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11 November 2026

**Secretary of State for Housing, Communities and Local Government**
**c/o Government Legal Department Litigation Group,**
**102 Petty France, London, SW1H 9GL**
**Email: Charlotte.Gannon@governmentlegal.gov.uk and**
**Gemma.File@governmentlegal.gov.uk**
**Your ref: Z2612794/CNG/JD7**

**Subject: Proposed judicial review of policies N1(2) and N2(3) of the National Planning Policy Framework**

Dear Ms Gannon,

1. We write further to Lifescape's Pre-Action Protocol letter dated 15 September 2026 ("**PAL**") and the Secretary of State's response dated 14 October 2026 ("**PAR**") concerning the lawfulness of policies N1(2) and N2(3) of the National Planning Policy Framework ("**NPPF**") published on 17 August 2026 (the "**Policies**").

2. We welcome the fact that the Secretary of State has largely agreed with Lifescape's interpretation of the lawful scope of the NPPF and its interaction with other relevant legal frameworks, although are disappointed that the Secretary of State is not proposing to take the logical step of publicly clarifying those parts of the NPPF which are apt to mislead Local Planning Authorities.

3. Nonetheless, in light of the significant clarifications made by the Secretary of State in the PAR (set out below), we do not intend to issue proceedings and so are writing formally to confirm that.

**Ground 1 – Unlawful frustration of the effective operation of various statutory obligations; alternatively, unlawfully attempting to amend the statutory framework via planning policy**

4. As we explained in our PAL, we were concerned that the language and directive approach of:
    a. Policy N2(3) unlawfully undermines the statutory obligations and powers of LPAs to give weight to certain development-plan policies requiring BNG above the statutory minimum of 10%; and
    b. Policy N1(2) unlawfully excludes a specific category of BNG polices (those stipulating ambition for BNG in excess of 10%) being brought forward by LPAs though their local plans and/or from being found sound in contravention of a number of statutory provisions.

5. We are pleased that the Secretary of State has clarified that:

    a. Policies N1(2) and N2(3) do not and cannot as a matter of law frustrate or amend the statutory framework, and in particular that the NPPF cannot "lay down the law" by way of the NPPF (PAR, §25);
    b. it is a matter for LPAs to decide how much weight to give to development plan policy requiring BNG above 10% (PAR, §35c);
    c. Lifescape's propositions at §41 and §45 in the PAL are correct (PAR, §36):
        i. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**") applies in relation to all extant development plan policies which require BNG above 10%. The weight that LPAs give to such policies is a matter for them and, despite the language of Policy N2(3), they are entitled to give weight to such policies.
        ii. The NPPF, and Policy N2(3), is an important material consideration in planning decision-making, but does not have greater weight than other material considerations and can be departed from.
        iii. The NPPF does not alter local authorities' duties or obligations under section 40 of the NERC Act and the LNRS Regulations.
        iv. Policy N1(2) of the NPPF cannot seek to countermand or frustrate the effective operation of sections 19 and 19(1A) of the PCPA 2004, which require LPAs to prepare development plan documents which must include policies designed to contribute to mitigation of and adaptation to climate change, and that the NPPF does not alter local authorities' duties or obligations under s. 40 of the Natural Environment and Rural Communities Act 2006 and

the Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023.

6. Further and significantly, the Secretary of State has clarified that, "if in future an LPA submits for examination local plan policies setting local standards that are contrary to the national policy, the inspector will consider whether the LPA's evidence base and local circumstances justify the LPA's proposed local standards. If they conclude that the standards are justified and the local plan policy is adopted, then more weight may be given to it than to the new national policy in subsequent decisions on planning applications" (PAR, §35d).

7. We welcome these clarifications, given in formal pre-action correspondence, which amount to material considerations for planning purposes, particularly for LPA decision-makers and the Planning Inspectorate. The Secretary of State has already brought the PAR to the attention of a number of LPAs and designated responsible bodies, and we intend to bring it to the attention of other LPAs and stakeholders.

**Other Grounds of Challenge**

8. In light of the matters set out above, we have decided not to go forward with the judicial review challenge. For the avoidance of doubt, however, we consider that the responses given on grounds 2-5 in the PAR either do not address the unlawfulness highlighted, or raise further concerns.

