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A S S O C I A T I O N O F

Local Government Ecologists

Integrating
Biodiversity
Objectives
into
Planning

Donald Rumsfeld
United States Defence Secretary Feb 12th 2002

“As we know, there are known knowns.

There are things we know....

We also know there are known unknowns.

That is to say we know there are some things
we do not know....

But there are also unknown unknowns, the ones we don't know
we don't know”.

What
Do We Know?



Nature Conservation (Scotland) Act 2004

2004 asp 6

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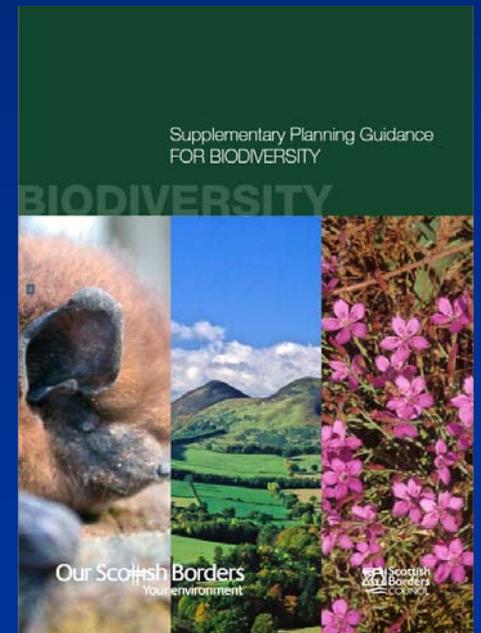
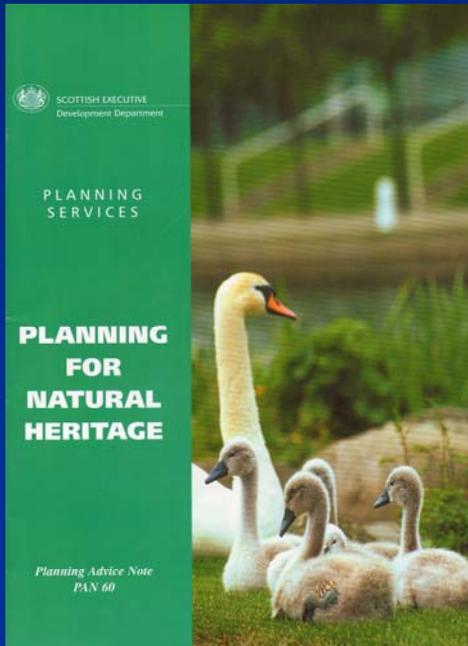
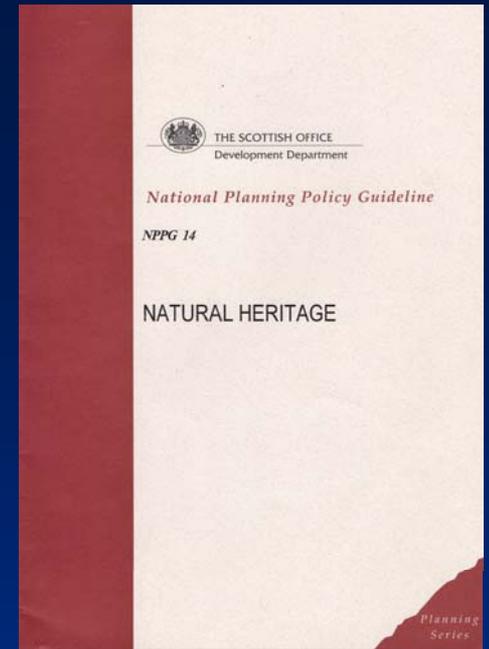
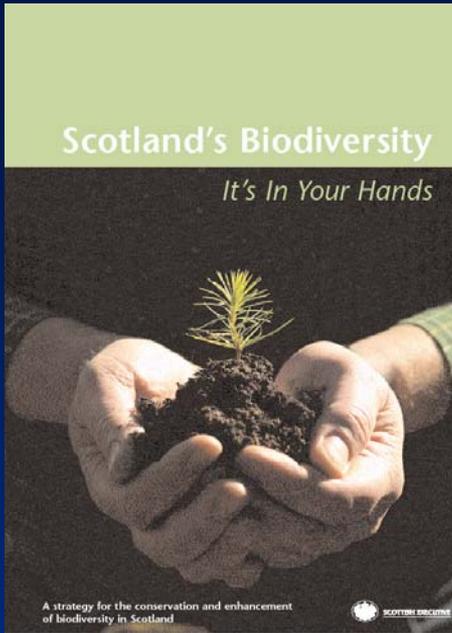
The Nature Conservation (Scotland) Act 2004

PART 1

1 Duty to further the conservation of biodiversity

- (1) It is the duty of every public body and office-holder, in exercising any functions, to
- further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.

