



Built Environment Committee

Corrected oral evidence: The impact of environmental regulations on development

Tuesday 6 June 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 Greenhalgh; Lord Mawson; Baroness Thornhill; Baroness Warwick of Undercliffe.

Evidence Session No. 12

Heard in Public

Questions 118 - 131

Witnesses

I: Professor Emma Lees, Professor of Transnational Law, European University Institute, and Professor of Environmental and Property Law, University of Cambridge; Professor Gert de Roo, Professor in Spatial Planning and Head of the Department of Spatial Planning and Environment, University of Groningen.

Examination of witnesses

Professor Emma Lees and Professor Gert de Roo.

Q118 **The Chair:** Good morning, and welcome to the Built Environment Committee's evidence session in our inquiry into the impact of environmental regulations on development. My name is Daniel Moylan. As we go through our questions, I will introduce other members of the committee or they will introduce themselves. Our witnesses today are Professor Emma Lees, professor of transnational law at the European University Institute in Florence and professor of environmental and property law at the University of Cambridge, and Professor Gert de Roo, professor of spatial planning and head of the department of spatial planning and environment at the University of Groningen.

Professor Lees is here in person and Professor de Roo is joining us via Zoom. Our normal practice is that, rather than asking for opening statements, we will kick off with questions and take the discussion from there. Some of these questions we have marked for a particular witness. Although I realise that it is slightly complicated to do this with one witness present in person and the other on Zoom, do feel free to make your own contribution to a question even if it has not been addressed to you specifically, because we are interested to hear what you have to say.

Q119 **Lord Greenhalgh:** Could you provide an overview of how the English planning system is unique compared to other countries in how it handles environmental regulations during development and plan-making?

Professor Emma Lees: Good morning, everybody. To set the scene for some specific examples, I will draw a very broad-brush picture of how you might distinguish between planning systems and how they deal with environmental regulations.

The fundamental question that all these systems are trying to answer is: can we build houses or something else on this site? If so, what must they be like to balance environmental needs with economic and social needs? There are only so many ways in which you can design the pieces to answer that fundamental question. Even though it sounds like a simple question, hidden within it is quite a lot of complexity and areas where a lot of specialist knowledge might be needed. You find that different systems put the expertise at different points in those processes to try to integrate the social and economic balancing with the scientific expertise needed to make that assessment.

There are five dimensions in which these systems vary. They can be more or less democratic versus technocratic—you can have a closer relationship with the democratic process or it can be further away. You can have processes that are highly participatory or ones that are behind closed doors. You can have ones that are very rules-bound, so the amount of wiggle room for decision-makers is very limited, or you can have ones that are very discretionary. You can have systems that are highly integrated or systems that are very fragmented. Finally, you can have differences in the substance—how much one system prioritises

environmental protection will vary with another system, which might prioritise the needs of development or economic or social considerations.

In all five dimensions, there are no bright lines. They are all on a spectrum. However, I think English law makes itself distinctive—unique is a big word, so I would say distinctive—in three areas. The first is that decisions are formally the responsibility of those with a democratic mandate, even if in practice it does not necessarily always look exactly like that. The second is that these decisions are highly discretionary, albeit that that discretion is very heavily constrained in specific ways by national policy and myriad binding legal standards. The third area is that the processes are highly fragmented. Those are the three main areas. If I have time, I will expand on them a little bit.

First, the formal allocation of responsibility is to those with a democratic mandate. That is not, in my view, quite the same thing as the formal allocation of the power to make the decision. The responsibility rests with the local planning authority, but the strongest voice in the process may not, in any particular case, be that of the local planning authority. That means that accountability for bad planning is, under the English system, mostly political accountability. That has three big consequences for the English planning system.

The first consequence is that, in this balance between environmental and economic or social considerations, they may meet up sometimes, but often they conflict. This is an area where there are no right answers, although there are probably some wrong ones, and any balance will always lead to winners and losers. We have probably not found a better way—we may have, but I do not know it—for the state allocating winners and losers than through the democratic process. If the state has to pick someone who wins and someone who loses, there is an instinctive appeal to that being done through a democratic process.

Secondly, local planning authorities, because of their close connection with the local electorate, tend to be very well attuned to the social and economic needs of a local area but less well attuned to its environmental needs, because the environment does not have a vote and the local inhabitants' felt experience of the environment might be somewhat different from the reality in scientific terms.

Finally, it means that there is frequent change in local planning authority priorities, because you have regular election cycles, which creates a mismatch with the long-term strategic decisions that need to be made on housing, the environment and other kinds of development.

