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Built Environment Committee

2nd Report of Session 2022–23

The impact of environmental regulations on development

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Built Environment Committee

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Evidence is published online at <https://committees.parliament.uk/work/7328/the-impact-of-environmental-regulations-on-development> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

At the heart of this inquiry is the interaction between two government policies: a drive for development—particularly of housing—and the promotion of new infrastructure; and a commitment to protect habitats and halt the decline of species. We do not comment on the validity of these potentially competing policies. We take them as given. Our focus has been on whether they are achievable and how they interact with each other.

Both policies should be achievable in a mutually reinforcing way. In practice, our inquiry has found that this has been hampered and sometimes completely blocked by lack of co-ordination in policy-making and haphazard and unbalanced implementation. We heard evidence of unresponsiveness, time-consuming duplication, delay and overlapping responsibilities on the part of government departments and of Natural England and the Environment Agency. We heard of Integrated Plans which lacked a strategy for their implementation. We encountered a confusing and unclear policy landscape where government guidance has made the situation worse, not better.

This is resulting in a current failure to deliver either goal. We see no path to delivering the Government's ambitions by the intended deadlines unless there is a strong display of political leadership to deliver and implement a comprehensive strategy for both development and the environment.

The pollution that threatens the vitality of our water courses has its sources in poor agricultural and sewage management practices over decades. Yet the legal position today is that the burden of mitigating it is falling on new, often desperately needed, housing. The lack of water adequacy in parts of the country arises from a failure to develop new water infrastructure over many years. Again, it is new housing that is bearing the brunt. The effective moratorium on housebuilding in affected areas is unsustainable and disproportionate.

Where new environmental regulation has been introduced thoughtfully, with consultation and adequate notice, developers have been able to plan and accommodate themselves to it. The impact of sudden and new environmental regulations, such as nutrient neutrality, can be so costly for developers—both financially and through delays—as to dissuade them from seeking planning permission or put them out of business altogether. Research for the Home Builders Federation suggests that as many as 45,000 new homes per year may not be delivered because of the nutrient, water and recreational applications of the Habitats Regulations.¹ There is no statutory weight behind the Government's housing ambitions and decision makers face an imbalanced problem as they struggle to meet their economic, social and environmental priorities.

The current approach is also not effectively protecting or improving the environment. Local habitats and species are not fully understood or considered in the round, isolated pockets of mitigation are not addressing system-wide pollution or the ingrained impact of historic decisions and 61 per cent of our Sites of Special Scientific Interest are assessed as being in an unfavourable

1 Home Builders Federation, *Planning for Economic and Social Failure: Estimating the impact of Government planning interventions* (March 2023): https://www.hbf.co.uk/documents/12331/HBF_Report_-_Preparing_for_economic_failure_report_2023_FINAL.pdf [accessed 4 September 2023]

condition.² These problems are the result of decades of poor practice and lack of investment. There is also a lack of coherence with the Government's food security goals, given that builders are now buying up viable agricultural land in order to close down farms as part of mitigation schemes for new housing elsewhere.

In this report, we call for the Government to demonstrate political leadership and take the difficult decisions necessary to balance their own competing priorities. We put forward several recommendations, including a proposal that the Government's housing ambitions be given statutory weight, so as to ensure they have equal status with environmental goals. Coherent, cross-government plans should be developed to address major pollutants and to ensure that money is expended where it will have the most impact. Where mitigation schemes are needed to address the impact of housebuilding these should take a strategic approach and be based on comprehensive and trustworthy baseline data.

The Government needs to address those issues holding back smaller developments, operating often on small, local sites. It is not enough to pay lip service, or provide isolated financial support, to deliver these sites. The current regulatory framework is limiting these developments and disproportionately affecting smaller builders, who bring so much to local economies.

Finally, we heard evidence that the recently enacted requirement for new development to meet statutory biodiversity net gain goals is having a perverse effect on the viability of building on derelict brownfield land, land which by common consent should be high on the list of desirable places to build.

Throughout this inquiry it has become clear that until the Government reconciles its own policy goals, it will continue to constrain new housebuilding in the name of improving the environment without delivering that goal either. There is a real risk that necessary homes and vital environmental protections will not be delivered.

2 Natural England, *Designated Sites View: SSSI Feature Condition Summary*: <https://designatedsites.naturalengland.org.uk/ReportFeatureConditionSummary.aspx?SiteType=ALL> [accessed 4 September 2023]

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Government ambitions

1. There are legitimate concerns that the Government will not meet its environmental or housing targets on time. The deliverability of its environmental ambitions is particularly drawn into question owing to the limited time afforded to meet them. (Paragraph 19)
2. *To balance policy decisions more effectively, the Government should commission a review into the cost implications of satisfying environmental regulations for both housebuilding and large infrastructure projects. (Paragraph 27)*

Balancing Competing Targets

3. It does not help the Government achieve its policy commitments if local planning authorities operate without clear, consistent, achievable, and co-ordinated national policies. National political leadership needs to be shown in setting out which priorities should prevail when individually important policies conflict with each other. (Paragraph 47)
4. *Too many local planning authorities do not have an up-to-date local plan. Given the importance of local plans in balancing ambitions for development and the need to protect the environment, the Government should ensure that all local planning authorities have the necessary resources and information to produce a plan. It should explore legislative or legal routes to enforce the requirement for a local plan. (Paragraph 48)*
5. *If the Government produces a land use framework it must ensure and demonstrate that all relevant government departments, including the Department for Environment, Food and Rural Affairs and the Department for Levelling Up, Housing and Communities are effectively involved in its production. (Paragraph 49)*
6. As a result of the requirement to mitigate harm at a project level, local planning authorities are attempting to balance decisions between unequally weighted principles. To overcome the statutory weight of environmental protection requires significant expertise and places great additional onus on local planning authorities. (Paragraph 58)
7. *If the Government thinks it is appropriate for competent authorities to be responsible for balancing economic, social and environmental priorities at permission stage, it must ensure that the necessary expertise is available within local authorities. Detailed guidance on the process for declaring imperative reasons of overriding public interest must be provided to support legally sound decision making. (Paragraph 59)*
8. *The Government should place the need to deliver housing on a statutory footing equal to that of environmental protection. This will help to ensure balanced decisions can be taken. (Paragraph 60)*
9. *The Government should review the requirement for mitigation to be available at the time of, and directly linked to, a planning application. It should explore legislating to allow development to proceed where a deliverable plan is in place to address pollutants or the condition of a protected site, which has taken into consideration development ambitions set out in the local plan. (Paragraph 61)*
10. *Following the passage of the Levelling-up and Regeneration Bill, the Government should provide clear advice as to what assumptions local planning authorities and*

developers can make regarding requirements for nutrient neutrality in light of the 2030 deadline for upgrading wastewater treatment works. (Paragraph 62)

11. The Government and Parliament have vital roles to play in taking decisions balancing environmental priorities with key issues such as the viability of ongoing housing development or the UK's food security. (Paragraph 66)
12. *The Government should confirm if it was aware of the likelihood that productive farmland would be taken out of use because of the nutrient neutrality advice and if it adapted its food strategy in response. (Paragraph 67)*
13. *The Department for Levelling Up, Housing and Communities and the Department for Environment, Food and Rural Affairs should issue joint advice on where and when, if at all, the practice of discontinuing farming owing to any impact mitigation requirements for housebuilding is applicable and acceptable. (Paragraph 68)*
14. Too often, the outcome of government policies and regulations place responsibility for preventing and addressing historic pollution onto those with limited, if any, power to effect change. Balancing the social, environmental and economic benefits and costs of development is a difficult task requiring expertise, evidence, ability and genuine willingness to effect change: it is a matter for the Government and Parliament. (Paragraph 75)
15. *The full suite of environmental regulations delivered through the planning system should be reviewed and, if necessary, considered for amendment to ensure that they are in line with the Government's environmental principles policy statement. (Paragraph 76)*
16. We were concerned to hear that the Government's Integrated Plan for Water, proposed as the solution to nutrient pollution, is not yet able to deliver genuine change. The Government has shied away from taking the necessary decisions and risks failing to improve the situation in line with international commitments. (Paragraph 82)
17. *The Government must prioritise implementing the Integrated Plan for Water and publish the information sought by its arm's-length bodies, including setting out the balance of priorities between farming and other sectors in addressing nutrient pollution. In doing this it should be cognisant of the experience in the Netherlands. (Paragraph 83)*
18. *The Government should develop integrated plans for addressing all areas of conflict between development and environmental policies before legal backstops are reached and development is halted. These must include implementation plans and be in line with the environmental principles policy statement. (Paragraph 84)*
19. *We welcome proposals in the Levelling-up and Regeneration Bill for the Environment Agency to review the environmental permits of plants which discharge treated effluent into catchments impacted by nutrient pollution. This should be expanded to agricultural activity. The Environment Agency should inspect all farms within the 27 catchment areas subject to nutrient neutrality advice by the end of 2024 to ensure they are operating within their permitted pollution levels and enforce standards on those that are not. (Paragraph 85)*
20. New development can contribute to environmental damage; however, it is important that the ongoing and long-term impact of historic housing stock and agricultural practices are addressed. (Paragraph 89)

21. *The Government should explore how mitigation schemes could finance improving existing housing stock, building on the model in Crawley. It is unlikely that this approach will provide sufficient offsetting to meet housing demand, but it should be considered a key part of the solution and a suitable route to contribute to the Government's levelling-up mission to improve housing quality. (Paragraph 90)*
22. The condition of protected areas in the UK has a direct impact on development. When not maintained, their poor condition can cause an immediate halt in housebuilding. Statutory bodies and others have known about the poor state of some protected areas for several years but there has been no overall improvement. (Paragraph 96)
23. *Given the importance of site condition and classification to the planning process and decision making there should be greater transparency over the assessment process. Natural England should publish its detailed scientific justification for any site assessment in an easily accessible and understandable format. (Paragraph 97)*
24. *Natural England's new Protected Sites Strategy approach should be extended to all protected sites in an 'unfavourable' condition. These strategies should include a time-bound action plan for restoring its condition in line with the environmental principles policy statement. (Paragraph 98)*

Public sector structures and resourcing

25. Restructuring Defra's arm's-length bodies could distract from the Government's targets for 2030. Nonetheless overlap between the agencies must be reduced to deliver the best value for money and reduce delays and confusion for developers. (Paragraph 104)
26. *The Government should publish its response to the Nature Recovery Green Paper by the end of 2023. If structural changes are not made, a clear plan for eradicating unnecessary overlap and improving cross-organisational work should be published. This must focus on improving engagement at a project level. (Paragraph 105)*
27. We were pleased to discover that there is a Ministerial Taskforce on Nutrient Neutrality. We do not know what its remit and objectives are. It is disappointing that such cross-governmental working was not in place before housebuilding was effectively halted across 14 per cent of the country's land area. (Paragraph 111)
28. *The Government should pave the way in innovating how organisations collaborate and drive change. It should ensure that the delivery expertise and market understanding in Homes England and the Planning Inspectorate is accessible to all departments making policy that will affect development. As far as possible, practitioners should be included in policy development. When introducing new regulations or requirements on the planning system or for development, all government departments should be mandated to consult Homes England and the Planning Inspectorate. (Paragraph 112)*
29. *When developing new advice or guidance which will affect the planning system, Defra and its agencies should undertake and publish an impact assessment. This should include insights from across government. (Paragraph 113)*
30. Public bodies are facing challenges recruiting and retaining ecological expertise. It is necessary to bring expertise into the system through recruitment or training current staff. (Paragraph 120)

31. *Additional funding has been provided for statutory bodies. In 2024, a review should be undertaken of the availability and accessibility of expertise in Natural England and the Environment Agency to identify and address any remaining gaps in expertise. (Paragraph 121)*
32. *Statutory consultees should ensure sufficient resource is available for them to work with developers to address issues raised during the statutory process in a timely manner. (Paragraph 122)*
33. *The Government should introduce targets for stakeholder satisfaction for its arm's-length bodies as part of the proposed new planning performance framework. Feedback from developers and infrastructure promoters should be regularly sought and acted on. (Paragraph 123)*
34. *The Environment Agency and Natural England should support the formalisation of a role for those experts who are part of the Nationally Qualified Mark Scheme. They should explore using this resource to provide independent reviews of relevant environmental assessments, funded by the developer, where the capacity is unavailable internally. (Paragraph 124)*
35. We welcome the Government taking steps to address the funding shortfall in local authority planning departments. (Paragraph 133)
36. *The Government should complete its proposed fees review within the next 12 months to provide greater long-term certainty for planning departments and applicants. The proposed skills and resources strategy should be published by the end of 2023. (Paragraph 133)*
37. The disparity in providing additional support between those areas impacted by nutrient and water neutrality is both unfair and illogical. Given the proliferation of new advice, ensuring early understanding and solutions are available could have wide reaching benefits. (Paragraph 134)
38. *The Government and statutory bodies must meaningfully consult local planning authorities on new advice and policy which will have an impact on their decision making as competent authorities. This process must allow sufficient time for expertise in handling new policy issues to be developed. (Paragraph 135)*
39. *Local planning authorities should work with local partners and, where relevant, upper-tier authorities to share expertise and drive economies of scale. The approach taken by Warwickshire County Council should be considered a best practice example and delivered through two-tier authorities, mayoral combined authorities and joint ecological units. (Paragraph 136)*

Project-specific challenges

40. It is unrealistic to expect the market to immediately provide a private sector mitigation solution for new regulatory schemes, especially where there is political uncertainty about their longevity. (Paragraph 143)
41. *When new types of mitigation are required owing to advice from statutory consultees, the Government should work with Natural England to provide public sector mitigation schemes in the immediate term. These can be closed to new applicants or become a provider of last resort when a private sector market has developed. (Paragraph 143)*

42. The lack of managed credit-purchase mitigation schemes for specific pollutants or in certain areas is restricting developers' ability to gain planning permission. (Paragraph 144)
43. *Mitigation networks, organised by Natural England, should be created to share expertise and learning between affected local planning authorities. These networks should develop standard mitigation models for local planning authorities to use when a new requirement comes to their local area.* (Paragraph 144)
44. *Where there is a model in place for cost recovery through the planning process, the Government should provide up front funding to local planning authorities to undertake mitigation activity. This could be repaid through the creation of a local credit scheme to ensure that mitigation schemes are available to all developers.* (Paragraph 145)
45. *It is unfair that, when using schemes which charge on a per dwelling basis, smaller properties are faced with a relatively larger cost. Local planning authorities should be encouraged to ensure schemes have a charging scale based on the number of bedrooms or square meterage of homes and is thus more directly related to the potential impact of new homes.* (Paragraph 146)
46. There is a preference among developers of all sizes for off-site mitigation to be managed centrally with clear and predictable costs to allow them to factor these into land value calculations. In these circumstances, the costs can be borne by a development and the outcomes provide greater benefit to the environment. (Paragraph 153)
47. *Natural England's District Level Licensing scheme for great crested newts has reduced costs and increased certainty for infrastructure and housing developers where it operates while maximising the benefits for species conservation. The Government should expand this approach to other protected species.* (Paragraph 154)
48. *The Government should support the authorities responsible for local nature recovery strategies to ensure that they bring together information and actions to enhance the environment. Relevant authorities should develop biodiversity net gain credit schemes which support the delivery of local nature recovery strategies so that off-site delivery continues to benefit residents in the local area.* (Paragraph 155)
49. *More detail should be provided on the proposed approach to monitoring and enforcing the long-term delivery of biodiversity net gain. Where local planning authorities are required to undertake ongoing monitoring, the Government should provide sufficient resources for this. The Office for Environmental Protection should have a role in ensuring local planning authorities undertake ongoing monitoring and enforcement.* (Paragraph 158)
50. *The requirement for robust environmental data accompanying development applications should remain. However, the Government should ensure that local planning authorities are mandated to validate a planning application if it fulfils the published list of information required.* (Paragraph 164)
51. *The Government should ensure that where planning applications are delayed in the planning system beyond the statutory or agreed time limit the lifespan of necessary surveys is extended.* (Paragraph 165)
52. There will always be a requirement for some site-specific environmental information, but improved and accessible baseline data would reduce costs for developers, improve the quality of information available and, if

provided by an independent body, reduce conflict in the planning system. (Paragraph 172)

53. *Alongside its work to digitise planning, the Government should consider the expansion of the Natural Capital and Ecosystem Assessment Programme. Any approach should prioritise the delivery of terrestrial information for areas of high housing and infrastructure demand over a blanket national approach. The Government should clarify when the proposed data sets will be available, develop a paid-for system for the private sector to utilise the data and confirm how often information will be updated. New technologies and innovations should be utilised to ensure data remains usable and useful in the long term.* (Paragraph 173)
54. *The Planning Inspectorate's work to introduce data standards for Nationally Significant Infrastructure Projects should be expanded to all projects of the scale which requires an Environmental Impact Assessment and should be suitably adapted for smaller housing developments.* (Paragraph 174)
55. *To create consistency for developers and improve community engagement with the planning process, the Government should develop templates and exemplars for those assessments most regularly undertaken by developers.* (Paragraph 176)
56. Brownfield development is a key government policy supported by the public and vital to delivering homes. (Paragraph 180)
57. *The Government should ensure that remediating brownfield sites is not disincentivised by biodiversity net gain requirements. Local planning authorities should be able to moderate biodiversity net gain requirements for sites on their brownfield registers.* (Paragraph 180)
58. The interaction between planning permission and permitting is causing delays on some sites, with a specific impact on the development of brownfield land. (Paragraph 186)
59. *The Department for Levelling Up, Housing and Communities should work with the Department for Environment, Food and Rural Affairs to review planning and permitting requirements for brownfield land and eliminate overlap. This should include checks on how brownfield sites are assessed to ensure public sector resources are used most effectively.* (Paragraph 186)
60. *The parallel approval approach for permits and planning applications used for Nationally Significant Infrastructure Projects should be expanded to all brownfield and housing developments significant enough to justify an Environmental Impact Assessment.* (Paragraph 187)
61. *The Government should ensure that existing planning consents, which cannot be commenced because of an inability to clear conditions owing to new advice under the habitats regulations, are automatically extended for a further three years.* (Paragraph 192)
62. *The Government should remove the need for a habitats regulations assessment to be undertaken for post-permission approvals for at least three years and for longer where development has been substantially started within the appropriate timescales for the development.* (Paragraph 193)
63. We were disappointed to learn of the Government's decision to not consult on nutrient and water neutrality guidance despite time being available. This choice was unnecessary and led to serious ramifications. It is indicative of a

wider issue: communication on new or evolving environmental regulations is often not provided in a timely way, lacks detail and practical solutions, or is difficult to understand. This inhibits the ability of developers and local planning authorities to respond appropriately, so delaying development. (Paragraph 199)

64. *Those who deliver policy through the planning system should be consulted on the content and drafting of relevant advice. Defra and DLUHC should work with Natural England and the Environment Agency to develop a suitable consultation method which can be used ahead of issuing advice under the Habitats Regulations. Where necessary this should allow for confidential discussions.* (Paragraph 200)
65. We are sympathetic to the fact that the use of secondary legislation will allow for regulations and policy to respond to the “fast-changing nature of environmental science”. This does not preclude the Government from setting out how the policy will be implemented in the immediate term. (Paragraph 201)
66. *Given the impact of uncertainty in the planning system on the delivery of new homes, the Government should ensure that policy is communicated clearly and in a timely manner. For a transition period to be successful stakeholders need to know to what they are transitioning. Statutory dates for the implementation of new regulations should reflect the lead times for development with the full policy detail available.* (Paragraph 202)
67. *By the end of 2023, the Government should publish its timeline for reviewing and updating all National Policy Statements.* (Paragraph 206)

Impact on smaller developers

68. Effective moratoria on housebuilding caused by advice such as nutrient and water neutrality risk putting small developers out of business in affected areas. (Paragraph 214)
69. *All public sector development mitigation schemes should prioritise provision for small developers.* (Paragraph 214)
70. *Following the passage of the Levelling-up and Regeneration Bill, the Secretary of State should use their powers to ensure that all wastewater treatment works with capacity for a population of 250 are upgraded by the 2030 deadline.* (Paragraph 215)
71. *Allowing local planning authorities to require biodiversity net gain ahead of the delayed statutory deadline negates the benefit of this accommodation. Where the Government has announced a transition period and implementation date local planning authorities should not be able to act ahead of it.* (Paragraph 219)
72. *The Government should ensure that local planning authorities are prohibited from introducing biodiversity net gain requirements above the 10 per cent minimum for small sites. These sites should be exempt from following the mitigation hierarchy and immediately permitted to deliver an offsite solution.* (Paragraph 220)
73. Large, and growing, up-front costs disincentivise developers of all sizes from entering the housing market. For smaller developers with limited access to finance they are a greater burden. Whilst developers are willing and able to cover these costs in many circumstances, they should not be asked to fund inapplicable surveys. (Paragraph 223)

