



HOUSE OF LORDS

Built Environment Committee

Corrected oral evidence: The impact of environmental regulations on development

Tuesday 28 February 2023

10.40 am

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Members present: Lord Moylan (The Chair); Lord Berkeley; Lord Best; Lord Carrington of Fulham; Baroness Cohen of Pimlico; Baroness Eaton; Lord Faulkner of Worcester; Lord Goddard of Stockport; Lord Greenhalgh; Baroness Thornhill.

Evidence Session No. 1

Heard in Public

Questions 1 - 11

Witness

[I](#): Professor Liz Fisher, Professor of Environmental Law, Oxford University.

Examination of witness

Professor Liz Fisher.

Q1 **The Chair:** Welcome to this session of the Built Environment Committee. I am pleased to welcome to the committee Professor Liz Fisher, professor of environmental law at the University of Oxford. We are grateful to you for giving your time to come and give evidence to us today. We aim to complete this session in about 40 minutes, and we have half a dozen questions to ask you. I ask everyone to be fairly brisk with their questions and answers so that we can cover all the work. Everyone has nameplates in front of them, although I will introduce them. As this is the first public meeting of this inquiry, Members will state their interests for the record before they ask a question.

Q2 **Lord Berkeley:** I do not have any declarable interests, but I am interested in the environment and development and how they go together. I lived in Oxford for 15 years and have seen some of the fusses that go on there. It is interesting to try to find out how environmental law and regulation has evolved in relation to building over the years and where it will go. There is obviously conflict between different elements of it, and an introduction from you, Professor Fisher, as to where this is all going—on a national scale; I do not mean Oxford, because that is very special—would be helpful.

Professor Liz Fisher: Thank you very much. To think about where it is going, we need to go back to where we have been. I would start with June 1858. We would not have been in this committee room then, because the stench from the River Thames was so significant that Parliament could not use any rooms on the river side.

I start with that because it is an example of how, with urbanisation and industrialisation in the 19th century, cities grew without any planning law or environmental law. The average life expectancy of a working-class man in Liverpool in 1842 was seventeen and a half. That is the starting point, and an example of why we have environmental law and planning law. No one building their little house is doing anything problematic, but together it creates a tragedy of the commons. In the case of 1858, it was pollution and sewage.

In the mid-20th century, we see the creation of the first comprehensive frameworks for both planning law and environmental law: the Town and Country Planning Act 1947 and the National Parks and Access to the Countryside Act 1949. They created early frameworks. Under the 1949 Act, for example, there are exciting things such as sites of special scientific interest, which I will come back to.

It is only in the 1970s that environmental law really takes off, and, again, it is for the same reasons: the growth in population, the growth in urbanisation and the development of environmental problems. When that happened, the UK was just joining the EU, so nearly all environmental law was at the EU level—for two reasons.

First, it was a unanimous decision by member states to do it at that level. Secondly, it tied in with the idea of the Common Market at that time. If you have different environmental laws in different places, that distorts competition; it is cheaper to build here than there. Part of it was about making sure that there was a level playing field. That is the second stage of development.

Since Brexit, we have been going through a state of flux. We had the Environment Act 2021, which has been passed, and, of course, we have two big Bills now that will change the shape of environmental law and planning law.

That is where we have been. I do not know if you have any questions on that. I am sorry if I have kind of laboured it.

Lord Berkeley: I have just one question. In my mind, much of the environmental law went to Brussels, and many Ministers here were very keen for it to go to Brussels so they would not get blamed if we did not like it.

Professor Liz Fisher: Yes, and political scientists have written many articles showing that there was a wave. Many of those environmental laws were UK initiatives; integrated pollution control is the classic example. You are absolutely right about that.

Going forward, we are facing a huge amount of uncertainty. I would list three types of uncertainty in how planning law is shaped at the moment. The first uncertainty is that we have two Bills, and until we know what they will look like as Acts it is very hard to say what the law is.

The second uncertainty is that those two Bills—I can go into detail in a moment about how they affect environment, if you would like—and the Environment Act are pretty much framework legislation; they empower the Secretary of State to pass regulations, or guidance and policy. In most cases, we are yet to see what that looks like. We also do not know how stable those regulations or that policy will be. That also creates uncertainty, particularly when there could be dramatic changes of approach to the law.

