



HOUSE OF LORDS

Built Environment Committee

Corrected oral evidence: The impact of environmental regulations on development

Tuesday 4 July 2023

10.45 am

[Watch the meeting](#)

Members present: Lord Moylan (The Chair); Lord Berkeley; Lord Best; Lord Carrington of Fulham; Baroness Cohen of Pimlico; Lord Greenhalgh; Lord Mawson; Baroness Thornhill.

Evidence Session No. 17

Heard in Public

Questions 175 - 191

Witnesses

[I](#): Natalie Prosser, Chief Executive Officer, Office for Environmental Protection: Dame Glenys Stacey DBE, Chair, Office for Environmental Protection.

Examination of witnesses

Natalie Prosser and Dame Glenys Stacey.

The Chair: Welcome to this meeting of the House of Lords Built Environment Committee. This evidence session is part of our inquiry into the impact of environmental regulations on housebuilding, development and infrastructure.

Our witnesses today are from the Office for Environmental Protection. Dame Glenys Stacey chairs the OEP and Natalie Prosser is its chief executive. Please could members of the committee keep their questions brief and, equally, could the witnesses keep their answers brief? There will be a transcript, so repetition can be avoided as answers will be in the record.

My name is Daniel Moylan, and I will introduce other members of the committee when it is their turn to ask a question. As you can see, we have name plates in front of us, so you can recognise everybody. Our first question is from Lord Greenhalgh.

Q175 **Lord Greenhalgh:** Could you talk about the role and the remit of the Office for Environmental Protection and how the OEP relates to other statutory environmental bodies such as the Environment Agency?

Natalie Prosser: The OEP is a new public authority. We were vested in late 2021, and the purpose of our creation was to fill what has been described as a governance gap arising from EU exit. That governance gap links to the oversight of compliance with UK Government environmental law.

The OEP is a very different creature from the commission. If I may, I will summarise our role and remit. Our mission is to protect and improve the environment by holding government and other public authorities to account. We have derived that mission from our founding legislation, and we do it in four primary ways.

First, we scrutinise environmental improvement plans. There is a statutory responsibility on government to set those plans. Secondly, we scrutinise the Government's statutory targets, which are set under the provisions of the Environment Act 2021. Thirdly, we scrutinise environmental law. This is a new function created under the Environment Act, and it allows us to look closely at how laws are performing in practice—the efficacy of the use of those laws, if you wish. Fourthly, we have powers to provide advice to government on new environmental law, and, quite importantly, we can also enforce against failures to comply with environmental law; that applies to all public bodies, including government departments, the regulators, local government and other public authorities.

A common theme in that governance is that the OEP does not make policy and we do not set those standards. We hold government to account on its own commitments under the environmental improvement

plan and those statutory targets, and we hold public bodies to account with regard to the laws created by Parliament.

We undertake those activities for four purposes. The first is to achieve sustained environmental improvement. The second is to secure better environmental law that is also better implemented in practice. The third is that we would like to see improved compliance with environmental law, and the fourth is that we strive to be an excellent organisation. Those are our four primary objectives.

You asked how we relate to other public authorities. We have an oversight role for all the environmental regulators, indeed for any public authority exercising functions under environmental law. Those bodies have duties to co-operate with the OEP to help us to do our job, and they have responsibilities to provide us with information necessary to perform our functions.

The Chair: Are your objectives in statute?

Natalie Prosser: We have a primary purpose in statute, which is to protect and improve the environment.

The Chair: Things like being an excellent organisation are not in statute.

Natalie Prosser: No, they are not in statute, but like all public authorities we have responsibilities to perform our job effectively and efficiently and to demonstrate good value for money.

Q176 **The Chair:** And to work out where they come from. I am interrupting Lord Greenhalgh's turn, but what is your enforcement mechanism against public authorities?

Natalie Prosser: The enforcement mechanism we have is set out in legislation. As our chair has frequently described, it is a statelike mechanism designed to achieve resolution, but I will try to summarise the various steps.

We receive complaints from members of the public in relation to compliance with the law or, on our own initiative, we can assess concerns about compliance with environmental law. We then assess whether any possible breach is serious; we are not concerned with the trivial. Then we assess whether any such breach meets our prioritisation principles. Essentially, those principles look at whether another public authority is acting, whether someone is better placed to act than us, and whether it is strategically important.

If a case passes that threshold, and it is a high threshold, we can investigate public authorities drawing on those duties to co-operate and the ability to secure information. Should we find that there has been non-compliance with environmental law, in the first instance we look to work with the public authority to put the non-compliance right. If that is not possible, we can issue something called an information notice to set out

our concerns. If we find that the breach is well founded, we can issue a decision notice and make recommendations to public bodies.

Ultimately, if none of that resolves the substantive issue, we have the power to take public authorities to court. In England, that procedure is called environmental review, which is very akin to judicial review. In Northern Ireland, we have the powers to bring judicial review.

The Chair: I am being very unfair to Lord Greenhalgh, but Lord Berkeley is bursting to ask a question.

Q177 **Lord Berkeley:** You have given us a wonderfully wide scope and remit for your organisation. How many people do you employ?

Natalie Prosser: At the moment, we have 68 people working for us at the OEP. We aspire to grow a very small amount—up to about 70 in the current financial year.

Lord Berkeley: Is that enough?

Dame Glenys Stacey: We are a new organisation working that through, as they say. Defra gave us 93% of the funding that we asked for this year. I suspect that other bodies did not fair quite so well. It is hard to bleat about 7%, but it would have been good to have it because it would have meant two or three more people.

We are in a different position in Northern Ireland, I am afraid. We made a request for monies there which we think was fair and right, and sufficient to make us a credible organisation but no more. We are not sufficiently funded in Northern Ireland, which is notably constraining what we can do there.

Q178 **Lord Greenhalgh:** Lord Berkeley stepped in on my question.

Lord Berkeley: I am sorry.

Lord Greenhalgh: Do not worry. I do not take it personally. You have given a very good explanation of your oversight role over all environmental bodies, your significant scrutiny functions, and your powers to enforce. Do you feel that you have the necessary powers to deliver against those myriad objectives?