74. *The Government should review the range of ecological assessments required of developers. It should issue guidance to local planning authorities on which assessments can be discretionary for smaller sites, rather than required up front. (Paragraph 224)*

The impact of environmental regulations on development

CHAPTER 1: INTRODUCTION

1. In this inquiry we explored the interaction of two distinct legal regimes that have developed in England over several decades: environmental regulations and the planning system.
2. The Government has major flagship policy ambitions in both areas: they have committed to “significantly [boost] the supply of homes”³ and to “become the first generation to leave [the] environment in a better state than we found it”.⁴ Delivering these ambitions needs to be done in a balanced and co-ordinated way. Throughout the inquiry we have considered whether the Government is effectively balancing its priorities and ensuring responsibility is appropriately assigned and we discuss how the current regulatory system has an impact on developers.
3. We discuss the Government’s policy ambitions and their legal basis (Chapter 2). We consider how these policies interact and how difficult questions of competing priorities are addressed (Chapter 3). We discuss public sector structures and the resources available to administer environmental regulations and support developers (Chapter 4). We make recommendations to address issues with the implementation of regulations at a project level (Chapter 5). Finally, we build on the work in our report *Meeting housing demand* to consider the experiences of small and medium-sized developers (Chapter 6).⁵
4. During this inquiry, the evidence focused on a small number of regulations where witnesses identified key issues. We do not examine in detail the efficacy of individual regulations; instead, we look at how they affect the processes of planning and gaining approval for development projects and, to some extent, for new infrastructure. Our report focuses on the extent and application of regulations in England: planning policy in other parts of the UK is a devolved matter.
5. The lessons learned from the regulations discussed in this report highlight fundamental issues which should be addressed across the full gamut of government policy in this area. We heard that there is a “repeated pattern”⁶ in advice issued by environmental regulators on the impact of development. Water neutrality advice began in West Sussex, and we are now seeing issues caused by water availability in South Cambridgeshire. Whilst nutrient neutrality advice was initially in place for only 32 local planning authorities,

3 Department for Levelling Up, Housing and Communities, *National Planning Policy Framework* (updated 5 September 2023): <https://www.gov.uk/government/publications/national-planning-policy-framework--2> [accessed 6 September 2023]

4 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf [accessed 30 August 2023]

5 Built Environment Committee, *Meeting housing demand* (1st Report, Session 2021–22, HL Paper 132) para 92

6 [Q 77](#) (Heather Sargent)

it was later expanded.⁷ Heather Sargent of Landmark Chambers suggested a similar escalation could occur for issues of air quality.⁸

6. In addition to taking oral and written evidence, we had two private sessions with volume and small and medium-sized developers and undertook a visit to the Houlton development in Rugby. We are grateful to all who participated in our inquiry.

7 Blandy & Blandy Solicitors, 'What is Nutrient Neutrality? Further Advice from Natural England' (29 March 2022): <https://www.blandy.co.uk/about/news-and-insights/insights/what-is-nutrient-neutrality-further-advice-from-natural-england>. [accessed 30 August 2023]

8 [Q 77](#) (Heather Sargent)

CHAPTER 2: GOVERNMENT AMBITIONS

7. This chapter gives a broad overview of the Government’s policies and targets for housing and environmental protection. We describe the statutory framework for these ambitions and provide details of the regulations used as case studies throughout this report.

Government policies and targets

8. The headline housing delivery target remains the 2019 Conservative manifesto commitment to build one million homes over this parliament. There is a parallel target that the Government would be building 300,000 homes a year by the mid-2020s.⁹
9. There is no single policy document on housing. The most recent housing White Paper, *Fixing our broken housing market*, was published in February 2017.¹⁰ There are several documents, such as Homes England’s *Strategic Plan 2023–28*, which contain elements of housing policy but not in a comprehensive or integrated way.¹¹ Some key elements of a policy for housing development are in the 2021 *National Planning Policy Framework* (NPPF) which, among other policy guidance, contains material on establishing housing need and identifying land supply.¹²
10. On 23 July 2023, the Secretary of State for Levelling Up, Housing and Communities announced *A Long-term plan for housing* containing initiatives relating to relaxing planning control, cities, infrastructure and resourcing the planning system.¹³ No detailed strategy was published alongside the announcement.
11. The *Environmental Improvement Plan 2023* set out the Government’s ‘apex’¹⁴ target: to halt species decline in England by 2030.¹⁵ The plan set out a further 44 supplementary targets which results in 640 actions.¹⁶ These include targets derived from international commitments.

9 The Conservative and Unionist Party, *Get Brexit Done: Unleash Britain’s Potential, Manifesto 2019*: <https://www.conservatives.com/our-plan/conservative-party-manifesto-2019> [accessed 30 August 2023] and [Q 194](#) (Rachel Maclean MP)

10 Department for Communities and Local Government, *Fixing our broken housing market* (February 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/590464/Fixing_our_broken_housing_market_-_print_ready_version.pdf [accessed 30 August 2023]

11 Homes England, *Strategic Plan 2023–28* (2023): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1159274/Homes-England-strategic-plan-2023-to-2028.pdf [accessed 30 August 2023] and Ministry of Housing, Communities and Local Government, *A new deal for social housing*, Cm 9671 (August 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733635/A_new_deal_for_social_housing_print_ready_version.pdf [accessed 30 August 2023]

12 Department for Levelling Up, Housing and Communities, *National Planning Policy Framework*

13 Department for Levelling Up, Housing and Communities, ‘News story: Long-term plan for housing’ (24 July 2023): <https://www.gov.uk/government/news/long-term-plan-for-housing> [accessed 30 August 2023]

14 The [Environment Act 2021](#) requires the Secretary of State to set targets for four priority areas: air quality, water, waste and biodiversity.

15 Department for Environment, Food and Rural Affairs, *Environmental Improvement Plan 2023* (updated 7 February 2023): <https://www.gov.uk/government/publications/environmental-improvement-plan> [accessed 30 August 2023]

16 [Q 193](#) (Trudy Harrison MP)

Box 1: Kunming-Montreal agreement

In December 2022, the Kunming-Montreal Global Biodiversity Framework (KGBF) was adopted: the UK is one of 188 signatories.

The agreement contains four overarching goals for 2050. These focus on ecosystem and species health including halting human-induced species extinction, the sustainable use of biodiversity, equitable sharing of benefits, and implementation and finance to include closing the global biodiversity finance gap of over £500 billion per year.

The 23 targets for 2030 include 30 per cent conservation of land and sea, 30 per cent restoration of degraded ecosystems, reducing excess nutrients lost to the environment by at least half and a nearly £400 billion per year reduction in harmful subsidies.

The Government's commitment to achieving the provisions of the agreement is reflected in the 2030 Strategic Framework for International Climate and Nature Action which describes the KGBF as a "landmark moment in the international approach to tackling climate change and nature loss" and states, "the global community now needs to focus on implementation of these agreements."¹⁷

The KGBF is not legally binding, but it commits signatories to monitoring and reporting on their progress against the targets every five years. In the UK, the targets have been codified in the Government's Environmental Improvement Plan and therefore progress must be reported to Parliament.

Source: Convention on Biological Diversity, *Kunming-Montreal Global Biodiversity Framework*: <https://www.cbd.int/gbf/> [accessed 30 August 2023]

12. As with housing, there is a wide range of other plans which, to varying degrees, affect plans for, and decisions on, development.¹⁸ There are other Government agency plans which may contain policies or targets affecting development, such as Natural England's 2023 *Green Infrastructure Framework*.¹⁹

Achievement of targets

13. The targets for housing and for habitats and species are ambitious.

17 HM Government, *2030 Strategic Framework for International Climate and Nature Action* (March 2023): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1148323/2030-strategic-framework-for-international-climate-and-nature-action.pdf [accessed 30 August 2023]

18 Examples of such plans include: Department for Energy Security and Net Zero, *Powering Up Britain: Net Zero Growth Plan* (April 2023): <https://www.gov.uk/government/publications/powering-up-britain/powering-up-britain-net-zero-growth-plan> [accessed 30 August 2023]; Department for Environment, Food and Rural Affairs, *Third National Adaptation Programme (NAP3)* (July 2023): <https://www.gov.uk/government/publications/third-national-adaptation-programme-nap3> [accessed 30 August 2023]; Department for Environment, Food and Rural Affairs, *Clean Air Strategy 2019*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf [accessed 30 August 2023]; Department for Environment, Food and Rural Affairs, *Plan for Water: our integrated plan for delivering clean and plentiful water* (updated 4 April 2023): <https://www.gov.uk/government/publications/plan-for-water-our-integrated-plan-for-delivering-clean-and-plentiful-water/plan-for-water-our-integrated-plan-for-delivering-clean-and-plentiful-water> [accessed 30 August 2023]; and Department for Environment, Food and Rural Affairs, *Government Food Strategy* (June 2022): <https://www.gov.uk/government/publications/government-food-strategy/government-food-strategy> [accessed 30 August 2023]

19 Natural England, 'Introduction to the Green Infrastructure Framework—Principles and Standards for England': <https://designatedsites.naturalengland.org.uk/GreenInfrastructure/Home.aspx> [accessed 30 August 2023]

14. In the case of housing, the Prime Minister has announced the target to build one million homes in this parliament will be achieved.²⁰ The latest data is not available to assess this claim.²¹ Success may be impacted by market conditions (some major developers have said they will be reducing their pipeline²²) and the impact of advice, such as nutrient neutrality, on developer's delivery pipelines.
15. The Government's target to build 300,000 homes a year in England by the mid-2020s has repeatedly been called into question. In May 2022, a former Secretary of State for Housing, Communities and Local Government told the House of Commons that the Government "will miss their 300,000 homes a year manifesto pledge by a country mile."²³ Net additions of homes peaked at 243,000 in 2019/20 but have subsequently fallen.²⁴
16. On the Government's progress to meet its environmental targets, we heard the Government is not delivering change at the necessary pace to achieve its ambitions for the environment.²⁵ Regarding biodiversity specifically, Dame Glenys Stacey DBE, Chair of the Office for Environmental Protection, was clear: "the Government are not going to meet their biodiversity targets at the current rates".²⁶ We also heard there are no plans to deliver against several of the targets.²⁷
17. Where plans are available it is unclear if they will deliver outcomes in time. John Curtin, the Interim Chief Executive of the Environment Agency, said: "The Government have set the targets for nutrient load across catchments²⁸ ... we now need the [implementation] plan."²⁹
18. Work to address pollution levels in Poole Harbour began in 2013 and it has taken 10 years to develop a plan for targets to be realistically deliverable by 2030.³⁰ We received no evidence of other such projects. This work is impressive and balanced between sectors, but it should be noted that the first interim target under the Kunming-Montreal Agreement for catchments in an

20 Department for Levelling Up, Housing and Communities, 'News story: PM to build 1 million new homes over this Parliament' (24 July 2023): <https://www.gov.uk/government/news/we-will-build-1-million-new-homes-says-prime-minister> [accessed 30 August 2023]

21 For example, the latest available figures for net additional dwelling in England (Live tables on housing supply: net additional dwellings) were last updated in November 2022 and do not yet include figures for the 2022/23 financial year. Department for Levelling Up, Housing and Communities, *Statistical data set: Live tables on housing supply: net additional dwellings* (updated 24 November 2022): <https://www.gov.uk/government/statistical-data-sets/live-tables-on-net-supply-of-housing> [accessed 14 September 2023]

22 'UK housebuilders in retreat amid property downturn', *Financial Times* (13 January 2023): <https://www.ft.com/content/bc6e1a8a-fb7b-4128-8455-fae5ce799ea4> [accessed 30 August 2023]

23 HC Deb, 10 May 2022, [column 77](#) [Commons Chamber]

24 Department for Levelling Up, Housing and Communities, *Statistical release: Housing supply; net additional dwellings, England: 2020–21* (November 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1035653/Housing_Supply_England_2020-21.pdf [accessed 30 August 2023]

25 [Q 180](#) (Dame Glenys Stacey)

26 *Ibid.*

27 [Q 159](#) (Tony Juniper)

28 The Government has a target to reduce nitrogen, phosphorous and sediment pollution from agriculture by at least 40 per cent by 2038, there is an interim target of 15 per cent by January 2028 for catchments containing protected sites in an unfavourable condition. Department for Environment, Food and Rural Affairs, *Environmental Improvement Plan 2023*

29 [Q 168](#) (John Curtin)

30 [Q 169](#) (John Curtin); YouTube, Environment Agency TV, 'Restoring the water quality and ecology of Poole Harbour—Farming actions and scheme Part 2': <https://www.youtube.com/watch?v=Fh8yjp46Cew> [accessed 30 August 2023]

unfavourable condition is for just seven years from now.³¹ In the Netherlands, where a legal ruling has required swift action to address nutrient pollution by 2035, it has resulted in a strategy with significant ramifications for the agricultural sector, with significant political consequences, and we heard this may still not meet their target.³²

19. **There are legitimate concerns that the Government will not meet its environmental or housing targets on time. The deliverability of its environmental ambitions is particularly drawn into question owing to the limited time afforded to meet them.**

Statutory framework

20. None of the Government's housing delivery targets nor any of its policy guidance are statutory. In contrast, there is a body of statutory requirements for environmental protection and enhancement, including the legal requirement under the Environment Act 2021 to set targets and report on their progress to Parliament.³³ We explore the interaction between these two different statutory positions in Chapter 3.
21. Environmental law in the UK derives from both domestic legislation and international commitments, including EU directives, which have either been placed into domestic law or are satisfied through pre-existing legislative frameworks. From the 1970s, until the UK left the European Union, "nearly all environmental law was at the EU level."³⁴ As a result, rulings and case law from the European Court of Justice played (and continue to play) a pivotal role in decision making. The requirements relating to habitats and species are in statutory instruments and a competent authority must comply with them when taking a planning decision.
22. The Office for Environmental Protection provides oversight of compliance with environmental law.³⁵ It acts independently to hold the Government and other public authorities to account through scrutiny and enforcement actions.³⁶ No such independent body provides scrutiny or enforcement functions for the delivery of new housing supply.

Relevant environmental regulations

23. The Home Builders Federation and Land Promoters and Developers Federation told us that "the industry has broadly been able to adapt to most current statutory environmental requirements"³⁷ and they do not represent a major barrier to housebuilding. In essence, housebuilders are "very used to them".³⁸
24. Simon Blanchflower CBE, former CEO of EastWest Rail, agreed with this sentiment for the delivery of major infrastructure projects. He emphasised the importance of pre-examination and pre-application stages for ensuring

31 [Q 169](#) (Jennie Donovan)

32 For further information see Box 3. [Q 128](#) (Professor Gert de Roo)

33 [Environment Act 2021](#)

34 [Q 2](#) (Professor Liz Fisher)

35 Office for Environmental Protection, 'Home': <https://www.theoep.org.uk/office-environmental-protection> [accessed 30 August 2023]

36 [Q 175](#) (Natalie Prosser)

37 Written evidence from the Home Builders Federation and Land Promoters and Developers Federation ([IER0031](#))

38 [Q 21](#) (James Stevens)

environmental requirements are delivered—”it is a mindset thing... not seeing the environmental piece as a separate activity that becomes burdensome”.³⁹ When considering the cost or delays of regulations, Simon Blanchflower argued that these can be manageable within project timeframes and any potential costs are “dwarfed by the challenges around clear policy decisions.”⁴⁰

25. Despite these assertions, we heard about difficulties within the planning system for both infrastructure and housing delivery, in the operation of certain regulations. Therefore, as discussed in Chapter 1, a specific subset of environmental regulations has been taken as case studies for this inquiry and are outlined below.
26. For both infrastructure and housebuilding, we struggled to obtain a clear understanding of the costs to deliver the full range of environmental regulations, either monetarily or in comparison to other potential public benefits which developers could bring.
27. ***To balance policy decisions more effectively, the Government should commission a review into the cost implications of satisfying environmental regulations for both housebuilding and large infrastructure projects.***

Habitats regulations

28. The EU Birds Directive was adopted in 1979 and the Habitats Directive in 1992.⁴¹ The two directives are often referred to as the ‘habitats regulations’ and they provide a framework to protect specific species and characteristic habitats. The directives gave rise to Special Protected Areas (SPAs), related to the Birds Directive, and Special Areas of Conservation (SACs), related to the Habitats Directive. Assessment under the habitats regulations is also required for Ramsar Sites (wetlands of international importance), which were protected under a separate international agreement in 1971.
29. A competent authority (a local planning or minerals authority for normal planning applications and the relevant Secretary of State for Nationally Significant Infrastructure Projects) must determine whether any plan or project will have a “likely significant effect” on a protected species or habitat by undertaking an Appraisal of Sustainability for a plan or a Habitats Regulation Assessment for a project. This test also applies to Sites of Special Scientific Interest, which are protected under the Wildlife and Countryside Act 1981.
30. If a proposal will have a ‘likely significant effect’, a competent authority cannot approve it unless appropriate mitigation is in place or there are imperative reasons of overriding public interest that the development should go ahead.

Advice from statutory consultees

31. Witnesses emphasised the importance of advice notes from statutory consultees, such as Natural England, regarding the conditions and impact of certain activity on protected areas in guiding decisions under the habitats regulations. As statutory consultees for planning, advice from Natural

39 [Q 56](#) and [Q 52](#) (Simon Blanchflower)

40 [Q 56](#) (Simon Blanchflower)

41 European Commission, Environment, ‘The Birds Directive’: https://environment.ec.europa.eu/topics/nature-and-biodiversity/birds-directive_en and European Commission, Environment, ‘The Habitats Directive’: https://environment.ec.europa.eu/topics/nature-and-biodiversity/habitats-directive_en [accessed 30 August 2023]

England must be taken into consideration. Three prominent examples cited throughout this report are water neutrality, nutrient neutrality, and recreational impact zones.

- Water neutrality⁴²

Natural England has issued advice to five local planning authorities in the Crawley and Horsham areas of West Sussex that water abstraction is having a negative effect on the integrity of protected wet land sites in the Sussex North West Water Resource Zone. It is advised that new development is not approved unless mitigation is in place such that the development can prove to be water neutral.

It is necessary to draw a distinction between the water neutrality advice issued in West Sussex, and the emerging water availability issue in South Cambridgeshire. Following evidence that water bodies across the Greater Cambridgeshire area are being negatively affected by groundwater abstraction, the Environment Agency made sustainability reductions to abstraction licences to prevent deterioration of water bodies. This has resulted in less water being available than anticipated in the 2018 Local Plan.⁴³ Subsequently, the Environment Agency is issuing advice against all developments requiring an Environmental Impact Assessment in the area owing to concerns about a lack of available sustainable water supply.⁴⁴ The outcome of this advice remains the same for impacted developments: they must demonstrate water neutrality to receive planning permission.

- Recreational impact zones

Natural England may issue advice creating a ‘zone of influence’ around a protected site if it is identified that recreational activity is harming the site. Standing advice would be issued for development within the identified buffer zone regarding potential impacts.

- Nutrient neutrality⁴⁵

This advice, from Natural England, relates to phosphate and nitrate run-off into water courses in, or connected to, protected sites. Twenty-seven river catchments, spanning 74 local planning authorities have received advice that all new overnight accommodation developments (including housing, hotels and student accommodation) should be required to mitigate their nutrient pollution.⁴⁶ This is to ensure no additional harm is caused to the relevant protected sites. This guidance has only been issued for catchments where the relevant SPAs are in an unfavourable condition.

