



Built Environment Committee

Corrected oral evidence: The impact of environmental regulations on development

Tuesday 7 March 2023

10.45 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; Baroness Thornhill.

Evidence Session No. 3

Heard in Public

Questions 21 - 30

Witnesses

I: James Stevens, Director of Cities, Home Builders Federation; Paul Brocklehurst, Chairman, Land Promoters and Developers Federation.

Examination of witnesses

James Stevens and Paul Brocklehurst.

Q21 The Chair: Welcome to this session of the Built Environment Committee. We will be taking evidence on our inquiry into the impact of environmental regulations on development. Our witnesses today are Paul Brocklehurst, chairman of the Land Promoters and Developers Federation, and James Stevens, director of cities at the Home Builders Federation. Time is always tight and there is always more of interest to listen to and discuss than we have time for, so could members and respondents please keep their questions and answers fairly crisp? I will introduce the members of the committee as they ask their questions. If a member of the committee has a question for a specific witness, or a supplementary question for a specific witness, could they say so? Otherwise, we will leave it to the two witnesses to work out among themselves who will answer and in what order, if that is all right. It is fairly informal in that respect.

I will start with the first question. My name is Daniel Moylan and I am the Chair of the committee. What are the environmental regulations that housebuilders have to meet when undertaking new development? When in the process do you need to engage with them, and how clear are you on what regulations apply?

James Stevens: There is a very wide array of different environmental legislation and regulations that housebuilders need to take into account when they are progressing schemes towards planning permission and when they are applying for planning permission. There is no point me reading out the long list of what everything entails; we can provide that for you in a subsequent note. Suffice to say that many of those environmental laws and regulations housebuilders are generally able to cope with and to take on board. They have become very used to them as they have accumulated over the years.

The challenge at the moment and looking ahead comes in the wake of the European Court of Justice Dutch N ruling and how that now applies to the need for developers to achieve nutrient neutrality and water neutrality, and the spread of other factors such as recreational impact zones. In addition, following the Environment Act 2021 we also have the biodiversity net gain requirement, which will come into play in November. Those are the main challenges that we have in the housebuilding industry at the moment. The industry has become very used to working with and accommodating the other environmental legislation.

The Chair: The Home Builders Federation that you represent has produced a short report—very timely, this—called *Planning for Economic and Social Failure*, estimating the impact of government planning interventions, in which you estimate the effect on the number of houses likely to be built of various regulations. For example, you say that nutrient neutrality will cost the country 41,000 homes that might otherwise have been built, water neutrality will cost 1,900 homes, and

recreational impact zones 2,100. However, the biggest impact comes from something you have not mentioned in your report, and that is 77,000 homes from changes to the National Planning Policy Framework. I only mention that now to put it in context. I would very much like to pick up with you this question of the NPPF as well because of the scale of its impact in your estimation.

James Stevens: Of course.

Paul Brocklehurst: Lichfields prepared the analysis that you are referring to of the 77,000 jointly for both federations—

The Chair: Oh, I see, forgive me.

Paul Brocklehurst: —because we both share a concern about the impact of the proposed NPPF changes on housing delivery in the near term.

I will refer to your opening questions. As Mr Stevens has outlined, for many decades there has been an evolving process and a library of environmental regulations that the industry has had to comply with, whether through the Town and Country Planning Act, which incorporates various environmental regulations, or the habitats regulations, some of which derive from previous European legislation.

We as an industry have become very capable of working within those regulations and managing our ability to manage them on the development process. They affect all stages of that development process, whether it is at the outline stage when you are establishing the principle of development on a site, when you would be doing ecological assessments of protected species and potentially environmental impact assessments of the wider environmental impact of a site, through to discharge of conditions that come through in any planning consent. All those are things that we have learned to live with.

We completely agree with Mr Stevens that in a very short period of time, with very little guidance from government, a new series of environmental regulations on nutrients, water neutrality, recreational neutrality and biodiversity net gain have been developed, and they are having an immediate impact on our ability to deliver new homes, and new affordable homes, in the country.

The Chair: I come back to this report now. I want you to comment on the NPPF point briefly, but I also note that in the table that you produce you do not make reference to biodiversity net gain. There is no estimate of the cost in lost opportunity homes of biodiversity net gain. Is that because you think that the effect is zero or because the work had not been done? Could you explain that to me? You have mentioned it as a factor, but it does not figure in your table.

James Stevens: I think it is because we do not really know yet what the effect of compliance with biodiversity net gain will be. We are assuming as an industry that we will have to get to grips with it and that we will

probably be able to deal with it, but it is contingent on there being an adequate supply of nature-based projects that can enable biodiversity net gain to be secured and procured—

The Chair: Off site?