Dame Glenys Stacey: Broadly, yes. The powers are those that Parliament has given us and we are finding them workable. I should say that it is quite early days. We have a couple of significant enforcement cases and investigations under way, and as we experience it we might find that it differs, but, broadly, yes, we can make the difference we wish to make with the powers that we have.

Lord Greenhalgh: I know that you are a very young organisation, but can you give us some examples, which you can comment on in open forum, of where you feel that you have made a significant difference?

Dame Glenys Stacey: Obviously our enforcement proceedings are under way and it is very difficult to comment on those, but in some of the

advice we have given we know that it has taken effect. We have given advice to government on a good number of occasions when there are proposed changes to the law, and we believe that they have had effect, most certainly.

We were also able to succeed in influencing government to get its statutory targets done in a decent timeframe. It was three months later than the statutory requirement, but it was done. Equally, government produced its environmental improvement plan on the last day that it could, and I think we had influence in putting pressure there. We also gave advice on the construction of targets that we thought were sufficiently ambitious. One target we thought was not necessarily legal, and our advice on that was certainly taken into account.

Again, it is early days, but we can see that we are having influence. It is always very difficult to measure influence and to claim it as your own when other people have been saying things, but I think we have influence and we know that the Secretary of State is, thankfully, interested in what the OEP has to say.

Q179 Lord Carrington of Fulham: Just to clarify it in my own mind, your final sanction is to take somebody to judicial review, which can be unbelievably expensive. Is that included in your budget, and how do you budget for something like having to take another Environment Agency-type organisation to judicial review when you cannot possibly know in any financial year whether that will happen or how much it is going to cost?

Dame Glenys Stacey: I think we will get our accounting officer to be explicit about that.

Natalie Prosser: As with any organisation, modelling the likely funding that we would need for that scenario has been challenging. We have built into our forecasting the likely costs of conducting our investigations. We work on the assumption that court proceedings are an unlikely outcome of our interest. We have some reserves to anticipate that, but we also have a mechanism to engage with Defra, our funding authority, in a governed way to seek additional funding in the event that we should meet unexpected expenditure.

Lord Carrington of Fulham: So Defra has an understanding with you. I suppose it is probably not a commitment, but an understanding that it will fund any deficit caused by your taking action.

Natalie Prosser: It is of course subject to rigorous controls, as it is public money. But a mechanism exists to allow us to seek that additional funding should we need to.

Dame Glenys Stacey: Calling it an understanding is a good way of expressing it. I should say that although judicial review is notably, and well known to be, expensive, investigation is not cheap either.

Lord Carrington of Fulham: But you can budget for that, whereas

judicial review is an unexpected event.

Dame Glenys Stacey: Yes, and it is immediate. You cannot put it off until next year.

Lord Carrington of Fulham: I am just curious to know how it is funded.

The Chair: When you are pursuing your role of ensuring that the Government and other public bodies comply with environmental legislation, to what extent do you take into account the externalities and consequences of that on housebuilding and development, for example?

Dame Glenys Stacey: I think what you are prising open here is the question of balance. How are these competing aspirations of government on the environment or housebuilding held in balance? Is that the issue?

The Chair: No, but we will come back to this question a bit later. I am sorry that I have slightly anticipated it in any event.

Baroness Thornhill: Yes, you have anticipated my question on that, but I was going to start by saying that we are segueing beautifully into it.

The Chair: I did that to you last week as well, so I am very sorry. This might be a good time to move on to your question.

Q180 **Baroness Thornhill:** What we are really interested in, the more so as you are a new organisation and getting a general impression, are the challenges and conflicts in your remit and in what you see the Government are trying to achieve. We are the Built Environment Committee, so obviously that is the focus of this investigation. Do you feel that it is about right? Are policies coherent and in balance, and what do you feel you have seen from your initial thinking?

Dame Glenys Stacey: Let me say straightaway—this is squarely within your committee's remit—that we are currently doing a piece of work looking at the way the environmental impact assessments work. How do they work in the planning regime? We anticipate doing a report on the various assessments and hope to publish it before the end of this year. We really think that it could be helpful to government and to Parliament. As they think about how these things work and the prospect of change, with the consultation from DLUHC that has just finished, it is helpful to know the detail of how it actually works before change is decided. We have to offer that—to put it on the table, if you like—before the end of the year.

As to balance, first, I ought to make it clear that the Government are really not delivering the environmental improvements that they should. They are not delivering the improvements that they need to do at the pace that is needed to meet their stated ambitions for the environment. That is the position we are in, and it is not a happy one.

Secondly, when it comes particularly to the interface with planning, the Government are not going to meet their biodiversity targets at the

current rates. Those are eye-watering and they are in statute. By 2030, we must halt species decline, which is a massive ask. I am always aware that that has been Parliament's intent. It is a statutory target, not any old target; it has stature, if you like. So when government or Parliament is trying to balance these competing demands, this one is pretty well hardwired and very demanding.

The other thing I should say—I do not wish to be difficult about this—is that it is not our job to hold that balance. That is a matter for government and ultimately for Parliament.

Baroness Thornhill: Would you advise? Would you say if you felt that there was a conflict: “You’re saying this but actually doing this”? Do you feel that is in your remit?

Dame Glenys Stacey: It is not for us at all to advise Parliament or government on how to strike that balance. We would be squarely called to rights for going beyond our remit if we even attempted to do that. We need to be proportionate; again, there is a requirement in our enabling legislation for us to be proportionate. So when we make a recommendation or give advice about how to achieve one aspect of a target, we must make sure that what we are suggesting is proportionate. There is not a lot of help in the Act as to how we interpret that, but we will obviously not recommend something that, for example, is simply not achievable. We hope that we are recommending the best ways for government and society to meet the Government’s clearly stated ambitions for the environment and their interim and longer-term statutory targets on it. That is what we have to do: find the best ways to do that.

Baroness Thornhill: Sticking with the planning, in the levelling-up Bill there has been a subtle change. Forgive me if I get the terminology wrong; it is about going from environmental impact statements to something else.

The Chair: It is environmental outcomes, a change from environmental impact assessments.

Baroness Thornhill: That is it. Can you summarise your thoughts on what that change is meant to achieve, and will it?