42 West Sussex County Council, *Natural England’s Advice Note regarding Water Neutrality within the Sussex North Water Supply Zone: February 2022 V2*: https://www.westsussex.gov.uk/media/17127/ne_advicenote_waterneutrality.pdf [accessed 30 August 2023]

43 South Cambridgeshire District Council, *Greater Cambridge external guidance note for planning applications - Drafted by Environment Agency*, (March 2023) : <https://www.scambs.gov.uk/media/23730/cd1303-ea-appendix-2-gcp-draft-briefing-note.pdf> [accessed 30 August 2023]

44 *Ibid.*

45 Natural England, ‘Natural England Water Quality and Nutrient Neutrality Advice, 16 March 2022’, (NE785) (7 December 2022): <https://publications.naturalengland.org.uk/publication/4792131352002560> [accessed 30 August 2023]

46 Local Government Association, ‘Nutrient Neutrality FAQs’: <https://www.local.gov.uk/pas/topics/environment/nutrient-neutrality-and-planning-system/faqs> [accessed 6 September 2023]

Box 2: Dutch ‘N’ Case

Nutrient neutrality advice was first issued in England in 2019 following the 2018 European Court of Justice ruling, known as the Dutch ‘N’ case.⁴⁷

This case dealt with the grazing of cattle and the application of fertiliser, which were judged to have a damaging effect on EU protected habitats in the Netherlands. The case determined that while projects can be authorised following an ‘appropriate assessment,’ that assessment must be sufficiently robust to provide evidence to allow a competent authority to ascertain whether there is reasonable scientific doubt as to the absence of adverse effects on the site concerned.

Natural England described the situation as a “convergence” of both a new legal understanding and evidence of the poor condition of several protected sites.⁴⁸ Following legal advice they concluded that decision makers for planning applications were at risk of legal challenge because of the judgement and issued advice regarding nutrient neutrality.⁴⁹ This advice refers to both nitrate and phosphate pollution.

Species Licensing

32. For specific species protected under the habitats regulations, developers and others must apply for an individual licence if they are doing any activity—such as a development—that affects a protected species and is not covered by a general or class licence. Protected species include badgers, bats, beavers, deer, dormice, freshwater fish, great crested newts and invasive non-native species.⁵⁰ Licences are issued by Natural England.

Biodiversity Net Gain

33. Under the Environment Act 2021 developments granted planning permission in England will be required to deliver at least 10 per cent biodiversity net gain (BNG). For most developments this will become mandatory from November 2023. A slower transition is in place for smaller sites, which must deliver BNG from April 2024, and Nationally Significant Infrastructure Projects where implementation is expected from November 2025. Local Planning Authorities can require BNG of greater than 10 per cent where this is made clear in advance of any development application through local policies.⁵¹
34. Developers will need to provide a plan to deliver BNG using a prescribed biodiversity metric. A mitigation hierarchy process requires the developer to ‘avoid’, ‘minimise’, ‘mitigate’ and then finally ‘offset’ their impact to

47 Court of Justice of the European Union, *Coöperatie Mobilisation for the Environment UA, Vereniging Leefmilieu, Stichting Werkgroep and Behoud de Peel v College van gedeputeerde staten van Limburg, College van gedeputeerde staten van Gelderland and College van gedeputeerde staten van Noord-Brabant*, [Joined Cases C-293/17 and C-294/17](#) and written evidence from Councillor John Fuller OBE, Leader of South Norfolk District Council ([IER0027](#))

48 [Q 155](#) (Alan Law)

49 *Ibid.*

50 Natural England and Department for Environment, Food and Rural Affairs, ‘Wildlife licences: when you need to apply’ (October 2022): <https://www.gov.uk/guidance/wildlife-licences> [accessed 30 August 2023]

51 Department for Environment, Food and Rural Affairs, *Government response and summary of responses* (February 2023): <https://www.gov.uk/government/consultations/consultation-on-biodiversity-net-gain-regulations-and-implementation/outcome/government-response-and-summary-of-responses> [accessed 30 August 2023]

biodiversity through the design of their development. If this process cannot take place on site, developers will need to compensate for impacts off site.

Environmental Permitting

35. Under the Environmental Permitting (England and Wales) Regulations 2016, permits are required for businesses that produce potentially harmful substances—for example, a landfill site or work on or near a main river or sea defence.⁵² Environmental permits are required for intensive poultry and pig farms and for water discharge or groundwater activities, including slurry management. The Environment Agency oversees these regulations, and the process runs parallel to regimes for deciding on planning applications.

Box 3: Infrastructure projects

Depending on their nature, infrastructure projects can seek approval through three different routes: a development consent order under the Planning Act 2008; a Transport and Works Act (1992) order; or a hybrid bill. In all instances some form of environmental assessment must be undertaken in line with the requirements for an Environmental Impact Assessment.⁵³ Habitats Regulations Assessments are also required if an infrastructure project will have an impact on a relevant protected site or species.⁵⁴

The Environment Act 2021 includes a requirement for Nationally Significant Infrastructure Projects to deliver 10 per cent biodiversity net gain. In February 2023, the Government confirmed that this will be expected from no later than November 2025 and will require a biodiversity gain plan from the applicant and gains to be delivered over a minimum of 30 years.⁵⁵

52 Further amendments to these regulations come into force on 2 October 2023: [Draft Environmental Permitting \(England and Wales\) \(Amendment\) \(England\) Regulations 2023](#)

53 [Q 52](#) (Jan Bessell)

54 National Infrastructure Commission, *Delivering net zero, climate resilience and growth*: <https://nic.org.uk/studies-reports/infrastructure-planning-system/delivering-net-zero-climate-resilience-growth/#tab-strategic> [accessed 30 August 2023]

55 Department for Environment, Food and Rural Affairs, *Government response and summary of responses*

CHAPTER 3: BALANCING COMPETING TARGETS

36. The Government’s housing and environmental targets are conflicting with each other. In this chapter we set out how these issues are managed at the local plan and planning applications stage, and we identify the impacts of the lack of Government oversight and policy direction.

Local plans

37. At the local level, the key vehicle for reconciling these policy ambitions is the local plan produced under the Planning and Compulsory Purchase Act 2004⁵⁶. The 2021 National Planning Policy Framework (NPPF) requires that local planning authorities (LPAs) should keep their local plans up-to-date and review them no later than every five years. Local plans set the framework for decisions on specific planning applications.
38. The NPPF emphasises the need for compromise, stating:
- “all [development] plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects.”⁵⁷
39. In 2022, only 15 LPAs adopted a new or revised local plan, and, according to Savills, one fifth of authorities still lack an NPPF-compliant local plan.⁵⁸ The launch of a consultation into amending the NPPF in December 2022 exacerbated this issue, with at least 44 LPAs having subsequently paused work on reviewing their Local Plan.⁵⁹ In July 2023, the Government announced the creation the Office for Place which will be “supporting councils to deliver high quality up to date local plans” and a consultation was launched on how to simplify the process for developing a new plan.⁶⁰ In the meantime they called for LPAs to continue to agree local plans. A similar exhortation was given in January 2021, and in March 2020 the Government had set a deadline of December 2023 for all councils to have up-to-date local plans in place.⁶¹ It is unclear if this deadline remains or what the impact will be if it is not met.
40. In developing these plans, LPAs are faced with a plethora of parallel and often competing national strategies and policies. Local plans are, or should be, at the heart of local policy on development and the environment; however, we heard from Richard Blyth of the Royal Town Planning Institute that: “at least a dozen environmental plans have to be taken into account by LPAs writing their own local plans.”⁶² These include such plans as Air Quality Management Plans (required to be prepared by local authorities for

56 Planning and Compulsory Purchase Act 2004, [section 38](#)

57 Department for Levelling Up, Housing and Communities, *National Planning Policy Framework*, para 11

58 Savills, ‘Planning Data Update 2023’ (11 January 2023): <https://www.savills.co.uk/research/articles/229130/338073-0> [accessed 6 September 2023]

59 Lichfields, ‘Planning matters: Failing to plan or planning to fail? The State of Local Plan-Making’ (20 April 2023) <https://lichfields.uk/blog/2023/april/20/failing-to-plan-or-planning-to-fail-the-state-of-local-plan-making/> [accessed 6 September 2023]

60 Department for Levelling Up, Housing and Communities, *News story: Long-term plan for housing*

61 Ministry of Housing, Communities and Local Government, ‘Councils urged to ensure Local Plans are up to date’ (19 January 2021): <https://www.gov.uk/government/news/councils-urged-to-ensure-local-plans-are-up-to-date> [accessed 6 September 2023]

62 [Q 31](#) (Richard Blyth)

areas unlikely to meet air quality targets⁶³), Shoreline Management Plans (developed by Coastal Groups with members mainly from local councils and the Environment Agency) and Water Resources Management Plans (required to be prepared by water companies in England and Wales every 5 years).

41. Carolyn Mackenzie, Chair of the Environment Board at the Association of Directors of Environment, Economy, Planning and Transport, said that there are a lot of plans that are topic based or single issue and “there is no link across all those plans”.⁶⁴ The Environment Agency suggested these “are important evidence bases, but can result in siloed approaches to local plan making”.⁶⁵
42. The 2021 Environment Act introduced local nature recovery strategies which are intended to provide opportunities for a stronger link between planning and environmental plans.⁶⁶ The Royal Town Planning Institute suggested these new strategies may simply add further to the “piecemeal landscape of environmental plans.”⁶⁷ The Wildlife and Countryside Link argued the strategies should be given more weight in the planning system to require local plans to be aligned with local nature recovery strategies to ensure better outcomes are delivered.⁶⁸ The House of Lords’ Land Use in England and Environment and Climate Change Committees agreed.⁶⁹
43. There is a good case for decisions about planning in a local area being delegated to local communities; LPAs are familiar with the social and economic needs of an area.⁷⁰ However, when made at scale, local decisions can have a dramatic impact on the nature of the country because of the demand for land they generate. Professor Emma Lees, Professor of Transnational Law at European University Institute and Professor of Environmental and Property Law at University of Cambridge, told us that biodiversity is important to the enjoyment of a local community but also has a fundamental role to play in delivering food security for the country.⁷¹ She emphasised:

“Other areas of national security like fuel security or weapons/munitions security are not questions that are left to individual local authorities ... If you think of it in terms of food security or water security, you would ... deal with those very strategically because of the strategic importance to the security of the state.”⁷²
44. The Government is developing a land use framework “that will reflect all our objectives for English agriculture, the environment and net zero in

63 Department for Environment, Food and Rural Affairs, ‘Air Quality Management Areas (AQMA)s’: <https://uk-air.defra.gov.uk/aqma/> [accessed 30 August 2023]

64 [Q 31](#) (Carolyn Mackenzie)

65 Written evidence from the Environment Agency ([IER0013](#))

66 *Ibid.*

67 Royal Town Planning Institute, ‘Planning for a better future: RTPI Proposals for Planning Reform in England’ (March 2023): <https://www.rtpi.org.uk/policy-and-research/planning-for-a-better-future/> [accessed 23 August 2023]

68 Written evidence from the Wildlife and Countryside Link ([IER0023](#))

69 Select Committee on Land Use in England, *Making the most out of England’s land* (Report of Session 2022–23, HL Paper 105) and Environment and Climate Change Committee, *An extraordinary challenge: Restoring 30 per cent of our land and sea by 2030* (2nd Report, Session 2022–23, HL Paper 234)

70 [Q 119](#) (Professor Emma Lees)

71 [Q 130](#) (Professor Emma Lees)

72 *Ibid.*

2023”.⁷³ This framework will set out land-use change principles to balance these three outcomes.⁷⁴ There is currently little information as to the form that this framework will take.

45. Witnesses suggested that a truly cross-governmental land use framework could provide a top-level strategy for the country which filters down into the local plan and helps with strategic planning between authority boundaries.⁷⁵ It presents an opportunity to address the “dearth of data at the strategic level”.⁷⁶
46. The proposed framework was considered by the House of Lords Land Use in England Committee, which made it “very clear that the framework needs to encompass a wide range of land use priorities under the preserve of Defra, DLUHC, BEIS, DCMS and DfT.”⁷⁷ Dr Richard Benwell, Chief Executive Officer at Wildlife and Countryside Link, told us: “to do it properly, it needs to be cross-departmental”.⁷⁸
47. **It does not help the Government achieve its policy commitments if local planning authorities operate without clear, consistent, achievable, and co-ordinated national policies. National political leadership needs to be shown in setting out which priorities should prevail when individually important policies conflict with each other.**
48. *Too many local planning authorities do not have an up-to-date local plan. Given the importance of local plans in balancing ambitions for development and the need to protect the environment, the Government should ensure that all local planning authorities have the necessary resources and information to produce a plan. It should explore legislative or legal routes to enforce the requirement for a local plan.*
49. *If the Government produces a land use framework it must ensure and demonstrate that all relevant government departments, including the Department for Environment, Food and Rural Affairs and the Department for Levelling Up, Housing and Communities are effectively involved in its production.*

Planning applications

50. Below the local plan, competent authorities are also afforded discretion in approving individual applications for development, within the parameters of relevant plans unless material considerations indicate otherwise.⁷⁹ The balance of economic, environmental and social priorities is reconsidered several times throughout the planning process.⁸⁰

73 Department for Environment Food and Rural Affairs, *Government food strategy*

74 Written answer [HL2273](#) (20 September 2022)

75 [QQ 112-113](#) (Dr Richard Benwell), [Q 107](#) (Joseph Lewis)

76 [Q 112](#) (Dr Richard Benwell)

77 Select Committee on Land Use in England, *Making the most out of England's land* (Report of Session 2022–23, HL Paper 105)

78 [Q 112](#) (Dr Richard Benwell)

79 Department for Levelling Up, Housing and Communities, *National Planning Policy Framework*, para 33

80 Built Environment Committee, ‘The impact of environmental regulations on development: summary of SME engagement event’ (2 August 2023): <https://committees.parliament.uk/publications/41101/documents/200221/default/>

51. The planning system in England is a permissive one in that, for example, land may be allocated for a specific use in a local plan but there is the possibility that a scheme for a different use may be permitted. Equally, when permission is received for a development, there is no penalty for not building it. National planning policy is a material consideration, but decisions may go against it if justified. Environmental policy, expressed through the designation of protected sites or through regulations, is not discretionary. For example, if a likely significant effect will be caused to a site, then the scheme must be refused unless other statutory circumstances exist.
52. The specific difficulties with implementing these project level decisions are discussed in Chapter 5, here we focus on the limitations within the decision-making process.

Habitats regulations

53. Under the habitats regulations, it would be unlawful for a competent authority to consent to a development which cannot demonstrate that there is no reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the protected site.⁸¹ In essence, a “legal backstop” is hit.⁸²
54. If, following an assessment or because of standing advice for a geographic area, a proposal may have a ‘likely significant impact’ it will usually be expected to provide mitigation. Prevention of harm to habitats must be ruled out at the date of decision making and cannot be based on something that may, or should, happen in the future.⁸³ This means that a broader nature recovery or pollution reduction plan cannot be considered sufficient, even where that plan has taken into account local development ambitions.
55. Statutory consultees, in particular Natural England, are viewed as the relevant experts for ecological issues under the habitats regulations.⁸⁴ They will respond to planning applications providing comment on a developer’s assessment, but they also issue standing advice in certain circumstances about how the habitats regulations should be considered. This can be the outcome of a protected site being found in an ‘unfavourable condition’ or updated ecological assessments identifying a generalised risk from specific human activity.⁸⁵ As a result, an LPA could have allocated several sites for housing in a sound local plan and then must reject planning applications that were in line with the plan.⁸⁶

81 [Q 113](#) (Dr Richard Benwell) and Local Government Association, *Habitats Regulations advice for LPAs* (15 November 2022): <https://www.local.gov.uk/pas/topics/environment/nutrient-neutrality-and-planning-system/habitats-regulations-advice-lpas> [accessed 23 August 2023]

82 [Q 113](#) (Dr Richard Benwell)

83 Local Government Association, *Habitats Regulations advice for LPAs*

84 [Q 45](#) (Hamish Walke)

85 Nutrient neutrality advice, for example, only applies in those catchments where connected protected sites are in an unfavourable condition.

86 For example, in south Cambridgeshire where the Environment Agency has reduced water abstraction licences owing to the impacts on protected habitats and is subsequently issuing advice against all EIA developments owing to insufficient water supply. The LPA has raised concerns that this undermines allocations within its current local plan. South Cambridgeshire District Council, Letter to Alison Dyson, The Planning Inspectorate, from the Environment Agency, (23 May 2023), page 8: <https://www.scambs.gov.uk/media/23727/cd1300-environment-agency-final-statement-23-may-2023.pdf> [accessed 23 August 2023]

56. LPAs are usually the competent authority for these planning decisions and could choose to take decisions against the advice of statutory consultees. We heard that academically there is “no strict hierarchy”⁸⁷ in taking planning decisions between the various priorities for development—ecological assessments must feed into a decision maker’s process but do not dictate an outcome. However, as discussed in Chapter 2, there is no statutory requirement to deliver new homes but there are to protect habitats and species. Those, statutory requirements can only be overruled if there are no alternatives and there are ‘imperative reasons of overriding public interest’. Otherwise, a decision can be challenged at judicial review and be found unsound.
57. We heard that it is unlikely that an LPA would take this action owing to the expertise within statutory bodies and a fear of judicial review by a regulatory body, environmental campaign body or the public.⁸⁸ As a result, LPAs are cautious in their decision making.⁸⁹ This strict adherence to advice from statutory bodies can result in moratoriums on development in certain areas. If mitigations are not readily available and LPAs do not feel able to make a case of imperative reasons of overriding public interest, development cannot proceed.
58. **As a result of the requirement to mitigate harm at a project level, local planning authorities are attempting to balance decisions between unequally weighted principles. To overcome the statutory weight of environmental protection requires significant expertise and places great additional onus on local planning authorities.**
59. *If the Government thinks it is appropriate for competent authorities to be responsible for balancing economic, social and environmental priorities at permission stage, it must ensure that the necessary expertise is available within local authorities. Detailed guidance on the process for declaring imperative reasons of overriding public interest must be provided to support legally sound decision making.*
60. *The Government should place the need to deliver housing on a statutory footing equal to that of environmental protection. This will help to ensure balanced decisions can be taken.*
61. *The Government should review the requirement for mitigation to be available at the time of, and directly linked to, a planning application. It should explore legislating to allow development to proceed where a deliverable plan is in place to address pollutants or the condition of a protected site, which has taken into consideration development ambitions set out in the local plan.*
62. *Following the passage of the Levelling-up and Regeneration Bill, the Government should provide clear advice as to what assumptions local planning authorities and developers can make regarding requirements for nutrient neutrality in light of the 2030 deadline for upgrading wastewater treatment works.*

87 [Q 7](#) (Professor Liz Fisher)

88 [Q 29](#) (James Stevens), [Q 45](#) (David Lowe)

89 [Q 29](#) (James Stevens)

Unaddressed policy conflicts

63. It is not the responsibility of the local planning authority (LPA) to assess if the developers' proposed mitigations are in line with broader government policy. It only needs to be confident that the proposal will necessarily protect the environment.
64. We have heard that this can lead to consequences for other areas of government policy. For example, where nutrient neutrality is required for housing development, one approach is for a developer (or nutrient credit scheme) to buy a local farm and close it down to offset the pollution from new homes.⁹⁰ One developer told us that they were required to fallow one hectare of productive agricultural land in order to unlock six homes.⁹¹ Despite this conflict with the 2022 Food Strategy objective of maintaining the current level of domestically produced food, there is no authority determining if this decision is appropriate.⁹²
65. The introduction of biodiversity net gain provides an example of the Government, and Parliament balancing competing objectives and setting out a priority within the planning system. Despite difficulties with the implementation and structure of the policy (discussed further in Chapters 5 and 6), we have heard from developers that the approach to consultation and clear requirement has allowed them to prepare for the statutory deadline.⁹³ One developer advised that they had achieved the 10 per cent requirement for all their developments in January, 11 months ahead of the deadline.⁹⁴
66. **The Government and Parliament have vital roles to play in taking decisions balancing environmental priorities with key issues such as the viability of ongoing housing development or the UK's food security.**
67. *The Government should confirm if it was aware of the likelihood that productive farmland would be taken out of use because of the nutrient neutrality advice and if it adapted its food strategy in response.*
68. *The Department for Levelling Up, Housing and Communities and the Department for Environment, Food and Rural Affairs should issue joint advice on where and when, if at all, the practice of discontinuing farming owing to any impact mitigation requirements for housebuilding is applicable and acceptable.*

The balance of responsibility

69. The January 2023 *Environmental principles policy statement*⁹⁵ states that the Government must (proportionally) have due regard to this policy statement

90 Built Environment Committee, 'The impact of environmental regulations on development: private roundtable with volume housebuilders' (10 July 2023): <https://committees.parliament.uk/publications/40809/documents/198879/default>

91 *Ibid.*

92 Department for Environment Food and Rural Affairs, *Government food strategy*

93 Built Environment Committee, *The impact of environmental regulations on development: private roundtable with volume housebuilders*

94 *Ibid.*

95 Department for Environment Food and Rural Affairs, *Policy paper: Environmental principles policy statement* (updated 31 January 2023): <https://www.gov.uk/government/publications/environmental-principles-policy-statement/environmental-principles-policy-statement#environmental-principles-an-overview> [accessed 23 August 2023]

when making new policy. This includes the rectification at source and polluter pays principles:

- Rectification at source is that “environmental damage should, as a priority, be addressed at its origin to avoid the need to remedy its effects later”.⁹⁶
- “The polluter pays principle means that, where possible, the costs of pollution should be borne by those causing it, rather than the person who suffers ... or the wider community.”⁹⁷ This does not oblige a tax to be created but can allow the costs to be passed on to relevant consumers.