The third uncertainty is how all this relates to existing law. The levelling-up Bill, for example, proposes a whole new approach to environmental impact assessments with environmental outcomes reports. The question is: how does that fit in with the practice that has been going on for nearly 35 years? Likewise, and you can see this in the submissions from industry to the Levelling-up Bill, one of the biggest problems is confidence in local authorities and their resources. That creates uncertainty. You can have great laws on the books, but if there is no one in a local authority to enforce them, you have a problem.

Does that help you to set the scene?

Lord Berkeley: I think you have reflected why we are doing this at the moment, with so much legislation going through, but it is going to be

interesting.

The Chair: I think you have slightly shot the fox of the question I was going to ask next.

Lord Berkeley: Sorry about that.

Q3 **The Chair:** No, not you, but the answer was so comprehensive that you have gone into the area of the legislative framework and the changes that the LURB and REUL Bills might bring about. I will ask something slightly different, then Lord Best will come in to ask about other things. Lord Berkeley stated as a definitive matter that there was a conflict between environmental legislation and planning legislation. That is not what we have stated explicitly in our call for evidence because we wanted to leave it open to witnesses to say, "That's not true at all; there is no conflict", which might be the view of some witnesses. Do you think there is a conflict between the two? Is Lord Berkeley right in the way he puts it or do you want to take advantage of the opportunity we have given you to say that there is no conflict?

Professor Liz Fisher: I will give a very academic answer: it depends on which level you look at it. If we think that the purpose of the planning system is to have quality environments for communities to live in then there is no conflict, in the sense that ensuring development is mindful of the environment is something that we all want. We do not want to return to 1858.

As to how it works practically, it can seem a conflict because we have the planning regime and planning legislation, and environmental issues are then triggered to consider the nature of the development. Because environment has been bolted on, that triggering process is not always as smooth as it could be. From that perspective, I would not say that there is conflict so much as tension.

From the perspective of someone who wants to build something, someone telling them that they have to think about X when they are not interested in it will always seem a conflict. Of course, that is the purpose of law: to make sure we are thinking about all the things that need to be thought about.

The Chair: One of the persons who wants to build something is the Government. The Government want to build, or see built, 300,000 homes a year, a railway that goes very quickly to Crewe and Manchester, and a nuclear power station here or there—Sizewell or whatever. Is this an internalised conflict within government? In other words, is it what we call muddle and confusion at the highest level?

Professor Liz Fisher: Again, academics write about governments muddling through. It requires some very careful decision-making and a recognition that any development that will be built will create winners and losers. One needs a legal system that ultimately helps to make the best decision in the circumstances.

Lord Best: I should say that I am president of the Sustainable Energy Association, a vice-president of the Local Government Association and vice-president of the Town and Country Planning Association.

The Chair: Before you go on, I accuse myself of failing in my own stipulations: I am a member of the board of the Ebbsfleet Development Corporation and chairman of the charity the Ebbsfleet Garden City Trust.

Q4 **Lord Best:** You mentioned that the Levelling-up and Regeneration Bill will create uncertainty. Could you explain how it will, if it proceeds on the course that it is on? What difference will it make to the world you look at? What can we expect from it that will change things in fundamental way?

Professor Liz Fisher: It will change a lot in a fundamental way, but I will focus on the two main areas where it impacts on environmental law. The first is that it creates a new regime: rather than having environmental impact assessment and strategic environmental assessment, there will be a new thing called environmental outcome reports. As I mentioned, the draft legislation is empowering regulations and guidance to be issued that would set up that framework. What that framework will look like is quite difficult to ascertain from looking at the Bill. That will be a huge sea-change, not just in practice here in the UK. Environmental impact assessment is a worldwide practice; you have it in nearly all jurisdictions. This would replace a practice that is pretty settled in most places with a whole new system.

Lord Best: And it would open the door to it being changed and changed again, because it is discretionary, with the Secretary of State in charge.

Professor Liz Fisher: Absolutely. To give you a feeling of that, the overarching National Planning Policy Framework has been changed four times since 2012—even shifting around paragraphs. I am talking about uncertainty, but it is really about calculability as a developer, thinking, “What risks am I taking in this project?”

