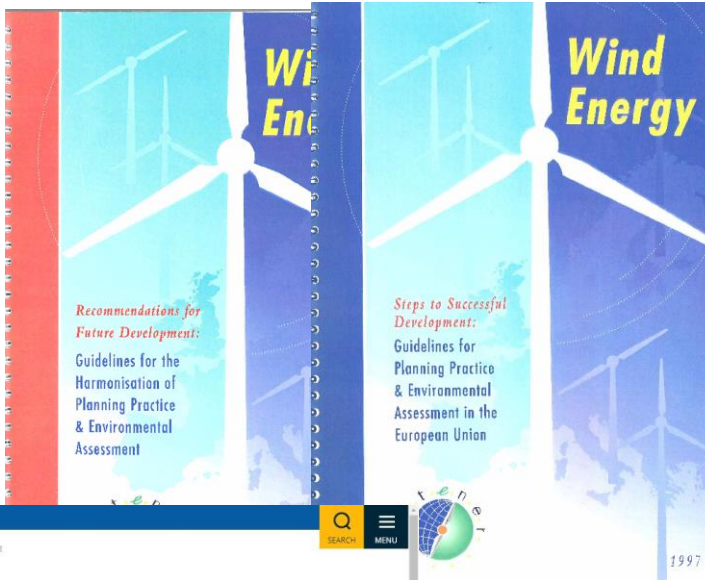
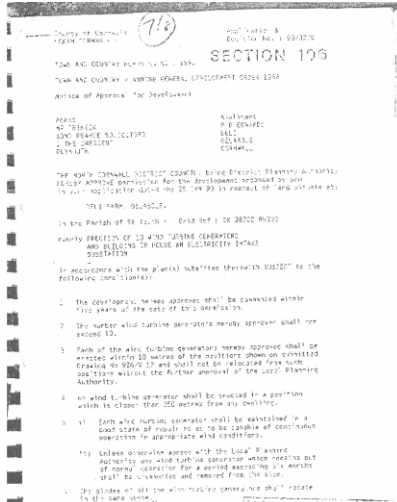


RTPI South West Conference Planning for the revolution Consenting infrastructure, energy & waste: a legal view

18 July 2019



From typewriters to 4G, stamps to posts, copiers to portals...



A legal view on...

- Environmental issues:
 - Air quality
 - Resources & Waste
 - Carbon, transport & energy
 - Nitrogen & Habitats