70. We have heard evidence that the current application of environmental regulations, especially the focus on restricting new housing development, is not in line with these principles.

Balancing responsibility between sectors

71. The starkest example we heard of an imbalance in responsibility between polluters and those facing the impact of regulation was the approach to addressing nutrient pollution. We heard that, although the build-up in nitrate and phosphate pollution in our water courses has taken place over many years, current efforts to correct it are placing an unfair and disproportionate burden on housebuilding compared with other polluting sectors.⁹⁸ Sewage works are the largest overall source of phosphorus pollution and contribute 25–30 per cent of nitrogen pollution.⁹⁹ Agriculture is the biggest cause of specific river quality failures.¹⁰⁰

72. Whilst overnight accommodation (including new homes, hotels and student accommodation) has not been able to receive planning permission without mitigating its nutrient impact, agricultural sites benefit from an “advice-led regulatory approach.”¹⁰¹ Last year the Environment Agency undertook over 4,000 farming inspections, and 5,500 instances of non-compliance were found.¹⁰² In such instances, farms can be allowed to continue operating while receiving support from the Environment Agency to address the non-compliance. In the last two years the Environment Agency has approved almost 500 derogations to licences for farmers in nitrate vulnerable zones.¹⁰³ These derogations may include permitting them to increase their nitrogen discharge above legal limits.

73. Nutrient neutrality is not the only example where the balance of responsibility remains unclear. Following concerns regarding recreational impact on the Chilterns Beechwoods and Ashridge Commons and Woods protected areas, Lands Improvement Holdings, a strategic land developer, told us that they

96 *Ibid.*

97 *Ibid.*

98 Written evidence from the Home Builders Federation and the Land Promoters and Developers Federation ([IER0031](#)); Gladman Developments Ltd ([IER0020](#)); Councillor John Fuller OBE, Leader of South Norfolk District Council ([IER0027](#)); and Lands Improvement Holdings Ltd ([IER0009](#))

99 Written evidence from Water UK ([IER0021](#))

100 *Ibid.*

101 ‘Loophole lets farmers pollute England’s rivers with excess manure—report’, *The Guardian* (13 July 2023): <https://www.theguardian.com/environment/2023/jul/13/loophole-lets-farmers-pollute-uk-rivers-with-excess-manure-report> [accessed 23 August 2023]

102 [Q 167](#) (John Curtin)

103 ‘Housebuilders attack double standards as farmers pollute’, *The Times* (8 August 2023): <https://www.thetimes.co.uk/article/66d58c0e-35f4-11ec-8810-d3022cd752ba> [accessed 23 August 2023]

had seen approximately 5,000 homes delayed, despite outline planning consent being in place.¹⁰⁴

74. The National Trust, which manages the site, made improvements to car parking and visitor facilities and a subsequent ecological survey identified that recreational pressure was affecting the condition of the site.¹⁰⁵ Natural England issued advice creating a 12.6km zone of influence, advising that housing development should not be approved unless the increased visitor impacts were mitigated. Despite this, the National Trust, having already sought to increase visitors through upgrading the facilities, continued to advertise to increase visitors to the site.¹⁰⁶
75. **Too often, the outcome of government policies and regulations place responsibility for preventing and addressing historic pollution onto those with limited, if any, power to effect change. Balancing the social, environmental and economic benefits and costs of development is a difficult task requiring expertise, evidence, ability and genuine willingness to effect change: it is a matter for the Government and Parliament.**
76. *The full suite of environmental regulations delivered through the planning system should be reviewed and, if necessary, considered for amendment to ensure that they are in line with the Government's environmental principles policy statement.*

Addressing nutrient pollution

77. The Government has acknowledged this imbalance in addressing nutrient pollution. Trudy Harrison MP, Minister for Natural Environment and Land Use told us “I absolutely sympathise and agree that it feels incredibly unfair to housebuilders.”¹⁰⁷

104 Written evidence from Land Improvement Holdings Ltd ([IER0009](#))

105 *Ibid.*

106 *Ibid.*

107 [Q 199](#) (Trudy Harrison MP)

Box 4: The Netherlands's nitrogen strategy

The Netherlands has 160 Natura 2000 sites and, like all member states, is required by EU law to maintain and restore these areas and avoid activities that could result in their deterioration. The Netherlands has the second highest nitrogen balance (surplus) in Europe and has the highest density of livestock in Europe.¹⁰⁸

In 2019, the Council of State (the highest administrative court) ruled that a nitrogen permitting approach in the Netherlands was contrary to environmental law.¹⁰⁹ This made it difficult for new nitrogen-emitting projects, including housing development, to get permits to build and caused delays to thousands of projects.

The 2021 coalition Government set out a nitrogen strategy which includes measures for industry, agriculture, transport and the construction sector to reduce nitrogen deposition and improve the quality of nature areas.¹¹⁰ The intention is to reduce nitrogen emissions by 50 per cent by 2030 and the plan has an associated budget of €24.3 billion.

A key part of this is a planned government buy out of some 3,000 highly polluting farms located close to Natura 2000 areas that could be shut down. The government plans to pay them 120 per cent of the value of their businesses to stop producing.¹¹¹

Farmers across the Netherlands have been protesting over concerns that the plan may require a one-third reduction in the country's livestock herd and may result in the forced purchase of farms to close them down.¹¹² This issue led to the Farmer-citizen movement (BBB) being set up which, in the March 2023 provincial elections, became the largest party in the Dutch Senate.

78. In the Netherlands, the courts required the Government to develop a coherent plan taking difficult decisions at a national level about the desired balance between housing, farming and other sectors to address nutrient pollution.
79. The UK Government's proposed solution to this issue is the Integrated Plan for Water, which aims to "transform management of the whole water system, deliver a clean water environment for nature and people, and secure a plentiful supply of water".¹¹³ It seeks to take a system wide approach including aiming to reduce pollution from wastewater (legislated through the Levelling-Up and Regeneration Bill), urban areas, transport, farms and metal mines.¹¹⁴

108 Eurostat Statistics 'Explained, Agri-environmental indicator - livestock patterns' (January 2023): https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Agri-environmental_indicator_-_livestock_patterns [accessed 23 August 2023]

109 'Setback for government as Council of State throws out new nitrogen rules', *Dutch News* (2 November 2022): <https://www.dutchnews.nl/2022/11/setback-for-government-as-council-of-state-throws-out-new-nitrogen-rules/> [accessed 23 August 2023]

110 Government of the Netherlands, 'The nitrogen strategy and the transformation of the rural areas': <https://www.government.nl/topics/nature-and-biodiversity/the-nitrogen-strategy-and-the-transformation-of-the-rural-areas> [accessed 23 August 2023]

111 'Brussels gives green light to Dutch farm buyout plan', *Dutch News* (2 May 2023): <https://www.dutchnews.nl/2023/05/brussels-gives-green-light-to-dutch-farm-buyout-plan/>. [accessed 23 August 2023]

112 'The easy guide to the Dutch nitrogen crisis, farmers' protests, and more', *Dutch Review* (13 October 2022): <https://dutchreview.com/culture/dutch-nitrogen-crisis-explained/> [accessed 23 August 2023]

113 Department for Environment Food and Rural Affairs, *Policy paper: Plan for Water: our integrated plan for delivering clean and plentiful water*

114 *Ibid.*

80. It is unclear how this plan will be implemented. John Curtin, interim Chief Executive of the Environment Agency, suggested that resolving the implementation approach for the IPW would require political decisions on the balance of responsibility between sectors for addressing nutrient pollution:

“How bold will you be? Do you want to buy X or Y farms to really reduce the nutrient effect there so that you can unlock development? Do you want a glide path that is more equitable across all sectors?”¹¹⁵

81. Local housebuilding remains stalled in many areas owing to the condition of protected sites; therefore, answering these questions to ensure the Integrated Plan for Water can be properly implemented is vital for local economies, to address the housing crisis and for the environment.
82. **We were concerned to hear that the Government’s Integrated Plan for Water, proposed as the solution to nutrient pollution, is not yet able to deliver genuine change. The Government has shied away from taking the necessary decisions and risks failing to improve the situation in line with international commitments.**
83. *The Government must prioritise implementing the Integrated Plan for Water and publish the information sought by its arm’s-length bodies, including setting out the balance of priorities between farming and other sectors in addressing nutrient pollution. In doing this it should be cognisant of the experience in the Netherlands (see Box 4).*
84. *The Government should develop integrated plans for addressing all areas of conflict between development and environmental policies before legal backstops are reached and development is halted. These must include implementation plans and be in line with the environmental principles policy statement.*
85. *We welcome proposals in the Levelling-up and Regeneration Bill for the Environment Agency to review the environmental permits of plants which discharge treated effluent into catchments impacted by nutrient pollution. This should be expanded to agricultural activity. The Environment Agency should inspect all farms within the 27 catchment areas subject to nutrient neutrality advice by the end of 2024 to ensure they are operating within their permitted pollution levels and enforce standards on those that are not.*

Focus on new development

86. All the environmental regulations on which we received evidence have applied to the development of new homes, infrastructure or other amenities. This is because regulations and guidance generally cannot be applied retrospectively: once a house is constructed and sold, upgrading its energy or water efficiency becomes the responsibility of the individual homeowner.¹¹⁶
87. This focus on new development means that an opportunity to reduce pollution or improve efficiency within existing developments may not be utilised. In

115 [Q 169](#) (John Curtin)

116 [Q 155](#) (Alan Law)

2021 there were 24.9 million dwellings in England.¹¹⁷ In 2021/22, there were 232,820 net additional dwellings completed, a gain of 0.9 per cent. New homes are at the “forefront of energy efficiency”;¹¹⁸ and can deliver water efficiency well above standards.¹¹⁹ New development (certainly new housing development) is a small part of overall pollution and the current emphasis on their contribution is unbalanced.¹²⁰

Box 5: Crawley Borough Council water mitigation

In September 2021, Natural England issued a Position Statement advising water neutrality should be required for planning permissions in the Sussex North Water Resource Zone.

Several commercial developments in the area demonstrated they would be less water consumptive than the existing use on a site. Mitigating the increase water use of new homes has been more challenging.

Crawley Borough Council is retrofitting its own housing stock with water efficiency appliances to reduce water consumption. This creates water neutrality credits which can be used for new housing development. By improving the water efficiency in 5,500 homes, the council has offset the water consumption of 206 new houses and flats, a ratio of 27:1.

This approach should be cost neutral for the local planning authority. It has required upfront spending of £1 million which will be recovered from developers as they bring sites through the planning process.¹²¹

Source: Written evidence from Crawley Borough Council (*IER0025*)

88. Schemes to improve the condition of existing stock can be centrally managed and delivered for council owned properties but can only be incentive based for privately owned stock. Private sector companies have been seeking to encourage people to upgrade their septic tanks in order to create phosphate credits with the promise of a cash incentive and servicing.¹²²
89. **New development can contribute to environmental damage; however, it is important that the ongoing and long-term impact of historic housing stock and agricultural practices are addressed.**
90. *The Government should explore how mitigation schemes could finance improving existing housing stock, building on the model in Crawley. It is unlikely that this approach will provide sufficient offsetting to meet housing demand, but it should be considered a key part of the solution and a suitable route to contribute to the Government’s levelling-up mission to improve housing quality.*¹²³

117 Office for National Statistics, ‘Housing in England and Wales: 2021 compared with 2011’ (30 March 2023): <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/articles/housinginenglandandwales/2021comparedwith2011> [accessed 23 August 2023]

118 Written evidence from Land Improvement Holdings Ltd (*IER0009*)

119 Letter to Alison Dyson, The Planning Inspectorate, from the Environment Agency

120 Written evidence from Crawley Borough Council (*IER0025*)

121 *Ibid.*

122 WCI, ‘A septic tank upgrade shouldn’t cost the earth’: <https://www.wci.co.uk/nutrient-neutrality/phosphate-scheme-for-home-owners/>. [accessed 6 September 2023]

123 HM Government, *Levelling Up the United Kingdom*, CP 604 (2 February 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052708/Levelling_up_the_UK_white_paper.pdf [accessed 6 September 2023]

Protected sites

91. There is a target to restore 75 per cent of protected sites to a favourable condition by 2042.¹²⁴ Natural England holds an objective to achieve ‘favourable condition’ status for all Sites of Scientific Interest (SSIs), meaning that the habitats and features are in a healthy state and are being conserved by appropriate management.¹²⁵ In June 2023, 39 per cent of SSSIs were in a favourable condition; in 2003, 44 per cent were in a favourable condition.¹²⁶ Richard Benwell, CEO of the Wildlife Countryside Link, told us “68 per cent of Sites of Special Scientific Interest have not been visited or monitored in the last six years”.¹²⁷ Natural England has tools to secure the good management of SSSIs but has used them only nine times in the previous 20 years.¹²⁸
92. We heard that the Government “has taken inadequate proactive action”¹²⁹ to ensure the condition of all protected sites. The resultant poor condition of sites has led Natural England to issue standing advice for certain geographic areas, forcing local planning authorities to require mitigation or refuse planning applications.¹³⁰
93. Regulatory enforcement is necessarily reactive, but this lack of monitoring forces policy making and problem solving also to be reactive. A lack of forward planning and programmes means issues cannot be addressed before they reach this legal backstop. Crawley Borough Council told us:
- “If early warning signs related to the impact of abstraction by Southern Water on the protected habitats had been picked up earlier through Natural England being fully resourced to undertake monitoring, the water industry regulators (Environment Agency and OFWAT) could have required Southern Water to bring in alternative water supply solutions sooner as part of their Water Resources Management Plan.”¹³¹
94. In their recent report, *Protected areas*, the House of Lords Environment and Climate Change Committee raised concerns about the degradation of protected sites across the country.¹³² This contributes to the Government not being on course to meet the ‘30 by 30’ target agreed under the Kunming-Montreal Global Biodiversity Framework.¹³³
95. In August 2023, the Government announced it would undertake “further work on developing Protected Sites Strategies” for those sites impacted by

124 Department for Environment, Food and Rural Affairs, *Environmental Improvement Plan 2023*

125 Natural England, *Guidance: Sites of special scientific interest: managing your land* (updated 18 May 2023): <https://www.gov.uk/guidance/protected-areas-sites-of-special-scientific-interest#achieving-favourable-condition> [accessed 23 August 2023]

126 Natural England, ‘Designated Sites View: SSSI Feature Condition Summary’: <https://designatedsites.naturalengland.org.uk/ReportFeatureConditionSummary.aspx?SiteType=ALL> [accessed 23 August 2023]

127 [Q 112](#) (Dr Richard Benwell)

128 Written evidence from the Wildlife Countryside Link ([IER0023](#))

129 [Q 97](#) (Ben Kite)

130 [Q 113](#) (Dr Richard Benwell)

131 Written evidence from Crawley Borough Council ([IER0025](#))

132 Environment and Climate Change Committee, *An extraordinary challenge: Restoring 30 per cent of our land and sea by 2030* (2nd Report, Session 2022–23, HL Paper 234)

133 *Ibid.*

nutrient neutrality.¹³⁴ The intention is for these to agree actions to reduce nutrient pollution at its source.¹³⁵

96. **The condition of protected areas in the UK has a direct impact on development. When not maintained, their poor condition can cause an immediate halt in housebuilding. Statutory bodies and others have known about the poor state of some protected areas for several years but there has been no overall improvement.**
97. *Given the importance of site condition and classification to the planning process and decision making there should be greater transparency over the assessment process. Natural England should publish its detailed scientific justification for any site assessment in an easily accessible and understandable format.*
98. *Natural England's new Protected Sites Strategy approach should be extended to all protected sites in an 'unfavourable' condition. These strategies should include a time-bound action plan for restoring its condition in line with the environmental principles policy statement.*

134 Department for Levelling Up, Housing and Communities, 'News story: 100,000 more homes to be built via reform of defective EU laws' (29 August 2023): <https://www.gov.uk/government/news/100000-more-homes-to-be-built-via-reform-of-defective-eu-laws> [accessed 30 August 2023]

135 *Ibid.*

CHAPTER 4: PUBLIC SECTOR STRUCTURES AND RESOURCING

Structures and resourcing

99. Throughout this inquiry we have identified a wide range of public sector organisations involved in the creation and implementation of environmental regulations relating to development. These span two government departments; arm’s-length bodies such as Natural England, the Environment Agency and Homes England; and multiple tiers of local government.

Central government and statutory bodies

100. The Association for Consultancy and Engineering and Environmental Industries Commission identified a lack of coherence, with “different environmental regulations ... administered by different government agencies or departments, each with their own priorities and approaches. For example, regulations related to air quality may be administered by the Department for Environment, Food and Rural Affairs, while regulations related to water quality may be administered by the Environment Agency.”¹³⁶
101. By way of example, the Minister for Housing and Planning, Rachel Maclean MP, sits in DLUHC which is also responsible for local government finance and policy.¹³⁷ However, the introduction of biodiversity net gain and local nature recovery strategies has given Defra an active stake in the planning process. It is responsible for providing funding to support local planning authorities and upper-tier authorities to deliver these policies and leads on the relevant primary and secondary legislation.
102. In March 2022, Defra published a *Nature Recovery Green Paper*, which consulted on which “institutional and delivery arrangements would best support our nature recovery objectives.”¹³⁸ This presented an opportunity to consider the structural arrangement of the relevant arm’s-length bodies and address the “massive overlap” Tony Juniper, Chair of Natural England, described between the Environment Agency, Natural England and the Forestry Commission.¹³⁹ He acknowledged that that there were many ways government agencies could be configured.¹⁴⁰ This green paper also features as a key part of the Government’s ‘action plan’ for reforming the planning process for Nationally Significant Infrastructure Projects.¹⁴¹
103. The Government has not published a response to this consultation. Dame Glenys Stacey, Chair of the Office for Environmental Protection, suggested

136 Written evidence from the Association for Consultancy and Engineering and Environmental Industries Commission ([IER0026](#))

137 Department for Levelling Up, Housing and Communities, ‘Ministerial role: Parliamentary Under Secretary of State (Local Government and Building Safety)’: <https://www.gov.uk/government/ministers/parliamentary-under-secretary-of-state--172> [accessed 23 August 2023]

138 Department for Environment Food and Rural Affairs, ‘Nature Recovery Green Paper: Protected Sites and Species’ (March 2022): <https://consult.defra.gov.uk/nature-recovery-green-paper/nature-recovery-green-paper/> [accessed 23 August 2023]

139 [Q 156](#) (Tony Juniper)

140 *Ibid.*

141 Department for Levelling Up, Housing and Communities, *Nationally Significant Infrastructure: action plan for reforms to the planning process* (February 2023): <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-nsip-reforms-action-plan/nationally-significant-infrastructure-action-plan-for-reforms-to-the-planning-process#annex-a-nsip-reform-actions> [accessed 30 August 2023]

that the optimum time for undertaking such change has now passed given a need to focus on the Government's ambitious 2030 environment targets.¹⁴²

104. **Restructuring Defra's arm's-length bodies could distract from the Government's targets for 2030. Nonetheless overlap between the agencies must be reduced to deliver the best value for money and reduce delays and confusion for developers.**
105. *The Government should publish its response to the Nature Recovery Green Paper by the end of 2023. If structural changes are not made, a clear plan for eradicating unnecessary overlap and improving cross-organisational work should be published. This must focus on improving engagement at a project level.*