Dame Glenys Stacey: I can do my best to summarise my own assessment. We have had a consultation from DLUHC about that. We have responded to it fulsomely and can send the committee a link to that. It is on our website, so you will see our full thinking there. Our understanding, from reading the consultation document and from the very helpful discussions we have had with officials in the relevant department, is that there is a deep frustration with the existing regimes. They are thought to be very cumbersome and to delay matters unduly. The committee will know, having had all these representations, that there are those issues with the way the regimes work at the moment. They are exacerbated by real problems in having the right skill levels in local

authorities and in the process as a whole. There are—let us call them this—cultural dimensions as well how people behave.

There are all those issues with the way things work at the moment, and the suggestion is that we could have a better regime. The consultation is not really spelling out the detail of that. It is a very high-level consultation, presumably for the purpose of getting early high-level steers and responses. We have done our best on that. What we say about it is that it is not necessarily the legislative regime that is at fault. There are all these other dimensions, particularly the cultural ones and the lack of skill.

For example, environmental issues can be considered very late in the day in the planning process, when they need to be right up front. It is quicker, and less of an obstacle in a way, if you face it right up front. For us, there are a lot of issues that are really difficult to change overnight, and they are about the way a regime works in practice out in the field. You will have had this from others, I imagine.

- Q181 **Lord Best:** I would like to explore this a bit further. If at the end of the day you are able to say, "We've protected the environment successfully, we've done well, but there has been a decline in housebuilding as a direct result of our success", do you say, "That wasn't our problem. That's for government to sort out separately. We were successful but, proportionately, perhaps a 10% cut in housebuilding would have been acceptable, not a 30% cut"? How do you interpret your proportionate success?

Dame Glenys Stacey: That is a very interesting question. We are at the stage of developing success measures and talking with government and stakeholders about how we measure success. Our success is measured against our statutory objective to restore, enhance and improve the environment as government intends. It does not reflect societal or economic impacts in any way. We are a very focused organisation, as Parliament decided and intended.

However, we say that there should be ways in which the environment can be protected, restored and enhanced and government can meet its ambitions, particularly on biodiversity and species decline, by directing housebuilding to the right places. There needs to be a coming together. Given that it is a spatial issue, there need to be mechanisms, particularly at a local level, along with the data that is needed to support wise decision-making at that level. That is where we have a significant gap at the moment: in the way these things are decided, the pressures that are put on, the cultural elements, and the lack of pertinent up-to-date data that would assist those charged with making planning decisions to make the best possible decisions.

The Chair: At the moment, in the case of Natural England and the nutrient-neutrality question, the fine-grained approach that you are discussing has resulted in what is in effect a total ban. I understand that nobody is responsible for that ban. Everyone is just giving advice, making

decisions and running scared of British courts that have not even pronounced on the question, so I understand that no one has brought in a ban, but in practice in 72 local planning authorities, which is 27 catchment areas or 14% of the land area of England, there is a ban on any development.

One of our questions is how confident you are that government will deliver environmental protection to the necessary standard. To a certain extent you have answered that question already by saying that it will be extremely challenging for the Government to do that, but the implication of that is that government has to try harder and do more things. We are talking about 72 areas today, but it might be a larger number in future.

It is also good to ask, "What is the right place for development?" You said that as if there were right places. It has been customary to think that brownfield development would be less damaging than greenfield development, but we have heard evidence that many brownfield sites, once they have been left to become derelict, achieve quite high levels of biodiversity naturally. If you clear them and concrete them over, you actually start with negative biodiversity, making it harder and more burdensome for brownfield sites to come forward than greenfield sites, and we have heard evidence to that effect. So what are these right places, and what sort of answer is this?

Dame Glenys Stacey: I am trying to think of an analogy for what you are highlighting. We know that the environment has been depleted over many years and has not been regulated in ways that enhance biodiversity—quite the opposite. We have reached a very difficult position that government is now intent on reversing. When you are trying to stop something that has been happening over many years, the best analogy that I have is that it is like trying to stop a merry-go-round going around. When it stops, it judders and something feels the effect of it. What is happening here is that that effect is being felt by developers and local authorities, because this is the point at which trying to stop that decline is most immediately felt. Another analogy is that you are trying to stop the train at the buffers, but the passengers feel it when it stops.

What is the solution to that? Regrettably, what government must now do will take some time, so it needs to plan. It has an environmental improvement plan, but it needs a delivery plan underneath it for each of its goals. One of its biggest and most immediately pressing goals relates to halting species decline, and central to that plan are the SSSIs. You will know, because you have heard evidence on it, about the poor condition of those. Resolving that poor condition is not straightforward and will take time. In other words, there is no time for government to waste if it has a 2030 target. It has to start somewhere, and it starts with SSSIs. Indeed, it has its 30 by 30 commitment to increase by yet more the land that is set aside for nature.

There is no easy solution, because on the one hand you have an immediate demand for housing where it is thought most appropriate in the locality, and on the other you have a very pressing but much longer-

term solution issue, which is about the quality of the environment and biodiversity. When I say, “the right house in the right place”, I admit that it is rather trite, but what I am really saying is that it is purposefully particularly difficult for housing to be built on land that is protected and not in very good condition; indeed, it is in poor condition, and Natural England takes the view that no more adverse effect on nutrient can be taken there.

The solution is to improve the land but, as Tony Juniper said in evidence to you recently, that is not always straightforward. The Government’s target is to improve 75% of these sites to good condition by 2042. That sounds ages away, but it is not if you have to change undergrazing, overgrazing or the type of animal grazing, or indeed to deal with more remote pressures such as air or water pressures. They really have no time to waste, so I applaud anything that gets these things done and gets them done sufficiently smoothly that planning can work as well as it can. Ultimately, and in my view rightly, planning decisions are in the hands of the local authority—they are local decisions—but one would hope that they are able to strike the right balance with the right data to enable government to meet the statutory requirement to halt species decline by 2030.

The Chair: On the merry-go-round analogy, we have had evidence from the Netherlands, where they have tried to stop the merry-go-round and it has resulted in the most amazing political upheaval. It is bringing their Government down. Our witness said that it had turned society upside down, with constant protests and newly formed farmers’ parties being elected to local authorities, municipalities and so on. These are considerations that someone has to take into account.