James Stevens: Off site primarily, if it cannot be delivered on site, and there are certainly many challenges about delivering it on site. At the moment, we have not included it because it is an unknown. There is certainly concern in the industry that neither local authorities nor Natural England have the capacity to advise local authorities on the best way to achieve biodiversity net gain. As with the nutrient neutrality issue, we know that there are no nature-based projects coming forward from the farming community or landowners to enable mitigation to be secured off site. We did not include it in our analysis because it is an unknown at the moment.

The Chair: Could I then just challenge you to explain the NPPF point? The text of your report—I am pointing to the table, but there is text as well—has three short paragraphs on the impact of changes to the NPPF, but I found them very unhelpful in explaining why the changes to the NPPF would have such a very large effect. Could you explain that to me and to the committee?

James Stevens: The analysis is based on looking at the effect of policy changes to the NPPF that will be introduced in the spring of this year, we understand. In particular, it will make releasing land on the edge of urban settlements, usually if that is green-belt land, more difficult. There tends to be a presumption that there will be a stronger presumption against that. There is also a requirement in the new NPPF to have much greater recognition of prevailing density—it will be much harder to intensify urban areas, existing developed areas, in order to achieve housing targets—and an analysis connected to that about the appetite for local plan production. As you will probably be aware, the Government's ability to encourage every local authority to produce an updated local plan has been poor. Only about 40% of the 330-odd local authorities in this country have an up-to-date local plan. Local plans are critical to the allocation of land.

Our conclusion is that the tendency that we have seen already for local authorities to cease local plan production, especially if there is not the pressure on them to produce an up-to-date local plan, will feed into this fall in the level of housing completions by about 77,000 a year based on the level of completions achieved last year, which was up at around 232,000. Paul might want to add to that.

Paul Brocklehurst: Yes. There are three specific issues that will affect it—from current delivery levels, putting aside the Government's ambition of achieving 300,000 new homes per annum by the middle of the decade—and that comprise the 77,000.

There is the deletion of the requirement for local authorities in green-belt areas to undertake a green-belt review, which is estimated to reduce delivery by just over 30,000 new homes per annum.

Then there is the impact of local authorities being able to discount from their figures oversupply or overdelivery in the recent past; that is just under 4,000 new homes per annum.

Then, effectively, there is a weakened five-year housing land supply and housing delivery test, which is estimated at about another 40,000 homes per annum.

The Chair: You did not mention the question of densification that Mr Stevens mentioned.

Paul Brocklehurst: That would also be partially included in the green-belt review question, because, in particular, it is focused on green-belt local authorities. I think there would be an impact in certain urban areas and suburban areas where density would not be able to be increased as much as people think because it is not in keeping with the character of the area.

The Chair: You very kindly offered to send some supplementary evidence in writing, and there are two things that I hope you might be able to do. One is the list of environmental regulations and what they do, so that we can understand that from your perspective. It also helps us in case our own researchers have missed some. That would be very helpful. The second is if you were able to give us perhaps a little more information on how all these figures have been compiled, particularly the NPPF ones, and the research that lies behind the document that would also be very helpful. With that, I have taken up enough time. Could I hand over to Lady Thornhill?

Baroness Thornhill: Well, you could, Chair, but you have rather nicked my question by your very astute question about the NPPF, which I think is critical.

The Chair: That was not my intention.

Q22 **Baroness Thornhill:** No, I know. I was trying to gesticulate to you, but never mind.

I am particularly interested in the Government's aspiration to get more SMEs, small sites and all that into use. It is very clear that they are what have dropped off the radar in the last decades. If you look at the numbers produced by SMEs, it has gone down. Could you talk about how you feel the regulations are proportionate to the problem that they are designed to solve, the impact of new hold-ups, and what you know about SMEs and small sites, to give us some play on that?

Paul Brocklehurst: Addressing one of the questions first, which is whether we feel they are proportionate, one issue that we have had as an industry is that what has occurred has occurred without any discussion at

all. It has just been implemented, and effectively what has occurred is a moratorium on development in a number of areas. Catchment areas that are affected by nutrients, for instance, affect 74 local authorities. They affect 14% of the land area of the country, and from 2019 onwards there has been a creeping moratorium on development in those areas. We have had no ability to transition our businesses so that we can manage with these new regulations.

I do not believe that as an industry we sit here not aware of our environmental responsibilities and without a desire to ensure the improvement to the environment for the benefit of all, including our new residents, but it has occurred in a virtually dictatorial way, which is, "This is what is occurring, and no development will take place unless mitigation is put in place".

We can have a further debate perhaps about the nature of that mitigation. That is particularly borne by SME housebuilders, which, unlike many of the volume housebuilders, do not have a land bank across the country. If you operate in one of the areas where the moratorium is effectively in place, you cannot manage your cash flow. That causes a huge stress on those business owners and potentially an impact on those employees, because one of the things that they can do is start laying people off. It has a disproportionate impact on SME housebuilders.