Improving collaboration

106. Regardless of the structure of the Government, there will be delineations between departments which need to be overcome through collaboration. This was felt to be poor between government agencies, especially Natural England and the Environment Agency, unless a project was deemed to warrant sufficient senior intervention.¹⁴³ Arup described systems and resources within the Environment Agency and Natural England as "frequently resulting in suboptimal conditions" for infrastructure projects.¹⁴⁴
107. In some instances, the actions and advice of Natural England and the Environment Agency appear to contradict each other. The Environment Agency is responsible for granting water abstraction licences and is the competent authority for ensuring that they will not cause significant harm to protected areas.¹⁴⁵ Natural England has advised the local planning authorities in the Sussex North Water Resource Zone that new development should not be permitted unless it can be proven not to inflict harm on protected areas through increased water abstraction. Despite Natural England's assertion that additional water abstraction risks the condition of protected areas, the Environment Agency has not amended abstraction licences (as has been the case with a similar issue in Cambridgeshire).¹⁴⁶ It is unclear why Natural England and the Environment Agency take different views on the risks to these protected sites and why Natural England is advising a halt in all development while the Environment Agency continues to allow potentially harmful water abstraction.¹⁴⁷
108. The Home Builders Federation told us: "about two years ago, we wrote to Defra about [water and nutrient neutrality] and Defra said that it was a DLUHC matter; that it was nothing to do with it because it is housing. We had a similar response from DLUHC, which said that it was a Defra matter."¹⁴⁸ The Minister for Housing and Planning and Homes England told

142 Q 183 (Dame Glenys Stacey)

143 Q 52 (Simon Blanchflower); written evidence from Arup (IER0036) and Partnership for South Hampshire (IER0005)

144 Written evidence from the Home Builders Federation and the Land Promoters and Developers Federation (IER0031)

145 Environment Agency, *Managing water abstraction* (April 2021): <https://www.gov.uk/government/publications/managing-water-abstraction/managing-water-abstraction#Water> [accessed 30 August 2023]

146 Written evidence from the Home Builders Federation and the Land Promoters and Developers Federation (IER0031)

147 *Ibid.*

148 Q 29 (James Stevens)

us that there is now a ministerial level cross-government taskforce working to address nutrient pollution and resolve policy tensions.¹⁴⁹

109. Agencies and arm's-length bodies have experience delivering policy 'on the ground' and in partnership with local communities and businesses. This is invaluable to the policy development process. Delivery expertise is necessary to ensure that policy is appropriate and is vital to ensuring that innovations are made at all levels of government. Homes England and the Planning Inspectorate told us they have regular contact with policy officials in DLUHC and both interact with Defra and its arm's-length bodies at an operational and delivery level.¹⁵⁰
110. Alan Law, deputy Chief Executive Officer at Natural England, said they "engage directly with Defra and, to a lesser degree, with DLUHC and other departments, around their development of policy."¹⁵¹ Natural England is also involved in the development of implementation plans. The Environment Agency has a similar role.
111. **We were pleased to discover that there is a Ministerial Taskforce on Nutrient Neutrality. We do not know what its remit and objectives are. It is disappointing that such cross-governmental working was not in place before housebuilding was effectively halted across 14 per cent of the country's land area.**¹⁵²
112. *The Government should pave the way in innovating how organisations collaborate and drive change. It should ensure that the delivery expertise and market understanding in Homes England and the Planning Inspectorate is accessible to all departments making policy that will affect development. As far as possible, practitioners should be included in policy development. When introducing new regulations or requirements on the planning system or for development, all government departments should be mandated to consult Homes England and the Planning Inspectorate.*
113. *When developing new advice or guidance which will affect the planning system, Defra and its agencies should undertake and publish an impact assessment. This should include insights from across government.*
- Effective and efficient resourcing*
114. Effectively resolving conflicts between development and environmental priorities is reliant on the technical expert advice provided by statutory consultees.¹⁵³ Both Natural England and the Environment Agency told us that they respond to most cases within agreed deadlines.¹⁵⁴
115. Citing a lack of resources, smaller and volume developers reported having significant difficulty engaging with both bodies outside the formal planning

149 Written evidence from Homes England ([IER0037](#))

150 Written evidence from the Planning Inspectorate ([IER0035](#)) and Homes England ([IER0037](#))

151 [Q 156](#) (Alan Law)

152 [Q 22](#) (Paul Brocklehurst)

153 [Q 43](#) (Hamish Walke)

154 Natural England respond to 90 per cent of planning applications within agreed deadlines. The Environment Agency responded to 88 per cent within agreed deadlines. Written evidence from HM Government ([IER0030](#))

process, describing Natural England as a “faceless organisation”.¹⁵⁵ Some had experienced isolated instances of good practice or teams going above and beyond, including providing advice outside the statutory requirements.¹⁵⁶

116. We heard about similar experiences for Nationally Significant Infrastructure Projects, although Simon Blanchflower, former Chief Executive Officer of EastWest Rail Company, said that for major projects the access to support is better if one engages “at a sufficiently senior level”.¹⁵⁷ The Planning Inspectorate shared examples of challenges securing agency attendance at hearings or inquiries, especially where robust evidence in opposition to agency advice had been offered.¹⁵⁸
117. The Environment Agency and Natural England confirmed that they have received funding increases after a period of cuts.¹⁵⁹ We heard that the skills they have recruited are not as expert as those they had lost and it will take time for staff to “get fully up to speed.”¹⁶⁰ The Environment Agency was keen to understand more about the difficulties faced by developers; however, Alan Law, Deputy CEO of Natural England, did “not recognise the position that developers find it difficult to contact us.”¹⁶¹
118. As part of an announcement on planning fees in July 2023, the Government said that it was developing proposals for a new planning performance framework, which will include considering the use of qualitative metrics such as customer feedback. It is unclear if this framework will apply to statutory consultees as well as local planning authorities.¹⁶²
119. Liz Hart, Director of Hart Environmental Limited, told us that, for soil reuse plans, developers can fund an independent assessment by a qualified person who will confirm to the competent authority that a developer’s risk assessment is in order.¹⁶³ She suggested that similar approaches could be developed for other technical assessments. This could reduce the need for the Environment Agency and local planning authorities to undertake or contract assessment themselves. This could be particularly useful for activity undertaken by statutory body area teams outside the statutory requirements, such as reviewing land quality or groundwater issues.¹⁶⁴

155 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event* and *The impact of environmental regulations on development: private roundtable with volume housebuilders*

156 Written evidence from Hart Environmental Ltd ([IER0039](#))

157 [Q 52](#) (Simon Blanchflower) and written evidence from the National Infrastructure Planning Association ([IER0011](#))

158 Written evidence from the Planning Inspectorate ([IER0035](#))

159 “The Environment Agency has seen cuts of 60 per cent in funding from 2010 to 2019; Natural England cuts are more like 70 per cent” [Q 111](#) (Dr Richard Benwell).

160 [Q 173](#) (John Curtin)

161 [Q 153](#) (Alan Law)

162 Department for Levelling Up, Housing and Communities, *Technical consultation: Stronger performance of local planning authorities supported through an increase in planning fees: government response* (July 2023): <https://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation/outcome/technical-consultation-stronger-performance-of-local-planning-authorities-supported-through-an-increase-in-planning-fees-government-response#planning-fees> [accessed 30 August 2023]

163 [Q 137](#) (Liz Hart). A further example, provided in written evidence, is the National House Building Council’s Land Quality Scheme, a paid for service to confirm reports meet a satisfactory standard to support future build warranty. Written evidence from Hart Environmental Ltd ([IER0039](#))

164 Written evidence from Hart Environmental Ltd ([IER0039](#))

120. **Public bodies are facing challenges recruiting and retaining ecological expertise. It is necessary to bring expertise into the system through recruitment or training current staff.**
121. *Additional funding has been provided for statutory bodies. In 2024, a review should be undertaken of the availability and accessibility of expertise in Natural England and the Environment Agency to identify and address any remaining gaps in expertise.*
122. *Statutory consultees should ensure sufficient resource is available for them to work with developers to address issues raised during the statutory process in a timely manner.*
123. *The Government should introduce targets for stakeholder satisfaction for its arm's-length bodies as part of the proposed new planning performance framework. Feedback from developers and infrastructure promoters should be regularly sought and acted on.*
124. *The Environment Agency and Natural England should support the formalisation of a role for those experts who are part of the Nationally Qualified Mark Scheme. They should explore using this resource to provide independent reviews of relevant environmental assessments, funded by the developer, where the capacity is unavailable internally.*

Local planning authorities

125. The Government told us that the funding shortfall for planning application services is “estimated to be in the region of £225 million annually”.¹⁶⁵ Where funding to recruit is available it can be difficult to attract applicants: one council had to undertake three recruitment rounds before a Senior Planning Officer could be appointed.¹⁶⁶
126. This situation risks poorer outcomes for the environment owing to an inability of decision makers to apply environmental regulations and provide advice.¹⁶⁷ Natural England suggested this lack of the necessary skills had contributed to local planning authorities making increased demands of developers for information throughout the planning process.¹⁶⁸
127. In July 2023, the Government increased fees for planning applications by at least 25 per cent and announced that a further fees review will be carried out within three years.¹⁶⁹ Planning fees will be increased on 1 April each year in line with the Consumer Prices Index, capped at 10 per cent. The comprehensive resources and skills strategy promised in the 2020 White Paper *Planning for the Future* has not yet been published.¹⁷⁰
128. New regulations and burdens can be difficult for local planning authorities (LPAs) to meet without additional resources.

165 Written evidence from HM Government ([IER0030](#))

166 Written evidence from Crawley Borough Council ([IER0025](#))

167 Written evidence from the Wildlife Countryside Link ([IER0023](#))

168 Written evidence from Natural England ([IER0007](#))

169 Department for Levelling Up, Housing and Communities, *Technical consultation: Stronger performance of local planning authorities supported through an increase in planning fees: government response*

170 Ministry of Housing, Communities and Local Government, *Planning for the future: White paper* (August 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958420/MHCLG-Planning-Consultation.pdf [accessed 30 August 2023]

129. The unexpected publication of new position statements by Natural England can be much more disruptive. Hamish Walke, Water Neutrality Lead at Crawley Borough Council, told us the advice on water neutrality was “the first time that had happened in the country, so at the start we simply did not know what to do”.¹⁷¹ They sought additional, expensive, consultant expertise at short notice. Even with this (unplanned) spending they could not avoid a two-month cessation in the granting of all planning permissions.¹⁷² Similar advice relating to water usage is now in place for developments requiring an environmental impact assessment in South Cambridgeshire where the Environment Agency has issued objections to over 9,000 homes.¹⁷³
130. All LPAs affected by Natural England’s nutrient neutrality advice received additional funding from the Government, but not those impacted by water neutrality.¹⁷⁴ Water neutrality advice impacts development beyond housing—it relates to all development including the building of new schools—and the geographical limits of the advice mean there is less ability for affected LPAs to share the burden.
131. The slower pace for introducing biodiversity net gain, and the national impact, has seen the announcement of several waves of funding support for LPAs. Following an initial commitment of £4 million, a further £9 million was announced in July 2023 to help LPAs recruit additional ecologists and specialists.¹⁷⁵
132. We heard that where LPAs can share or pool resources and expertise it can result in greater efficiencies. Warwickshire County Council currently has 16 ecologists on staff.¹⁷⁶ The team operates service level agreements with the district and borough councils to review relevant planning applications and provide advice to developers for all ecological issues. This operates on a cost recovery principle. As a result, district and borough councils do not need to employ a full-time member of staff or access costly external consultant support. Whilst uncommon in England, this is like the approach to issuing environmental permits in the Netherlands. Assessment was moved from the municipality to the provinces because of the issues becoming “so complex that municipality departments do not have enough knowledge to deal with them.” This has helped developers as it ensures that appropriately qualified people are able to consider an issue.¹⁷⁷
133. **We welcome the Government taking steps to address the funding shortfall in local authority planning departments. *The Government should complete its proposed fees review within the next 12 months to provide greater long-term certainty for planning departments***

171 [Q 44](#) (Hamish Walke)

172 Written evidence from West Sussex County Council ([IER0018](#))

173 South Cambridgeshire District Council, *Appellant: Brookgate Land Ltd on behalf of the Chesterton Partnership LPA Updated Position Statement—15 June 2023*: <https://www.scambs.gov.uk/media/23730/cd1303-ea-appendix-2-gcp-draft-briefing-note.pdf> and *Appellant: Brookgate Land Ltd on behalf of the Chesterton Partnership LPA Updated Position Statement—15 June 2023*: <https://www.scambs.gov.uk/media/23852/ld104-updated-water-resources-position-statement-15-june-2023.pdf> [accessed 30 August 2023]

174 Written evidence from Horsham District Council ([IER0001](#)) and Land Promoters and Developers Federation ([IER0010](#))

175 Department for Environment, Food and Rural Affairs, ‘Biodiversity Net Gain moves a step closer with more funding’ (27 July 2023): <https://www.gov.uk/government/news/biodiversity-net-gain-moves-a-step-closer-with-more-funding> [accessed 30 August 2023]

176 [Q 43](#) (David Lowe)

177 [Q 125](#) (Professor Gert de Roo)

and applicants. The proposed skills and resources strategy should be published by the end of 2023.

134. **The disparity in providing additional support between those areas impacted by nutrient and water neutrality is both unfair and illogical. Given the proliferation of new advice, ensuring early understanding and solutions are available could have wide reaching benefits.**
135. *The Government and statutory bodies must meaningfully consult local planning authorities on new advice and policy which will have an impact on their decision making as competent authorities. This process must allow sufficient time for expertise in handling new policy issues to be developed.*
136. *Local planning authorities should work with local partners and, where relevant, upper-tier authorities to share expertise and drive economies of scale. The approach taken by Warwickshire County Council should be considered a best practice example and delivered through two-tier authorities, mayoral combined authorities and joint ecological units.*

CHAPTER 5: PROJECT-SPECIFIC CHALLENGES

137. It is clear that a coherent plan from central government, which balances the trade-offs between housing and infrastructure development, protecting and improving the environment, and ensuring food security, is a matter of urgency. Beyond this vacuum at a strategic level, we have also identified ways in which the implementation of regulations is having unintended consequences or leading to poorer outcomes for both developers and the environment. In this chapter we consider the structure of mitigation schemes in more detail, explore the information required alongside a planning application and address specific challenges for brownfield development.

The function of mitigation schemes

138. As discussed in Chapter 3, when it is identified that a development proposal will have an impact on the environment, it is usually required to mitigate the impact. This is done through:

- on-site measures to reduce harm;
- payments through the section 106 process¹⁷⁸;
- delivering an alternative habitat or reducing pollution off site through their own means; or
- buying credits from a government or private mitigation scheme to deliver a centralised off-site solution.

The approach to biodiversity net gain is similar. Developers are expected to minimise the impact as much as possible and prioritise delivering gains within a development. If that is not possible then credit purchasing schemes can be used.

Availability and costs

139. For issues such as recreational impact zones, there are several examples across England which could be adapted to a local area. When new advice is issued for a protected site the delivery of new homes or infrastructure may be delayed while a solution is developed but the impact will likely not be significant in the long term (after recreational impacts on the Chiltern Beechwoods SPA were identified in March 2022, a mitigation strategy was agreed by Central Bedfordshire in March 2023)¹⁷⁹. In contrast, when a new regulation or requirement is introduced, it can be many years until mitigation is available to the market.

178 Competent authorities can require a developer to contribute financially towards providing infrastructure or other steps to offset the impact of a development. These obligations are legally binding and often referred to as ‘section 106 agreements’ in reference to the [Town and Country Planning Act 1990](#).

179 Central Bedfordshire, ‘Important information regarding current and proposed residential proposals in Southern Central Bedfordshire’ : <https://www.centralbedfordshire.gov.uk/info/44/planning/1144/important-information-regarding-current-and-proposed-residential-proposals-in-southern-central-bedfordshire> [accessed 22 August 2023]

Box 6: Nutrient Neutrality

Natural England told us the Government decided not to launch a mitigation scheme alongside the publication of its nutrient neutrality advice as it expected private markets would deliver a mitigation scheme.¹⁸⁰ The success of this was limited by a lack of market rules for nature-based solutions and, more recently, by reports of a change in government policy on nutrient neutrality providing a disincentive to invest in schemes.¹⁸¹

In March 2023, Natural England opened a mitigation scheme in the Tees Valley and will shortly open schemes in six other catchments.¹⁸² In the Solent area the local planning authority is running a mitigation scheme and the Department for Levelling Up, Housing and Communities has launched a Local Nutrient Mitigation Fund for local planning authorities to develop their own schemes.¹⁸³ There are no active mitigation schemes for phosphate pollution.

The schemes are managed in different ways.¹⁸⁴ Some of the nutrient mitigation schemes operate on a ‘first come first served’ basis; others prioritise based on factors such as development scale or affordable housing provision.

140. The cost of providing mitigation varies significantly between individual schemes and across geographic areas. The Country Land and Business Association described nutrient mitigation costs as a “postcode lottery” even within local planning authorities (LPAs).¹⁸⁵ Examples of the charges associated with recreational impact mitigation include North Norfolk at £210.84 per net new residential and tourism accommodation dwelling and Stroud District Council charging £994 per new dwelling.¹⁸⁶ Developers argued these costs reduce the amount of other ‘public good’ provisions developers can deliver including affordable housing.¹⁸⁷
141. Developers must offset the pollution caused by their scheme in total and this can be impacted by property size and on-site management methods.¹⁸⁸ For nutrient neutrality the performance of local wastewater treatment works is a key determinant in the amount of mitigation required.¹⁸⁹ Where a local planning authority develops a scheme, such as those described for recreational impact zones, they may choose to charge a flat rate per dwelling regardless of the size of the property.
142. When new costs are introduced—most recently with the introduction of biodiversity net gain—they can present challenges for viability on sites purchased before the requirements were in place. Homes England told us

180 Q 153 (Alan Law)

181 Written evidence from the Home Builders Federation and the Land Promoters and Developers Federation (IER0031); Greenshank Environmental, ‘Response to the Government Announcement to Scrap Nutrient Neutrality’, (21 July 2023): <https://greenshank-environmental.com/nutrient-letter-to-the-pm> [accessed 22 August 2023]

182 Supplementary written evidence from Natural England (IER0040)

183 Supplementary written evidence from HM Government (IER0043)

184 Written evidence from Gladman Developments Ltd (IER0020)

185 Written evidence from the Country Land and Business Association (IER0006)

186 North Norfolk District Council, ‘Habitat Mitigation: Recreational impacts’: <https://www.north-norfolk.gov.uk/tasks/development-management/habitat-mitigation-recreational-impacts> [accessed 22 August 2023]; and Stroud District Council, ‘Other policy documents’ (6 February 2023): <https://www.stroud.gov.uk/environment/planning-and-building-control/planning-strategy/other-policy-documents> [accessed 22 August 2023]

187 Written evidence from Land Improvement Holdings Ltd (IER0009)

188 Written evidence from Partnership for South Hampshire (IER0005)

189 Written evidence from the Country Land and Business Association (IER0006)

“this is thought to be a diminishing impact as going forward biodiversity net gain will be designed into schemes from the outset.”¹⁹⁰ Warwickshire County Council experienced little challenge from developers on mandatory biodiversity off-setting because they appreciated the certainty provided by the policy: “developers knew why they were doing it and how to do it.”¹⁹¹ Successful recreational impact schemes where fixed costs per home are charged by the relevant LPA have not caused long-term reductions in housing delivery.¹⁹² Where costs remain unpredictable, or requirements change unexpectedly, this certainty cannot be achieved.