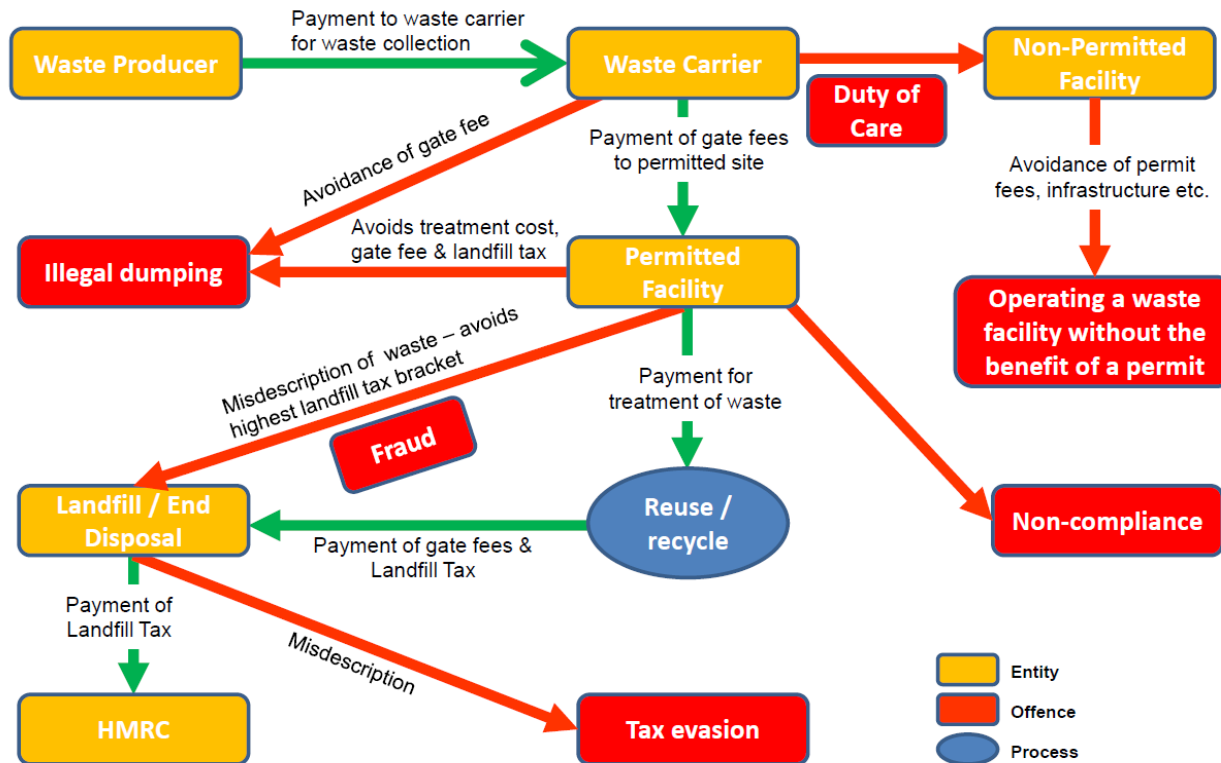
- System & Process issues:
 - Resourcing
 - Flexibility
 - Certainty
 - Cost
 - Spatial reach
 - Consent v Deliverability
 - Environmental Impact Assessment
 - Habitats Regulations Assessment

Air Quality



Resources & Waste Management

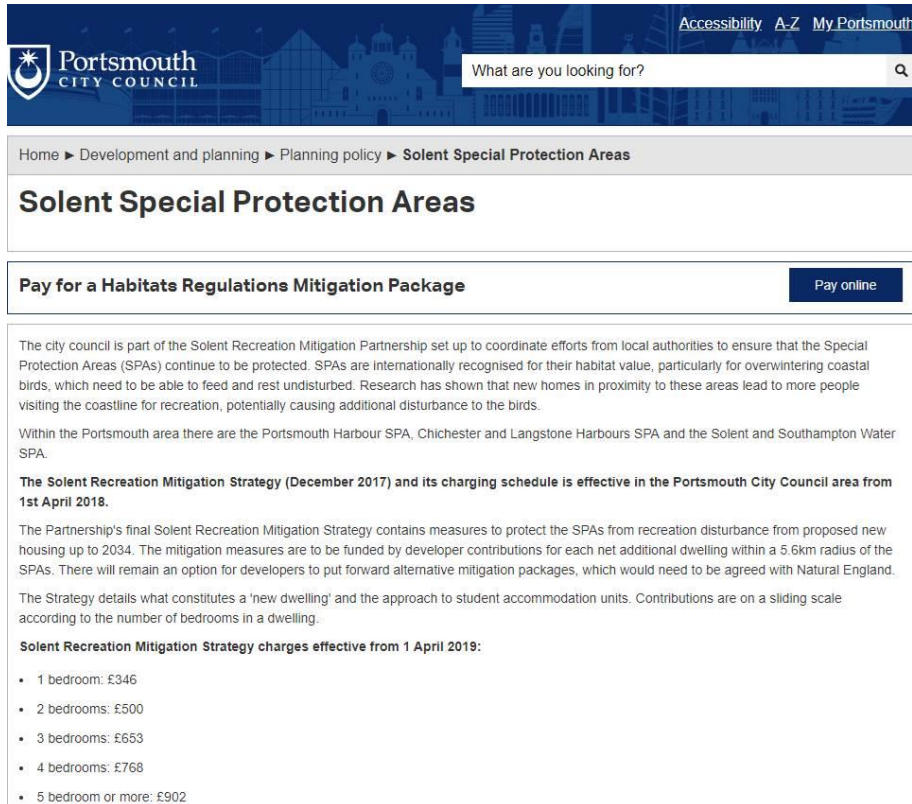
Criminal exploitation of the waste market



Carbon, transport & energy



Nitrogen & Habitats



Portsmouth CITY COUNCIL

Accessibility A-Z My Portsmouth

What are you looking for?