On the overall point, interestingly we have published research today on the wider planning impact and regulatory impact on SME housebuilders. One of the things that is worthy of note is that the planning system itself is delivering fewer sites of 100 units or less, which are required by those very same SME housebuilders. That is 38% less in five years. It is a major issue for SMEs for the last three to four decades. The barriers to entering the business as a result of regulation, whether environmental or planning, have risen, which is why we are facing the structural issues that we face in the UK housebuilding industry.

James Stevens: I would emphasise what Paul has said about the guillotine effect of these measures coming in. We have often asked Natural England if it could give us some forewarning of the particular catchments that are in danger of falling into an adverse condition, but we have never had any response from it or Defra about that. Their ability to forewarn the industry so that they do not invest in areas that are considered to be vulnerable has been a big disappointment.

As Paul says, SMEs are particularly vulnerable, because they tend to be more locally based regional companies. If a moratorium is introduced, it is not a moratorium as such. Natural England would say that it means that you have to provide mitigation, but if the mitigation solutions are not available it is a de facto moratorium. The struggle that the SMEs have is that they are particularly exposed to this issue.

They are also particularly exposed in two other ways. Paul mentioned that larger developers' interests tend to be spread over a much larger geographic area so that they can transfer investment away from an area

subject to the moratorium and enable their business activity to continue to some degree. Small housebuilders cannot do that, and they tend to build on smaller sites. Therefore, the ability to accommodate mitigation, say in the form of wetlands or the planting of hedgerows, is much more reduced.

The third factor is that one of the Government's major interventions—a statutory obligation on the wastewater industry to take effect from 2030—planned to help to resolve the issue by improving wastewater treatment works, but only larger wastewater treatment works, not those that serve a population equivalent of 2,000 people or fewer. Smaller wastewater treatment works tend to be located in more rural areas or on the edge of smaller settlements, which tend to be where SME housebuilders concentrate. That concern is shared not only by our SME members but by local authorities like Shropshire, Herefordshire and Somerset, which realise that a lot of their development will not benefit from the Government's planned improvements to wastewater treatment works. That is another issue that I can talk about at length but probably will not.

So, yes, I think the challenges for SMEs are particularly difficult. The proportionality question is important, because the housebuilding industry contributes so little to the issue of nutrient-related pollution. The chief sources are agriculture—majorly so—and the existing built environment. You might want to refer back to the natural environment audit committee, which recommended to government that it takes action on agriculture, effluent run-off and fertiliser use on land, and, in particular, stops the immediate granting of planning permission for poultry sheds, which causes a major problem of effluent run-off in places like Herefordshire, in order to reduce nutrient-related pollution. However, the Government decided—for understandable reasons, because they wanted to prioritise food production—not to introduce any restrictions on agriculture.

The housebuilding industry feels a bit aggrieved that we contribute a tiny part of the problem—at most about 4%, according to some calculations—yet we are subject to restrictions in the way that no other part of the economy is. This is a problem not only for the life of SMEs but for the industry's delivery of things like affordable housing and more energy-efficient homes.

Baroness Thornhill: That is fascinating. Thank you.

The Chair: It is. There are so many questions there.

- Q23 **Lord Best:** Your comments on the figures and the reduction in supply do not take account of the fact that demand may fall—indeed, may already have fallen. I have seen estimates from the big housebuilders that their production line, because of the absence of first-time buyers and the production needed for them, might be down 25% or 30%. On top of your figures, which already halve the amount of housebuilding, there is the prospect of demand also making a big dent in it.

What are the housebuilders going to do about this? You can come and moan to us—that is a start—but what are the mitigations that you can be part of? I understand that there is a transition period before you get there, but housebuilders could pay a lot less for the land. In other words, the hit does not have to be taken by the housebuilders or even the consumers; it could be taken by the owners of the land, who are sometimes public bodies. What is the housebuilding industry itself going to do about the predicament that we find ourselves in?

Paul Brocklehurst: To pick up on one or two of those points, effectively the way the land market will operate from now is that the landowner will pick up the cost, because the housebuilder will estimate the cost of mitigation and will factor that into their ability to pay a lower price for the land, so it will come off the landowner's receipt.

The issue, and perhaps one of the major frustrations, is that at the moment mitigation itself is very difficult to put in place. Effectively, when Defra announced the improvement to the wastewater treatment works, which James just talked about, it also announced a national mitigation scheme, which was the investment in agricultural land where nature-based solutions for nutrients would be brought into being. For the first of those, the credits are being sold at the end of this month, I believe, by Natural England, and they are effectively limited. That is, I think, in the Tees Valley catchment area. We have a very limited pool of these mitigation schemes across the country.