143. **It is unrealistic to expect the market to immediately provide a private sector mitigation solution for new regulatory schemes, especially where there is political uncertainty about their longevity. When new types of mitigation are required owing to advice from statutory consultees, the Government should work with Natural England to provide public sector mitigation schemes in the immediate term. These can be closed to new applicants or become a provider of last resort when a private sector market has developed.**
144. **The lack of managed credit-purchase mitigation schemes for specific pollutants or in certain areas is restricting developers’ ability to gain planning permission. Mitigation networks, organised by Natural England, should be created to share expertise and learning between affected local planning authorities. These networks should develop standard mitigation models for local planning authorities to use when a new requirement comes to their local area.**
145. **Where there is a model in place for cost recovery through the planning process, the Government should provide up front funding to local planning authorities to undertake mitigation activity. This could be repaid through the creation of a local credit scheme to ensure that mitigation schemes are available to all developers.**
146. **It is unfair that, when using schemes which charge on a per dwelling basis, smaller properties are faced with a relatively larger cost. Local planning authorities should be encouraged to ensure schemes have a charging scale based on the number of bedrooms or square meterage of homes and is thus more directly related to the potential impact of new homes.**

Effectiveness of mitigation schemes

147. Requiring project-level mitigation of pollutants and mandating on-site delivery of biodiversity net gain risks poorer results for residents and nature.¹⁹³ The Environment Bank is critical of the Government’s preference for onsite mitigation for biodiversity net gain. It considers that mitigation and compensation delivery within a development boundary is largely incapable of securing net positive outcomes for nature—placemaking and green space provision ought to be distinct focuses from biodiversity, and onsite mitigation should not be a substitute for quality placemaking.¹⁹⁴

190 Written evidence from Homes England ([IER0037](#))

191 [Q 47](#) (David Lowe)

192 Written evidence from Natural England ([IER0007](#))

193 National Infrastructure Commission, *Delivering net zero, climate resilience and growth*

194 Written evidence from the Environment Bank ([IER0008](#))

148. The National Infrastructure Commission, in its review of the planning system for infrastructure also called for a more strategic approach to environmental mitigation. There is a not always a consistent approach to mitigation, nor effective monitoring and enforcement, meaning that environmental groups identify that does not deliver the best outcomes.¹⁹⁵
149. However, on-site mitigation in sufficiently large development sites can ensure that local people remain connected to nature in their area and do not suffer only the negative impacts of development whilst benefits are felt elsewhere.¹⁹⁶
150. A multi-phase development, such as the Houlton urban extension in Rugby, can take a much wider consideration of how and where to provide habitats for species such as the great crested newt. This does not risk the creation of small pockets of green space which could lead to complaints from residents.¹⁹⁷ Where such a strategic approach is not possible owing to the size of a development, there are clear benefits to taking a strategic approach across a local area.
151. The introduction of a district level licensing scheme for great crested newts has led to a more strategic consideration of necessary habitats and unfavourable areas for development.¹⁹⁸ Mapping shows the most important areas to conserve and identifies target areas for new or restored ponds to compensate for the loss of habitats. Developers pay a fee to obtain a licence which funds the mitigation activity.¹⁹⁹ Natural England argued these deliver better outcomes for nature and reduce delays for developers.²⁰⁰ The National Infrastructure Commission cites this scheme as a positive example of a strategic environmental mitigation scheme.²⁰¹
152. Local nature recovery strategies, introduced in the Environment Act 2021, could provide a strategic context for the delivery of biodiversity net gain, and other nature-based mitigation.²⁰² The plans would coordinate mitigation local to the affected areas while operating at sufficient scale to improve outcomes for nature. Ben Kite suggested local planning authorities could consider developing a local biodiversity net gain tariff to support the delivery of their local nature recovery strategies where developers cannot deliver on-site gains.²⁰³

195 National Infrastructure Commission, *Delivering net zero, climate resilience and growth*

196 [Q 108](#) (Ben Kite)

197 Built Environment Committee, 'The impact of environmental regulations on development: summary of SME engagement event' (2 August 2023)

198 Natural England and Department for Environment, Food and Rural Affairs, *Guidance: Great crested newts: district level licensing for local planning authorities* (25 July 2022): <https://www.gov.uk/guidance/great-crested-newts-district-level-licensing-for-local-planning-authorities> [accessed 22 August 2023]

199 *Ibid.*

200 Written evidence from Natural England ([IER0007](#))

201 National Infrastructure Commission, *Delivering net zero, climate resilience and growth*

202 Written evidence from the Environment Agency ([IER0013](#))

203 [Q 108](#) (Ben Kite)

Box 7: Thames Basin Heaths zone of influence

At Thames Basin Heaths a strategic approach has been taken to recreational disturbance within 5km of the Special Protection Area (SPA).

Local development plans across 11 local planning authorities require developers to make financial contributions to Suitable Alternative Natural Greenspace ('SANGs') and strategic access management and monitoring measures. For example, Surrey Heath Borough Council levies a fee of £112.50 per square metre.²⁰⁴ The approach removes the need for project-level assessments in this respect and the development of tailored mitigations.

As a result of this centralised approach, despite a 12 per cent increase in housing stock within 5km of the SPA, populations of the three SPA bird species increased. Eighty SANGs (1,500ha of new or improved greenspace) are open to the public and £20 million of funding has been provided for wardening.

Source: Written evidence from Natural England ([IER0007](#))

153. **There is a preference among developers of all sizes for off-site mitigation to be managed centrally with clear and predictable costs to allow them to factor these into land value calculations. In these circumstances, the costs can be borne by a development and the outcomes provide greater benefit to the environment.**
154. *Natural England's District Level Licensing scheme for great crested newts has reduced costs and increased certainty for infrastructure and housing developers where it operates while maximising the benefits for species conservation. The Government should expand this approach to other protected species.*
155. *The Government should support the authorities responsible for local nature recovery strategies to ensure that they bring together information and actions to enhance the environment. Relevant authorities should develop biodiversity net gain credit schemes which support the delivery of local nature recovery strategies so that off-site delivery continues to benefit residents in the local area.*

Monitoring and enforcement

156. Mitigation schemes and biodiversity net gain place responsibility on developers to fund or directly deliver long-term benefits to the environment. As well as granting the necessary planning permissions, local planning authorities are responsible for monitoring and enforcing this work. Biodiversity net gain introduces a new 30-year timeframe over which these outputs must be monitored.
157. The Government told us, regarding Environmental Impact Assessments, that a lack of post-development monitoring had created uncertainty over the effectiveness of mitigation measures and led to issues being revisited in future assessments.²⁰⁵ Similar concerns were raised over the monitoring of the new biodiversity net gain requirement: there are questions on the balance

204 Surrey Heath Borough Council, 'Supplementary planning documents': <https://www.surreyheath.gov.uk/planning-and-building-control/planning-policy/development-plan/supplementary-planning-documents/thames-basin-heaths-special-protection-area-avoidance-strategy-spd> [accessed 22 August 2023]

205 Written evidence from HM Government ([IER0030](#))

of responsibility for monitoring the 30-year delivery of biodiversity net gain, how it will be done given the unavailability of data, how enforcement will be effective if a developer is no longer in business, and whether there will be sufficient resources to undertake this activity.²⁰⁶

158. *More detail should be provided on the proposed approach to monitoring and enforcing the long-term delivery of biodiversity net gain. Where local planning authorities are required to undertake ongoing monitoring, the Government should provide sufficient resources for this. The Office for Environmental Protection should have a role in ensuring local planning authorities undertake ongoing monitoring and enforcement.*

Information requirements

159. When submitting a project proposal, a developer is required to produce an environmental statement detailing the expected impact on habitats, water quality, local species and other site-specific issues. This document is usually produced by an environmental or ecological consultant. For developments over a certain size and Nationally Significant Infrastructure Projects a single assessment is produced following the approach set out in the relevant Environmental Impact Assessment regulations.²⁰⁷

Demands and costs

160. For individual assessments, we heard that the expectations of developers are clearly defined, well understood and often appropriate.²⁰⁸ However, overall, the scale and range of assessments and associated surveys has increased. WSP, an engineering and professional service firm, noted the Environmental Statement accompanying the High Speed 1 applications in 1994 consisted of 10 documents and was 900 pages long; the 2013 High Speed 2 statement was 536 documents and 39,610 pages long.²⁰⁹
161. The costs of completing surveys can be significant. Developers and promoters must make a substantial financial outlay at the beginning of a project. The Country Land and Business Association warned that “the fear of excessive costs ... deters people from applying [for planning permission].”²¹⁰ Jan Bessell, Chair of the National Infrastructure Planning Association, said that this project-by-project assessment requirement “can be hugely expensive at the pre-application stage, which is the hardest to fund for privately funded and promoted infrastructure projects.”²¹¹
162. Costs can also increase owing to surveys being time sensitive and time limited. Surveys of protected species like the great crested newt can only take place at certain times of year. Lands Improvement Holdings Ltd highlighted that the need to repeat surveys which had gone out of date while a project progressed through the planning system caused costs to “spiral”.²¹²

206 [Q 74](#) (Alex Watts), [Q 112](#) (Dr Richard Benwell) and written evidence from the Local Government Association ([IER0028](#))

207 Under the hybrid bill process the report is called an environmental assessment, under the Transport and Works Order process it is called an environmental statement and under the Development Consent Order process it is called an environmental impact assessment.

208 Written evidence from VertaseFLI Ltd ([IER0033](#))

209 Written evidence from WSP ([IER0019](#))

210 Written evidence from the Country Land and Business Association ([IER0006](#))

211 [Q 56](#) (Jan Bessell)

212 Written evidence from Land Improvement Holdings Ltd ([IER0009](#))

163. Developers told us they had experienced increased requests for ecological surveys from local planning authorities before planning applications would be validated and, in some instances, there was no clear justification for the request.²¹³ In one example new requests were made part way through the planning process when a new officer was assigned to an issue.²¹⁴ The Minister for Housing and Planning, acknowledged “we need to apply a more consistent approach so that we are not asking people to redo things over and over again.”²¹⁵
164. *The requirement for robust environmental data accompanying development applications should remain. However, the Government should ensure that local planning authorities are mandated to validate a planning application if it fulfils the published list of information required.*²¹⁶
165. *The Government should ensure that where planning applications are delayed in the planning system beyond the statutory or agreed time limit the lifespan of necessary surveys is extended.*

Data and analysis

166. By focusing on the land within a red line boundary to undertake assessments, developers may not identify relevant species or habitats in nearby nature sites which are important to the local community and give rise to subsequent objections.²¹⁷ Additionally, even in instances where data could be usefully shared between developers and potentially reduce costs and improve environmental understanding there can be a reticence to do so owing to intellectual property rights.²¹⁸
167. Natural England told the committee that a national verified environmental database would benefit all participants in the planning process.²¹⁹ Jan Bessell, Chair of the National Infrastructure Planning Association, thought that it would reduce costs for developers and infrastructure promoters at the pre-application stage (even if this was a paid-for service) and reduce conflict and challenge owing to having an agreed assessment point and confidence in the veracity of data.²²⁰
168. Local Environmental Records Centres and National Recording Schemes can be credible sources of baseline data; however, their value to the planning system is impacted by reduced investment and support for volunteer programmes.²²¹ The reliance on volunteers and independent organisations for species-wide data can lead to variations in the quality and accessibility of the information.²²²

213 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event*

214 *Ibid.*

215 [Q 208](#) (Rachel Maclean MP)

216 Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities and Local Government, *Guidance: Making an application* (updated 24 June 2021): <https://www.gov.uk/guidance/making-an-application#National-information-requirements> [accessed 22 August 2023]

217 [Q 111](#) (Jackie Copley)

218 Supplementary written evidence from the National Infrastructure Planning Association ([IER0011](#))

219 Written evidence from Natural England ([IER0007](#))

220 [Q 56](#) (Jan Bessell)

221 [Q 111](#) (Dr Richard Benwell)

222 [Q 105](#) (Ben Kite)

169. Collecting and reviewing data across a broader geographic region, as seen in the great crested newt District Level Licensing Schemes, can overcome costs and provide greater certainty.²²³ The licensing schemes reduced the time it took to obtain a licence from 100 days to 10 days and is estimated to have saved the housebuilding sector over £200 million.²²⁴

Box 8: Hampshire County Council Environmental Data and Advice Service

Hampshire County Council provides an Environmental Data and Advice Service. This involves a team of specialists providing professional environment and planning advice and interpretation of data for interested developers ahead of commencing the planning process.

An Environmental Data and Advice Service report provides site assessment information for any location in Hampshire, giving a “detailed desktop analysis” of the site and listing constraints and opportunities for developers. This might include the presence of a protected species or site designation; water management information; and mineral resources.

The cost of a full report is £1,450 plus VAT for sites up to 0.5 hectares.

Source: Hampshire County Council, *Environmental Data and Advice Service*: <https://www.hants.gov.uk/landplanningandenvironment/sharedexpertise/whatwedo/environment/edas> [accessed 6 September 2023]

170. The Government told us it expects a digitised planning system to enable greater transparency of planning data, including environmental data. However, it was unclear how this proposal would address those areas where data are unavailable: we heard that there has never been a national audit of biodiversity²²⁵. The Natural Capital and Ecosystem Assessment Programme may be the solution to these issues, but it is currently unclear when datasets will be available.²²⁶
171. In its April 2023 report into *Improving nationally significant infrastructure planning*, the National Infrastructure Commission suggested that the Government should host a data sharing platform for environmental data to make the system more efficient.²²⁷ The Government asserts that the new Environmental Outcome Reports assessment process will improve data collection and therefore reduce assessment burdens in the future.²²⁸ The Planning Inspectorate is working with relevant bodies to agree appropriate data standards within the Nationally Significant Infrastructure process.²²⁹
- 172. There will always be a requirement for some site-specific environmental information, but improved and accessible baseline**

223 Natural England and Department for Environment, Food and Rural Affairs, *Guidance: Great crested newts: district level licensing for local planning authorities* (25 July 2022): <https://www.gov.uk/guidance/great-crested-newts-district-level-licensing-for-local-planning-authorities> [accessed 22 August 2023]

224 [Q 153](#) (Alan Law)

225 Supplementary written evidence from the National Infrastructure Planning Association ([IER0011](#)) and Wildlife and Countryside Link ([IER0023](#))

226 Department for Environment Food and Rural Affairs, *Policy paper, Natural Capital and Ecosystem Assessment Programme* (updated 5 October 2022): <https://www.gov.uk/government/publications/natural-capital-and-ecosystem-assessment-programme/natural-capital-and-ecosystem-assessment-programme#objectives> [accessed 22 August 2023]

227 National Infrastructure Commission, *Delivering net zero, climate resilience and growth*

228 Department for Levelling Up, Housing and Communities, *Nationally Significant Infrastructure: action plan for reforms to the planning process*

229 *Ibid.*

data would reduce costs for developers, improve the quality of information available and, if provided by an independent body, reduce conflict in the planning system.

173. *Alongside its work to digitise planning, the Government should consider the expansion of the Natural Capital and Ecosystem Assessment Programme. Any approach should prioritise the delivery of terrestrial information for areas of high housing and infrastructure demand over a blanket national approach. The Government should clarify when the proposed data sets will be available, develop a paid-for system for the private sector to utilise the data and confirm how often information will be updated. New technologies and innovations should be utilised to ensure data remains usable and useful in the long term.*
174. *The Planning Inspectorate’s work to introduce data standards for Nationally Significant Infrastructure Projects should be expanded to all projects of the scale which requires an Environmental Impact Assessment and should be suitably adapted for smaller housing developments.*

Ease of understanding

175. A non-technical summary must be published alongside an Environmental Impact Assessment. These contain a wealth of technical data and there is no standard way to present environmental information. When combined with its specialist nature this can be detrimental to the engagement process. Information published in an “unreadable format ... just hundreds of pages that were illegible even when printed at A3 size”²³⁰ is difficult to understand without expert support, to which most individuals do not have access.
176. *To create consistency for developers and improve community engagement with the planning process, the Government should develop templates and exemplars for those assessments most regularly undertaken by developers.*

Brownfield land

177. The National Planning Policy Framework says that strategic plans should make “as much use as possible of previously developed or ‘brownfield’ land” unless this conflicts with other policies including causing harm to protected sites.²³¹ In July 2023, Homes England launched the Brownfield, Infrastructure and Land Fund to focus on regenerating brownfield land.²³²

Biodiversity net gain

178. Liz Hart told the committee that the biodiversity net gain (BNG) requirement is “putting developers off brownfield sites”.²³³ Remediation of a brownfield site, such as removing contaminated soil, can have a negative impact on biodiversity irrespective of any benefits from the removal of contaminants. If the same BNG metric applies to greenfield and brownfield sites, there

230 Written evidence from Friends of Carrington Moss ([IER0002](#))

231 Department for Levelling Up, Housing and Communities, *National Planning Policy Framework*

232 Homes England, ‘Homes England launches new approach to transform places and boost housing supply’ (24 July 2023): <https://www.gov.uk/government/news/homes-england-launches-new-approach-to-transform-places-and-boost-housing-supply> [accessed 22 August 2023]

233 [Q 132](#) (Liz Hart)

is no incentive to fund remediation: a developer risks making a substantial financial outlay to remediate a site only to result in potentially significant negative BNG with further investment then being required on mitigation. We heard that the development of brownfield sites may depend on larger developers building on greenfield land to create a surplus of BNG credits.²³⁴

179. The Minister for Natural Environment and Land Use agreed that where remediation involved removing contaminated soil that was beneficial to wildlife it would have a negative impact on BNG. However, she suggested many brownfield sites have low biodiversity value or will be below the de minimis threshold.²³⁵ The Wildlife Trust disagreed, suggesting this is often “far from reality”²³⁶ with brownfield sites commonly being successional habitats, home to a variety of rare species.
180. **Brownfield development is a key government policy supported by the public and vital to delivering homes. The Government should ensure that remediating brownfield sites is not disincentivised by biodiversity net gain requirements. Local planning authorities should be able to moderate biodiversity net gain requirements for sites on their brownfield registers.**

Planning and permitting

181. When a project requires planning permission and environmental permits these processes are usually run separately: a housing development on brownfield land may receive planning permission for the proposal, but separately require a licence to handle contaminated material on site.
182. The Environment Agency provides a ‘parallel track’ for planning and permitting regimes for large or complicated proposals or those where a significant impact on a protected habitat or species is likely.²³⁷ Parallel tracking is standard for Nationally Significant Infrastructure Projects, with permits, and development consent issued concurrently.
183. Where parallel tracking is not available, the Mineral Products Association criticised the lack of certainty provided by the Environment Agency on whether a site will obtain the necessary permits. “Environmental permitting is far too slow and often lags behind the planning process, effectively delaying or constraining implementation with serious adverse consequences for business.”²³⁸ VertaseFLI Limited and Hart Environmental highlighted that this significantly affects the remediation of brownfield land: sites which are appropriate for redevelopment are “orphaned” because of the delays in permitting.²³⁹
184. Overlaps between planning and permitting result in some developers facing lengthy waits for permits to address issues which have already been considered

234 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event*

235 Supplementary written evidence from HM Government ([IER0042](#))

236 The Wildlife Trusts, ‘Brownfield’: <https://www.wildlifetrusts.org/habitats/towns-and-gardens/brownfield> [accessed 22 August 2023]

237 Environment Agency, *Guidance for developments requiring planning permission and environmental permits*, section 4.3, (October 2012): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/297009/LIT_7260_bba627.pdf [accessed 22 August 2023]

238 Written evidence from the Mineral Products Association ([IER0017](#))

239 Written evidence from VertaseFLI Ltd ([IER0033](#)) and Hart Environmental Ltd ([IER0034](#))

in the planning system. This is specifically in respect to the definition of waste and how this relates to soils and construction and demolition arisings.”²⁴⁰

Box 9: Redevelopment site containing red shale

A development site in the northeast included red shale, a naturally occurring bedrock. Following tests which found the rock to be chemically clean, the development proposed retaining the rock on site for reuse in the necessary earthworks. The reuse of the rock was included in the planning application and approved and included in the planning conditions.

The development site is adjacent to an historic colliery and the presence of the red shale was believed to be natural bedrock which had been removed to access the coal seam. Therefore, the rock is classed as ‘extractive waste’ under the Mining Waste Directive and an environmental permit is required to reuse the red shale under an agreed Waste Management Plan—the plan is a replication of the Remediation Strategy and Earthworks Specification agreed through the planning process. Alternatively, the developer could excavate all the red shale from the site and dispose of it as waste, a costly approach.

The developers applied for a permit in December 2022 and had not received it when we received evidence from Hart Environmental Ltd in June 2023. As a result, development earthworks were stalled.