That is one part. The other part of the Bill is the nutrient provisions, which basically say that the assumption will be that sewage undertakers will meet the nutrient neutrality standards. Therefore, if I understand it correctly, that will not become an issue for planners to think about. The question is: will that actually happen? Does everyone know about nutrient neutrality? I see nods around the committee.

The Chair: Sadly. We had to learn about it.

Professor Liz Fisher: That is, in a sense, taking it out of the planning regime. The question will be: will that solve the problem? One thing to stress in all this is that, no matter what the law is, the environment is a physical reality. Problems can be created; once they are, some of them can be very difficult to address.

That is that. On the repeal Bill, as I am sure you know, I think there are about 1,700 pieces of retained EU law under Defra’s remit—it depends on which number you take. Some of them are not environmental measures,

but what will happen at the end of 2023 is very unclear. Given that most of our environmental law has come from the EU, removing it—or even retaining it; I will come back to that in a moment—will have a significant impact on the law.

The other part of that Bill is what courts can take into account. It might be that the law remains, but the courts might not be able to take other bits of law—precedent or Court of Justice reasonings—into account. Again, that will change the law. We again have this problem of calculability.

Lord Best: You mentioned the courts in that context. At the moment, how much of environmental law is played out in the courts?

Professor Liz Fisher: Before I get to the courts, I come back to the Environment Act 2021, because it introduces biodiversity net gain and conservation covenants. Again, biodiversity net gain is just in the process of being rolled out. That creates another uncertainty.

On the role of the courts, first, we have the Planning Inspectorate. If you are a developer and an adverse decision is made, you can appeal to the Planning Inspectorate. If you are a third party you cannot: you have to go straight to judicial review. Even though that is the case, a study I did with my colleague, Joanna Bell, in 2017, in which we read a year's worth of Administrative Court and Planning Court decisions to look at who was bringing cases and other issues, revealed that about 10% of all those cases were brought by companies, not just in planning law. Only 3% were brought by NGOs. So a lot of this is developers bringing actions to the courts, not NGOs.

As to the role that the courts are playing, the first and the most important is that they are articulating what the law is. To go back to the study that I did with Joanna Bell, we found that, in quite a few cases, if the legislation or the policy changes, people are unclear about the law. That ends up as a legal dispute, which the court has to decide on: what does this term mean? In your area, I once did a project on wind turbines, and there was a whole series of cases about Section 66 of the Listed Buildings Act and what it means to put a wind turbine in the view of a listed building, because you have to have special regard to the setting.

In a sense, courts are doing a lot of stating what the law is when you have this process of change. They are also resolving disputes. Sometimes they are between communities but, for example, you can have a dispute where you have a competitor bringing the judicial review action. There was the famous case of Quinn Glass up in Chester, which built the largest glass factory in Europe without planning permission, as I understand it from reading the judgment. It was the competitor who challenged that. You then have a role for accountability and calling public decision-makers to account. My point is that the courts are doing lots in this, but the Planning Inspectorate is also doing a lot.

Lord Best: You said that 10% of the cases taken to the courts were from

companies—from the developers, housebuilders, and so on—and 3% were from the NGOs. Who brings the other 87%?

Professor Liz Fisher: Again, this is not just planning law; this is right across all administrative law and statutory appeals. Overwhelmingly it is individuals bringing actions, as well as different government bodies against each other.

The Chair: That is certainly true but I suspect that many of the individuals are, so to speak, fronts for larger organisations. It is a rare individual who can sustain the expense of bringing a judicial review action, but there are advantages to limiting the liability to one person—although that may arise.

Professor Liz Fisher: That is the case. Likewise, an NGO can often be a small group of local people. I am not saying that these numbers are set in stone, but they give you a feeling for who is using the system.

The Chair: Our next question is from Lord Faulkner of Worcester. Perhaps you could declare your interests first, please.

Q5 **Lord Faulkner of Worcester:** I have railway interests in that I chair the Great Western Railway stakeholder advisory board and I am president of the Heritage Railway Association. I am also the owner of two properties in Oxford that are let to academics—I want to ask about Oxford in a minute—and I am the Government's trade envoy to Taiwan.