In addition, at the moment Natural England is saying that, rather than use modelled mitigation outcomes, it wants to use measured mitigation outcomes. That means effectively that you have to invest in your site and all the costs of obtaining planning consent, and maybe the discharge of condition, but you are not allowed to occupy a house until a measured outcome from the mitigation scheme is understood and has been measured so that the scheme is seen to be delivering what it says it will deliver. In terms of a housebuilder's cash flow, that just does not work. It is completely the wrong way around. A housebuilder wants to know that it has bought a credit for mitigation based on a modelled outcome and so can get on, invest the money in the site and in the working capital to build the house, and sell it to the future occupier.

There is a very limited stream of mitigation schemes at the moment, and I think government is probably hoping that the improvements to the wastewater treatment works does most of the heavy lifting when it comes to mitigation. As Mr Stevens has just pointed out, unfortunately in rural areas there is a big exclusion of smaller wastewater treatment works, which potentially limits the impact of the mitigation overall. In that respect, we have a timing programme issue from mitigation not meeting the requirements of the industry.

You made a point about demand, and the research that I alluded to, which we can supply copies of, makes that very point. We have been living through a period of low interest rates and help to buy, which has supported demand, and that demand has come from sales on fewer

outlets than we have previously had, largely because the planning system has not been delivering enough planning consents. In an environment where you are seeing sales rates that are 30% lower, perhaps more in parts of the country, if you want to get to the same housing volumes or even to larger housing volumes, you need 30% more planning consents, simply speaking. We are back to NPPF changes working against that, not with it.

The Chair: Lord Best said that the hit, so to speak, would be taken by the landowners. You confirmed that and I understand that. Does the return to the landowner get to a point where they say that it is simply not worth selling or, "My expectation is that it's not worth selling now. I will hang on and maybe in the next generation or something we will become millionaires"? Or, if I just put the other limb of it, is the value of the residential planning permission so high that we are a long way from the point at which land ceases to come forward for development?

James Stevens: I think that is absolutely the case.

The Chair: Which of the two is the case?

James Stevens: I do not think the landowners will sell unless they are under really straitened circumstances that would force them to sell. The old adage is death, divorce and taxation.

I want to come back to the first-time buyer point, because it is true that the nutrient neutrality restrictions are affecting areas where you tended to have a lot of first-time buyers: the Solent catchment, the Kent Stodmarsh catchment, the Tees Valley. The fact that the nutrient neutrality restrictions were introduced overnight without even giving the metropolitan mayor for the Tees Valley, Ben Houchen, any forewarning is certainly very serious.

To go back to the point about land value, as Paul said it is now a requirement for applicants, for housebuilders, to take into account all the policies in a local plan, and the assumption, the theory, is that that gets taken off the land value. However, there comes a point at which landowners will refuse to sell.

The Chair: Yes, but are we anywhere close to the point at which you start to see the marginal effect, because it will be a marginal effect of land not coming forward?

James Stevens: Outside London and the wider south-east, we have certainly reached the margins of viability—and even in London and the south-east, I think, because of building safety issues, which are entirely understandable. In combination with biodiversity net gain, that will create a real challenge for the industry from November this year onwards.

Paul Brocklehurst: If the cost of nutrient mitigation in certain parts of the country is borne by the development industry, it will have a material impact on site viability, the delivery of affordable housing from those sites and, indeed, potentially on landowner decision-making as to

whether they bring land forward. I would agree that in large parts of the south and south-east of England house prices are such that, even with the costs of mitigation built in, there is sufficient land value to incentivise people to bring their land forward. However, I would caveat that by saying that one of the problems we have is that we have very limited mitigation schemes and no regulated market for them. There is no broking methodology in the catchments, so if we are not careful we will create a wild west in the cost of mitigation.

The Chair: It sounds like a market operating rather than the wild west. I would not be too anti-market, Mr Brocklehurst, in your position.

Paul Brocklehurst: No, I accept the point. However, when the cost of mitigation, if you calculate it out to the benefit of the mitigation provider, ends up being more than the benefit that they would receive—

The Chair: We have the point that there are not sufficient mitigation schemes in place. If I may say so, it is possible in a reasonably well-functioning market that more mitigation schemes will come forward and that prices will reflect that. We need to go quite a big step before we have to have a regulated mitigation market. Indeed, brokers may come forward—

Paul Brocklehurst: I think that is one of the key points.

The Chair: —who will take that job on and help everyone to marry up the different things. This is how markets work. We believe in markets.

I think we have probably dealt with this point now. We come to Lord Goddard.

Q24 **Lord Goddard of Stockport:** Do we know what the actual costs for developers are of meeting the environmental regulations? In my briefing, and you just mentioned it, you can go from north Norfolk at £183 per dwelling up to the Solent at £4,000 per dwelling. For an SME builder, that is a lot of money per unit. Who in the company is responsible for meeting the regulations, and do these requirements impact and cause delay in developments, working out that imponderable of what the extra will be on the bottom line?