What (perhaps)
do we know we
don't know?



Objective 1

We need to know the biodiversity policy that we want planners and applicants to know

and

make sure that it is provided in a form fit for purpose!

What don't we know
we don't know?

METAPHORICAL ALLIGATORS !!

- **Missing the importance of biodiversity as a planning issue**
- **Insufficient information to make a decision**
- **Lack of understanding about how to protect and enhance features**
- **Failure to comply with statutory obligations**
 - **Judicial Review following unlawful decision**
- **Failure to apply national policies effectively**
- **Poor and ill-informed professional practice**
- **Sanction under the RTPI's Code of Professional Conduct !**
- **Biodiversity killed, affected, lost or in decline because of poor decisions!**

Objective 2

We need to be very aware of what planners and applicants may not know!

So if we know all that

What about
forward planning
for biodiversity ?

Front Loading Biodiversity into Forward Planning

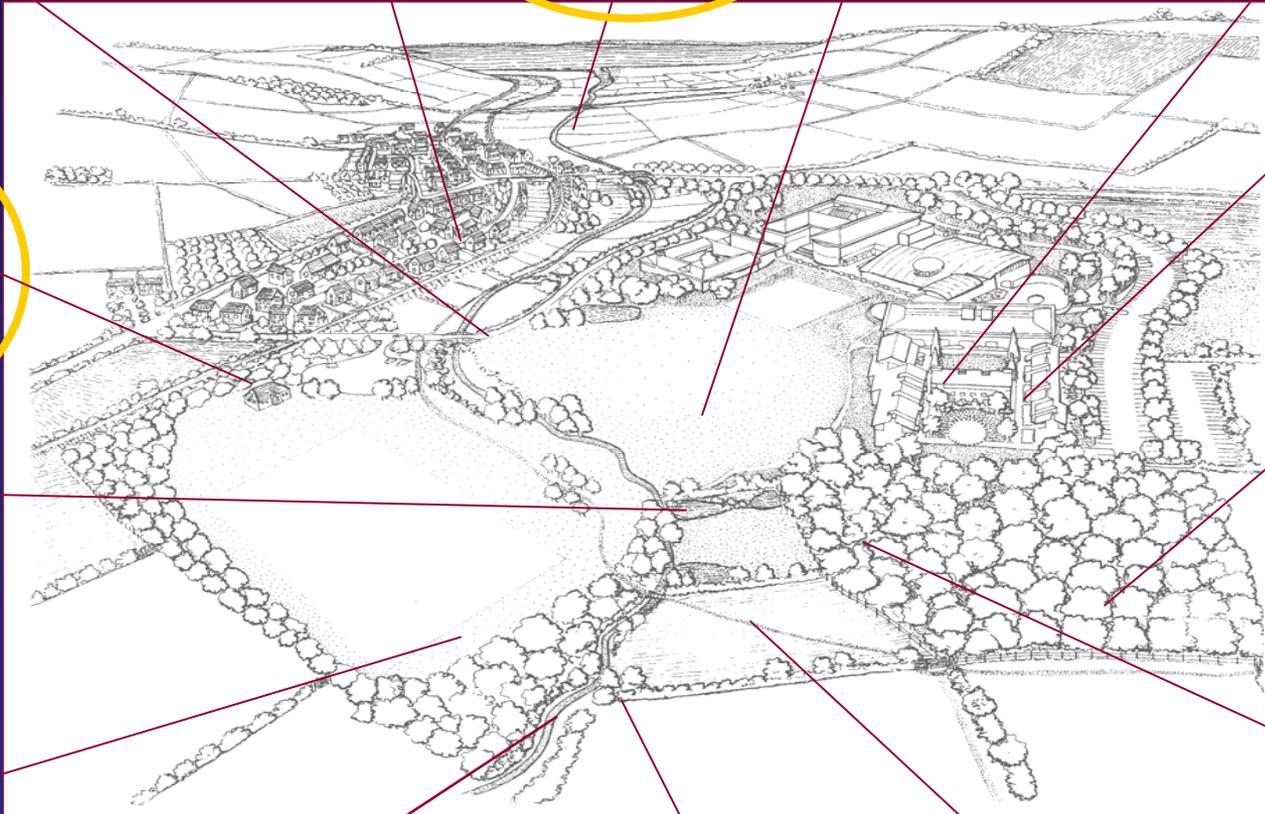
Pond managed for Great Crested Newts

New purpose built bat roost in roof of new building

Restored floodplain grazing marsh

Retention, restoration and expansion of unimproved neutral grassland meadow

Creation of Butterfly Garden



New barn owl box in sports pavilion

Bird boxes under eaves of buildings

Flood balancing ponds created in field corners

Woodland fenced and under new coppice management regime

Playing field margins managed for long grass and small mammals

River margins restored and managed for water vole

Artificial otter holt installed

New nature trail with wheel chair access

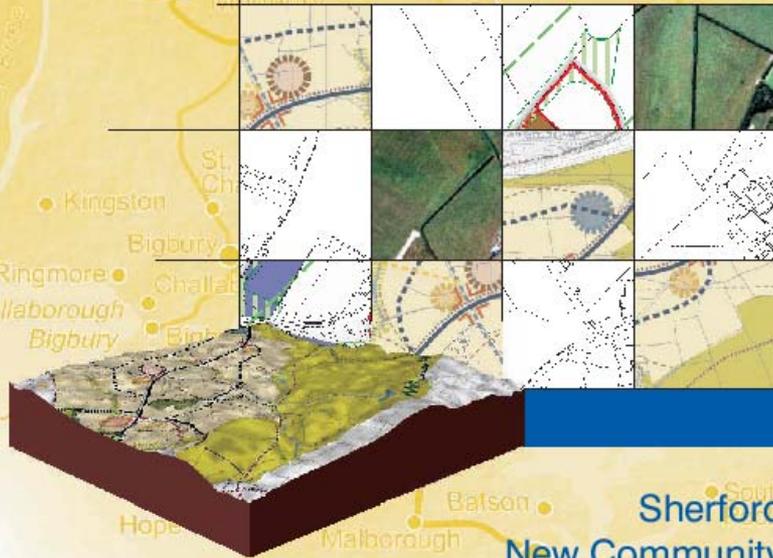
Restored unimproved wet grassland meadow managed for Marsh Fritillary Butterflies



**South Hams
District Council**

August 2007

South Hams Local Development Framework



**Sherford
New Community
Area Action Plan**

Adopted

Objective 3

We need to create a real vision for biodiversity in
our local landscapes

and

know how to implement it on the ground

More stuff

we should know