The second feature is that English planning authorities are highly discretionary. I have read some of your previous witness testimony and can see that you are familiar with what is a very complicated picture. However, there is a sort of simple core: a local planning authority gets to choose, but it must follow the local plan unless there is a good reason not to. That is the essence of it. But within that fairly simple statement there is a lot of complexity. Different kinds of considerations have to be taken

into account. However, because that fundamental principle exists, a lot follows from it. We might talk about the courts later, the approach of which is very much premised on the idea that the local authority drafts its local plan and has to follow it unless there are good reasons not to. That is the fundamental framework that we are operating in.

Finally, the simplicity of that principle also. These are very complicated decisions with a very wide cast of actors, all of whom contribute to decisions in subtly different ways. You might have national government, other local planning authorities because of the Section 110 obligation to co-operate, the Environment Agency, Natural England, other private landowners in the vicinity, highways authorities, the general public and courts, all of which operate in subtly different ways within this decision, which falls on to the local planning authority's shoulders.

I spend most of my day thinking about these questions, and I am not even sure that I completely understand hides a baffling amount of fragmentation the messiness of this system, because it is very difficult to navigate. It gets re-understood with each fresh decision. We have to go through these steps again and again to understand precisely the interactions between the different rules, which is a pretty inefficient way of doing things. The fragmentation creates that possibility of inefficiency.

The upside is that we can develop a system that is fairly flexible, because we have the possibility of bolting on additional rules when something new comes along; rather than having to reformulate the whole, we can just add another layer. That, although complicated, has proved to be quite flexible.

Those are the main characteristics of the English system. I will briefly express some ways in which it might be done differently. As you have already heard from Judge Preston, Australia has a very technocratic, much more expertise-driven approach. Others such as France and Italy use environmental codes or highly integrated sets of rules that attempt to provide a sort of formula for every time a decision is made. In practice, that may not be quite as smooth as it sounds. Other systems, such as in New Zealand, use zoning. That means, effectively, that if you are building a certain kind of property in a certain area, you can go ahead without a bespoke permission in each case.

It is important to note that, as environmental questions become more complicated and multilayered and pressures for more housing increase, these different kinds of systems tend to coalesce to be more similar rather than less. Even in England, we have things like permission in principle and permitted developments, which edge a bit closer to the rules-bound zoning approach. In places like New Zealand, you also have the need to have specific permissions for complicated developments. They tend to come closer together, fundamentally because these questions are really complicated. They are difficult to do, and when things are difficult to do you sometimes have to go through a difficult process to find an answer.

We want simplicity, but when the issues are complicated, it may be better to acknowledge that the complexity is a necessity rather than try to wish it away into a simple, smooth and streamlined system. That is my longish overview of the distinctiveness of English planning law.

The Chair: We will be keeping questions and answers a bit brisker as we go through, but that was very helpful in setting it all out for us.

- Q120 **Lord Greenhalgh:** On the distinction and the three things you highlighted, I think some of it is quite conscious, but I am not sure that the fragmentation is as conscious; it has just happened. Do you have any comments on how we can make it less fragmented, as it reduces accountability?

Professor Emma Lees: The real answer, which is not an easy one, is more money. If you want a really smooth, streamlined, efficient system, it probably needs a lot of very well-trained decision-makers who practice it a lot to make it very smooth and integrated.

The “add another bit” approach has been particularly problematic. A lot of the legislation says: “has been amended by this, which has been amended by that, which has been amended by this other thing”. It is really difficult to read and navigate your way through it. Even something as simple—which it is not—as a single piece of legislation covering what exists now, not even trying to change anything, would probably help.

- Q121 **Baroness Eaton:** Professor de Roo, how does the approach to environmental regulations differ in the Netherlands compared with England?

Professor Gert de Roo: I am definitely not an expert on UK affairs, but we have just heard a wonderful story about how to see it. Let me explain a bit about the Dutch situation. We have had our regulations for quite some time, despite the fact that we adapted them to EU law. They were always to do with externalities and tapering effects. If you have a source that is either polluting or a nuisance and take it away, the issue is gone. The mechanism of externalities and tapering effects helps us to use standards and translate them spatially, and through that we get environmental zones. These environmental zones help us to separate, in a sustainable way, intrusive and environmentally sensitive functions. It works quite well. I believe that all industrial sites in the Netherlands are zoned, and the zones are part of the local land use plan. That means that if you live within the zone, you should not, so you either demolish the house or the zone has to shrink a bit.

It is an interesting approach. It works and it is sort of simple. But the standards we have used over time are based on simple situations. As Professor Lees has explained, situations are not always simple. I believe that 95% of the cases are indeed simple and you can use these standards rather straightforwardly to separate sensitive and intrusive functions. The issue is how to deal with the main polluters; the main industrial sites have several pollutants, which turn into a mix that is really hard to handle. We have noticed that the more complex these sites become, the

less simple the issue. We need to shift our focus from limit values, which the industry or whoever is polluting has to relate to, towards target values, allowing ourselves more time to create a decent environment.