James Stevens: On the issue of costs, it is very difficult to say, because it all depends on supply and demand—Lord Moylan’s point. There are very few schemes providing nature-based solutions servicing the whole catchment area, so it is very difficult to get a handle on the costs. You are right that, in the Solent catchment, it is between about £3,500 and £4,000 per unit, but that is only because the Solent is the only catchment with a functioning market providing credits for housebuilders. That is not available in any of the other 26 catchments, because they are dealing with nitrogen, which is easier to compensate for, to mitigate for, than phosphorous. Phosphorous is the problem that the other 26 catchments need to deal with. You require a lot more land in nature-based solutions.

Some of the figures we are getting back from our members who have had to procure solutions themselves, without relying on say the market facilitating that, are between about £5,000 and upwards of about £25,000 per unit, per home. For biodiversity net gain, that is still in its infancy, but some of the figures I have heard from our members are between about £10,000 and £20,000 per unit, per home. Of course, Lord Moylan is quite right that, in due course, if the Government adhere to things like nutrient neutrality and biodiversity net gain, you would expect a market to emerge in which farmers want to donate or sell their land for nature-based projects. You would expect a market to emerge, but that market is not there yet.

The Chair: We have got the point that it is not there yet. We have absolutely grasped that the mitigation required for both nutrient neutrality and biodiversity net gain has not yet sprung into action. We would be happy to think about the things you want to say as to how that might be encouraged, but we have got the point that it is not there, so we do not need to go over that any further.

Lord Goddard of Stockport: That is the point. We have not got there yet, so in the gap between it getting there, wherever “there” is, how is that delaying and stopping the houses being built that we need building, especially in urban areas? Not all areas have loads of land around. Try to do developments in urban areas—in Greater Manchester, for instance—where you do not have that land. Where do you get your biodiversity from where there is no park locally?

James Stevens: I am glad you raised that, because I spent two months doing the Places for Everyone plan for Greater Manchester and that was one of the issues that I raised: how you deliver biodiversity net gain. At the moment, the Government’s rules are stacked in favour of delivering it on site and you are penalised if you deliver it off site. Rationally and logically, things like birds and bees do not acknowledge local authority administrative boundaries, so it would be more sensible, in our view, if the Government allowed a more strategic approach to delivering biodiversity net gain, where you could deliver it within another local authority area that perhaps had more wildlife and more local nature areas that you could enhance and improve.

Similarly, with an issue like mitigating for nutrient neutrality, at the moment you are required to achieve that sometimes within sub-catchment areas, but so long as you can achieve it within the catchment area itself that would be a positive step forward. If Natural England embraced that, I think that would be helpful.

Paul Brocklehurst: Picking up one or two points, there is also the ability to put stacking in place, which is not only using land to provide suitable alternative natural green space, for instance, which can be a requirement of development in certain areas where they are located close to protected areas and special areas of conservation, but using that suitable alternative natural green space to provide, say, biodiversity net gain. That is helpful, because it allows a double use of the land. Unfortunately,

that stacking is not there yet for a variety of uses. It seems to be that biodiversity net gain is the key one.

Also, there are brokers for the BNG. The Chair's point is being borne out in biodiversity net gain a little bit sooner than it is in nutrients, but I think that is because it is slightly easier to provide the solutions for biodiversity net gain than it is for nutrients and phosphates.

Q25 Lord Faulkner of Worcester: Good morning. Thank you for coming to see us. I would like to ask you both a question about the roles of Natural England and the Environment Agency in shaping the requirements that are imposed on developments. Do you take the view that they are helpful to what the developers want to do, or are they a real problem?

James Stevens: I think there is a big question over the effectiveness of the British regulatory state and the way government devolves responsibility for matters relating to environmental standards and pollution to organisations like Natural England and the Environment Agency, which are critical in the issues of nutrient neutrality, water neutrality and biodiversity net gain.

The Environment Agency has been aware of the issue of nutrient-related pollution to waterways for at least the past 30 years, and it should have been communicating those requirements to Ofwat—the water regulatory body for the water industry, and another problem here—as well as to Natural England to ensure that this issue did not come out of the blue. Although the Dutch N issue in the European Court of Justice is often cited as the reason for these restrictions coming into place, that is not entirely true because we have known about this growing problem for the past 30 years. Suddenly, this guillotine comes down on housebuilding, with housebuilding singled out along with hotel accommodation. No other sector of the economy is hit.