Home ► Development and planning ► Planning policy ► Solent Special Protection Areas

Solent Special Protection Areas

Pay for a Habitats Regulations Mitigation Package [Pay online](#)

The city council is part of the Solent Recreation Mitigation Partnership set up to coordinate efforts from local authorities to ensure that the Special Protection Areas (SPAs) continue to be protected. SPAs are internationally recognised for their habitat value, particularly for overwintering coastal birds, which need to be able to feed and rest undisturbed. Research has shown that new homes in proximity to these areas lead to more people visiting the coastline for recreation, potentially causing additional disturbance to the birds.

Within the Portsmouth area there are the Portsmouth Harbour SPA, Chichester and Langstone Harbours SPA and the Solent and Southampton Water SPA.

The Solent Recreation Mitigation Strategy (December 2017) and its charging schedule is effective in the Portsmouth City Council area from 1st April 2018.

The Partnership's final Solent Recreation Mitigation Strategy contains measures to protect the SPAs from recreation disturbance from proposed new housing up to 2034. The mitigation measures are to be funded by developer contributions for each net additional dwelling within a 5.6km radius of the SPAs. There will remain an option for developers to put forward alternative mitigation packages, which would need to be agreed with Natural England.

The Strategy details what constitutes a 'new dwelling' and the approach to student accommodation units. Contributions are on a sliding scale according to the number of bedrooms in a dwelling.

Solent Recreation Mitigation Strategy charges effective from 1 April 2019:

- 1 bedroom: £346
- 2 bedrooms: £500
- 3 bedrooms: £653
- 4 bedrooms: £768
- 5 bedroom or more: £902

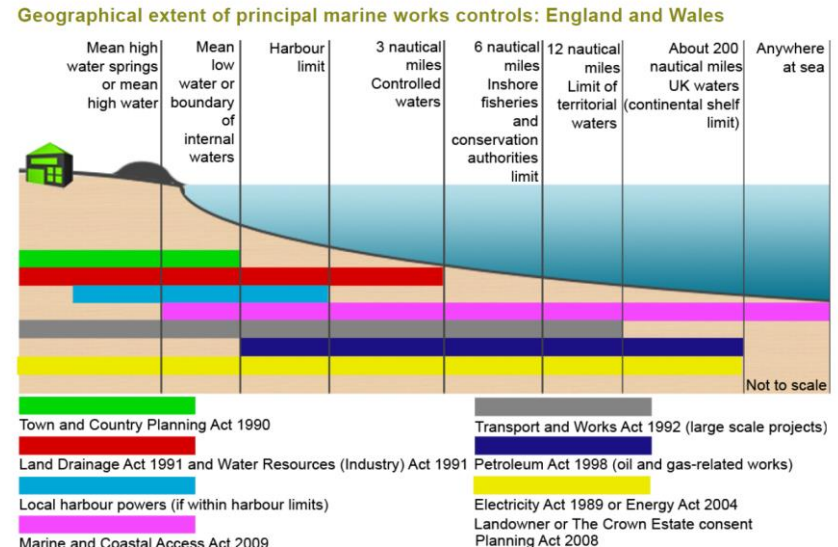
- Existing uncertainty about the deterioration of the water environment must be appropriately addressed in order for the assessment of a proposal to be legally compliant.
- Suitable mitigation measures can ensure that proposals achieve “nitrate neutrality”.