In the really difficult situations—the hotspots—this is completely useless. We just need more time and another approach, anticipating a good environmental situation in, say, 10 years' time. There are a handful of these, such as Rotterdam harbour. This approach is hard to explain to the public, but if you dig into this, there is no alternative, because every other approach is more painful.

This is the situation we are in. You could say, "Look, we have a generic approach that works in 95% of cases, but we also need a more situation-specific approach for those complex situations". We shifted towards that, but only to some extent. At some point, the Government tried to bring in the possibility of putting standards aside in situations that are completely hopeless. It failed, sort of thanks to EU legislation, because in those cases citizens would really be in trouble for a long time. This is the current situation in the Netherlands for situations where we have routine-like approaches. It is different for nitrates and PFAS, because they are new and causing a lot of trouble, but I guess we will come to that issue later.

Lord Mawson: In the Netherlands, are developers experiencing cost increases or delays because of the need to meet environmental regulations?

Professor Gert de Roo: That is a very good question. With this routine-like approach, everyone already knows what is at stake. As we have been doing this for 20 years, it is clear to almost everyone what to expect. The industry knows how to invest for a sustainable environment, so that is not really an issue. It is reducing costs even more now that everyone knows exactly what to do.

The real pain is these new issues. Really small particles, PFAS and nitrates, for example, are causing us difficulties right now. In those circumstances, we have to start again from scratch. In most cases, these are neglected issues, which means that we are effectively already beyond the point of having to start from scratch. We have to clean up. That is the real pain in this process, and it is very costly.

Q122 **Lord Faulkner of Worcester:** Professor Lees, I have a very similar question, except substituting New Zealand for the Netherlands.

Professor Emma Lees: First, the disclaimer. I am not a New Zealand lawyer, but I did think that there are four points of comparisons that are quite informative—participation, the relevance of legal culture, ecosystems thinking, and the successfulness of innovation in New Zealand—which show how small or big changes can create big changes in the systems.

On participation, you may have read about the fact that in some areas in New Zealand legal personality has been given to certain features of the

environment, so some rivers or forests have legal personality, which is a complicated way of saying that there is a group of people who are tasked to make decisions about environmental effects on that environmental feature. That has happened in New Zealand because of pressures from indigenous populations who want to have a say on specific environmental features.

In a more global sense, it shows that there is a way of having participatory decision-making about the environment that is not as slow or as difficult as some of the Aarhus-type environmental impact assessment approaches. It is about having a more flexible, community-style decision-making approach. That is the first thing that is interesting about New Zealand.

The Chair: Why is it more flexible and community-style if it is, in fact, appointed advocates speaking on behalf of a river? Who is participating?

Professor Emma Lees: It is the trustees group, with a combination of indigenous population representatives, local community representatives, local government representatives, and representatives from the equivalent of the Environment Agency and nature protection agencies. They can all work together in one decision, rather than what we have, which is that it has to get sent to this person for advice, it comes back, it goes to this other person for advice, it comes back. You have the group working together on a single decision rather than it going back and forth between different agencies. It is that sort of idea.

Lord Faulkner of Worcester: They tend to get on, do they? They are not tensions between them.

Professor Emma Lees: There are quite a lot of tensions, but it is successful overall. Even if it leads to a difficult conversation, it is a conversation that happens once rather than a back and forth. That is the idea, anyway.

On ecosystems thinking, they treat the river, as opposed to the river in this local authority area, that local authority area, this other local authority area. That has the potential to be more successful, because you see the thing for what it is, which is a connected system. This is mirrored in other areas as well. The Alpine region and the Danube region also have these kinds of co-operative approaches around their common environmental heritage, which has the potential to produce a more integrated way of thinking.

The relevance of legal culture is important here. This is a small point, but the personality of New Zealanders might be different on average from the personality of English people. That translates to legal culture. That means that you have different styles of approach among the public when they come into contact with authority figures in relation to the environment. You also see it in the Nordic countries. There is a high level of acceptance of expertise from scientific agencies in relation to the environment here. Here, perhaps, there is a little more scepticism about what is happening,

which affects the ways in which these decisions are made and accepted.

The final point is about innovation. Recently, New Zealand has up-zoned some of its city areas, meaning that areas that were single house units are now able to build high-rise buildings within the zone. That has had a really fast impact on house prices in the major cities in New Zealand. It seems like a small change—you move it from this zone category to that zone category—but it is a really big reform in terms of house pricing and house pressure in urban areas in New Zealand.

I thought they were four interesting points of comparison.

The Chair: Lady Cohen of Pimlico, who is joining us by Zoom, has another question on this topic.