My first question is on the regulations that we have been talking about. What objectives are they designed to meet and who sets them?

Professor Liz Fisher: When we talk about environmental regulations, we are talking about two types. We are talking about environmental quality—air quality, water quality; those types of generic standards—but also about laws where we are trying to protect areas of land, which is what I often call enclave protection: here is a piece of land that we value because it is a site of special scientific interest or a special protection area. So there are those two types of laws. As regards the law, there are those which apply to everyone—for example, we have an emission zone in London. However, we also have laws that are triggered when an activity happens, which is why planning law becomes relevant.

I say all this because environmental law has many different purposes. There is not a single purpose. Some of it is about protecting human health—that is air quality—and some of it is about protecting the fact that we have drinking water, which is a more basic kind of issue. If we get into something like nature conservation, we might be protecting something because we think it is of scientific interest, such as of geological interest, or because we want to protect the habitat for another species, such as birds. So there is not a single objective in environmental law.

As regards who sets them, in a way it is a product of history. If we go back to sites of special scientific interest, that was the Huxley committee in the 1940s, which said that it is really important that we protect things

that are of scientific value. A lot of our environmental laws from the EU would have come from committees, which the UK would have been involved in, setting standards.

There is no way of saying that we have a single vision of what environmental protection is. Of course, that makes it complicated, but in a sense it is the reality in that the environment is everything around us and we value it for different reasons.

- Q6 Lord Faulkner of Worcester:** Sticking with air quality for a second—this is my Oxford question—as you know, Oxford is a pioneer for low-traffic neighbourhoods, and there are moves for ultra low emission zones in other cities around the country, most notably in London and Birmingham. Do you think enough is being done to stress the air quality desirability of these measures, and should not everybody be falling in behind the authorities which are attempting to do that?

Professor Liz Fisher: I live in a low-traffic neighbourhood, and I should say that I find it a very positive experience. What is also really interesting—as an academic, I have been thinking about this a lot—is the conflict that it has given rise to. Bollards have created a huge amount of community conflict; as you may know, there was a big protest in Oxford two weeks ago. I have heard from people on the city council that the issue is to do with air quality. Many people are saying that this is about climate change, and that is one of the aims, but it is also about the fact that Oxford has a serious air quality problem, and this was designed to reduce it. That has perhaps got lost in the messaging.

However, you can understand why. Both air quality and climate change are what George Marshall has described as multivalent—they feel very abstract. When you are driving your car and suddenly there is a bollard in front of you, that does not feel abstract, but when someone is talking about health quality outcomes for the whole of the city, that feels like it is off somewhere in the future—

Lord Faulkner of Worcester: It is a bit like the big stench outside, is it not?

Professor Liz Fisher: It is absolutely like the big stench outside. Again, the person trying to cut across the side streets is not doing anything bad, but they are contributing to the problem. That challenge of how one explains and captures that big problem is a challenge in environmental law.

The Chair: We come now to Baroness Thornhill. Could you declare your interests first and then ask your question?

- Q7 Baroness Thornhill:** I am very boring in this department; I have no interests to declare. I am a formerly directly elected mayor, so local government is my thing, and I am a vice-president of the Local Government Association.

Your comments regarding Oxford and your previous comment when you

said that the system creates winners and losers is the bit that I am interested in. I am sharing this question with another colleague, so I will stick to the first part. I am interested in how within the system, which we all have a lot of experience of, prioritisation is played out in terms of decision-making. In other words, what weight is given to what, and in your view, when certain things, say, may hold up a development for a long time, how does the system get some degree of proportionality into those decisions that are concerned with the greater good? Is that coherent?

Professor Liz Fisher: The short answer is that there is no strict hierarchy, and that is for two reasons. The first is that a development happens in a place, and in a sense it is the place and the nature of the development which will determine what environmental laws come into play. To go back to nutrient neutrality again, if you build in an area which is very sensitive, that will come into play. Or, if you want to build something really big, environmental impact assessment will come into play. So the first thing is that we do not have a hierarchy because in a sense it depends on each project.