Consenting processes – update & challenges



Consenting regimes & stakeholders

- Consenting regime determined by geographic location/nature & scale of development
- Planning Act 2008/Town & Country Planning/Marine & Coastal Access Act etc.
- Interface between different consenting/permitting/licensing regimes
- Relationship between law & policy



Nationally Significant Infrastructure Projects v Town & Country Planning Developments

- Application to Secretary of State for Development Consent Order for Nationally Significant Infrastructure Projects (NSIPs): energy; transport; water; waste; waste water; business and commercial
- "One stop shop": planning permission, compulsory acquisition, highways, marine licences, environmental licences
- Front loaded process – extensive formal consultation
- Rigid timetable post submission
- Determine in accordance with any relevant National Policy Statement
- Examination in public then report to Secretary of State for decision
- Limits on post DCO amendments
- Application for planning permission to local planning authority where development proposed
- Separate applications to relevant bodies for compulsory acquisition, highways, marine licences, environmental licences
- Formal consultation post application
- Timetable not prescribed
- Determined in accordance with development plan policies unless material considerations indicate otherwise
- Decision – delegated/planning committee/PINS on appeal
- Greater scope for post permission amendments



South West

Projects have been split into areas to make them easier to find. Use the list in the table below to select a project or go back to the main [Projects](#) page to search all projects.

This section covers the 'South West' area including any nearby coastal regions.



Please note that these regions are only an organisational convenience and do not represent any administrative or legal boundaries. In particular, coastal regions do not imply regional or national responsibility or ownership.

Dates for your diary

06/08/2019 - Deadline for close of examination for [A30 Chiverton to Carland Cross Scheme](#)

12/09/2019 - Deadline for Planning Inspectorate to submit recommendation for [A303 Sparkford to Ilchester Dualling](#)

02/10/2019 - Deadline for close of examination for [A303 Stonehenge](#)

Show entries

Showing 1 to 10 of 14 entries Search: Previous **1** **2** Next

Project	Developer	Stage
A303 Sparkford to Ilchester Dualling	Highways England	Recommendation
Oldbury New Nuclear Power Station	Horizon Nuclear Power	Pre Application
Bere Alston to Tavistock Railway Reinstatement and Associated Trails	Devon County Council	Pre Application
Avon Power Station 950 MW output	Scottish Power	Pre Application
Seabank 3 CCGT	SSE plc	Pre Application
A30 Temple to Higher Carblake Improvement	Cornwall Council	Decided
Hinkley Point C Connection	National Grid	Decided
Hinkley Point C New Nuclear Power Station	NNB Generation Company Limited	Decided
A417 Missing Link	Highways England	Pre Application