Ground 2: Failure to give due regard to the Environmental Principles Policy Statement

9. As we explained in our PAL, the Secretary of State has a duty, pursuant to s.19 of the Environment Act 2021 ("**the 2021 Act**") to have "due regard" to the Environmental Principles Policy Statement ("**EPPS**") when making policy ("**the EPPS Duty**"). The EPPS duty is a personal duty of the Minister. It is iterative.

10. The EPPS itself states that Policymakers "should identify potential environmental effects (positive or negative) and use the principles to inform and influence the design of the policy", informed by the overall purpose of the EPPS to contribute to improving environmental protection and achieving sustainable development in the context of building resilience to biodiversity loss and the effects of our changing climate.

11. It is unfortunate that the Secretary of State's response to our request for transparency and disclosure on the Minister's discharge of this duty in the PAR and follow up letter of 23 October was to provide a copy and pasted extract of an

updated intermediate EPPS assessment, with no context. This extract was plainly not dispositive of this ground. The EPPS Duty, on the Minister personally, cannot, in any event, be discharged simply by assessments being carried out within the Minister's department. the extract provided (either in the PAR or by letter of 23 October 2026) does not demonstrate personal evaluation by any Minister.

12. In any event, the extract did not evidence a lawful EPPS assessment, for example, barely touching the overlap with climate and the biodiversity crisis and not seeking properly to quantity the impact on the country's achievement of relevant international commitments. This is particularly troubling in circumstances where climate change and biodiversity loss have been identified as national security risks facing our country.

13. We consider, given the importance of these matters, that it is unacceptable for the Secretary of State to seek to rely on an alleged lack of obligation to disclose such material (per PAR, §3 of your letter of 23 October 2026) in order to withhold further disclosure. Such transparency is critical for accountability. We consider that the Secretary of State has failed to evidence that its EPPS Duty was adequately discharged and we intend to pursue this matter with the Office for Environmental Protection.

Ground 3: Failure to take into account the adverse economic impact of the Policies, which was a material consideration in making them

14. Our concern under this ground is that the Minister failed to take into account the "adverse economic impact" of the policies. We consider that it is common ground that the 2021 Act was intended to create a nature market for BNG. The statutory underpinning of the BNG condition provided reassurance to those intending to invest in this new market. Axiomatically, any undermining of that statutory framework is likely to undermine confidence in the market and affect BNG supply.

15. In its PAR, the Secretary of State asserted that "economic impact was not an obviously material consideration" for the Minister to take into account (PAR, §48). That is an extraordinary assertion, particularly against the backdrop of the Government's repeated (and ill-informed) rhetoric around nature blocking economic growth. BNG is an example of nature creating and underpinning economic growth, creating a new, vibrant market. For the Government to contend that the economic impact of the new NPPF policies was not an obviously material consideration is an irresponsible position to take in the context of market confidence and investment decisions.

16. Further, the Secretary of State seeks to assert that Lifescape cannot raise this argument now because it did not submit a response to the NPPF consultation (PAR, §48(a)). This assertion has no basis in law and relies incorrectly on *Keep Chiswell Green* (which concerned the narrow situation of a new consideration arising after an inquiry closed).

17. Finally:

    a. It is no answer to the legal error for the Secretary of State retrospectively to look at responses to three of the consultation questions to ascertain if economic issues were raised (PAR §48(b)). In any event, the responses could only ever be framed by reference to the questions posed.
    b. The attempt to rely on the terms of the PPG in PAR §48(c) and Lifescape's failure to challenge those is likewise inapposite, given that the language in the PPG is significantly different.

Ground 4: Failure to comply with the public sector equality duty

18. This ground explained our concerns that the Policies disproportionately impact disadvantaged communities and that, the Minister having had this expressly identified as a likely outcome from the Equalities Impact Assessment, did not properly take account of this prospect in deciding to proceed to implement them, in contravention of the public sector equality duty under s.149 of the Equality Act 2010 ("**PSED**"). Again, the PSED is personal to the Minister, cannot be discharged by the simple creation of a departmental paper, and it must be exercised with rigour.

19. We remain concerned about the Minister's failure to exercise the PSED with appropriate rigour. The reliance on certain superficial statements within the Equalities Impact Assessment (see those highlighted in PAR §§53, 58) supports this concern. By attempting to take a holistic approach which refers to NPPF policies in the round as being positive for "individuals with protected characteristics and society overall," without identifying specific, appropriate mitigations, we consider that the Minister has failed to discharge the PSED. We have taken this matter up in a complaint to the Equalities and Human Rights Commission.