Q123 **Baroness Cohen of Pimlico:** I have spent a good deal of time in New Zealand, because we got trapped there during the pandemic. Blessedly, I had friends to stay with, so I learned, unwillingly, quite a lot about house prices and how the New Zealand system works.

Do you feel that environmental regulations are causing delays or increased costs for new development? I noted that, as you said, with a small change all the prices were shooting up. Was there more delay in building or less?

Professor Emma Lees: I do not know about the commercial side of the New Zealand system; I can give you more on the legal side. The system is one of zoning, a little bit like the Netherlands approach, so for the most part you will have an automatic process. You get the difficulty where you want to go outside the parameters of what is automatic. What the change in New Zealand achieved was to make more automatically possible. Again, this is applicable to urban areas, so we are talking here about increasing density in already developed areas, as opposed to developments in environmentally sensitive areas where it is a lot more difficult to obtain the relevant consents.

The other thing New Zealand uses quite a lot is conservation covenants, which are payments between private landowners or agreements between public bodies and private landowners where private landowners voluntarily restrict what they will do on their land. We do not really make use of that kind of mechanism in England, but it has an effect on development in New Zealand in rural areas.

Q124 **The Chair:** Thank you. We now return to questions for both of you. I will start with one for Professor de Roo which we did not ask earlier and perhaps should have done.

What benefits will the forthcoming Environment and Planning Act have for simplifying environmental regulations?

Professor Gert de Roo: This Act will come into effect in 2024, and we have been working on it for more than 10 years to get it into place. It is meant to simplify all the legislation that was there before. I think it will be very helpful. Those who need a permit will be able to go to just one

desk and get everything done in one go. That is a wonderful new step that I think will be appreciated by all.

The Act itself is quite procedural, while the Acts that are combined in this Act were very much material on the issue itself. That is a change. It now has all kinds of generic rules, and the more precise and area-specific details are in the by-laws. That will be a major change. Are we going to find these by-laws? Are we going to understand them? Obviously the good thing about these by-laws is that they are more flexible. National standards and those kinds of things will go into the by-laws.

There are major worries in respect of nature conservation, because the Nature Conservation Act has really specific rules regarding the various habitat regions. That Act will also be part of the Environment and Planning Act, which has generic rules, procedural rules. The worry is that the shift from 2024 will make environmental conservation, nature conservation, more tough.

Does the Environment and Planning Act make it possible for local authorities to come up with specific rules? That could be the escape for nature protection. You can imagine that if you have 300 or so municipalities all trying to come up with specific rules, it is going to be a mess, so we will have to see how it works out. So, yes, in general, this new Environment and Planning Act is a blessing. In practice, for specific cases, we will have to see. It is going to be a challenge.

Q125 Baroness Warwick of Undercliffe: On that point, the new legislation in the Netherlands in particular might be quite relevant here, because we have had a lot of comments from builders here about the impact of national bodies like the Environment Agency and Natural England on the planning process. What role do independent bodies play in the planning process in other countries besides the Netherlands as well? Do they have the ability to issue rules or guidance that can halt development?

The Chair: The independent bodies that Lady Warwick is referring to are all erected by the state through law. They are not voluntary bodies. You probably understand that already, but I thought I would say it.

Professor Gert de Roo: Thank you for that explanation. It helps. We do not really have those bodies in the Netherlands, except for nature protection, which is in the hands of semi-governmental bodies, which have the capability to come up with their own rules.

However, this is changing quite fast and it is all becoming centralised and generic. With regard to the grey environment, it is all centralised and generic; there are no independent bodies dealing with the issue. There was a decentralisation process towards municipalities, which were tasked with issuing environmental permits. When that no longer worked very well, these municipalities scaled up and brought it to the provincial level—the in-between level for agencies in my country. These governmental agencies gained the responsibility from the municipalities of dealing with environmental issues, because they have become so

complex that municipality departments do not have enough knowledge to deal with them. That process is effectively far more interesting than the concern of independent bodies. It is becoming way too complex for local authorities to deal with the issues, particularly the more complex ones. I hope that sheds some light on the issue.

Baroness Warwick of Undercliffe: Has that rather complicated arrangement had an impact on development? Has it stopped any developments that you are aware of?

Professor Gert de Roo: Not this process. Actually, it helps development, because you get more qualified people who, even before the permit is granted, go to the sites, have a look and discuss it with the various people who want a permit. They are very knowledgeable, which was not the case in each municipality. It is really helpful. I do not think they will change that and turn back to the old days.

Baroness Warwick of Undercliffe: Could I turn to Professor Lees with the same question?

Professor Emma Lees: What Natural England is doing is a very similar story. There are two ways in which an independent body might be acting, in a comparative perspective. First, you have independent bodies running things like national parks, nature reserves—the designated sites that are more or less public land. That happens everywhere. That tends not to be that controversial, because the value of those sites is quite tangible to the public as a whole.