Consenting Processes - issues

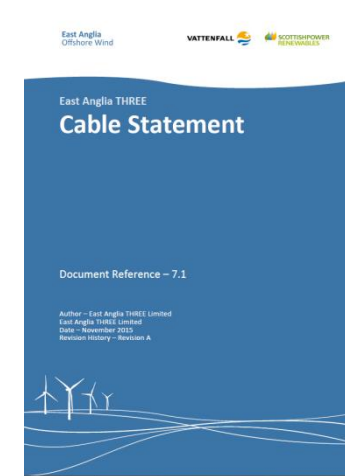
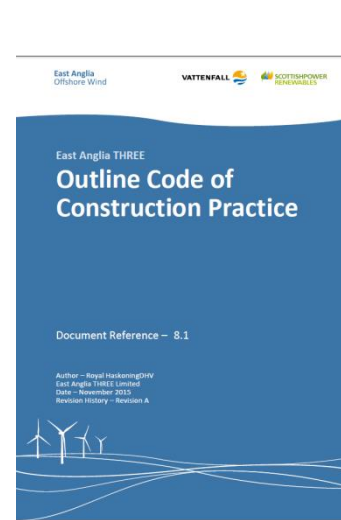
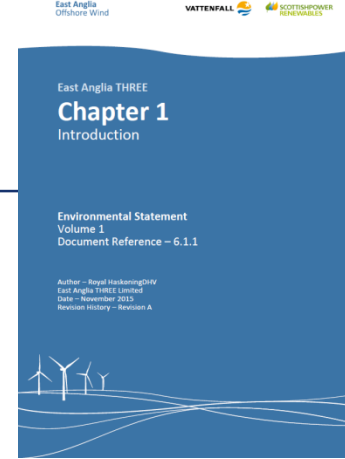
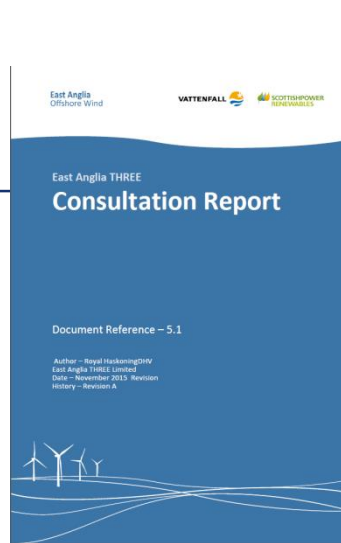
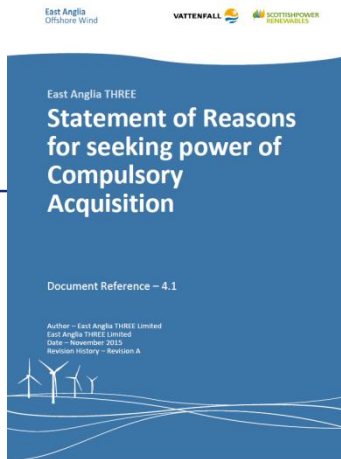
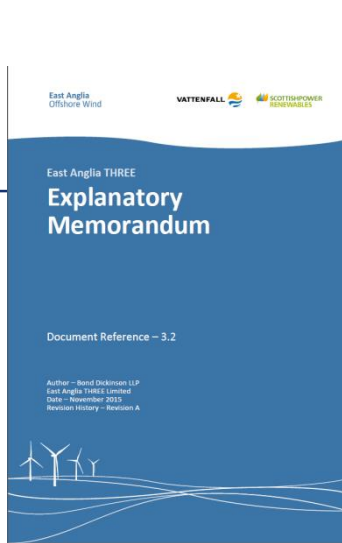
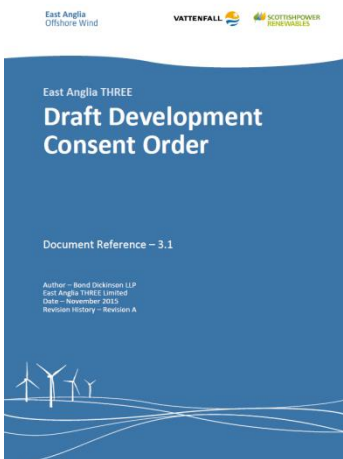
- Deliverability & Resourcing
- Flexibility v certainty
- Tail Pieces
- EIA
- HRA



Environmental Impact Assessment (EIA)

- A process to ensure that decision-makers have full information on likely significant environmental effects before determining an application for consent for development and take this information into account in making the decision
- EIA assessments are part of the planning balance – consent can be granted even if likely significant adverse effects are predicted
- NSIPs: The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- TCPA: The Town and Country Planning (Environmental Impact Assessment) Regulations 2017