There is a question about what the Environment Agency and Natural England had been doing to forewarn and require water companies, through their Section 94 duty in the Water Industry Act, to upgrade wastewater treatment works to deal with this problem. We seem to have a breakdown in the capacity of the British state to manage water infrastructure in this country, and the housebuilding industry does not really understand why we have been landed with this issue, other than a feeling from Ofwat, the water industry and Natural England that we have deep pockets, so we will pay for mitigation. It does not seem to be a rational approach to planning for the nation's infrastructure.

Paul Brocklehurst: I completely agree with Mr Stevens. We need to be careful that we do not just shoot the messenger with Natural England. Not only is it the messenger; it is one of the bodies that should be assisting the industry to find practical and pragmatic solutions to mitigation, bearing in mind, as Mr Stevens has said, that we seem to be the only sector that has been specifically targeted.

There is a question about Natural England's resource and ability to do that, and it is both financial and human. There seems to be a great desire to delegate responsibility to local planning authorities, which themselves are already struggling under a huge underresourcing issue in their planning functions. They are expected to meet the requirements of policing, enforcing and understanding the implementation of biodiversity net gain and, indeed, nutrient neutrality and water neutrality, and find their way through to deliver housing. There is a major issue as to the next step and how we all as a society find our way through these problems.

Q26 Lord Berkeley: Going on to some of the issues that you have both been telling us about, which include nutrient neutrality, greywater treatment, biodiversity, recreation and, of course, the NPPF, they are all issues that Parliament has said need to happen. Some of them seem to be a bit unfair, from your point of view, but should you not be turning it around and saying, "How do we comply with all these things in the easiest and cheapest but most productive way?", and get on and do it? We have talked about the Dutch N case in the ECJ in 2018, I think you said. The farmers have been polluting the rivers for years, but so has the rest of industry, and if we do not start somewhere we will not get anywhere.

The question I am coming to is that you need to come up with some solutions, and I wonder what those solutions might be. They could include building somewhere else completely or designing differently or whatever. Surely something has to give. If we want to keep building houses, which clearly is a good idea, how are we going to do it?

James Stevens: Housebuilders are doing that. They have to get to grips with it. We have confronted the issue that Parliament has raised—"You have to achieve nutrient neutrality"—usually through nature-based solutions, so housebuilders have been going out and buying up farms. Whether that is a wise and sustainable option in the long run, I do not know. Certainly the National Farmers' Union is worried that the Government do not seem to be taking a strategic approach to addressing nutrient neutrality if it requires you to buy up farms in a cost of living crisis where we need to be prioritising food production. Housebuilders will get on with it and try to pay and find a way through this, but there is a larger question.

Lord Berkeley: Will they buy chicken farms?

James Stevens: We would do that if we could buy a chicken farm, yes. Certainly, that is the only realistic solution in somewhere like Herefordshire. I think Herefordshire said that you would have to decommission something like two chicken farms in order to provide sufficient mitigation for 250 homes, or something like that. It takes a lot of land through nature-based solutions to mitigate not that many homes in some parts of the country. That is our concern.

The Chair: Does it need planning permission to convert a working farm into a nature-based mitigation?

James Stevens: Some do. Some benefit from permitted development, but generally it does if it involves construction. If you are constructing a wetland, it will require planning permission, which is another issue: the length of time it takes to deliver.

The Chair: Then, of course, it requires the compliance of the local authority in the area where the farm is, which may be nowhere near where the homes are. Sorry, I am just working this out in my head.

Paul Brocklehurst: I think Mr Stevens is absolutely right. Effectively, the industry is trying to find solutions, but the equation of the solutions is not a balanced one. You do not have an acre of development and all you need to do is find an acre of mitigation. The level of mitigation that is required can be very out of kilter.

Nature-based solutions are probably the key form of mitigation that the industry is looking at, but there are other forms of mitigation that Natural England likes less. For instance, if you can find large septic tank users, you can agree to replace those with packaged treatment plants that ensure that what is discharged from the site is already treated and effectively emits lower nutrients and phosphates from the site. Then you have, and this is happening around the country, people approaching various types of septic tank users—a septic tank for a care home, for instance—so that is replaced.

The Chair: Is that not a benefit?

Paul Brocklehurst: Yes, it will be, absolutely. The issue is not that the industry is not willing to find the mitigation or, indeed, to fund the mitigation; it is the scale of the mitigation required and your ability to do so in a relatively short time period. If we go back to Lady Thornhill's point about SMEs, it is not possible, for instance, for many SMEs to say, "I will up sticks and move my business to another part of the country that is not affected by a nutrient or water neutrality issue". We have to accept that it is having business-limiting impacts, and those business-limiting impacts do not just impact on the business itself; they are impacting on the delivery of housing and the delivery of affordable housing in large parts of the country.

Q27 **Baroness Eaton:** We have certainly spent most of this session discussing the problems and difficulties with regulations. Are there any ways in which environmental regulations present an opportunity for developers?