2007 No. 1843

WILDLIFE

COUNTRYSIDE

The Conservation (Natural Habitats, &c.) (Amendment)
Regulations 2007

Made - - - - - 22nd June 2007

Laid before Parliament - - - - - 3rd July 2007

Coming into force - - - - - Section 2

The Secretary of State is a Minister designated(a) for the purposes of making Regulations under section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the conservation of natural habitats and of fauna and flora.

These Regulations make provision for a purpose specified in section 2(2) of the European Communities Act 1972.

It appears to the Secretary of State that in any reference to an Annex to Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna(c) or to Council Directive 79/409/EEC on the conservation of wild birds(d) to be construed as a reference to that Annex as amended from time to time.

In the exercise of powers conferred on him by section 2(2)(e) of, and paragraph 1A(f) of Schedule 2 to, the European Communities Act 1972 and by section 307(3) and (5) of the Criminal Justice Act 2003(g), he makes the following Regulations:

-
- (a) European Communities (Designation)(No. 4) Order 1992 (S.I. 1992/2870).
 - (b) 1972 c.68.
 - (c) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora was last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).
 - (d) Council Directive 79/409/EEC on the conservation of wild birds was last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).
 - (e) In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers (by virtue of section 53 of the Scotland Act 1998 (c.46)), the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998.
 - (f) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
 - (g) 2003 c.44.

The Habitats Regulations: The ‘*Three Tests*’

Under Regulation 44, in making their decision, should LPAs have “*due regard*” to:

- the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment - Regulation 44(2)(e);

As long as:

- there is no satisfactory alternative - Regulation 44(3)(a); and
- the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range - Regulation 44(3)(b).