The second reason why there is not a hierarchy is because, as I said, in a sense environmental issues have been bolted on to the planning system. If we take something like Section 70 of the Town and Country Planning Act, development comes in and it should be decided in accordance with a development plan unless there are material considerations. But then there are these other regulations which create other obligations, and in a sense, what has weight in the decision-making will depend on the wording of those laws.

Before we left the EU, the added complication was the supremacy of EU law. Because many of these obligations were coming from EU law, that meant that in a sense they were higher up—

Baroness Thornhill: They were top trumps.

Professor Liz Fisher: Yes. Think of the HS2 decision before the Supreme Court in 2012, although that is a more complex decision. So there is no easy hierarchy.

On the point about delay and, again, going back to the evidence that the Home Builders Federation and others put in relation to the Levelling-up Bill, the issue that they all highlight is the lack of resources in planning departments. The Federation in particular highlights that only 0.45% of local government budgets are being spent on planning. If you are going to require a developer to put in an environmental impact assessment or to think about other issues, you need expertise on the other end to figure things out. That is a big challenge. The industry evidence highlights that a lot of the delays are concerned with problems in the planning department rather than problems with the actual laws.

The Chair: May I jump in on this point? I appreciate the point about resources in local planning authorities, but to what extent are local

planning authorities able to disregard or override environmental regulations?

Professor Liz Fisher: It depends on which regulations you are talking about. If you are talking about environmental impact assessments, first, most projects do not require one. The way the past regulations have been drafted means that they encourage developers to say, "Yes, we know we need to do an EIA—we will do it up front."

Secondly, that has to be carried out, but the local authority, or the Secretary of State if they are the decision-maker, only needs to have due regard to that. That assessment does not force a particular outcome, but it has to go into their decision-making. That might result in, for example, particular conditions and so on. However, if, for example, you have something like the obligations in relation to biodiversity net gain, they will create obligations on the local planning authorities, or, if we take a SSSI or an area protected under the habitats directive, then there is a duty on a local planning authority under the regulations and the legislation to consult Natural England to decide what to do next. Again, there is complexity; I am sorry that I am not giving you a neat answer.

The Chair: That is all right.

Baroness Thornhill: What will be the difference between the impact assessment and the outcome assessment in this argument?

Professor Liz Fisher: Again, because it is all in regulations that say, "The Secretary of State may do this", it is very hard to know what the new regime will look like. As far as I can figure out from looking at the Bill, the big difference is that a key part of environmental impact assessment is not just doing the assessment but public consultation. From 1985 up until 2013, the public consultation aspects of the EIA regime have been strengthened over time. As far as I can see, there is not much provision for that in the new regime, but that could come under regulations. That is one difference.

The second difference is that the Secretary of State "may"—again, under regulations—say that some other type of report is good enough to be considered an environmental outcome report. That was not the case under the old environmental impact assessment regime; you had to have substantial compliance with that regime for it to come under that regime, if that makes sense.

Q8 **Baroness Cohen of Pimlico:** I am on the planning committee of Cambridge Past, Present & Future, and—it sounds like a small interest but it is not—I am chairman of the Madingley Road Area Residents' Association. It is one of the principal entry points from the east to Cambridge and is very much fought after on all these issues staring everybody in the face. We currently have a mayor, from my party, whose experience is entirely in the National Health Service, so it is all quite difficult in Cambridge.

I am trying to reframe what I was going to ask, because it does not quite

work as it stands. What I find myself brooding about is what you originally said about the uncertainty obtaining, because nobody quite knows what is in all this legislation. I do not see—I am a lawyer trained—how you get to clarify which bits are going to matter, or are you suggesting that it is really a matter of case law, where somebody will test, probably a developer or even a private person, and be told no? How do you see this panning out? How do you see certainty getting into the system?

Professor Liz Fisher: That is a very good question. The starting point would be what you began with: these decisions are always going to be difficult. Searching for certainty is not searching for something that will always have really easy decisions. Planning is difficult because you are creating winners and losers, and people have competing visions.

My concern with what we are going into is that, yes, regulations and guidance will be passed, but there is a lack of calculability for developers. First, there is a question about the quality of the drafting. I have concerns, particularly about the guidance, where, to put it bluntly, the quality of the drafting is often like a 2.2 student's essay: there are some good ideas in there, it is just that they ran out of time on the execution. Part of it is making sure that it is of good quality and gives a clear message of what is allowable and what is not. Likewise with regulations.

