

The impact of environmental regulations on development

Evidence for the Built Environment Committee Inquiry

Land Use Planning Group, Wildlife and Countryside Link

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Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 70 organisations to use their strong joint voice for the protection of nature.

Summary:

1. Environmental regulation is essential to the design and delivery of sustainable development for [the wellbeing of people, environment and economy](#). A healthy natural environment is central to meeting [the Government's environmental ambitions](#) and [legally-binding environmental targets](#) and to [people's health and wellbeing](#), but crucially it is also the [prerequisite for a healthy economy](#) and a successful [development sector](#).
2. Environmental regulation is also [vital for and appreciated by businesses](#). Regulations set out requirements and minimum standards that ensure compliance with environmental law, create [a level playing field for the sector](#), and [promote well-designed and sustainable development in the right place](#), providing certainty and stability for investment. Further benefits of effective environmental regulations include [the creation of new jobs and skills](#) and [stimulated innovation and investment](#) in the development sector.
3. Existing environmental regulation in England has been reviewed time and time again and both [Government](#) and [external reviews](#) have found it fit-for-purpose. However, the implementation of environmental regulations in England, including through the land use planning system, [could be improved](#). Poor implementation, for example, too long and unfocused reports, can result in poor outcomes for nature, as well as delays in the planning system. This is an implementation issue, not a fault with the regulations themselves, and could be addressed through process improvements, such as the ones set out below.
4. Currently, land use change and development is a [significant contributor to environmental degradation and greenhouse gas emissions](#) in the UK. Existing environmental protections in the planning system have not been enough to halt the decline of nature, contributing to the current situation where [41% of British species](#) have declined in abundance since 1970, [15% of species in Great Britain](#) are now at risk from extinction, only [16% of England's rivers, lakes and coastal waters](#) are in good condition, and the public health costs of poor air quality in the UK are now [£20 billion per year](#).
5. The Government has acknowledged that [the planning system should contribute to addressing the decline of biodiversity and climate change](#). Ensuring better implementation of environmental regulations, including by facilitating and promoting better application of environmental regulations for development, will limit delays and costs for those involved in the planning system and deliver better environmental outcomes for nature, climate, people and developers.

6. To improve the implementation of environmental regulations in the land use planning system in England, we recommend:
 - a. Strengthened application of environmental regulations ‘upstream’ of the planning system through [strengthening the protections and improving the management for protected sites](#) and strengthened environmental monitoring and development control for pollution sources, in particular those close to sensitive habitats, and strengthen environmental permitting to control waste from intensive operations. For example, [there is currently no information](#) about where, when or how much slurry, manure or litter is stored or spread on land near sensitive habitats. As well, targets under the Storm Overflows Discharge Reduction Plan mean that [only 38% of storm overflows causing harm to priority wildlife sites will be dealt with by 2030](#); increased ambition is needed (ideally, 100% of storm overflows in priority areas dealt with by 2030), to prevent storm overflows from spilling and causing harm to protected sites.
 - b. More clear and certain application of environmental regulations within the planning system, [for example the Habitats Regulations](#), to avoid inappropriate proposals from coming forward in the first place to reduce the need for costly assessment of plans and proposals that are clearly damaging.
 - c. Earlier and better strategic and spatial planning, including through Strategic Environmental Assessment (SEA), by [strengthening the mitigation hierarchy and earlier and genuine consideration of alternative proposals](#), in order to steer developments or projects away from inappropriate sites and towards the right location, improving environmental outcomes and limiting adverse delays and costs for developers.
 - d. [Better quality, availability and comparability of environmental data](#) to inform strategic planning, plan-making, the development of plans and proposals, decision-making, and any necessary mitigation and compensation measures, [including through SEA and Environmental Impact Assessment \(EIA\)](#).
 - e. Increased funding and ecological expertise for all competent authorities (e.g., Local Planning Authorities) and Government bodies (e.g., [Natural England](#) and [the Environment Agency](#)) in order to properly and confidently apply environmental regulation, [review and conclude environmental assessments](#), and [implement new environmental policies such as Biodiversity Net Gain \(BNG\)](#) leading to better environmental outcomes and more surety in the planning system.