Ground 5: Making the decision on the basis of an irrational justification

20. The PAR rejects the assertion that the decision was irrational for the reasons set out in the PAL, but it does not engage seriously with this potential ground. Reliance is placed on the aim of the NPPF consultation as justification for the rationality of the later policies. It is stated that the NPPF consultation was

"intended to provide greater consistency while allowing higher gains when supported by appropriate evidence" (PAR, §64) and that it aimed for greater clarity for stakeholders. However, we consider that policies N1(2) and N2(3) do the opposite – instead of greater clarity, they are apt to create confusion for LPAs and other stakeholders because they seem directly to countermand the statutory framework. We consider this is likely to lead to LPAs pursuing diverse and contradictory approaches to BNG, with potentially damaging effects on the BNG market – this is another reason why Lifescape is bringing to wider attention the Secretary of State's clarifications under Ground 1.

21. Further, there has been nothing disclosed to show proper consideration of the fact that the 10% baseline was originally thought to be the minimum required to ensure that there was no net loss to biodiversity and what the consequences of limiting policies to 10% is likely to be. Nor is there any attempt to rationalise the changes against the Government's wider international commitments on climate mitigation or biodiversity restoration under the United Nations Framework, the Environmental Improvement Plan under the 2021 Act or otherwise.

**Conclusion**

22. In light of the matters set out at §§2-3 above, Lifescape has decided not to go forward with a judicial review challenge and so we do not expect a response to this letter, although should you wish to do so, the relevant contact details are at the head of the letter.

Yours sincerely,



**Adam Eagle, CEO**
**For and on behalf of The Lifescape Project**

**Copies to Annex 1 LPAs and other Responsible Bodies (by email)**

Annex 1

**Local Authorities with Adopted Area-Wide BNG Policies Above 10%**

- Guildford Borough Council (20%): Ezra.wallace@guildford.gov.uk
- Maidstone Borough Council (20%): planningsupport@midkent.gov.uk
- Mole Valley (20%): Tom.penlington@molevalley.gov.uk
- Uttlesford District Council (20%): legal@uttlesford.gov.uk
- Worthing Borough Council (20%): legal.mail@adur-worthing.gov.uk

**Local Authorities with Emerging BNG Policies**

- Cambridge (20%): emma.duncan@cambridgeshire.gov.uk
- Canterbury (20% on major development): jan.guyler@canterbury.gov.uk; planning@canterbury.gov.uk
- Ealing (20%): LegalSupport@ealing.gov.uk
- East Devon (20%): gsalter@eastdevon.gov.uk
- Enfield (20%): legalsupport.requests@enfield.gov.uk
- Herefordshire (20%): Philippa.Wride@herefordshire.gov.uk
- Portsmouth (20%): peter.baulf@portsmouthcc.gov.uk
- Sevenoaks (20%): Martin.Goodman@sevenoaks.gov.uk
- South Oxfordshire (20%): nick.bennett@southandvale.gov.uk; anne.ricketts@southandvale.gov.uk
- Surrey Heath (20%): nathalie.boateng@surreyheath.gov.uk
- Swale (20%): timothy.pyant@midkent.gov.uk
- Vale of White Horse (20%): nick.bennett@southandvale.gov.uk ; anne.ricketts@southandvale.gov.uk
- Wealden (20%): legalservices@wealden.gov.uk
- Castle Point (20%): planning@castlepoint.gov.uk
- Chelmsford (20%): w.butcher@chelmsford.gov.uk
- Cherwell (20%): shiraz.sheikh@cherwell-dc.gov.uk
- Great Yarmouth (20%): plan@great-yarmouth.gov.uk
- Kingston upon Thames (30%): localplan@kingston.gov.uk
- Lewes (20%): PlanningFirst@lewes-eastbourne.gov.uk
- Mid Sussex (20%): julie.galvin@midsussex.gov.uk
- Rother (20%): planning@rother.gov.uk
- Stockport (20%): vicki.bates@stockport.gov.uk
- Tower Hamlets (30% or 2.5 biodiversity units per hectare, whichever is higher): jill.bayley@towerhamlets.gov.uk
- Wokingham (20%): sharedlegalsolutions@wokingham.gov.uk