The more complicated issue is what we have with Natural England, whereby these micro-decisions about individual developments are heavily influenced by the approach of independent bodies through their generic guidance or through specific advice on specific developments. However, Natural England is taking over a job that would have to happen in each local authority. It has the expertise, if properly funded, to give advice on very specific issues. Otherwise, you would need someone who can do air pollution, someone who can do water pollution and someone who can do biodiversity in every local authority. It is not efficient, because they would have to do something once every five months or so. It is much more streamlined to centralise it.

However, that creates a visible division between “The local authority wants to do this” and “Natural England says it can’t”. Otherwise, you would have that exact same conversation, but it would happen behind the closed doors of the local authority. It is not that the standards are any different because Natural England is involved, but we come back to these questions of accountability, responsibility and power. It makes it look as though a lot of the power is with Natural England, but the formal responsibility is with the local planning authority. I think some of the perceived tensions arise because Natural England is trying to help to solve complex scientific problems for local authorities, but it sometimes looks as though—and sometimes it is the case that—it wants something

different from what a local planning authority would want, and that creates this democratic tension.

Q126 **Baroness Thornhill:** I want to move us on to the role of the courts, which you alluded to earlier, and expand that to how decisions are taken, and how they are challenged and by whom. Who has the power to challenge and what is the impact of that system on the process of building homes and doing the right things for the environment? Could we look at the Netherlands first, and then expand on other EU jurisdictions?

Professor Gert de Roo: I think it is good to know that we try to avoid going to court, and everything is directed towards that. The local and provincial courts are not involved at all, aside from very local permits. It usually goes straight up to the national court, which does not do civil issues but only government-related and permit-related ones. There is no real follow-up, so that decision stands, but everyone tries to avoid getting there, because it is quite arbitrary and does not make many people happy. I cannot say much about this really, because we planners try to stay away from that.

The Chair: Are you referring to a superior administrative court that deals with a broad range of administrative matters to do with government decision-making, or specifically a planning court such as we heard evidence of in New South Wales?

Professor Gert de Roo: It is administrative, but it has one particular chamber that is very much on spatial affairs, planning affairs.

The Chair: So, to an extent, there is a planning court expertise to which you can go. Why is it unsatisfactory? I appreciate that no one wants to go to court and that it is always a last resort, and that in most court decisions some people are unhappy, but what we heard of New South Wales was that generally its decisions were respected and accepted even though individuals might be unhappy. Does it work well?

Professor Gert de Roo: It works well and people accept the verdict, but it takes so much time. Planning processes are already quite lengthy, but this stresses the whole time issue, which is effectively a burden on everyone, because people are uncertain about what will happen and those who want to invest cannot make their investments, which is a pain.

The Chair: That is a helpful clarification, especially in the light of earlier evidence we have had.

Baroness Thornhill: How would you sum up the attitude of the public towards development and planning in the Netherlands? In this country, there is very much an anti-development culture and loud voices, et cetera.

The Chair: There is now.

Baroness Thornhill: I will take that, Chair. What is it like in the Netherlands? Do people get their banners out and get upset? How do

they make their voices heard? I am interested in the impact on the system when we talk about balance with all these decisions.

Professor Gert de Roo: That is an intriguing question. I have the best job in the world, because they believe that I am a sort of god. Planners are everywhere in the Netherlands, and it is felt that they are doing an awfully good job. Of course, looking from the inside, I am quite capable of criticising various things that are not well done and are even painful.

There are a few issues which the public really stand up and oppose. Windmills are one of them, basically because the national authorities have put aside provincial and municipal plans simply to get them everywhere without too much interaction with the local public. That was a trigger for people at a local level to stand up and oppose them, because it has a major impact on their lives. They feel that the windmills are there for the country as a whole, but that they have negative effects. This has become quite an issue, and the national authorities are now reconsidering their climate policy based on these protests. The other thing that has caused loads of trouble is the nitrate issue, which at the moment is turning the country upside down.

These are the two issues that are currently really stressful for us planners to deal with, because there is no mitigation; there is simply top-down policy clashing with local interests, with the authorities wondering what to do because they promised the EU and whoever else to take firm steps. Clearly, these steps are not always appreciated, particularly regarding windmills and nitrates.

Baroness Thornhill: Fascinating. Thank you.

Q127 **The Chair:** My question is about nitrates, so you have landed perfectly for it. In this country, the effect has been that development has been brought to a total standstill in about 72 of our 365—one for every day of the year—local planning authorities, which is quite a large proportion. We are aware from the newspapers of the political turmoil in the Netherlands over the result of this legal case, which curiously still binds us in our domestic law because we have not abolished that aspect of EU law yet. I am not sure whether it is included in the Bill going through or not. Apart from the political effect, what has the effect been on development in the Netherlands? Is there a standstill?