The courts do play a role in stabilising what the law is and making clear what is possible. That takes time, but they can work only with the material they have, and the quality of the material to begin with is important. I have looked through this and thought about how easy it is for a developer to think, "What applies to my project and what doesn't?" It is all in different places. We have the Environment Act, regulations left over that might or might not be retained, and the Levelling-up Bill. Trying to get a full 360-degree view of that will be very difficult.

The question is an incredibly important one. Again, the evidence from industry is not saying that industry does not want environmental laws; it wants a level playing field. It wants a clear regulatory regime that is legible, which I think is fair.

The Chair: Lord Carrington, could you declare your interests and then ask your question?

Q9

Lord Carrington of Fulham: I certainly will: I have no interests to declare, so that is very straightforward. I want to bring you on to the role of the various other agencies involved in planning. Obviously, there is Natural England, which seems suddenly to be waking up and stopping things happening because it thinks they have an impact on the environment under its legislation. There is also the Environment Agency, obviously, Historic England and various other bodies, all of which add up to controls on development in terms of both whether they should go ahead and the length of time they take to reach completion, which, for some of the major developments, has been a major factor in cost overruns. Then we have the Office for Environmental Protection

potentially coming along.

How do all these things mesh together? Has it become such a nest of vipers—of people fighting among themselves trying to get dominance for their own particular bit of legislation as the one that should impact the thing that really concerns them at that moment? Is this a total muddle, or is it one that is capable of rational solution and disentangling?

Professor Liz Fisher: My experience of talking to different people in these different agencies and government bodies is that this is not about a power grab. They take their statutory obligations very seriously. Coming back to the issue of funding and resources, Natural England is the prime example where, the more a body loses resources, the less capacity it has and the more likely it is that it will not be able to do a particularly good or quick job. That is my first comment.

My second comment is that their role will come into play if one of the legal issues is triggered under a particular piece of legislation or policy. For example, to take the Environment Agency, it comes in if a contaminated land site is a special site, or, to take the NPPF, if there is an issue with flood risk, the Environment Agency's views on flooding become important. Natural England needs to be consulted under Regulation 63 of the Habitats Regulations, or I think under Section 28G—I forget the exact number—of the Wildlife and Countryside Act 1981. It comes in and is consulted.

The Chair: They are also active; they go round doing things. The Environment Agency has a large estate in property that it has to manage. There are riverbanks and such things that it owns and has financial liability for. Natural England does not just sit there waiting for someone to ring up and say, "Come and look at this site"; it actively goes round looking for SSSIs. The number of local planning authorities that have now been disbarred from development as a result of the nutrient issues is another case of an agency going out into the world. They are not simply sitting by the phone.

Professor Liz Fisher: That may be.

The Chair: That is a question, of course; I might be completely wrong.

Professor Liz Fisher: As I said, it does not have the resources. SSSIs have been pretty stable over recent years, in the sense that they were created and now it is about their management.¹ Again, it needs to be recognised that the environment can be degraded. There is a problem.

On the Office for Environmental Protection, its main obligation relates to public authorities, so it does not regulate private actors. Complaints can be put to it if there is a serious breach of environmental law. It is still early days, so we do not know what role it will play—that is another uncertainty—but it is not direct; it plays a background role.

Lord Carrington of Fulham: Can I give you an example, which is an old

one that affects London? It is the sight-lines to St Pauls. One characteristic of the high-rise development that has happened pretty much across London has been that you have had to protect the sight-lines of St Pauls. We have ended up with some very oddly shaped buildings because they had to get out of the line of sight as determined. It has not stopped high-rise buildings going up. We have ended up with high-rise buildings, some of which look very odd, and sight-lines that are protected but not enough, because if you look at the sight-lines you still see the buildings. It suggests that there is absolutely no co-ordination between the planning laws and the planning authorities, and the environmental laws and the environmental authorities. Until you get those two brought together, you will not get a resolution to a lot of the problems that cause delays and expense. That is really what it comes down to.