Appeal dismissed - 14 March 2006 at Former Hack Green
RAF Camp, Coole Lane, Hack Green, Austerson, Nantwich
CW5 8AS

Inspector concluded that the development proposal did not meet the relevant tests in Regulation 44 of the Habitats Regulation, including maintenance of favourable conservation status of GCN (40% of Great Crested Newt habitat would be lost).

Inspector also stated that "the provisions of the Directive [the tests] are relevant in reaching planning decisions..." i.e. that the Local Planning Authority, as a competent authority, should have regard to the requirements of the Directive when reaching planning decisions and NOT left until the licence application stage.

Appeal Dismissed: 15 August 2007 at
Bryan Bras, Lon Tan y Bryn, Morfa Nefyn, Pwllheli LL53 6UB
Appeal Ref: APP/Q6810/A/07/2044104

The Inspector stated that:

“On balance I am not satisfied that there is sufficient evidence before me to conclude that there would be no significant risk to the well being of protected species.

It would therefore be wrong to grant planning permission for the proposal in the absence of a survey to establish the extent of any harm and whether it would be feasible to allay this harm by mitigation measures.

I therefore conclude that the appeal should be dismissed on this ground, notwithstanding the lack of sustained objections on other issues”.

Appeal dismissed – Land off Beili Glas Road, Fleur de Lis, Blackwood. Caerphilly County Borough Council (2005)

The Inspector stated that:

“I have reached the view that there is inadequate information before me to enable the framing of mitigating conditions, or to predict the effectiveness of such controls.”

“The appellant suggests the imposition of a condition requiring further ecological survey – in my opinion, such a condition would not be appropriate as the necessary survey is required to inform a decision on the acceptability of the proposed development as well as the use of any planning conditions”.

Objective 4

We need to know and also use statutory obligations for protected species conservation

We should know
that the planning
system has targets
to meet !

Options in the Absence of Information *i.e. Not Knowing!*

- Determine application in absence of information, grant consent . . . and risk legal challenge for non-compliance with Habitat Regulations 3(4) and 44 + Section 1 Part 1 Nature Conservation (Scotland) Act 2004.
- Applicant withdraws planning application
- Application is refused on grounds of insufficient information
- Defer a decision until sufficient information has been received

Options in the Absence of
Information *i.e. Not Knowing!*

OR

Find A The Fifth Option!

135. Biodiversity and Geological Conservation

To assist in answering the following questions, refer to the Help Text for further information on what information is going to be required as part of the planning application when there is reasonable likelihood that important biodiversity or geological conservation features may be present or nearby are likely to be affected by your proposals.

Having referred to the guidance notes and the authority's local Planning Application Requirements, Is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, OR on land adjacent to or near the application site:

a) Protected and priority species (help text):

- Yes, on land adjacent to the development site
- Yes, on the development site
- No

b) Designated sites, important habitats or other biodiversity features (help text):

- Yes, on the development site
- Yes, on land adjacent to the development site
- No

c) Features of geological conservation importance (help text):

- Yes, on the development site
- Yes, on land adjacent to the development site
- No

Local Requirements for Biodiversity

Validation Checklists

Adequate Survey
Assessment of Impacts
Avoidance
Mitigation
Compensation
Enhancement

Q. When is the above
needed?

A. Criteria / Thresholds

Criteria and Thresholds

Proposals for Development That Will Trigger a Protected Species Survey

	Bats	Barn Owls	Breeding Birds	Gt. Crested Newts	Otters	Doormouse	Red Squirrel	Water Vole	Badger	Reptiles	Amphibians	Plants	Other species ?	Other species ?	Other species ?
Prop of build or removal															
all agricultural buildings (e.g. farmhouses and stone buildings)	•	•	•												
brick or stone buildings	•														
within 400m of woodland and/or water;	•														
pre-1914 buildings within 400m of woodland															
within 400m of water															
bridges, aqueducts and viaducts (especially over water and wet ground)	•														
Prop within to wo															
Propo conine	•		•												
Proposed tree work (felling)															
•															
•															

Buildings

Floodlighting

Ponds and Water bodies

Trees and Hedgerows

Other features/habitats where key species are likely to be found

Objective 5

We should ask very clearly for what we want
and need to know!

Objective 6

We need to show people
what we mean
and what we
want them to know



Welcome to the Biodiversity Planning Toolkit – your one-stop-shop for incorporating biodiversity into the planning system and new development.