James Stevens: Issues such as biodiversity net gain and securing it on site will certainly translate into creating more attractive developments for the public. That is a benefit, which is why the industry is generally very receptive and supportive of biodiversity net gain. It is a question of resources and some of the means by which that is delivered. We would just like to see some more attention from government on that.

Nutrient neutrality, if that is creating wetlands on site that can also double up as sustainable drainage systems and the creation of

woodlands, hedgerows and other fauna and flora, would certainly translate into more attractive developments for prospective purchasers and the general public. Yes, there are certainly advantages with that. It is just the delays at the moment.

Baroness Eaton: It is the implementation and the way the process is and so on, rather than what is behind it?

James Stevens: We are still years away from finding a solution to this at any particular scale.

The Chair: It does not seem to work in urban areas. You cannot have a wetland on site in an urban area.

James Stevens: Correct.

The Chair: You might have a few beehives on a roof maybe or something that attracts them.

James Stevens: With nutrient neutrality, that is generally okay because you can locate the mitigation within the catchment. The Solent area has decommissioned nine farms. BNG, though, because of the presumption that you need to provide it on site, could be more challenging in urban areas.

Baroness Eaton: Yes, I can see that. Thank you.

Q28 **Baroness Cohen of Pimlico:** I have a slightly tangential question. I had not quite realised that the local authorities have stopped being obliged to review the green-belt provision. I seem to spend my time in Cambridge on a committee fighting tooth and nail to preserve the green belt, because we are under very heavy pressure to provide housing in Cambridge; of course we are. Can somebody explain that to me? Does it help or hinder that local authorities no longer have to review the green-belt provision?

Paul Brocklehurst: As yet, they are not safe from having to review the green belt, but it is part of the NPPF proposals which the Government consulted on; the consultation closed on 2 March. I am sure that the Cambridgeshire authorities' consultation response was supportive of the Government's proposals not to review the green belts around Cambridge and Cambridgeshire. At the moment, it is still the requirement that green belt is reviewed when you bring forward your local plans, although pretty much local authority has decided to pause or delay their local plan process awaiting the NPPF changes.

James Stevens: This is a political question and it is perfectly legitimate for the Government to say that green belt is off limits. The problem we have across most of the country for many of our main cities—Brighton, Bristol, London, Leicester, Reading, Southampton—is that they are all facing very large unmet needs. That is the assessment of how many homes they would have to provide over 20 years versus how much capacity they have within their urban area. Because of that, we are facing

major shortfalls in housing and land supply in our urban areas where working populations are concentrated. We do not have the strategic apparatus, and we do not have a strategic planning system to enable those populations to be dispersed elsewhere, as we did in the immediate post-war period with Patrick Abercrombie and such, where you disperse the population to satellite new towns.

We have no planning means to do that, so the needs are just unmet. You get increased homelessness and overcrowding among the urban populations and pressure for outward migration by relatively more affluent households, which, of course, is what Maria Miller, MP for Basingstoke and Deane, is worried about, because she can see the political implications and what happens electorally if you get an outward movement of people unable to afford to live in London moving out to Basingstoke and Deane. That is the issue that Sir Julian Brazier experienced down in Canterbury with the outward migration of certain Londoners to Canterbury.

Baroness Cohen of Pimlico: I suppose there is a way of turning the question around slightly: if the green-belt regulations were reviewed, would that be helpful or yet another damn thing for developers?

The Chair: I think they have made it clear, Janet, that it is not helpful to development if the requirement to review the green belt is removed from local authorities in the plan-making process. Indeed, I think you almost put a number on it.

Paul Brocklehurst: We did, yes.

The Chair: How many homes would it be?

Paul Brocklehurst: I think it was just 31,000.

The Chair: That 31,000 homes a year alone would be foregone by removing that requirement.

Paul Brocklehurst: It also impacts commercial uses that may occur in the green belt. If you do not release green belt for commercial users, it also has an employment impact.

The Chair: Yes.

Lord Berkeley: What about the north? The cities you mentioned were, I think, all in the south of England.

James Stevens: Generally, it is better in the north of England. The pressures are not as great.

Lord Berkeley: I am sorry, what is better?

James Stevens: The population pressures. The need to accommodate the population is more feasible. It can be realised within existing urban areas in many major cities in the north.

Lord Berkeley: You can build more houses up in the north and then the Government have to encourage people to go and live there.

James Stevens: That is the government strategy, is it not? That is the levelling-up agenda—that people will up sticks and move to the north.

The Chair: I have never heard of an up-sticks element to levelling up.

Paul Brocklehurst: Basically, most of the major conurbations of the Midlands and the north also have green-belt designations that surround them. They are faced with effectively the same issues as the south, the south-east and other parts of the country of unmet need for housing the urban requirements of population.