Responses to selected questions:

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

7. Environmental regulations must be considered and applied as early as possible in the development process, from plan-making, to the development of plans and proposals, to decision-making, to the development of necessarily mitigation and compensation measures.

8. The application of environmental regulations must be underpinned by sufficient environmental information and ecological and planning expertise. The environmental evidence base, including national spatial data and site-specific local survey data, should be consulted by developers and Local Planning Authorities (LPAs) in order to identify important areas for nature, to identify environmental regulations that may be applicable to a plan, project or proposal, and to inform application of and compliance with relevant environmental regulations.
9. At a strategic level, effective consideration of environmental regulations will help steer the right development to the right locations, avoiding harm to nature, inappropriate proposals coming forward later on, for example, proposals for development on protected sites, and costs and delays for developers. Strategic Environmental Assessment (SEA) is an important tool for strategic planning and [SEA should be strengthened](#) by being applied earlier, to more plans and programmes, and by being more spatially explicit and given more decision-making strength, for example, by requiring responsible authorities to act in accordance with an SEA. Local Nature Recovery Strategies (LNRSs) are another important new tool for better strategic planning for nature – these plans should be given more weight in the planning system by requiring local development plans to be aligned with LNRSs in order to deliver better outcomes for nature and sustainable development.
10. At a site level, Habitats Regulations Assessment (HRA) and Environmental Impact Assessment (EIA) are vital processes to gather environmental information, identify potential impacts, and develop mitigation and compensation measures. Again, earlier application of HRA and EIA to inform the evolution of projects, rather than being applied to the final outcome, will result in better outcomes for nature as well as reduced costs and delays for developers.
11. Early and effective application of environmental regulations, including through HRA, SEA and EIA, requires increased funding and ecological expertise for all competent authorities (e.g., Local Planning Authorities) and Government bodies (e.g., [Natural England](#) and [the Environment Agency](#)) in order to properly and confidently apply environmental regulation and [review and conclude environmental assessments](#), resulting in better environmental outcomes and more surety in the planning system. Increased funding for LPAs is especially crucial in the face of new environmental policies and requirements such as Biodiversity Net Gain (BNG), as [LPAs do not currently have sufficient capacity and ecological expertise](#) to implement BNG.

What is the single biggest challenge for developers and promoters in fulfilling environmental requirements? How could this be resolved?

12. Appropriate, high quality, and timely environmental data to inform strategic planning, and later in the process, the development of proposals and decisions on proposals, must be available and then applied by developers and LPAs with sufficient ecological expertise in order to limit delays and additional costs in the planning system and to deliver better environmental outcomes.

13. Increased funding and ecological expertise is urgently needed for all competent authorities (e.g., Local Planning Authorities) and statutory consultees in order to properly and confidently review and conclude environmental assessments and decisions. The Regulation 9 duty for relevant authorities to establish conservation measures to avoid deterioration of nature sites and to avoid disturbance to listed species must be fully funded and supported.
14. The quality, availability and comparability of environmental data, [necessary to underpin good decision-making and limit costs and delays in the planning system](#), should be improved. Data collected through the environmental assessment process should be shared and made available and usable for other purposes in accordance with the [FAIR data principles](#) to improve the existing environmental evidence base, which can then be mobilised for future environment assessments and inform best practice.

Is there sufficient coherence between different environmental regulations? How could regulations be administered in a more systematic and coherent way?