The Biodiversity Toolkit is an online planning resource for England, Wales, Scotland and Northern Ireland. Use this site to learn how to:

- Apply for planning permission in situations where biodiversity may be encountered;
- Design biodiversity into a wide range of different types of development
- Determine application where biodiversity may be a material consideration;
- Incorporate biodiversity into spatial plans and forward planning documents;
- Research Government policy, good practice and statutory obligations that relate to biodiversity conservation in the UK.

Show me The Biodiversity Toolkit for:

England



Scotland



Northern
Ireland



Wales



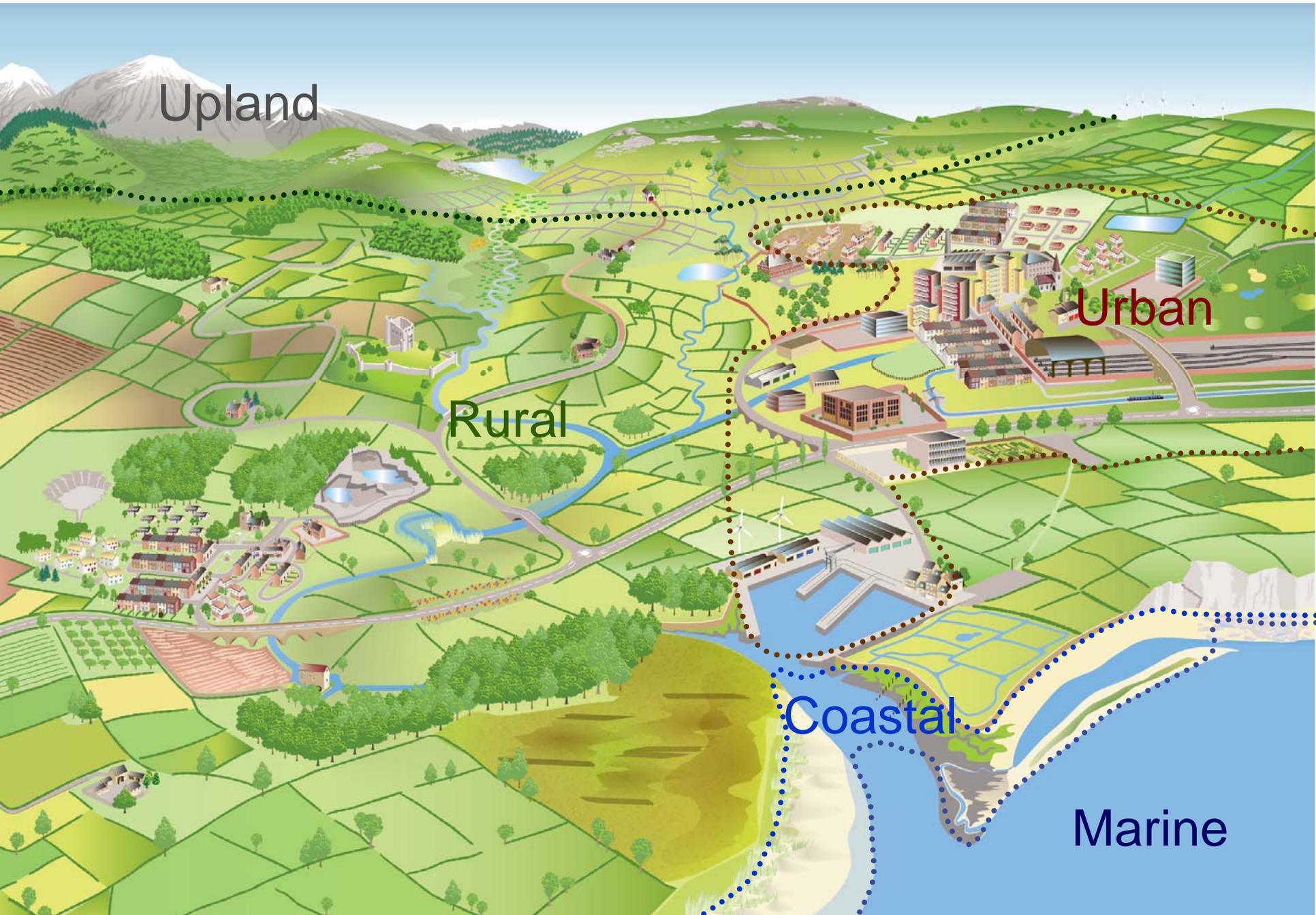
Upland

Rural

Urban

Coastal

Marine



An interactive barn based on a simpler version of the interactive house on the planning portal site

Showing inside and outside views before and after barn conversion

Thank you for your ear

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