Is there a solution to this? Is it a question of legislative change, or is it just the nature of the beast that you will get people in environmental things saying, "I'm not interested in planning. I'm not interested in money. We're going to protect"—whatever it is?

Professor Liz Fisher: I do not know anything about the sight-lines of St Paul's, but I suspect that that is a heritage issue.

The Chair: To be fair, it is not really an environmental issue.

Lord Carrington of Fulham: But it is the same thing; it affects development.

The Chair: Take it as illustrative, then we will move quickly to our last question, because we are going to finish at 11.30 am.

Professor Liz Fisher: The nature of the beast is that it will always be challenging. You are absolutely right that there needs to be more co-ordination, which will require more resources in the system. That would be helpful.

One thing I will add, which goes to the last question as well, is that I have just done an edited book on the Land and Environment Court of New South Wales—the first environmental court in the world. In actual fact it is a planning court, but it integrates planning and environment together. Having a system that is a little bit all over the place in the ground but where these things come together in a co-ordinated way in the resolution of disputes in a specialist institution has done a lot for planning in New South Wales.

The other thing I would add is alternative dispute resolution. As I said, there will always be disputes in planning. One thing to think about is the role of ADR in resolving some of these disputes. That has been hugely successful in the context of the Land and Environment Court of New South Wales.

The Chair: We will come to our last question, and we will try to be fairly brief because we hope to end about 11.30 am. That is entirely our fault;

your answers have been crisp and very informative. We are very open to receiving any supplementary evidence, especially evidence that brings to our attention contrasting or better-functioning systems from other countries. Please feel free.

Lady Eaton is joining us by Zoom. Could you declare your interests and then ask your question?

Q10 **Baroness Eaton:** Of course. I have no declarable interests, but I am also a vice-president of the Local Government Association and my background is in local government.

It has been really interesting hearing the complexities, particularly of the regulations. You said that there is no hierarchy as such, and you referred to a lack of resources in cases such as planning authorities and organisations such as Natural England. Are there any key environmental issues where there are no regulations? If so, why do you think that is?

Professor Liz Fisher: I cannot think of anything, but I stress that we have regulations on the books where not much happens with them. To take contaminated land, the statutory guidance from 2012 makes that regime far more difficult to operate in practice. We might have laws on the books but what is actually happening might be very different.

The other example comes back to the resources of planning departments. One thing that is kind of obvious is the need to integrate more carefully into the planning system the net-zero obligation. That is not about bringing another hurdle into environmental law but about stopping a distortion of competition in the long term among different developments.

My answer is that it is more about making sure that the system that we have works as well as it can.

The Chair: Before we bring Lord Goddard in, could I make a bid to be your star pupil and say: what about ambient noise? There is no regulation of ambient noise.

Professor Liz Fisher: That was the one I was thinking about. Of course, it is sort of regulated in the NPPF, with issues to do with coming to the nuisance, such as if the nightclub was there before. There is some regulation but people might not be happy with the way it is regulated.

The Chair: Try applying it to an airport.

Q11 **Lord Goddard of Stockport:** I have my own consultancy company on public relations. I support housing growth in the north-west with a company and provide business advice for lets in the north-west for a different company.

My question, which has just been shot by the chair, was about noise, but anathema to me is the green belt—if it was discussed while I was out I apologise. It seems to be covered by law; is it, or is it covered by a direction?

Professor Liz Fisher: As I understand it from your terms of reference, the green belt is not under consideration.

The Chair: No, we are trying to avoid the green belt because we could spend the entire six months on it and never emerge.

Lord Goddard of Stockport: I was just trying to find out if there is any environmental protection for it in law. That is the question.

Professor Liz Fisher: Most of the protection will be if, for example, there is a SSSI. There is some kind of enclave protection of it rather than saying in law that the green belt is protected, if that makes sense.

Lord Goddard of Stockport: So it does not say that in law.

Professor Liz Fisher: No, not as far as I know.²

The Chair: At this point we will conclude the session. As I said, we would be very grateful if we could hear further from you with any further evidence, in writing or suggestions. We might even contact you if we have some queries to follow up. This has been a session for us to inform ourselves about the background to the inquiry we are making, and it has been extremely valuable to us.