Q182 **Lord Mawson:** My question is on this topic. Dame Glenys, I am interested in what you know about the local, the micro and the granular. You talk as though government might not have been responsible for some of the situations that we are now in. I find that pretty unbelievable.

Dame Glenys Stacey: I am sorry. I did not mean to say that.

Lord Mawson: No, I am not saying that you meant to say that, but government has not stood back; it has been involved in a whole range of processes that may have unintentionally produced a lot of the circumstances that we are now dealing with. In my experience in life, to really understand these macro things you have to be somewhere in the micro in a lot of granular detail. I am old enough to remember the pop song lyric, “You’re everywhere and nowhere, baby. That’s where you’re at ... In your hippy hat”. I find a lot of that behaviour in government systems that need to grow, and here is another one.

I have asked this question before, but in your agency do you feel that you are at that level of granularity to really understand what is going on in one place that might have implications for many places, and where would that be?

Dame Glenys Stacey: As I said earlier, we are doing a review of the implementation of the various assessment regimes. We have made calls for evidence in order to get information from any number of localities and spoken to people there. We make our best efforts, without getting involved in any locality, to get the information that we need to form a measured and wise view. We have board members with a wealth of experience at a local level and are still involved in some local matters. There is the work on the Oxford-Cambridge Arc, for example, and we have good information from there.

So we have a number of ways of getting information when we need to, but it is right that we are not sleeves rolled up in a locality. That is not where we wish to be, or where we should be. We need to know how things work on the ground and we use a number of ways to do that. Calls for evidence are a really good way of talking with any number of stakeholders, which we do. We have open doors for information to come in.

As to what government does and does not do, my own view is that we have regulated for the environment in certain ways over decades, very much influenced by the common agricultural policy. We need to regulate differently to achieve government's aims. We have an opportunity now that we are no longer in Europe and have left the common agricultural payment arrangements. We have ways to incentivise agriculture and farming, for example, to make sure that under the ELM scheme the right things are rewarded. All the regulatory tools are now at the disposal of government and the relevant agencies. Am I missing something?

Lord Mawson: I notice that I never get taken to a real place, with real people, in granularity. I get generalisations, and I am not sure that they are the way into these kinds of real issues. We have had the conversation, but I am hearing generalisations.

Dame Glenys Stacey: Let me say one more thing, then. We do a lot of site visits. The teams get out any number of times to specific sites to see how things are working.

The Chair: I want to ask about a factual matter. The 30 by 30 target that you refer to is not statutory, is it?

Dame Glenys Stacey: No, it is an international commitment.

The Chair: It has no force of law.

Dame Glenys Stacey: It is now embedded in government's *Environmental Improvement Plan 2023*. In January, it was reiterated in that plan.

The Chair: It is quite frustrating that somehow obligations are made because a few officials go off to a conference abroad, something is agreed, and then all of a sudden we find that it is a binding target with an agency to enforce it.

Dame Glenys Stacey: Just to be clear, first, we are not there to enforce a target; we are there to evaluate whether the Government are likely to achieve it. Secondly, we have advised government right from the beginning that some prioritisation of targets would be really helpful here. There ought to be a way in which we could understand their relative importance and, indeed, whether some targets are still valid, because there are so many of them.

We know that targets that are set out by statute or agreed by government because of a statutory requirement to do so, or those that are in the environmental improvement plan, seem to us to be necessarily important targets. They are what we might call apex targets, but there are any number of others. I agree with you that there has been a proliferation of targets and it is quite difficult to work your way through them, but the Environment Act helps us in that.

Q183 **Lord Mawson:** In your assessment, is the current institutional structure of the Government fit for purpose in delivering environmental regulations? We have heard evidence of a “massive overlap” between the roles of Natural England and the Environment Agency and of a lack of co-ordination between them. Do you see it as part of your remit to make these two bodies work more effectively together? I would be interested in what you think the cost of that overlap is and how many staff are duplicating each other.

Finally, you recently found that the Government had consistently failed to complete post-implementation reviews of environmental laws. How have you followed up on this study, and is Defra now performing satisfactorily in this respect?

Dame Glenys Stacey: There is a lot in that question. I should declare here that a few years ago, in 2018, I conducted an independent review of the regulation of farming for government—the Stacey review. I made any number of recommendations there and questioned the current configuration of government agencies. I argued for an independent regulator for farming. Regulation is a discrete business and ought to be given that attention as a discrete thing. I also argued for different regulatory approaches, so I have a personal view on record as to the configuration.

Having said that, we know that it was in Defra's mind to consider its configuration, because in a Green Paper last year it signalled that that was on the cards. Obviously, thinking has moved on and perhaps the optimum time for doing it has passed. Reconfiguration is certainly enormously disruptive, and you are necessarily putting a lot of jobs at risk. We now have the 2030 target in relation to species decline, so you really do not want any distractions in getting there.

For me, the key now is a transparent, certain delivery plan, particularly for that target but also for other aspects of the EIP, and that is a recommendation we have made. The respective roles and responsibilities of Defra's arm's-length bodies and others—local authorities and so on—

should also be really clear, because the urgent thing now is to make that delivery happen and, as yet, there is a lack of transparency about quite how these things are going to be achieved.

Lord Mawson: Government and delivery is interesting.

Dame Glenys Stacey: The question of overlap is the next one. We are not in a position to quantify the overlap, although I saw that Tony Juniper, when he gave evidence to you, referred to a massive overlap between the Environment Agency and the Forestry Commission. Alan Law explained that in operational cases there is about a 15% overlap, but I think he was careful to make it plain that it is not them both doing the same things. They are dealing with an issue but in an integrated way, with different responsibilities for each. There is bound to be a cost to that, but I am not in a position to quantify it.

Natalie Prosser: I would note for the record that we currently have a live investigation into Ofwat, the Environment Agency and the Defra Secretary of State. One of the focuses of that investigation is clarity of roles and responsibilities, specifically in the regulation of combined sewage overflows, where we have identified a degree of ambiguity in relation to who is responsible for what. An objective of that work is to bring clarity to it, and that is just one component of the overarching regulatory system. I agree with our chair: it would not be possible for us to quantify that overlap, but we recognise that it needs to be addressed to get clarity for everybody as to exactly who is responsible and accountable for what. We would like to see that in a coherent delivery plan.