Professor Gert de Roo: It has been even worse than in the UK. We, a country much smaller than the UK, are the second exporter of agriculture in the world, so you can imagine the stress. Nitrates have brought us to a standstill too—18,000 projects have been stopped—all while we are facing a housing crisis. We do not have enough houses; we need to build 900,000 in the coming years and it is not working. There is a clash of crises and panic in the Government. The people voted a couple of months ago on the provincial level and it is clear that they voted against the national Government and their proposals very much to escape from this misery.

Effectively, there is panic. As I said before, the moment you have standards and it is done routinely, there is not much wrong, but we have neglected the nitrate issue for 20 years. We simply pushed our farmers to produce more and more while knowing that there had to be an end to this. With the EU no longer willing to make exceptions for the Netherlands in its nitrates directive, the country has come to a complete standstill.

The Chair: Did I hear you say that 18,000 development projects have come to a standstill?

Professor Gert de Roo: That is correct.

The Chair: Could we now come now to Lord Best?

Baroness Thornhill: Could we hear first from Professor Lees on the courts and the public? I am sure she will be succinct and to the point.

The Chair: I beg your pardon. Let us loop back to Professor Lees—we have great mental agility here. I am sorry; I was so excited by nitrates that I thought it was my turn. Professor Lees, could you tell us about the courts and the court of public opinion?

Professor Emma Lees: One of those is easier for me than the other. I will deal with the courts to start with. The English courts, together with the Irish courts and a few other member state courts, are very hands-off in their approach to reviewing environmental development decisions. They tend to be quite respectful of the discretionary powers/responsibility given to local authorities, although that is not the case in all member states.

A lot of this is operating against a homogenous background. The habitats regulations and the EIA regulations are all the same rules, but they operate very differently in the courts. That difference has nothing to do with the environment. The difference comes because of the different constitutional set-ups and the allocation of power between administrative authorities and the courts. If you want to understand that interaction, you almost have to go to the constitutional level and ask how a state sees the interaction between the courts and the administrative authorities. The consequence is that the English and Irish systems are very hands-off, whereas somewhere like Finland would be much more interventionist.

There are also countries in the middle like Italy, whose courts repeat over and over again, "We're not interfering", and interfere all the time. They constantly say, "We don't have the power to get involved in these decisions, but we're going to tell you that you can't do it anyway". You get that kind of middle ground as well.

This willingness to intervene is one area, but another important point is the ability of the court to review evidence. In the English system, for the most part you cannot have expert witnesses testify to a court about the scientific information that they are trying to interrogate. That is not the

case in very many member state courts. Lots of member state courts can have additional witnesses in the hearing to assist the court with its job in relation to the environment. Some cases even have specialist scientist judges who are not lawyer judges but scientist judges.

The Chair: That is where the court substitutes itself as a decision-maker.

Professor Emma Lees: Not always. Even sometimes just for a judicial review they will have evidence in court over whether the local authority's interpretation of the science was reasonable. The judges do not know because, perfectly understandably, they do not understand the scientific position, so they will have court-appointed experts as opposed to developer or local authority-appointed experts to assist them, which can be quite useful. I may be wrong, but I think the Netherlands courts have something even better—their own internal scientific body that can help them review and understand the decisions before them. You see a big difference in that area of expertise and scientific literacy in a lot of member state courts.

Turning to the court of public opinion, I sort of mentioned this when I talked about the influence of culture. If you have a general public who are very accepting of the opinions of independent scientific bodies, those decisions are not challenged quite so often. If you understand that those decisions are up for challenge, there is a lot more litigation and a lot more tension around the decisions being made.

Q128 **Lord Best:** Using our mental agility, I will go back to nutrient neutrality and ask about the Dutch experience. Am I right in thinking that the target for reform, for change, is the farming community and that agriculture is deemed to be the cause of the problem you face, rather than overdevelopment by housebuilders? We are hearing quite a bit in this inquiry from the housebuilders that they have to do all kinds of things that they used not to have to do. In Holland, as I understand it, the target is the farmers. There are too many animals, basically, for the amount of space that those animals are occupying. Is that the case? Is it an agricultural issue?

The Chair: Some 18,000 projects have been stopped.

Lord Best: They are collateral damage because of something that farming is responsible for.

Professor Gert de Roo: That is absolutely correct, but the Government are the ones who are really responsible. They did not act for more than 20 years or so. They encouraged the farmers to intensify their production, and now, of course, the farmers are really angry, which I fully understand.