15. Environmental regulations could be administered in a more systematic and coherent way through more strategic planning, better guidance for developers, use of standardised templates and appropriate use of digital technology, and more capacity and ecological expertise within Government bodies, statutory consultees, and LPAs.
16. Environmental regulations ‘upstream’ of the planning system must be well implemented. For example, if done well, the protection, good management, and monitoring of protected sites should ensure these sites are in good condition and prevent the environmental limits of these sites from being exceeded by development proposals nearby.
17. Environmental regulations should be considered and applied in combination as early as possible in the development process, from plan-making, to the development of plans and proposals, to decision-making, to the development of necessarily mitigation and compensation measures.
18. Strategic Environmental Assessment (SEA) is an important tool for strategic planning and [SEA should be strengthened](#) by being applied earlier, to more plans and programmes, and by being given more decision-making strength, for example, by requiring responsible authorities to act in accordance with an SEA. Local Nature Recovery Strategies (LNRSs) are another important new tool for better strategic planning for nature – these plans should be given more weight in the planning system by requiring local development plans to be aligned with LNRSs in order to deliver better outcomes for nature and sustainable development.
19. At a site level, the EIA regulations already cover several environmental regulations such as air quality, and they require the relevant authority to coordinate EIA with HRA, if an HRA is required. Earlier application of HRA and EIA to inform the evolution of projects, rather than being applied to the final outcome, will result in better outcomes for nature as well as reduced costs and delays for developers.
20. The new environmental requirement of Biodiversity Net Gain (BNG) is proposed to be considered separately and Link strongly believes this is as it should be, as BNG is an

additional requirement that should be applied after the mitigation hierarchy has been applied and on top of any mitigation and compensation measures that have been identified as requirements.

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?

21. Government bodies such as the Environment Agency and Natural England have an important role in planning and development decisions as statutory consultees and enforcers of environmental regulations.
22. When functioning effectively with sufficient resources and expertise, these bodies can vastly improve the implementation of environmental regulations, steering the right development to the right locations, and facilitating the functioning of the planning system in delivering sustainable development.
23. Natural England and the Environment Agency also have important roles in implementing and enforcing environmental regulations 'upstream' of the planning system – for example, if done well, the protection, good management, and monitoring of protected sites by Natural England should ensure these sites are in good condition and prevent the environmental limits of these sites from being exceeded by development proposals nearby.
24. Unfortunately, years of under-resourcing of these agencies has left them lacking the sufficient resources, capacity, and expertise to fulfil their statutory functions.
25. Increased funding and ecological expertise is urgently needed for Natural England, the Environment Agency and other Government bodies in order to properly and confidently apply environmental regulation, and advise and conclude on environmental assessments and decisions, leading to better environmental outcomes and more surety in the planning system.
26. There is also room for improvement in how the Environment Agency and Natural England work together. Setting the achievement of nature recovery and the mitigation and adaptation to climate change as statutory purposes for all of Defra's Arms Length Bodies (ALBs) would minimise conflicting drivers and enable better join-up across the ALBs, for example in the freshwater environment. A shared strategy and strengthened legal duty to collaborate, at least between the Environment Agency, Natural England and Forestry Commission, could also secure better join up and better delivery of shared environmental objectives, including the land use planning system.

What role does Natural England play in monitoring and implementing these regulations? How does Natural England's involvement affect the delivery of new development?

27. Natural England has an important role in planning and development decisions as statutory consultees and enforcers of environmental regulations.
28. When functioning effectively with sufficient resources and expertise, Natural England can vastly improve the implementation of environmental regulations in the planning system, steering the right development to the right locations, and facilitating the functioning of the planning system in delivering sustainable development. Natural England also has an important role in implementing and enforcing environmental regulations 'upstream' of the planning system – for example, if done well, the protection, good management, and monitoring of protected sites should ensure these sites are in good condition and prevent the environmental limits of these sites from being exceeded by development proposals nearby.
29. Unfortunately, years of under-resourcing of Natural England has left it lacking the sufficient resources, capacity, and expertise to fulfil their statutory functions. Increased funding and ecological expertise is urgently needed for Natural England in order to properly and confidently apply environmental regulation, and advise and conclude on environmental assessments and decisions, leading to better environmental outcomes and more surety in the planning system.

To what extent are the information needs of the planning system proportionate?