Lord Mawson: If you were running a business, you would get really clear about what that overlap and those costs were. It is a bit like what the chair was indicating: people go off to these conferences and have very fine conversations and meals at great cost. Then they come back and suddenly another agency appears at great cost. There seems to be no clarity in these systems about money, cost or the expansion of these organisations in five years' time; if you look at other bits of government, they seem to expand exponentially at great cost. There is no grasp of that detail, which I find increasingly extraordinary, and you are not able to tell us either what these costs are.

Dame Glenys Stacey: Back in 2018, when I conducted that review of regulation, I gave some examples. I had a small review team of four people working part time for six months, but I was able to give examples of significant inefficiencies. One was in the deployment of the field forces of these various organisations, and we were able to present and map out, by way of example, how that would happen. If you are looking at who should be looking at that, it would presumably be an issue for the accounting officer for the sponsor department for these agencies. I reiterate that I have suggested that these things could be organised differently.

It is worth saying, though, that the remit is so big that you will not have one delivery body for the whole of government's ambitions for the environment, flooding and so on, so you are bound to have boundaries between some organisations. The real skill in organisation design is to get that as clean-cut as possible, but there are usually dependencies that have to be managed: data and information, for example, has to cross over that boundary. There will always be these boundaries. I am not suggesting that the current configuration is perfect for what now needs to be achieved. I am saying that we need to get on and do it.

Q184 The Chair: That is a good point for me to ask a question about plans. We heard last week about the integrated water plan, which has been published, but the Environment Agency is now waiting for an implementation plan, so we need a plan in order to implement a plan. You referred to the environmental improvement plan and said that we need a suite of plans to implement it. Producing the plans will take up all the time until 2030, I would have thought.

Dame Glenys Stacey: It rather depends on the priority you give it. I have no doubt that work is being done in Defra and other places to plan for delivery. But we are now in the six months after the environmental improvement plan, and obviously our focus this year is on the nature targets, because the 2030 date is pressing—it is 90 months or so away—and what needs to be achieved is so demanding. So, certainly as we see things, there is a real priority for that plan to be there, for us to know how that will be achieved.

The Chair: When you say a nature plan, do you mean biodiversity?

Dame Glenys Stacey: Yes, I do.

The Chair: One of the main mechanisms that the Government have in mind for biodiversity net growth is development. As people develop sites, they are obliged to increase biodiversity by 10%, and in some local areas that target may be higher. But if there is no development, what is the mechanism? It is in the plan.

Dame Glenys Stacey: We have not forgotten, by the way, that we have not dealt with post-implementation reviews.

The Chair: Yes, we must come back to that. But, if you do not mind, what is the mechanism?

Dame Glenys Stacey: Biodiversity net gain has a role to play in contributing to what is to be achieved. It is 10%. Certainly from the OEP's point of view we would have liked that percentage to have been higher, because it could have made a bigger contribution in some places, but there you go: it is there to make a contribution.

It is not the only—or, indeed, the main—way in which this target can be achieved. Last week, for example, the Government announced more detail in relation to the environmental land management schemes, which will incentivise farmers to do the right thing for the environment. It needs

to be done at a sufficiently detailed level. We are yet to look at the detail there, but we are very aware that about 70% of our land is in agricultural use and that an incentivisation scheme to do the right thing therefore has a significant contribution to make. That is one example of another tool, if you like.

Also, this is rather circular, but government needs to increase the amount of space that is protected in the country and to get its SSSI sites in good condition when the majority are not. That is not straightforward, but these are the sorts of levers that government must use; it must use all levers at its disposal to have any hope of meeting this target. Biodiversity net gain is one but, in my view, it is not likely to make the most significant contribution. ELMS could, and so could the proper protection and expansion of these sites.

The Chair: None the less, knocking out development is knocking out one prop for biodiversity, even if it is not the greatest.

Dame Glenys Stacey: I understand your point.

The Chair: Would you agree with the point, though?

Dame Glenys Stacey: Any chance for biodiversity net gain should be taken. Again, the extent to which it delivers depends really on the detail at the local level: how it is done, measured and monitored, and how responsibilities for the land pass over time. A lot of detail about biodiversity net gain is needed to make it deliver effectively, as you say. If it can work effectively, be seen to deliver 10% net gain and stay there over time, the more of it, the better, of course.

Natalie Prosser: This is why we are pressing for transparent, credible and coherent planning. We recognise that achieving these targets requires strategies and policies to work across a number of fronts. We would like to see how those plans fit together, so that you can see how much environmental land management, agricultural regulation or improved water regulation, for example, are meant to and will contribute to those goals. Then the choices that need to be made and how these different plans cohere into achieving the outcome are transparent to everybody.

The Chair: Would that also include the security of food supply?

Dame Glenys Stacey: Government has an ambition, when I last looked at it, to make sure that 60% of our food is grown and provided here, and that is to be the ambition for the foreseeable future. As I understand it, we are at about that level, so it is about maintaining current provision.

The Chair: But ELMS will take that into account.

Dame Glenys Stacey: I believe so. ELMS is not designed to make farming businesses unprofitable, but one of the secrets that we have seen in going out into the field, as was suggested earlier, is that the way forward is often to find the least profitable bits of the farm—the bits that

bog up in winter or whatever—and find ways to use them to benefit the environment. Hopefully, we will see farmers paying for it.

Again, when I did the farm review back in 2018, I argued strongly for good advice to farms at a farm level. Farmers and landowners are used to receiving advice on how to increase production, but the advice needed now is slightly different: it is on how to maintain production and enhance profitability but also to do the right thing for the environment.

Q185 **Lord Best:** I will go a bit further on farming regulation, since you have already done your review and understand these things. We were told that 96% of the causes of the nutrient neutrality problems we face—I think it is the same for water pollution—come from farming, particularly from intensive farming, and 4% from new construction of all sorts. That being so, the constant pressure on housebuilding as the solution to reducing the problem of nutrient pollution seems totally out of kilter. With your particular knowledge and expertise in farm regulation, why are we not concentrating on where the problem really lies?