Source: Written evidence from Hart Environmental Ltd ([IER0034](#))

185. Jennie Donovan, Deputy Director, Sustainable Business and Development at the Environment Agency, told us that planning and permitting are “quite distinct”.²⁴¹ The National Planning Policy Framework states:

“The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.”²⁴²

186. **The interaction between planning permission and permitting is causing delays on some sites, with a specific impact on the development of brownfield land. The Department for Levelling Up, Housing and Communities should work with the Department for Environment, Food and Rural Affairs to review planning and permitting requirements for brownfield land and eliminate overlap. This should include checks on how brownfield sites are assessed to ensure public sector resources are used most effectively.**
187. **The parallel approval approach for permits and planning applications used for Nationally Significant Infrastructure Projects should be expanded to all brownfield and housing developments significant enough to justify an Environmental Impact Assessment.**

240 Written evidence from Hart Environmental Ltd ([IER0034](#))

241 [Q 172](#) (Jennie Donovan)

242 Department for Levelling Up, Housing and Communities, *National Planning Policy Framework*, para 188

Post-permission approvals

188. In July 2022, the Secretary of State for Environment, Food and Rural Affairs issued a written ministerial statement confirming his view that habitats regulations assessment provisions “apply to any consent, permission or other authorisation, this may include post-permission approvals; reserved matters or discharges of conditions.”²⁴³
189. Competent authorities must now also consider a habitat regulations assessment when discharging any conditions on a planning application. This is the case even where the post-permission approval is not altering the impact of the proposal on protected areas.
190. This interpretation of the law could mean that, in some cases, a permission already given will be lost because tests that did not apply at the time that it was granted have been applied retrospectively. As the Ministerial statement made clear, this means that “... development that previously was lawfully screened out at the permission stage cannot now be screened out.”²⁴⁴
191. This requirement is stalling developments across the country.²⁴⁵ Developments which had planning permission in place before advice such as water neutrality was issued must now undertake additional assessments and source mitigation before they can commence development. The owners of these sites face all the challenges in availability and costs that we outline above regarding mitigation schemes, compounded by the fact that this will have not been factored into the initial viability assessments of the sites.²⁴⁶ The retrospective application of these requirements creates uncertainty for developers and therefore impacts on market confidence and future investment.²⁴⁷
192. *The Government should ensure that existing planning consents, which cannot be commenced because of an inability to clear conditions owing to new advice under the habitats regulations, are automatically extended for a further three years.*
193. *The Government should remove the need for a habitats regulations assessment to be undertaken for post-permission approvals for at least three years and for longer where development has been substantially started within the appropriate timescales for the development.*

Clarity and Guidance

194. Interrelated legislation and guidance, developed in isolation, has made it difficult for developers to understand what they must deliver and when.²⁴⁸
195. The Environment Agency and Natural England work with several organisations, including specific development industry groups, to communicate changes and strengthen the capability of the sector.²⁴⁹

243 Written statement [HCWS258](#) (20 July 2022)

244 Department for Levelling Up, Housing and Communities, *National Planning Policy Framework*, para 188

245 Written evidence from Home Builders Federation and Land Promoters and Developers Federation ([IER0031](#))

246 *Ibid.*

247 Written evidence from Land Improvement Holdings Ltd ([IER0009](#))

248 Written evidence from the Home Builders Federation and the Land Promoters and Developers Federation ([IER0031](#))

249 Written evidence from the Environment Agency ([IER0013](#)) and Natural England ([IER0007](#))

Nonetheless we heard that there is not a single source of information on issues owing to the number of bodies involved. This can be particularly difficult for smaller developers to navigate.²⁵⁰ When guidance is located it is not written in plain English, which the Minister for Natural Environment and Land Use, described as “completely unacceptable.”²⁵¹

196. We heard condemnation of the lack of communication in advance of Natural England’s advice on nutrient and water neutrality, as well as the subsequent lack of and contradictory advice.²⁵² Natural England indicated that it worked on the advice for months but Defra and DLUHC took the decision that they “should not proactively signal that this advice was coming” because of concerns about legal risk and potentially causing a pre-emptive stalling in the granting of planning permissions.²⁵³ This approach resulted in implementation “without warning and with significant consequences.”²⁵⁴ Flaws in the guidance which could have been resolved in advance required several weeks to fix.²⁵⁵
197. Witnesses were of mixed opinions about the process for introducing biodiversity net gain. We heard from a volume housebuilder that the timeframe for introduction was appropriate and that, because housebuilders were fully consulted, they had been able to plan.²⁵⁶ However, with less than six months until the policy became mandatory for the majority of developments, and well after the introduction of the policy by many LPAs, we heard that there was insufficient clarity on several key policy details²⁵⁷ including the relevant metrics²⁵⁸ and the pricing and approach to statutory biodiversity credits.²⁵⁹ Robbie Owen, Partner at Pinsent Masons, discussing the introduction of biodiversity net gain for housing and infrastructure development explained that “It is extremely difficult, when the policy tapestry is developing around you and behind you, to try to navigate through that.”²⁶⁰
198. In a similar vein, despite a consultation on Environmental Outcome Reports (EORs), we were told that how the new system will operate, following the passing of the Levelling-up and Regeneration Bill, remains unclear.²⁶¹ The Delegated Powers and Regulatory Reform Committee, in its assessment of

250 Written evidence from the Country Land and Business Association ([IER0006](#))

251 [Q 208](#) (Trudy Harrison MP)

252 Built Environment Committee, ‘The impact of environmental regulations on development: summary of SME engagement event’ (2 August 2023), Built Environment Committee, ‘The impact of environmental regulations on development: private roundtable with volume housebuilders’ (10 July 2023), written evidence from Gladman Developments Ltd ([IER0020](#)), Country Land and Business Association ([IER0006](#)), Land Promoters and Developers Federation ([IER0031](#)), [Q 21](#) (James Stevens)

253 [Q 155](#) (Alan Law)

254 Written evidence from Horsham District Council ([IER0001](#))

255 Written evidence from Partnership for South Hampshire ([IER0005](#))

256 Written evidence from Home Builders Federation and Land Promoters and Developers Federation ([IER0031](#)); and Built Environment Committee, ‘The impact of environmental regulations on development: private roundtable with volume housebuilders’ (10 July 2023)

257 Written evidence from the Environment Agency ([IER0013](#)); Partnership for South Hampshire ([IER0005](#)); Environment Bank ([IER0008](#)); Land Promoters and Developers Federation ([IER0010](#)); Local Government Association ([IER0028](#)); Country Land and Business Association ([IER0006](#)); and Gladman Developments Ltd ([IER0020](#))

258 A statutory metric will become available in November. In July 2023, the Government announced there would be a transitional period between the previous and new metrics.

259 Indicative information was provided in July 2023: Department for Environment, Food and Rural Affairs, *Guidance: Statutory biodiversity credit prices* (updated 11 August 2023): <https://www.gov.uk/guidance/statutory-biodiversity-credit-prices> [accessed 22 August 2023]

260 [Q 77](#) (Robbie Owen)

261 Written evidence from the Wildlife and Countryside Link ([IER0023](#))

the Levelling-up and Regeneration Bill, concluded: “Parliament will have set no policy framework for assessing the environmental impact of proposals over as wider a range of activities as it is possible to imagine.”²⁶² It found that the department had provided inadequate justification for such skeleton legislation.²⁶³ A lack of clear information on the nature and form of the proposed new EOR regime prevents us from commenting on whether this proposal will address any of the issues raised in this report. Whatever the potential effectiveness of this proposed new regime, the introduction of such fundamental changes creates uncertainty for developers and risks delays in delivery.²⁶⁴

199. **We were disappointed to learn of the Government’s decision to not consult on nutrient and water neutrality guidance despite time being available. This choice was unnecessary and led to serious ramifications. It is indicative of a wider issue: communication on new or evolving environmental regulations is often not provided in a timely way, lacks detail and practical solutions, or is difficult to understand. This inhibits the ability of developers and local planning authorities to respond appropriately, so delaying development.**
200. *Those who deliver policy through the planning system should be consulted on the content and drafting of relevant advice. Defra and DLUHC should work with Natural England and the Environment Agency to develop a suitable consultation method which can be used ahead of issuing advice under the Habitats Regulations. Where necessary this should allow for confidential discussions.*
201. **We are sympathetic to the fact that the use of secondary legislation will allow for regulations and policy to respond to the “fast-changing nature of environmental science”.²⁶⁵ This does not preclude the Government from setting out how the policy will be implemented in the immediate term.**
202. *Given the impact of uncertainty in the planning system on the delivery of new homes, the Government should ensure that policy is communicated clearly and in a timely manner. For a transition period to be successful stakeholders need to know to what they are transitioning. Statutory dates for the implementation of new regulations should reflect the lead times for development with the full policy detail available.*

National Policy Statements

203. National policy statements (NPSs) set out the strategic priorities for the development of key infrastructure and provide the legal framework for planning decisions. There are currently 12 designated NPSs covering energy, transport and the handling of water, wastewater and waste.²⁶⁶

262 Delegated Powers and Regulatory Reform Committee, *Levelling-up and Regeneration Bill Pensions Dashboards (Prohibition of Indemnification) Bill Shark Fins Bill Genetic Technology (Precision Breeding) Bill: Government Response* (24th Report, Session 2022–23, HL Paper 142) para 76

263 *Ibid.*

264 **Q 2** (Professor Liz Fisher), **Q 104** (Joseph Lewis)

265 Delegated Powers and Regulatory Reform Committee, *Levelling-up and Regeneration Bill: Government Response* (39th Report, Session 2022–23, HL Paper 229)

266 National Infrastructure Planning, *National Policy Statements*: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/national-policy-statements/> [accessed 30 August 2023]

204. Jan Bessell, Chair of the National Infrastructure Planning Association, described NPSs as having been “left to languish”.²⁶⁷ Outdated policy is creating uncertainty, conflict and delay when delivering infrastructure projects.²⁶⁸ Robbie Owen, Parliamentary Agent at Pinsent Masons, agreed with this assessment. Differing iterations of national policy statements have introduced complexity into the system at all stage of the consenting process: preliminary examination through to the final decision.²⁶⁹ This has also resulted in an increase in judicial reviews.²⁷⁰ Up to date NPSs would provide a clearer hierarchy between plans and policies.²⁷¹
205. In February 2023, the Government committed to updating a number of NPSs by the end of 2023 and the Department for Levelling Up, Housing and Communities will update planning guidance to provide clarity on the process for reviewing NPSs by Spring 2024.²⁷² Natural England suggested that these reviews will provide clarity as to how infrastructure projects should consider environmental regulations.²⁷³
206. ***By the end of 2023, the Government should publish its timeline for reviewing and updating all National Policy Statements.***

267 [Q 60](#) (Jan Bessell)

268 *Ibid.*

269 [Q 77](#) (Robbie Owen)

270 *Ibid.*

271 *Ibid.*

272 Department for Levelling Up, Housing and Communities, *Nationally Significant Infrastructure: action plan for reforms to the planning process*

273 Written evidence from Natural England ([IER0007](#))

CHAPTER 6: IMPACT ON SMALLER DEVELOPERS

207. While the housebuilding industry has grown in recent years, the delivery of new homes is increasingly reliant on a smaller number of large developers.²⁷⁴ In our 2021 report *Meeting housing demand* we emphasised the importance of SME housebuilders in diversifying the market and maintaining competition.²⁷⁵ Despite this, in a recent poll of more than 200 small and medium-sized housebuilders, 93 per cent were considering scaling back their residential construction activities or changing business direction.²⁷⁶
208. The Government has several programmes to provide direct construction finance to developers and to encourage the lending market to provide greater access to finance for smaller builders.²⁷⁷ These schemes are only accessible where the developer has a controlling interest in the land and planning consent, or a clear route to achieve it. We heard that obtaining planning permission is a significant barrier to development for smaller developers and therefore these schemes may not provide the necessary support.²⁷⁸
209. We heard that “the barriers to entering the business as a result of regulation ... have risen”.²⁷⁹ Environmental regulations place a disproportionately greater burden on smaller developers who are less able to meet the costs of compliance.²⁸⁰ The Competition and Markets Authority has recognised this challenge and announced in August 2023 that it would undertake further detailed work on planning rules and the barriers to entry for smaller housebuilders, as part of its *Housebuilding market study*.²⁸¹

Unavailability of mitigation schemes

210. Advice from Natural England which leads to the need for project-based mitigation, such as nutrient and water neutrality, is a significant barrier to development and has created “massive ripple” effects which are “crippling” SME developers.²⁸² The Minister for Housing and Planning agreed that “smaller firms may be disproportionately affected by [nutrient neutrality]”.²⁸³
211. Access to finance is already a limiting factor for smaller developers and therefore measures such as buying and closing a local farm before a planning permission can be approved is likely to be difficult, if not impossible. As a result, smaller developers are reliant on structured mitigation schemes that are unavailable in many areas. Homes England described this as

274 Built Environment Committee, *Meeting housing demand* (1st Report, Session 2021–22, HL Paper 132) para 92

275 *Ibid.*

276 Home Builders Federation, *Letter to Rt Hon. Rishi Sunak MP, Prime Minister* (6 July 2023): [https://www.hbf.co.uk/documents/12676/FINAL - 6 July 2023 - SME letter to the Prime Minister - HBF.pdf](https://www.hbf.co.uk/documents/12676/FINAL_-_6_July_2023_-_SME_letter_to_the_Prime_Minister_-_HBF.pdf) [accessed 30 August 2023]

277 Supplementary written evidence from HM Government ([IER0043](#))

278 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event*

279 [Q 22](#) (Paul Brocklehurst)

280 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event*

281 Competition and Markets Authority, ‘CMA update on work in housing sector’, (25 August 2023): <https://www.gov.uk/government/news/cma-update-on-work-in-housing-sector> [accessed 30 August 2023]

282 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event*

283 Supplementary written evidence from HM Government ([IER0043](#))

risking “jeopardis[ing] their whole business”.²⁸⁴ The localised development pipeline of smaller developers means that businesses cannot divert activity to unaffected areas.²⁸⁵

212. One developer told us that they had had schemes delayed by up to two years owing to water neutrality requirements, which led to costs of £500,000.²⁸⁶ Affected developers had struggled to find available ecologists who could assess the water neutrality situation, which caused further delays. Horsham District Council said that the measure had a significant impact on smaller builders with 113 dwellings delayed or refused on sites of 1–9 homes.²⁸⁷ However, Homes England noted that it may be easier to off-set water use on smaller sites given the lower use and easier predictability than multi-phase schemes.²⁸⁸
213. Measures to improve wastewater treatments works by 2030 and the delay in developing mitigation schemes in many catchments may be too late to support the smaller developers facing stalled development pipelines. Indeed, the exemption from upgrading for wastewater treatment works for those serving below 2,000 people is likely to mean there are no improvements for many rural areas and small housing schemes in villages, which are often delivered by small and medium-sized developers.²⁸⁹
214. **Effective moratoria on housebuilding caused by advice such as nutrient and water neutrality risk putting small developers out of business in affected areas. *All public sector development mitigation schemes should prioritise provision for small developers.***
215. ***Following the passage of the Levelling-up and Regeneration Bill, the Secretary of State should use their powers to ensure that all wastewater treatment works with capacity for a population of 250 are upgraded by the 2030 deadline.***

Biodiversity net gain

216. Biodiversity net gain (BNG) requirements can be easier to deliver than water and nutrient neutrality requirements. However, we heard that the proposed approach is complicated and bureaucratic and there is insufficient information on how it will operate.²⁹⁰
217. In acknowledgement of the greater difficulties smaller developers face in meeting providing BNG, it is not supposed to become mandatory on smaller sites until April 2024.²⁹¹ Nonetheless, many local planning authorities are requiring all developments to demonstrate BNG ahead of the statutory implementation date and, in some instances, requiring above the 10 per cent minimum.

284 Written evidence from Homes England ([IER0037](#))

285 [Q 22](#) (Paul Brocklehurst)

286 Built Environment Committee, ‘The impact of environmental regulations on development: summary of SME engagement event’ (2 August 2023)

287 Written evidence from Horsham District Council ([IER0001](#))

288 Written evidence from Homes England ([IER0037](#))

289 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event*

290 *Ibid.*

291 Department for Environment, Food and Rural Affairs, *Government response and summary of responses*

218. We heard that developers on smaller sites would find it difficult to deliver on-site mitigation owing to strict red line boundaries: there would not be space for wetlands or the planting of new hedgerows.²⁹² An example was given of a small site on the edge of a village where development had been voted for by residents in a Neighbourhood Development Plan but, owing to redline constraints and the need to deliver BNG, it was no longer financially beneficial for the landowner to sell. The development did not progress.²⁹³
219. *Allowing local planning authorities to require biodiversity net gain ahead of the delayed statutory deadline negates the benefit of this accommodation. Where the Government has announced a transition period and implementation date local planning authorities should not be able to act ahead of it.*
220. *The Government should ensure that local planning authorities are prohibited from introducing biodiversity net gain requirements above the 10 per cent minimum for small sites. These sites should be exempt from following the mitigation hierarchy and immediately permitted to deliver an offsite solution.*

The planning system

221. As with all planning applications where relevant habitats or species are identified on a site, a smaller developer must prepare various surveys and assessments for a planning application to be validated. The impact of increased demands for reports and information to support planning applications discussed in Chapter 4 has a greater impact on smaller developers.²⁹⁴
222. For example, a smaller developer had to undertake a full flood assessment on a zone one flood risk site with no previous history of flooding. As well as sometimes being unnecessary, these assessments require smaller developers, who often have difficulty accessing financing, to spend considerable amounts before a planning application can be validated, let alone considered.
223. **Large, and growing, up-front costs disincentivise developers of all sizes from entering the housing market. For smaller developers with limited access to finance they are a greater burden. Whilst developers are willing and able to cover these costs in many circumstances, they should not be asked to fund inapplicable surveys.**
224. *The Government should review the range of ecological assessments required of developers. It should issue guidance to local planning authorities on which assessments can be discretionary for smaller sites, rather than required up front.*

292 [Q 22](#) (James Stevens), [Q 109](#) (Ben Kite)

293 Built Environment Committee, *The impact of environmental regulations on development: summary of SME engagement event*

294 *Ibid.*

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Berkeley
 Lord Best
 Lord Carrington of Fulham
 Baroness Cohen of Pimlico
 Baroness Eaton
 Lord Faulkner of Worcester
 Lord Greenhalgh
 Lord Goddard of Stockport (Member until 11 May 2023)
 Lord Mawson
 Lord Moylan (Chair)
 Earl Russell (Member since 12 July 2023)
 Baroness Thornhill
 Baroness Warwick of Undercliffe (Member since 27 April 2023)

Declarations of interest

Lord Berkeley
No relevant interests to declare

Lord Best
Vice President, Town and Country Planning Association
Vice President, Local Government Association
President, Sustainable Energy Association
Chair, Devon Housing Commission

Lord Carrington of Fulham
No relevant interests to declare

Baroness Cohen of Pimlico
Member, Cambridge Past Present and Future Planning Committee
Chair, Madingley Road Residents Association

Baroness Eaton
Vice President, Local Government Association

Lord Faulkner of Worcester
Chair, Great Western Railway Stakeholder Board
President, Heritage Railway Association
Trade Envoy to Taiwan, HM Government
Residential property in Oxford from which rental income is received

Lord Goddard of Stockport (Member until 11 May 2023)
Director, David Goddard Consulting Limited (public relations and affairs)
Consultant supporting housing growth in North West England, Avison Young Manchester
Providing business advice for P&D Northern Asset Management Limited

Lord Greenhalgh
Vice-President the Local Government Association
Role with and shareholdings in BIBA Estates Ltd

Lord Mawson
I work with the following companies and organisations working on the Built Environment: Barratt plc; Istock plc; OCS Group; NHS; Surrey County Council and ICS

Lord Moylan

Board member, Ebbsfleet Development Corporation (ceased 31 August 2023)

Chairman and Director/Trustee, Ebbsfleet Garden City Trust (Registered charity) (ceased 31 August 2023)

Earl Russell

No relevant interests to declare

Baroness Thornhill

Vice President, Local Government Association

Liberal Democrat Lords Spokesperson (Housing)

Baroness Warwick of Undercliffe

Chair, Board of the Property Ombudsman

Residential flat in Nottingham from which rental income is received

A full list of Members' interests can be found in the Register of Lords' interests: <https://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Specialist Adviser

Kelvin MacDonald FAcSS FRTPI CIHCM FRSA

Senior Teaching Associate, University of Cambridge

Senior Departmental Fellow: Department of Land Economy, Cambridge

Land Economy Director of Studies: Christ's College, Cambridge

Senior Lecturer (part-time): School of Applied Sciences, University of Brighton

Specialist Adviser to the House of Commons Levelling Up, Housing and Communities Select Committee

Chair of the Board of BHT Sussex (formerly Brighton Housing Trust)

Fellow of the Academy of Social Sciences

Fellow of the Royal Town Planning Institute

Chartered Member of the Chartered Institute of Housing

Member of the Labour Party (I take no part in its activities at national or local levels)