30. The right information, including environmental information, at the right time, is essential to good decision-making, good environmental outcomes and to enabling sustainable development through the planning system. Environmental information must be appropriate, good quality, and timely. Good environmental information at the right time [can limit costs and delays in the planning system](#). Mandatory scoping for environmental assessments can help ensure that they are focused on what really matters, relevant and proportionate.
31. Data collected through the environmental assessment process should be shared and made available and usable for other purposes in accordance with the [FAIR data principles](#) to improve the existing environmental evidence base, which can then be mobilised for future environment assessments and inform best practice.
32. While we recognise the vast amount of information and documentation that can be involved in environmental assessments, EIA for example is an essential evidence-gathering process and the right information must be included at the right time to inform decision-making. All evidence should be submitted as part of an application. If not, this can result in delays to the planning process and decision-making. There could be improvements to the formatting and sign-posting in EIA documents to ensure the right information is clear and accessible to decision-makers. Standardised templates could also make navigating reports easier and more efficient.

How far do the key actors in implementing environmental regulations have sufficient resources to carry out their responsibilities?

33. Local Planning Authorities (LPAs) have a central role in the planning system and to creating sustainable development, including good environmental outcomes.
34. Currently, however, LPAs [do not have sufficient capacity or ecological expertise to fulfill their statutory planning functions](#), let alone [implement new environmental policies and requirements such as BNG](#).
35. Increased funding is urgently needed for LPAs in order to properly and confidently review and conclude plan-making, environmental assessments and planning decisions. The Regulation 9 duty for relevant authorities to establish conservation measures to avoid deterioration of nature sites and to avoid disturbance to listed species must also be fully funded and supported.
36. Government bodies such as the Environment Agency and Natural England also have an important role in planning and development decisions as statutory consultees and enforcers of environmental regulations.
37. When functioning effectively with sufficient resources and expertise, these bodies can vastly improve the implementation of environmental regulations, steering the right development to the right locations, and facilitating the functioning of the planning system in delivering sustainable development.
38. Natural England and the Environment Agency also have important roles in implementing and enforcing environmental regulations ‘upstream’ of the planning system – for example, if done well, the protection, good management, and monitoring of protected sites by Natural England should ensure these sites are in good condition and prevent the environmental limits of these sites from being exceeded by development proposals nearby.
39. Unfortunately, years of under-resourcing of these agencies has left them lacking the sufficient resources, capacity, and expertise to fulfil their statutory functions. Between 2009-2019, [Environment Agency funding fell 63%, total staff fell 25%, and prosecutions of businesses fell 88%](#). This has resulted in a lack of enforcement: the number of Environment Agency enforcement notices [fall 69.5% between 2012 to 2019](#).
40. Natural England’s functions have also suffered from a lack of funding over the last decade: a [decline of 72% from 2010 to 2019](#). the body has not been able to properly fulfill its statutory duties such as the monitoring of SSSIs ([78% of SSSIs have not been monitored in the last 6 years](#)) and exercising its regulatory tools to secure the good management of SSSIs (these tools have been used [on 9 occasions in the last 20 years, covering 0.2% of SSSIs](#)).
41. Increased funding and ecological expertise are urgently needed for Natural England, the Environment Agency and other statutory nature conservation bodies in order to properly and confidently apply environmental regulation, and advise and conclude on environmental assessments and decisions, leading to better environmental outcomes and more surety in the planning system.

Are there further significant changes which would improve this system?