Dame Glenys Stacey: These are some very direct questions. On the 96% and 4%, I saw that that evidence was given to you, but I did not see where it came from.

Lord Best: It was Holland, I think.

Dame Glenys Stacey: Right. How valid is that? I do not know that that is a fair assessment of the split, or that there is a known assessment. I have heard in other circles that 50% is from water companies. I think it varies enormously at a site level and that we do not have a reliable national picture.

We can accept that there are two main drivers here, in relation to water at least. One is the activities of water companies and the second is agriculture and farming. There are particular culprits when we look at farming, such as intensive chicken farming on the Welsh border. You question how many more chicken farms could legitimately be given permission. We know that that is an issue to be resolved, and a lot of that will be about guidance to planning authorities. Indeed, we have a similar issue in Northern Ireland, where we have begun an investigation about the guidance that government is giving planning authorities there about aspects of beef and chicken farming. We are beginning to dip our toes in the water there.

We also have an issue with slurry management. It is estimated that about 50% of our slurry tanks, certainly by 2020, were leaking in some way. I think government has moved there and introduced some sort of grant scheme, but I do not have the details of it, I am afraid.

You can attack it from several angles. One is dealing with a known problem at a national level, which is slurry storage. I think government is doing that. You can do it at a local authority level with the planning applications that you are prepared to grant, which will have an impact on the environment. That is where you need very clear decision-making

processes as to how you balance the immediate benefits of the planning application with the immediate adverse impact on the environment locally and, ultimately, regionally. You can deal with it at a regulatory level—for example, by adopting catchment-sensitive approaches. They are quite resource-intensive for the regulator involved but worthwhile.

It is a classic example of needing to tackle these things on all fronts. It comes back to why we argue that we needed this comprehensive plan, which shows how these things each play their part and to what extent. Otherwise, it is a bit up in the air.

The Chair: We have heard evidence that suggests that the 4% relates only to new housebuilding, not existing stock.

Dame Glenys Stacey: Yes, I understood that.

The Chair: You are quite right to alert us that we need to dig further into those figures, but you seem to be suggesting—probably correctly—that we will not find anything very much more solid if we do so.

Dame Glenys Stacey: I am not aware of anything.

The Chair: On the basis that, as you suggest, there is no clear idea what the contributions of the different causes are, it still seems a little unfair that the entire burden of trying to address it is being imposed not on housebuilders but on people who do not have houses to live in, which is what we are really talking about with the national shortage of houses. Then there is also the infrastructure question, because the Government have an ambitious infrastructure plan.

Dame Glenys Stacey: What you are highlighting is what we would call a regulatory deficit.

The Chair: I really do not think I am.

Dame Glenys Stacey: In relation to farming, or to water?

The Chair: I will put my own view as to where the imbalance comes from. We have inherited a very large amount of legislation from the European Union—we have always had an extremely high respect when it comes to implementing EU law—relating to habitats, nature, environmental impacts, strategies and so forth. We are trying to replicate its institutions. You are part of that. As you say, you are not the Commission, but to some extent you take on the deficit created by its disappearance and so on.

But we have never had any European Union legislation that says that we need to build houses to accommodate our people. We have never had laws that compete with the corpus of environment legislation, nor the institutions that enforce and impose it. So, in this huge struggle, the legacy of the European Union legislative framework gives an enormous strength to those arguing the environmental case, while the people who want to live in houses are getting all the consequences.

Dame Glenys Stacey: I understand that point exactly. Thank you. I would just add that I think this country has hugely benefited from the levels of protection afforded to the environment by the provisions that were established while we were in the European Union. We are in an enviable position with those sorts of protections. We have lots of difficulties with how they are then implemented—we see that in local planning, for example—but we ought to be proud that those controls have been there.

Secondly, it is not just European legislation: the Environment Act 2021 was passed by this Parliament, and it is the biodiversity target in it that is now so hard-wired. But I accept entirely what you say: that you do not have an equivalent hard-wiring.

The Chair: That is essentially my point. I would go on to say that the 2021 Act and so on are to some extent focused on replicating and continuing, and doing our best to replicate, the legacy of the European Union but on a national basis without the basis of European Union law. This includes the drivers, the advocates, the institutions, the lawyers and the corpus of judicial decisions from the past—case law and so forth—that are all there. But there is nothing on the other side. Anyway, we need to make progress, and that was not so much a question as an observation.

Baroness Cohen of Pimlico: I do not think that Lord Mawson got a chance to ask the second bit of his question.

The Chair: He did, but he did not get an answer.

Natalie Prosser: I am grateful for the question on the post-implementation reviews. I will give a bit of context for the benefit of the committee. The legal obligation to conduct post-implementation reviews is largely grounded in the deregulatory policy. The purpose of them is to assess whether regulations are delivering as intended and without excessive burden. They are an important part of the evaluation landscape.

We conducted a review of PIRs. In relation to Defra, we found that 49 were not completed. For the Department for Business, Innovation and Skills, as was, six were not completed. For the Department for Transport it was one, and for DLUHC it was three. We had serious concerns about that due to the fact that it is a legal obligation, and an important one for the efficacy of those regulatory systems, but also because a number of those EU-derived laws are subject to review and because we felt it important in law reform to understand what is working and what is not working, which is an important prerequisite to reform. We laid our report before Parliament, as I am sure you are aware, and a response from government has also been laid.

We have also worked closely with the Regulatory Policy Committee, which has primary oversight of PIRs. We very much welcome government's commitment to now addressing that shortcoming, and we see them as an

ongoing and important toolkit for government in testing the efficacy of its own regulations.

Q186 Baroness Cohen of Pimlico: I will slightly rephrase my question. It is still about environmental outcome reports, but I will ask it rather more directly. We have the horribly named LURB going through Parliament rather slowly. So far, nobody has told us what the environmental outcomes will look like. They are still in consultation, and the legislation is tracking its way through Parliament. We always hope—I certainly hoped while reading these papers—that you are really the National Audit Office in disguise.

Dame Glenys Stacey: It has a few more than 70 staff.

Baroness Cohen of Pimlico: I know that it has a few more than 70 staff, but on things like this you were really the National Audit Office, so I would like to know how we will arrive at environmental outcome reports and, generally, what you think about them.