Thames Tideway application

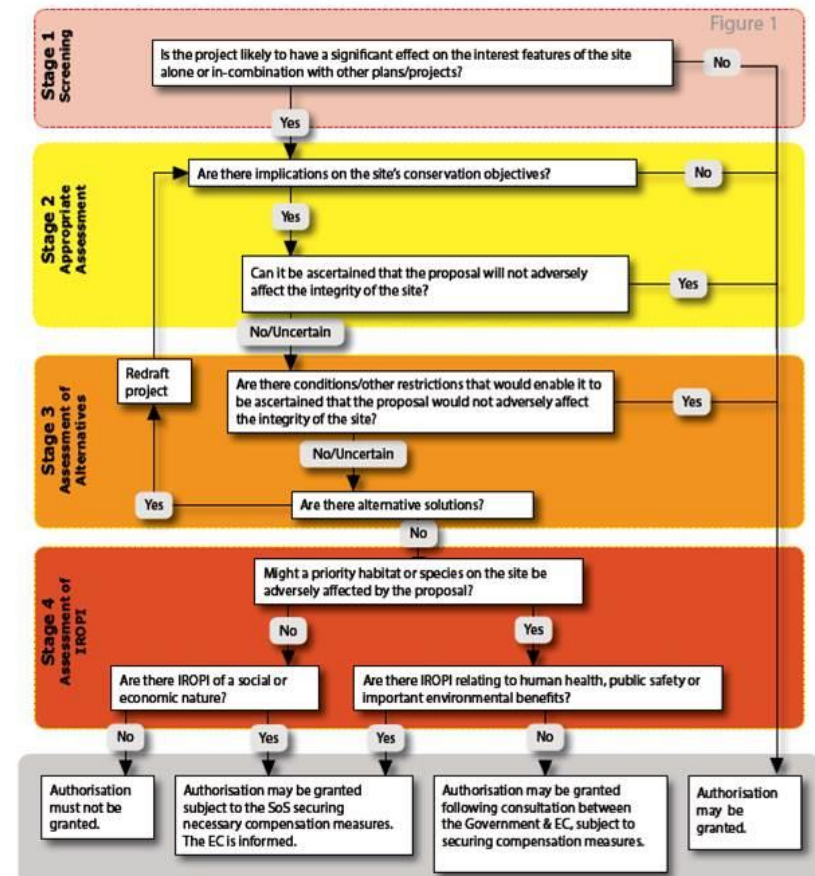
Environmental Statement: practical issues

- Description of proposed development
 - Rochdale Envelope
 - Embedded mitigation
- Types of mitigation & treatment in EIA process
- Enhancement & planning gain
- Creeping changes
- Robustness of evidence base & adequacy of data
- New topics – human health, climate change, major hazards
- Cumulative impacts and Inter-relationships
- What is a likely significant effect?



Habitats Regulations Assessment

- In contrast to EIA, the outcome of the HRA process can determine whether or not consent for the proposed development can be given
- Multi-stage process of up to 4 stages depending on outcomes
- Until 12 April 2018 mitigation measures could be taken into account in determination of likely significant effect



Mitigation measures – moving from appropriate assessment into IROPI

- CJEU in Case C-164/17 - *Edel Grace and Peter Sweetman v An Bord Pleanala* – measures can only be taken into consideration in an appropriate assessment when they will guarantee that there will be no adverse effect on integrity. Compensation measures can not be included
- Distinction to be drawn between protective measures forming part of a project and measures aimed at compensating for the negative effects of a project on a protected area
- IROPI must be demonstrated in every project where a negative appropriate assessment applies, which will result in an IROPI assessment regardless of the outcome of the measures for compensating for adverse effects



Post grant of planning permission or DCO

- Risk of judicial review or statutory challenge to lawfulness of decision to grant permission or consent
- Any work undertaken by developer at risk in event of a successful challenge
- Risk tends to lead to more voluminous assessments at EIA stage
- If material changes to project or environment then additional EIA or HRA processes may be engaged where a project requires multi-stage consents

Avoiding silos – de-risking projects to maximise delivery

- Grant of a permission or DCO is an early stage in the life of a project
- Different business models but common factor: greater certainty means cheaper projects & greater market access
- Important in balancing public v private interests that decision- making is transparent & policy is clear