Now, however, the situation needs a solution. One of them is existing practice. It is the farmer in relation to nature protection, and both are willing to solve the issue by looking at each other. For a long time, farmers used part of their land as nature protection. They had a mechanism for when to sell, when to harvest and so forth to protect

nature. They get a subsidy for that, which is likely to increase. However, some farmers close to habitat areas will be bought out and will have to leave, although I guess that most farmers in this particular situation will get a tailor-made solution.

It will take time. The courts are forcing us to solve this before 2035. That will not work, but if we can get more time, we will go to situation-specific, tailor-made solutions for farmers in relation to their habitat area, which is quite interesting. There is one flaw, though. A farmer and their emissions do not necessarily correlate directly with the impact in the nearby habitat area. If you remove the farmers around the habitat area, there will still be emissions from nitrate, although of course it comes from everywhere.

This duality will be the major concern. How are we going to solve this by taking measures such as buying out farms when we cannot be exact about how this will reduce nitrate emission in the habitat area? That will be a tough one. We can get far by adopting a tailor-made area-specific approach, but that is something to work on for the coming years.

- Q129 **Lord Best:** Fine. Moving on, to what extent do other countries face the problem of underresourcing of the planning system? I was given an example last week by a developer who said that his planning application has to be considered by someone who works part-time on Thursdays for two hours working from home. He is in the queue, but this queue will last a very long time. Are we unique in not resourcing our planning system so that it can cope with the demands upon it?

Professor Emma Lees: Not unique, no. It is not that hard a political sell to cut funding to planning authorities. There are other things that it is less popular to cut money to. If you are trying to cut money in general, that is an easier one to cut. We are certainly not alone in having very slow planning processes. Whether that slowness comes from a lack of resources or from the complexity of the system is open to question in each case.

I would say that most states face the same problem, which is that they want to build houses but they want to protect the environment. Working out how to do that is really hard. Getting the people who have the expertise to do it is challenging on public salaries, and money needs to be prioritised. So I would say that most systems face similar challenges there.

The Chair: Professor de Roo, do you have sufficient planning officers in the Netherlands who are well paid, happy, intelligent, turning up to their work five days a week and putting in the extra hours

Professor Gert de Roo: One of my books has the title *Environmental Planning in the Netherlands: Too Good to be True*. That says a lot. We have loads of planners. The thing is that the system has become quite complex. In the last 10 years, it has tried to simplify itself, which was an absolute necessity. The Environment and Planning Act, which we

mentioned, is part of that process and the sort of final act in the response.

As I explained with regard to the decentralisation in our country whereby every responsibility goes to the municipality, we saw a counter-movement: agencies on a higher level taking over the responsibility of the municipalities on specific issues—in this case, the environmental issues—and acting for them, which is really helpful because you bring expertise to a higher level and municipalities benefit from that. So it is not just there for simplification, which is a very long process; it will be really helpful, while also trying to concentrate expertise in agencies that can act effectively. That process cannot be underestimated. It is really positive.

Q130 Lord Carrington of Fulham: My question takes on what Professor de Roo was saying about expertise. How do you get the expertise into the system and at the same time keep the democratic control? One problem that has come out of this inquiry, although it was fairly obvious before, is that a lot of people who live in nice communities do not like to have new development, rightly or wrongly. So we seem to have ended up with local democracy responding to this and saying, “We won't have development” or “We will have development”, and outside bodies like the Environment Agency, Natural England or whatever saying, “Oh no, you won't have development” or “Yes, you will have development, because we want to do some environmental things to make things happen”, and even to force through more housing.

How do you balance the need for the expertise that cannot be in the local planning authorities because it needs to be concentrated, as Professor de Roo has said, against the democratic right of people to have the ultimate say on their own built environment and on their own natural environment?

Professor Emma Lees: That is the \$50 million question. I try to think about what is at stake when it comes to environmental degradation, and to see how that relates to other kinds of questions that the state has to address. If we look forward to the second half the 21st century, having strong biodiversity in a nation state will be very important in the face of climate change. Why? Food security. We all like to be able to go for a walk in the woods and see bluebells. That is lovely. But probably more important is that we can eat.

Other areas of national security like fuel security or weapons/munitions security are not questions that are left to individual local authorities—and for very good reasons, because you need to make strategic decisions about how to maintain a strong level of security. So part of this is about how we frame what is at risk with environmental degradation.

It is not only the aesthetic, appealing aspects of the environment that we like because they make us feel good. There are also fundamental existential reasons for having a strong biodiverse, clean, well-functioning environment. If you think of it in terms of food security or water security,

you would not allocate those decisions to somebody who was making them on a micro level. You would deal with those very strategically because of the strategic importance to the security of the state.