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://committees.parliament.uk/work/7328/the-impact-of-environmental-regulations-on-development> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	Professor Liz Fisher, Professor of Environmental Law, Corpus Christi College, University of Oxford	QQ 1–11
*	Daniel Smyth, Director and Head of Environment, Savills	QQ 12–20
**	James Stevens, Director of Cities, Home Builders Federation	QQ 21–30
**	Paul Brocklehurst, Chairman, Land Promoters and Developers Federation	QQ 21–30
*	Richard Blyth, Head of Policy, Royal Town Planning Institute	QQ 31–42
*	Carolyn McKenzie, Chair of ADEPT Environment Board, ADEPT—Association of Directors of Environment, Economy, Planning & Transport	QQ 31–42
*	David Lowe, Delivery Leader: Ecology, Historic Environment & Landscape, Warwickshire County Council	QQ 43–50
**	Hamish Walke, Water Neutrality Lead, Crawley Borough Council	QQ 43–50
**	Jan Bessell, Chair, National Infrastructure Planning Association	QQ 51–60
*	Simon Blanchflower CBE, former Chief Executive Officer, East West Rail	QQ 51–60
*	Rob Wall, Assistant Director of Sustainability and Tax Policy, British Property Federation	QQ 61–76
*	Alex Watts, Associate, Green Offset Scheme, Fisher German	QQ 61–76
*	Heather Sargent, Barrister, Landmark Chambers	QQ 77–86
*	Robbie Owen, Partner, Parliamentary Agent, Pinsent Masons LLP	QQ 77–86
**	The Honourable Justice Brian Preston, Chief Judge of the Land Environment Court of New South Wales	QQ 87–95

- * Ben Kite, Chair, Strategic Policy Panel, Institute of Ecology and Environmental Management; Managing Director, Ecological Planning Research [QQ 96–109](#)
- * Joseph Lewis, Head of Policy, Institution of Environmental Sciences [QQ 96–109](#)
- ** Dr Richard Benwell, Chief Executive Officer, Wildlife and Countryside Link [QQ 110–117](#)
- * Jackie Copley, Planning Director, CPRE—The Countryside Charity [QQ 110–117](#)
- * Professor Emma Lees, Professor of Transnational Law, European University Institute, and Professor of Environmental and Property Law, University of Cambridge [QQ 118–131](#)
- * Professor Gert de Roo, Professor of Spatial Planning, and Head of the Department of Spatial Planning and Environment, University of Groningen [QQ 118–131](#)
- ** Liz Hart, Director, Hart Environmental Ltd [QQ 132–141](#)
- ** Professor David Hill CBE, Chair, Environment Bank [QQ 142–151](#)
- ** Alan Law, Deputy Chief Executive, Natural England [QQ 152–161](#)
- ** Tony Juniper, Chair, Natural England [QQ 152–161](#)
- ** John Curtin, Interim Chief Executive, Environment Agency [QQ 162–174](#)
- ** Jennie Donovan, Deputy Director, Sustainable Business and Development, Environment Agency [QQ 162–174](#)
- ** Dr Tony Grayling, Director, Sustainable Business and Development, Environment Agency [QQ 162–174](#)
- * Natalie Prosser, Chief Executive Officer, Office for Environmental Protection [QQ 175–191](#)
- * Dame Glenys Stacey DBE, Chair, Office for Environmental Protection [QQ 175–191](#)
- ** Rachel Maclean MP, Minister of State (Housing and Planning), Department for Levelling Up, Housing and Communities [QQ 192–213](#)
- ** Trudy Harrison MP, Parliamentary Under Secretary of State (Minister for Natural Environment and Land Use), Department for Environment, Food & Rural Affairs [QQ 192–213](#)
- ** Jenny Preece, Deputy Director, Planning Infrastructure, Department for Levelling Up, Housing and Communities [QQ 192–213](#)
- ** Rachel Fisher, Deputy Director for Land Use Policy, Department for Environment Food and Rural Affairs [QQ 192–213](#)

Alphabetical list of all witnesses

	ARUP	IER0036
	Association for Consultancy and Engineering	IER0026
*	Association of Directors of Environment, Economy, Planning and Transport (ADEPT) (QQ 31–42)	
*	Simon Blanchflower CBE, former Chief Executive Officer, East West Rail (QQ 51–60)	
*	British Property Federation (QQ 61–76)	
*	Chartered Institute of Ecology and Environmental Management (QQ 96–109)	
	Cherwyn Developments Ltd	IER0016
	Country Land and Business Association	IER0006
*	CPRE—The Countryside Charity (QQ 110–117)	
**	Crawley Borough Council (QQ 43–50)	IER0025
	William Cutting	IER0012
*	Ecological Planning Research (QQ 96–109)	
**	Environment Agency (QQ 162–174)	IER0013
		IER0041
**	Environment Bank (QQ 142–151)	IER0008
		IER0038
	Environmental Industries Commission	IER0026
**	Professor Liz Fisher, Professor of Environmental Law, Faculty of Law and Corpus Christi College, University of Oxford (QQ 1–11)	IER0024
*	Fisher German (QQ 61–76)	
	Friends of Carrington Moss	IER0002
	Councillor John Fuller OBE, Leader of South Norfolk District Council	IER0027
	Gladman Developments Ltd	IER0020
**	Hart Environmental Ltd (QQ 132–141)	IER0034
		IER0039
**	HM Government (QQ 192–213)	IER0030
		IER0042
		IER0043
**	Home Builders Federation (QQ 21–30)	IER0031
	Homes England	IER0037
	Horsham District Council	IER0001
	Houses for Homes Consortium	IER0032
	Institute of Environmental Management & Assessment	IER0015

*	Institution of Environmental Sciences (QQ 96–109)	
**	Land Promoters and Developers Federation (QQ 21–30)	IER0010 IER0031
	Lands Improvement Holdings Ltd	IER0009
*	Professor Emma Lees, Professor of Transnational Law, European University Institute, and Professor of Environmental and Property Law, University of Cambridge (QQ 118–131)	
	Local Government Association	IER0028
	Mineral Products Association	IER0017
**	National Infrastructure Planning Association (QQ 51–60)	IER0011
**	Natural England (QQ 152–161)	IER0007 IER0040
	Rhiannon Ogden-Jones	IER0004
*	Office for Environmental Protection (QQ 175–191)	
	Partnership for South Hampshire	IER0005
*	Pinsent Masons LLP (QQ 77–86)	
	Planning Inspectorate	IER0035
**	The Honourable Justice Brian Preston, Chief Judge of the Land Environment Court of New South Wales (QQ 87–95)	IER0029
*	Professor Gert de Roo, Professor of Spatial Planning and Head of the Department of Spatial Planning and Environment, University of Groningen (QQ 118–131)	
	Royal Institution of Chartered Surveyors	IER0022
*	Royal Town Planning Institute (QQ 31–42)	
	Dr Samuel Ruiz-Tagle, Senior Researcher in Law, Centre for Climate Engagement, Hughes Hall, University of Cambridge	IER0014
*	Heather Sargent, Barrister, Landmark Chambers (QQ 77–86)	
	Save Greater Manchester's Green Belt	IER0003
*	Savills (QQ 12–20)	
	VertaseFLI Ltd	IER0033
*	Warwickshire County Council (QQ 43–50)	
	Water UK	IER0021
	West Sussex County Council	IER0018
**	Wildlife and Countryside Link (QQ 110–117)	IER0023
	WSP	IER0019

APPENDIX 3: CALL FOR EVIDENCE

The Committee invites interested individuals and organisations to submit written evidence by 14 April 2023. The Committee intends to take oral evidence between February and May and will publish its report later in the year.

The Government, Parliament and the courts have set out, through primary and secondary legislation, a number of environmental requirements for development of the built environment. This has resulted in a range of environmental protections for development in England which are largely administered through the planning system. Examples of such regulations include those on biodiversity net gain, nutrient neutrality, habitats and air quality. These national requirements, and the governance structures which manage them, are complex and evolving. There is limited empirical understanding of the impact these requirements are having on developers and promoters.

The Government summarises its environmental ambitions as to “become the first generation to leave [the] environment in a better state than we found it”. In January 2023 the Government published the Environmental Improvement Plan 2023, reiterating its commitment to achieving the ten goals set out in the Environment Plan 2025. The Government also has an objective of “significantly boosting the supply of homes” and to support the delivery of infrastructure projects.

This inquiry will assess the governance, the associated costs for developers and promoters, and the impact on the delivery of projects, of nationally defined environmental regulations in England. The Committee is not seeking to evaluate the merits of individual environmental regulations but rather how these are implemented through the planning system and the interactions between different environmental regulations. The Committee is aware of new requirements in the Environment Act 2021 and wishes to ensure that the implementation of these draws on lessons to date. The inquiry will not be exploring building regulations. It will not consider heritage sites, or specific land use allocations such as the green belt or areas of outstanding natural beauty. The Committee’s focus is on England, as most relevant matters are devolved in Northern Ireland, Scotland and Wales.

We are keen to hear from membership organisations, representative bodies, local authorities, businesses with an interest in the subject, think-tanks, non-governmental organisations, academics and other stakeholders about these issues.

Diversity comes in many forms and hearing a range of different perspectives means that Committees are better informed and can more effectively scrutinise public policy and legislation. We encourage anyone with experience or expertise of an issue under investigation to share their views with the Committee, in the full knowledge that they have value and are welcome. If you have difficulty submitting evidence online, please contact the Committee staff by email to builtenvironment@parliament.uk or by telephoning 020 7219 3616.

Questions

The Committee seeks evidence in response to the following questions. It is not necessary to answer all the questions. Short submissions are preferred. A submission longer than six pages should include a one-page summary.

1. What environmental regulations need to be considered when undertaking development? When during the development process are they most likely to be encountered?

2. What is the single biggest challenge for developers and promoters in fulfilling environmental requirements? How could this be resolved?
3. Are changes in environmental regulations governing development clearly communicated? Is sufficient support available to help developers and promoters fulfil their responsibilities?
4. What are the costs of meeting environmental regulations for developers? How does this vary for types of developer or promoter and in different locations?
5. Is there sufficient coherence between different environmental regulations? How could regulations be administered in a more systematic and coherent way?
6. What impact do Government bodies such as the Environment Agency and Natural England have on planning and development decisions? How effectively do these bodies work together? How does the Environment Agency interact with development as both regulator and owner of land and other assets?
7. What role does Natural England play in monitoring and implementing these regulations? How does Natural England's involvement affect the delivery of new development?
8. To what extent are the information needs of the planning system proportionate?
9. How far do the key actors in implementing environmental regulations have sufficient resources to carry out their responsibilities?
10. Are there further significant changes which would improve this system?

APPENDIX 4: COMMITTEE VISIT TO HOULTON, RUGBY

As part of its inquiry on the impact of environmental regulations on development, on 23 May 2023 the committee visited Rugby, where they were hosted by the master developer Urban&Civic on their Houlton development site. The Committee hosted an engagement event with SME developers.

The following Members took part in the visit:

- Lord Moylan (Chair)
- Lord Best
- Lord Mawson
- Baroness Thornhill
- Baroness Warwick of Undercliffe

The specialist adviser, Kelvin MacDonald, was in attendance.

The Committee heard from:

- Nigel Hugill, Chief Executive, Urban&Civic
- James Scott, Group Director for Strategy and Planning, Urban&Civic
- Richard Quartermaine, Head of Sustainability, Urban&Civic

The Houlton development is a 1,170 acre site jointly owned by Urban&Civic and Aviva Investors. The outline planning consent was granted in May 2014 and includes up to 6,200 homes, a link road, 24 hectares of formal open spaces and sports pitches and community facilities including schools and GP surgeries.

The Committee heard about the master developer approach to development, where a single organisation undertakes to promote a site, secure planning permission, deliver green, grey and community infrastructure and create serviced plots of land. Urban&Civic submits outline planning consent giving a high-level plan and at each key development phase seeks further approval from the Local Planning Authority providing more detail for the area including a design code, viability, transport and educational reviews. Serviced plots of land are then sold or licensed to developers for the deliver of homes and commercial buildings. Reserved matters applications are submitted by either the master developer for the infrastructure delivered by them or the relevant end user for the homes and commercial buildings.

Representatives from Urban&Civic said Houlton's landscape strategy was initially developed in response to the existing population of newts on site, including great crested newts. The habitats regulations required the conservation of biodiversity and protection of endangered species, and, in 2014, biodiversity net gain and carbon neutrality were not factors in the planning process. Urban&Civic were required to submit a planning application and engage with the Natural England planning team with no guarantee that the licensing department would grant a protected species license after the consent was approved. Following engagement with the then Homes and Communities Agency and senior government figures, Natural England agreed to trial an 'in principle' licensing process which substantially reduced the planning risk and delays. Urban&Civic indicated that they have a positive relationship with Natural England who engage proactively to help mitigate potential issues and develop innovative solutions. The provision of habitats to support the resident newt population meant that the Houlton development was

already delivering above 10 per cent biodiversity net gain ahead of its mandatory introduction in November 2023.

On their sustainability plan, representatives from Urban&Civic said they had developed a bespoke sustainability framework which was intended to be easily understandable for the public and set a benchmark for the delivery of large strategic sites. The framework incorporated the United Nations' sustainable development goals and identified biodiversity, climate change and health and wellbeing as three universal goals. Houlton was Urban&Civic's only site at that time which exceeded their biodiversity net gain target. 18 trees per household had been delivered to date which was below the target of 25 trees per household by 2025 which was providing focus for future actions. On addressing carbon usage, the committee heard that Urban&Civic had been seeking to use more recycled material in roads and footpaths to reduce embodied carbon but had faced challenges because of policy contradictions at planning and delivery stage. As a result, Urban&Civic had opted to use recycled material in footpaths across the site despite this meaning they would not be adopted by the local authority. Homeowners were required to pay a service charge, in addition to council tax, for the management of the site's green spaces and unadopted amenities.

Regarding capacity within local planning authorities, the committee heard that developers on site at Houlton were experiencing significant delays in achieving permission on reserved matters applications. This was due to capacity issues within the local planning authority. Across the Urban&Civic portfolio, those developments in unitary authorities had a smoother experience with the planning process. This was attributed to the local planning authority having joint responsibility for housing delivery and highways and education facilities. In two-tier systems there was no incentive for a country council to prioritise taking decisions which unlocked planning permissions, as they were not responsible for overall housing delivery. In these circumstances, Urban&Civic had had positive experiences when a 'hit squad' made up of officers from both authorities had been established. It was suggested that in some locations local planning authorities were becoming increasingly risk averse and process driven because of their experience with judicial reviews.

The Committee was given a tour of the Houlton development site where they saw the green corridors and newt tunnels which had been put in place to both satisfy the habitats regulations and act as green amenities for residents. Members were also given a tour of Houlton School, a redeveloped grade II listed building that had originally been a radio station.

APPENDIX 5: GLOSSARY

BBB (BoerBurgerBeweging)	The farmer-citizen movement in the Netherlands which became the largest party in the Dutch Senate in the March 2023 provincial elections.
BEIS	Department for Business, Energy and Industrial Strategy. BEIS existed until 2023 when it was split to form the Department for Business and Trade (DBT), the Department for Energy Security and Net Zero (DESNZ) and the Department for Science, Innovation and Technology (DSIT).
Biodiversity Net Gain (BNG)	A requirement introduced in the 2021 Environment Act that development granted planning permission must provide a 10 per cent gain in biodiversity value.
Competent authority	The authority with the power or duty to determine whether a proposal can proceed. The habitats regulations state that a competent authority “includes any Minister, government department, public or statutory undertaker, public body of any description, or person holding a public office”.
DCMS	Department for Digital, Culture, Media and Sport
DEFRA	Department for Environment, Food and Rural Affairs
DLUHC	Department for Levelling Up, Housing and Communities
Environment Act 2021	The UK’s statutory framework for environmental protection which sets out targets, plans and policies for improving the natural environment; makes provision for statements and reports about environmental protection; for establishing the Office for Environmental Protection; about waste and resource efficiency; about air quality; about water, nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.
Environment Agency	An executive non-departmental public body, sponsored by the Department for Environment, Food & Rural Affairs to create better places for people and wildlife, and support sustainable development. When relevant, it is a statutory consultee in the planning process.

Environment Improvement Plan 2023	The Government's five-year delivery plan to restore nature and improve the environmental quality of the air, waters and land. It is the first 5-yearly revision of the 2018 25 Year Environment Plan.
Environmental Impact Assessment (EIA)	A statutorily required assessment of some types of development proposals detailing the expected impact on habitats, water quality, local species and other site-specific issues, which is required when developers submit project proposals.
Environmental Permit	Permits issued by the Environment Agency required for specified installations, medium combustion plant, specified generator, waste or mining waste operations, water discharge or groundwater activities, or work on or near a main river or sea defence.
Food Strategy	The June 2022 Government food strategy. This strategy responds to an independent review led by Henry Dimbleby, and includes policy initiatives to boost health, sustainability, accessibility of diets and to secure food supply, ensuring that domestic producers and the wider food and drink industry contributes to the levelling up agenda and makes the most of post-Brexit opportunities.
Green Infrastructure Framework 2023	A framework developed by Natural England to help local planning authorities and developers consider green infrastructure, such as parks and other green space, and fulfil policies in the National Planning Policy Framework.
Habitats regulations	Regulations that transpose the EU Birds Directive 1979 and the Habitats Directive 1992 into UK law.
Habitats Regulations Assessment (HRA)	A statutorily required process of assessing the impacts of certain proposed developments or plans on Special Areas of Conservation, Special Protection Areas and Ramsar Sites.
Kunming-Montreal Global Biodiversity Framework (KGBF)	An international framework setting out 23 targets to be met by 2030 to halt and reverse biodiversity loss, including effective conservation and management of at least 30 per cent of land and sea areas. The UK is a signatory.

Levelling-Up and Regeneration Bill	A Bill to make provision for the setting of levelling-up missions and reporting on progress in delivering them; about local democracy; about town and country planning; about Community Infrastructure Levy; about the imposition of Infrastructure Levy; about environmental outcome reports for certain consents and plans; about regeneration; about the compulsory purchase of land; about information and records relating to land, the environment or heritage; for the provision for pavement licences to be permanent; about governance of the Royal Institution of Chartered Surveyors; about vagrancy and begging; and for connected purposes.
Local Nature Recovery Strategy	A statutory strategy to identify locations to improve nature and provide other environmental benefits, such as carbon sequestration, flood regulation and access to nature-rich spaces being prepared by 48 responsible bodies covering the whole of England.
Local Planning Authorities (LPA)	Local authorities that are empowered by law to exercise planning functions for their area.
National Planning Policy Framework (NPPF)	Sets out the Government's planning policies for England and how these are expected to be applied.
National Policy Statement	Sets out the strategic priorities for the development of nationally significant infrastructure and provides a legal framework for planning decisions under the 2008 Planning Act.
Natural England	Natural England is an executive non-departmental public body, sponsored by the Department for Environment, Food & Rural Affairs to advise the government on the natural environment in England. When relevant, it is a statutory consultee in the planning process.
Nutrient Neutrality	Used to refer to the advice Natural England have given to ensure the amount of nitrate and phosphate pollution entering rivers arising from new development does not increase the nutrient load in those water courses.
Office for Environmental Protection (OEP)	The Office for Environmental Protection was created under the Environment Act 2021 to protect and improve the environment by holding government and other public authorities to account.
Ramsar Sites	Ramsar Sites are wetlands of international importance designated under the 1976 Ramsar Convention.

Recreational impact zones	A zone surrounding a protected site that Natural England identifies is being potentially harmed by recreational activity
Site of Special Scientific Interest (SSSI)	A Site of Special Scientific Interest is the land notified as an SSSI under the Wildlife and Countryside Act (1981) for its particular qualities in wildlife, geology, landform or habitats.
Special Areas of Conservation (SACs)	SACs are protected areas in the UK that must make a significant contribution to conserving the habitats and species identified by the EU Habitats Directive.
Special Protected Areas (SPAs)	SPAs are protected areas in the UK for birds listed under the EU Birds Directive.
[Protected] Species Licence	A licence issued to carry out any development works that may interfere with specified protected species.
Strategic Framework for International Climate and Nature Action 2030	The framework setting the direction for the UK's integrated approach to international action on nature and climate to 2030, including keeping to the 1.5C target, building resilience to current and future climate impacts and halting and reversing biodiversity loss.
Water neutrality	Used to refer to the advice Natural England has given that the total demand for water arising from a development is the same as it was before that development was built. The new demand for water can be offset in the existing community by making existing homes and buildings in the area more water efficient.