DCO Research Project – Choices for Planning

RESEARCH PROGRAMME

Literature review

Survey

Specialist interviews

Roundtables

Report

A STUDY BY

copper

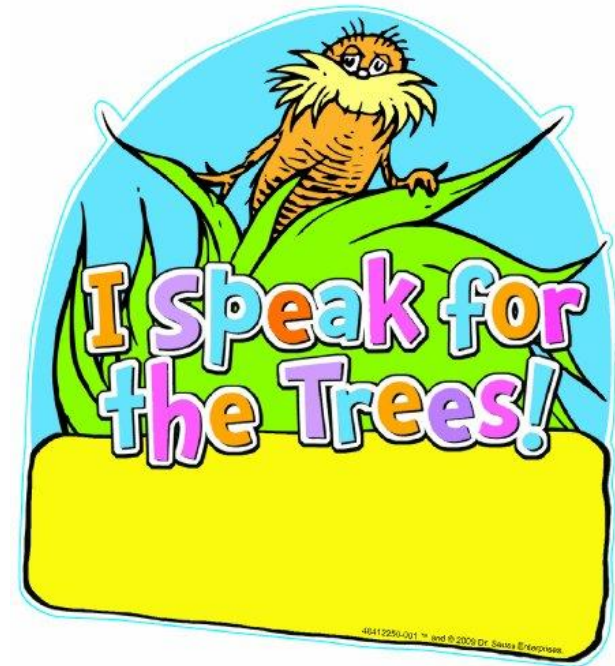
BARTON
WILLMORE

WOMBLE
BOND
DICKINSON

Some observations from the front line

- The sustainability and delivery of projects is improved where:
 - Legal processes are clear, logical and affordable
 - Planning policy is stable, evidence based and supported
 - Objectives are coherent and aligned
 - Thresholds are not arbitrary
 - Local planning authorities and statutory consultees are well resourced
 - Decision-makers are well informed and appropriately qualified
 - There are clear lines of accountability

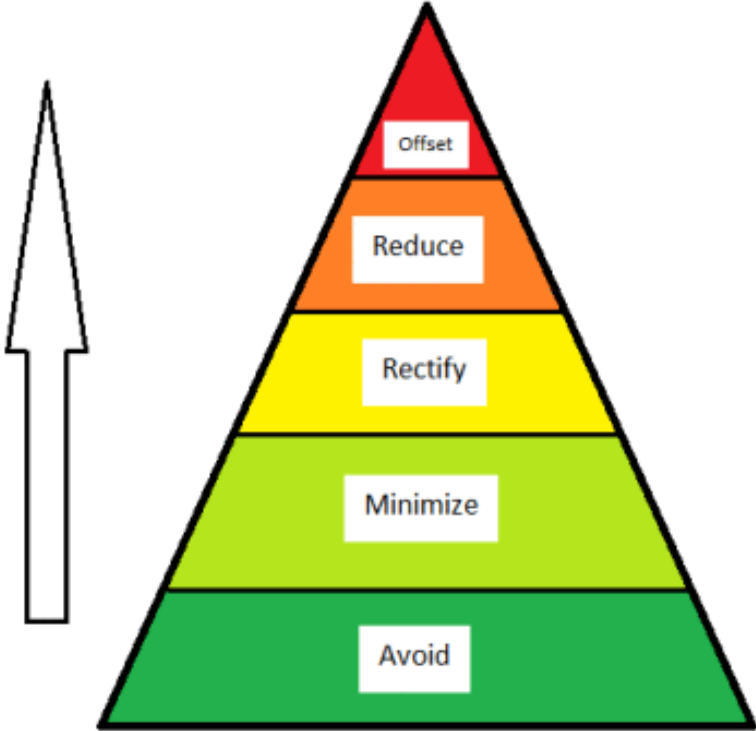
... plus ça change?



DEFRA 25-Year Environment Plan



A Green Future: Our 25 Year Plan to Improve the Environment



Mitigation Hierarchy

Into the future...



Local action



Any questions?

Womble Bond Dickinson (UK) LLP at a glance



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