Dame Glenys Stacey: Gosh. In the discussions we have had with the delightfully named department DLUHC, we are assured that this was a very high-level consultation. There was a full 12-week consultation period, which we applaud because it is not always like that, and we are quite keen to see that sort of governance adhered to. We have given our full response and are obviously pressing for more detail, but that detail simply is not there yet, as far as we understand it. You are highlighting, quite interestingly, that a consultation is under way. The detail as to how things might work, should it come about, is not there, but the statutory provision is on a course.

Baroness Cohen of Pimlico: Welcome to LURB.

The Chair: Yes, welcome to the way we do a lot of our legislation: “We’ll pass the law, and we’ll fill in the detail later”. You are not going to get the answer today, Janet—eventually, but not today.

Dame Glenys Stacey: It is of material concern to Parliament, presumably.

Baroness Cohen of Pimlico: Yes, it is of material concern to Parliament and lots of people are waiting for it. I know that all sorts of people concerned with planning are hoping that there will be this magic environmental outcome report that will tell them what they can do and what they cannot. At the moment, in my own hometown of Cambridge, meetings are being held that announce that nothing can happen until they know a bit more about what will be required, particularly on water.

Dame Glenys Stacey: This is a risk that I think we highlighted. If you are going to propose change, there will be that stasis. People stop doing what they have been doing.

Baroness Cohen of Pimlico: Yes, they do. They are sitting there.

Dame Glenys Stacey: It alters and halts things, which is not desirable, obviously.

Q187 **Lord Mawson:** On the implementation, I have tabled two amendments to the levelling-up Bill, which were really about innovation and learning from best practice. I got a reply back from the Minister telling me, "The public sector is all covered. Don't worry about it", which causes me considerable anxiety.

Again, a lot of this discussion has been about process and not people. Yesterday, I was in east London with an individual who has stayed there a very long time on the edge of the River Thames and now has 800 staff. There is a whole range of environmental implications and things in there that are stimulating this stuff in different places around the country. Next door is a very large development site that is half empty, with soulless buildings and no people there. It has very little impact in reality. There were lots of documents showing young people drinking glasses of wine when the buildings were for sale, et cetera.

In the granularity, that individual has major lessons to share on a whole range of bits of it, but there is no proper engagement, and all of that was done without any public money whatsoever. My experience of the granularity is that, when you really get into it—in farming, in urban areas—these people are there. They are often struggling against agencies like yours and others and, if I am honest, they are not understood. I am not being mean; I am just saying that they are there, all over the country, but none of these processes and systems are ever really interested in them.

So I suppose my question to you and other agencies is: when are we going to get interested in these people? They are actually delivering practical, factual things that I could see in front of my eyes yesterday. It is all in plain sight, yet all these processes are not even seeing it because they are about the process. There is a lack of interest in people and individuals, and I wonder what we do about that.

Dame Glenys Stacey: I was going to say that we would certainly welcome any discussion about potential solutions to that. I will make two points. Natalie may have more to say.

First, we have pressed government in the advice we have given that things will not be delivered, and delivered well, unless there is proper engagement and governance at that local level. At the moment, the governance mechanisms are not there, for example for any proposed project, to bring the right players to the table. That would include anyone locally with something to bring to the table, but the mechanisms are not even there at the moment to bring the statutory agencies in. We have said to government that there is a notable gap there and that, if it wants to achieve its ambitions, governance is not just about a department deciding something; it is about taking it down to a regional, local and site level. We do not think that that arrangement is there.

Secondly, forgive me, but you have put us alongside the other agencies. We are not actually a first responder like them. We do not have those direct responsibilities. I am not trying to avoid getting close to people, but we are not in that first-responder position. Natalie, is there anything you would like to add?

Natalie Prosser: Dame Glenys mentioned the live implementation review that we have at the moment, which is looking into the existing regimes. That is a deep dive into the practicalities of what goes on on the ground. We have had an open call for evidence and have engaged with over 150 stakeholders on that. A lot of the purpose of that review is to drive improvements, where they are possible, to how things work now, but also to inform upcoming law reform so that we keep what works and improve what does not.

An awful lot of the feedback that we have had from talking to people on the ground is that the problem is far less with the law; it is a great deal more to do with how that law is working and being operationalised. We will capture that evidence and present it to Parliament later in the year. I hope it will reflect the insight from people who are working within the system, and that we can retain and improve as much as possible. We try to do that when we undertake an implementation review, which is necessarily narrow because of the amount of capacity that we have, but our view is always to try to find practical solutions from people who understand how things work.

Q188 **Baroness Thornhill:** Immediately, my brain has gone to the National Development Management Policies that are coming out and the hierarchy of plans. Obviously, the concern over a lack of scrutiny is well documented. It is perhaps not responded to by government, but it is at least understood. I am more concerned about whether this way of dealing with it will get that local, granular dataset. Is it going to help or hinder?

Dame Glenys Stacey: We made the point in our response to the consultation by DLUHC that there is a data deficit here. It is quite right for decisions to be made at a local level—you can strike the balance there—but you can make wise decisions only with pertinent data that is sufficiently up to date and collated in a way that measures what you need to measure. I know that DLUHC is doing quite a bit of work to try to improve that for local authorities, although I am not close to that work. Instead, we have been pressing Defra to move at pace with the work it is doing to improve data collation and to focus it on the things that we really want to have measured. If you set a target to halt species decline by 2030, you need up-to-date measures, but when we reported early this year we found collated data only up to 2018. That will not do, will it, if we want to get to the 2030 target?

Baroness Thornhill: In that locality?

Dame Glenys Stacey: Yes, exactly so. So much could be achieved by having that data available to decision-makers. It is not there at the

moment, which makes the job so much more difficult and makes wise decisions much less likely.

- Q189 **Lord Carrington of Fulham:** If I can bring you back to SSSIs and the environmental improvement plan, what about trying to get 75% of them up to being in a “favourable condition” by 2042. That is not going to be achieved, is it?

Dame Glenys Stacey: It is 75%, not 100%, so there is a little 25% “Get out of jail free” card, and it is 2042, which is a bit further away than 2030.

Lord Carrington of Fulham: It is several general elections away.