42. We are concerned about significant proposed changes to environmental regulations and environmental assessment in the planning system which would introduce uncertainty and open the door to potential regression in environmental protections. This includes proposals in the Nature Recovery Green Paper to change amend HRA and provisions in the Levelling Up and Regeneration Bill to replace EIA and SEA with a new system of environmental assessment called Environmental Outcomes Reports (EORs).
43. Existing environmental regulation in England, including HRA, has been reviewed time and time again and both [Government](#) and [external reviews](#) have found it fit-for-purpose.
44. Environmental regulation is also [vital for and appreciated by businesses](#). EIA and SEA are internationally-recognised processes to assess and mitigate environmental impacts and are well known and understood by developers and businesses, including global investors. Regulations set out requirements and minimum standards that ensure compliance with environmental law, create [a level playing field for the sector](#), and [promote well-designed and sustainable development in the right place](#), providing certainty and stability for investment. Further benefits of effective environmental regulations include [the creation of new jobs and skills](#) and [stimulated innovation and investment](#) in the development sector.
45. We recognise that the implementation of environmental regulations in England, including in the land use planning system, could be improved. The Government should pursue improvements to the implementation of environmental regulation, rather than creating a new system (including bodies of underpinning case law) which will cause uncertainty, delays and poses risks to environmental protection.
46. To improve the implementation of environmental regulations in the land use planning system in England, we recommend:
 - a. Strengthened application of environmental regulations ‘upstream’ of the planning system through [strengthening the protections and improving the management for protected sites](#) and strengthened environmental monitoring and development control for pollution sources, in particular those close to sensitive habitats, and strengthen environmental permitting to control waste from intensive operations. For example, [there is currently no information](#) about where, when or how much slurry, manure or litter is stored or spread on land near sensitive habitats. As well, targets under the Storm Overflows Discharge Reduction Plan mean that [only 38% of storm overflows causing harm to priority wildlife sites will be dealt with by 2030](#); increased ambition is needed (ideally, 100% of storm overflows in priority areas dealt with by 2030), to prevent storm overflows from spilling and causing harm to protected sites.
 - b. More clear and certain application of environmental regulations within the planning system, [for example the Habitats Regulations](#), to avoid inappropriate proposals from coming forward in the first place to reduce the need for costly assessment of plans and proposals that are clearly damaging.

- c. Earlier and better strategic and spatial planning, including through Strategic Environmental Assessment (SEA), by [strengthening the mitigation hierarchy and earlier and genuine consideration of alternative proposals](#), in order to steer developments or projects away from inappropriate sites and towards the right location, improving environmental outcomes and limiting adverse delays and costs for developers.
 - d. [Better quality, availability and comparability of environmental data](#) to inform strategic planning, plan-making, the development of plans and proposals, decision-making, and any necessary mitigation and compensation measures, [including through SEA and Environmental Impact Assessment \(EIA\)](#).
 - e. Increased funding and ecological expertise for all competent authorities (e.g., Local Planning Authorities) and Government bodies (e.g., [Natural England](#) and [the Environment Agency](#)) in order to properly and confidently apply environmental regulation, [review and conclude environmental assessments](#), and [implement new environmental policies and legal requirements such as Biodiversity Net Gain \(BNG\)](#) leading to better environmental outcomes and more surety in the planning system.
47. While in principle EORs have the potential to deliver good outcomes for nature, due to the dearth of detail on the face of the Bill, the lack of parliamentary scrutiny on vast enabling powers for the Government to reform and create environmental assessment through secondary legislation, and the weak non-regression clause in the Bill, the provisions in the Bill open the door to possible regression in environmental protections. These concerns have been repeatedly echoed by Public Bill Committee witnesses,¹ by MPs during Commons stages,² by nature and climate groups in their written evidence,³ and by the Office for Environmental Protection.⁴ The detail of the scope, requirements, and implementation of an entirely new system of environmental assessment is crucial, especially in the face of the nature and climate emergencies. In particular, without the ‘outcomes’ set in in legislation, the new EORs system is susceptible to gaming by any future government, as outcome indicators can be changed and manipulated at any point to meet future political objectives.
48. If the Government decides to pursue a new system of environmental assessment, the Government should amend the Levelling Up and Regeneration Bill with safeguards to ensure that the EOR regime lifts rather than lowers environmental standards, by increasing the level of parliamentary scrutiny of the secondary legislation, preserving the integrity of the Habitats Regulations (the strongest protections for protected sites and species), clarifying that the scope of EORs will include climate mitigation and adaptation, and strengthening the non-regression clause to the same level as in the Environment Act 2021, so that the Secretary of State cannot weaken some environmental protections so long as they consider this to be balanced out else where to maintain the ‘overall level of protection.’

¹ https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf p115-116

² https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf p687

³ [2238 \(parliament.uk\)](https://www.parliament.uk)

⁴ [Levelling-up and Regeneration Bill \(7th September 2022\) \(parliament.uk\)](https://www.parliament.uk)

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This response is supported by the following Link members:

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