Q29 **Lord Carrington of Fulham:** I think this has been one of the most depressing sessions that we have had with this committee for a long time. It has all been problems, which is totally understandable. That seems to be what is going on.

A lot of the problems seem to come, perhaps, from the fact that there are so many different bodies trying to influence the way housebuilders operate and coming up with their own dose of regulations. How does all that fit into the planning system, particularly the local authority planning system, which is critical to this? Can the local authorities get a grip of what is going on with all the environmental legislation? Can they influence what Natural England, for instance, is deciding to do? Does it need to be more joined up?

Does there need to be somebody, whether in the local authority or, god forbid, central government, who brings the whole lot together and says, "We have an objective to build 300,000 houses"—which is probably too small in any case—"and we cannot do it if we have four or five different bodies able to stop it and seeing their *raison d'être* as being to stop it"? How do we get around this? Is it a planning thing? Do we sort out the planning departments? Do we resource the hugely underresourced local authority planning departments? What do we do?

The Chair: Maybe we need a regulator to regulate the regulators, a sort of reg-reg.

Lord Carrington of Fulham: There is something about big fleas and little fleas on their back to bite them, is there not?

James Stevens: I will attempt to answer that question first. I think Paul was right that local planning authorities have enough on their plates just dealing with local plans and determining applications when they come in. The new requirements that have been imposed by Natural England—not imposed, it is advice—in the wake of the ECJ Dutch N judgment represent a particular problem for local authorities, because local authorities will be very nervous.

Ultimately, they are the competent authorities under the habitats regulations, so they can make a decision. They can choose to ignore Natural England's advice or apply Natural England's advice in a different

way. They could choose to exercise their own sovereignty in that regard, but they are very nervous about doing so because of the fear of judicial review by one of the Government's regulatory bodies, which is less likely, or from an environmental NGO like Friends of the Earth or Greenpeace, which is more likely. They are very nervous about doing that, so they take a very cautious approach. Unfortunately, that means that they are trying to comply with the spirit, if not the word, of what Natural England is saying, which means the need to achieve neutrality of water and nutrients, but you can only do that, as we have discussed, if the solutions are available, which they are not.

I think we have a particular legal obstacle with the new interpretation of the habitats regulations, which has come in the wake of the European Court of Justice ruling. The Government have said that they are not minded to intervene legislatively on that issue, for understandable reasons, but I think they do have a role in pulling all the parties together.

We were frustrated when, about two years ago, we wrote to Defra about this 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. For the first time on 14 February we had everybody in the room—Natural England, No. 10, DLUHC, Defra, Homes England and the Environment Agency—at least to begin a conversation about how we deal with this in a more rational way.

Lord Carrington of Fulham: So that could lead to them working together. The problem is that as politicians we all make our life by sitting in meetings and making nice noises at each other, and then going out of the meeting and doing something completely different. What makes anybody think that getting them together will change anything?

James Stevens: We are looking at particular work strands. We are looking at how Natural England's advice to local authorities can be improved or fine-tuned and whether it is possible to establish an advice service that knits together all the different government perspectives and provides that to local government. That could be delivered through the structure of Homes England. We are also looking at improvements to Natural England's nutrient budget calculator to see whether the technical inputs in that could be refined, which might make delivering mitigation easier.

Another strand that we are looking at is the development of independent standards to supply the market with nature-based projects more quickly and easily so they know what they are doing. There are no market rules, as Paul referred to earlier, on the supply of nature-based projects to the market, so if we can look at the issue of standards, that might make it easier.

Q30 **Baroness Thornhill:** How helpful or not do you think the levelling-up Bill's proposal to make a distinction between the national development management policies and the local plan is? I am not quite sure where they all interconnect at the moment. How helpful or not will that new

structure be?

Paul Brocklehurst: The Government's ambition is clear and one that I think everybody would agree with, which is to make local plans simpler and, therefore, to focus on what people want to discuss in local planning, which is probably the spatial allocation of housing uses and numbers. A lot of issues are repeated between every local plan, whether it be climate change, flooding, air pollution—a raft of policies that could be set at a national level, where everybody is in agreement with them, basically.

We go along to examinations in public of local plans and there is very little focus at those examinations on the broad range of those policies. Everybody wants to discuss the total housing number, where the commercial development will be and whether housing will be next to them. That is where the focus of local plans tends to be.

Therefore, the national development management policies could be a force for good in that they remove some of the requirement on policy officers at local authorities. Going to Lord Carrington's point, I am afraid my view is that it is unfair of central government to announce new guidelines, new rules, new laws, and it is always the local authorities and their planning departments that have to carry the burden of implementing and supposedly enforcing them. Whether they have the resources to enforce them is another moot point.

The Chair: Thank you very much for your time, Mr Brocklehurst and Mr Stevens. It has been extremely valuable for us.