When we think about balancing expertise and the kinds of places where people live and work, we have to attempt to divide what is strategically necessary from how we design places where people want to be, and see those things as two separate questions. You can maintain a strong degree of local accountability for the “How do I feel about my local environment?” questions, but you need a high degree of expertise for the more strategic, fundamental questions about biodiversity across the piece. That is not how to do it, but how I would think about how to do it.

Lord Carrington of Fulham: Who has the final decision? That is the key. If one lot of people is saying “No, you can’t build” and the other lot is saying “Yes, you must build”, someone has to say whether you build or not.

Professor Emma Lees: My answer is a cop-out. I would say that who gets to decide depends on what you are asking, rather than having a one-size-fits-all approach where it is always the national body or the local body. This happens where a decision is made with nationally significant infrastructure projects; some of these projects are so important to the nation as a whole that the decisions are taken more centrally, and some are very significant to a local area and get taken locally. Who gets to have the final say depends on the question, which is a very complicated system because the questions are complicated.

Lord Carrington of Fulham: Professor de Roo, from what you have said it sounds as though you have exactly the same problem in the Netherlands. Did I understand you to say that the resolution of this problem is for decisions to be taken by the expertise in the centralised bodies rather than by the local democratic process?

Professor Gert de Roo: Not entirely. The knowledge is centralised but the decisions are not—they are made locally, which is the difference. At the moment, there is a clash between citizens and the authorities about a decision to be made. The expertise will come from a higher level and be used in the deliberations on how to respond to the public’s fears. It is an interesting one. The knowledge is part of the democratic process but not necessarily part of the decision-making bodies, which is important to know.

Our morphology with regard to cities is that, for the last 100 years, we have built our cities in neighbourhoods. These neighbourhoods are complete areas, away from industrial sites. Therefore a conflict between, for example, industrial growth and neighbourhood development is hardly there any more. There is a conflict at the moment within the urban area over our festivals. They come in and make a lot of noise for two days, everyone gets angry, but the festival goes again and everyone gets back to business. But it is quite a pain in the urban area and we do not yet

really know how to solve it, except that festivals must stop at 12 am sharp.

The Chair: Since you mention it, let us come back to a question from Lady Warwick. Do these regional bodies that aggregate expertise have any regulatory power?

Professor Gert de Roo: Effectively, they do, because they are coming up with the permits. They are composing the permits for you to act—

The Chair: I thought the local authority provided them.

Professor Gert de Roo: Exactly. There are two ways. For noise abatement and that kind of thing, it is very local, but if it is an issue such as risk—the possibility of a calamity if something explodes—it is the responsibility of the province. These come together in this agency. It composes your permit, which then goes either to the municipality or the province, and they issue it.

The Chair: So they write the conditions for the permit.

Professor Gert de Roo: Exactly. They also go to the site to see what is really there and interact with people.

Q131 **Lord Berkeley:** We know that England is introducing a requirement for developments to achieve an at least 10% biodiversity net gain, sometimes allowing off-setting and sometimes not. Is a comparable requirement happening elsewhere? Is it happening in the Netherlands, New Zealand and other places? If so, does it work?

Professor Emma Lees: I am not aware of something precisely the same elsewhere. It is quite an unusual way of phrasing the requirement. More common is proactive management of biodiversity as a concept, but not with a 10% number.

Lord Berkeley: It is a frightening number.

Professor Emma Lees: It is either frighteningly low or frighteningly high, depending on who you are. I am not familiar with other places attempting to quantify it as a number like that, but maybe they do in the Netherlands.

Lord Berkeley: Professor de Roo, is it happening in the Netherlands?

Professor Gert de Roo: Not as a 10% figure. It is very fragmented, but many things are happening, from really low-key issues such as no longer mowing the grass along highways and motorways to allowing rivers that have been canalised to meander again. These kinds of activities are taking place, but more important is non-profit organisations working with farmers and trying to combine forces for new exploratory activities. These are fascinating to follow, anticipating legislation that will no doubt come in the very near future. If we solve our nitrate problem, we can expect legislation on this issue; we will have all these experiments done and can move forward from there. I am looking forward to that period, because

we all have a sense of national feeling that we have to make that step in particular in this country, which is highly influenced by agriculture.

Lord Berkeley: Going back briefly to Professor Lees, are we looking at a situation where somebody has to make a decision between having enough to eat—of food made locally—and having somewhere comfortable to live? It is an interesting debate. How do we decide?

Professor Emma Lees: Yes—the third point is not only having enough to eat but having a food system that is resilient to climate change. You can have large-scale, efficient agricultural practices that are risky; if the risk pays off then you are all right, but very rich biodiversity reduces the risk level in your food systems.

The Chair: So in future we will have the “Eat” party and the “Shelter” party contesting for votes at elections. Thank you for that thought, Lord Berkeley. We will now bring this evidence session to a close. It has been most fascinating. We are very grateful to both of you and thank you very much for your time.