Dame Glenys Stacey: There is that political dimension, I accept, but it could be achieved with a will and a plan. Some of these things are difficult: we have mentioned the issue about different types of grazing, with overgrazing or undergrazing, or air or water pollutants on those sites. But we have that 25% get-out, so it could be achieved if you had the will to do it. That is what is needed: the will over time and a plan that is sufficiently detailed, making sure that we get clearly respected roles and responsibilities. It needs to start now, because 2042 sounds a long way away, but some of the things that have to be done here will take time to come to fruition and then to measure. I would say that it could be done, but we have yet to see the plan to make it happen, and time is pressing in this area, as it is for the 2030 target.

Lord Carrington of Fulham: And to do it will take quite a lot of difficult political decisions.

Dame Glenys Stacey: Yes.

- Q190 **Lord Carrington of Fulham:** I bring us on to the water companies, which are a key part of this, I suspect. If the water companies carry on pumping out arable effluent into SSSIs, as they are at the moment, and nobody does anything about it, that will make any plan extraordinarily difficult to achieve.

We have had the Environment Agency and Natural England in front of us, and neither of them seems to have any idea at all what they are going to do about the water companies. There are a lot of fine words, but they seem to have no idea at all how to make sure that our sewage disposal, for instance, does not involve making all our rivers and coastal waters unacceptably polluted under the conditions required for SSSIs.

What is your role in making sure that the various agencies, the departments, whichever bodies could impact this decision—it is very largely the Treasury as well; it is not just all the environmental bodies—make that happen? Tabling a report in Parliament is a wonderful thing—I am all in favour of tabling reports in Parliament—but it achieves nothing.

Dame Glenys Stacey: Thank you very much. I should say that we are not the NAO; we are only small, and so on. We launched our first investigation and first serious enforcement on the first day we could,

having produced our core values and consulted on our approach to enforcement. It is an investigation into the respective roles and responsibilities of the Secretary of State for the Environment, Ofwat and the Environment Agency in relation to combined sewage overflows and their oversight.

Our aim is to set out, for you and others, the respective roles and responsibilities, which is complex, and to evaluate whether they are suitable for the issues of the day and whether the law is being complied with by each of the three parties. If not, we will consider taking further enforcement action. In other words, we are but a small cog in this, but we are playing our full part.

Lord Carrington of Fulham: Good. Tony Juniper told us in evidence, which I think, from what you said before, you have read—

Dame Glenys Stacey: I watched the session.

Lord Carrington of Fulham:—that they were all breaking the law. So clearly, prima facie, somebody ought to be doing something about it.

Dame Glenys Stacey: We are playing our part. It is a legal live investigation.

Lord Carrington of Fulham: And you will take action.

The Chair: Now, now. You are asking to anticipate—

Lord Carrington of Fulham: I am asking just for a bit of confidence.

The Chair: You are asking to anticipate the outcome of a particular investigation.

Dame Glenys Stacey: We will always take action in any investigation where it is justified.

Natalie Prosser: I would add that the obligation to deliver the IP and the targets sits on government. There are legal responsibilities to do that. We will scrutinise their progress. We will, on an annual basis, dig into how those outcomes are being delivered, and we will make that transparent. Where we think they can go faster we will provide that advice. Where they fall below the minimum required of the law, and if that is sufficiently serious, we will look at that within that context.

Lord Berkeley: Dame Glenys, you mentioned a couple of times a report you did before the OEP was formed. If that is going to be quoted from, perhaps you could submit it in evidence, if you want it to be.

Dame Glenys Stacey: Absolutely. It is publicly available, but I am happy to give your clerk the details.

Q191 **Lord Berkeley:** Thank you. Many of the regulations we have at the moment come from the European Union, and we probably would not have them without having been members of the EU. Now that we are no longer

members, have you learned anything from other member states that are implementing the regulations in different or in similar ways, and have you come across any other problems that we appear to be facing now?

Dame Glenys Stacey: Thank you. I will ask Natalie to deal with the detail of what we have discovered from other states, as we have looked and have found some models. As often as not, it is about the approach to regulation, whether it is a rules-based approach or a management-based approach. There are different approaches within regulatory frameworks, so unfortunately it is not straightforward, but let us look at what we have at this point.

Lord Berkeley: I am sorry, but at the time we were all members of the EU and presumably we had to approach them in the same way.

The Chair: No. I think what Dame Glenys is saying is that—

Lord Berkeley: I was asking the witness, but not to worry.

The Chair: I am just helping to clarify what I think she has already said, which is that you can have outcomes that the law focuses on and you can have different approaches, too.

Dame Glenys Stacey: You can, but let us look at what we have found.

Natalie Prosser: My have not undertaken any systemic international comparisons yet. However, we look at specific areas and will increasingly look at international comparisons. In our advice on biodiversity net gain, for example, we have drawn experience from New Zealand, and you can see that set out in our relevant reports. We are doing the same in relation to our environmental impact assessment activity.

We would note that looking internationally has its limitations, because any regime is set in the context of its own environment. We have so far found very limited examples of international regimes using the environmental outcome report system. My understanding is that New Zealand is exploring something, but, as in this country, it is still in development, so it is difficult to draw any concluding evidence from that. We would like to draw from international comparisons as far as possible, and we would like to see government doing the same—learning lessons from other jurisdictions, where possible.

Lord Best: Including perhaps Holland, which we talked about earlier. We have done this in some depth.

Q192 **The Chair:** As we are approaching the end, may I ask another question? Has the 30 by 30 target led to Natural England reducing its standards or the designation of SSSIs, in your experience?

Dame Glenys Stacey: Not as far as we are aware.

The Chair: Clearly, to achieve 30 by 30 we need more protected land, and designating SSSIs is one way of doing that.

Dame Glenys Stacey: It is one way, but there are other ways. The Government will be thinking through how they meet that target. It might not be solely by SSSIs.

The Chair: I agree. That is one way, but there are others. I just wondered whether you were finding it easier to designate.

Dame Glenys Stacey: We have not done a study of that, but we are not aware of any change in the standard required.

The Chair: Thank you very much. We are very grateful to our witnesses for the time you have given us today. We have found it very valuable. Thank you.