



Communities and Local Government Committee

Oral evidence: Operation of the National Planning Policy Framework, HC 190

Monday 23 June 2014

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Written evidence from witnesses:

Panel 1 (Questions 196-227)

Woodland Trust

RSPB

Watch the session

Members present: Mr Clive Betts (Chair); Bob Blackman; Simon Danczuk; Mrs Mary Glendon; David Heyes; Mark Pawsey; John Pugh; John Stevenson; Heather Wheeler; and Chris Williamson

Panel 1 Questions [196-227]

Witnesses: **Richard Barnes**, Senior Conservation Manager, Woodland Trust, and **Simon Marsh MBE**, Head of Planning Policy, RSPB, gave evidence.

Q196 Chair: Welcome to the third public evidence session in our Inquiry into the Operation of the National Planning Policy Framework. Welcome to witnesses. Just for the sake of our records, could I ask you to say who you are and the organisations you are representing, please?

Richard Barnes: I am Richard Barnes from the Woodland Trust.

Simon Marsh: I am Simon Marsh from the RSPB.

Chair: Before the last evidence session of a different inquiry that we had earlier this afternoon, members of the Committee put on record their interests. John Pugh, you were not here at this stage.

John Pugh: I am a Vice-President of the LGA and I have two councillors who work for me.

Q197 Chair: Thank you very much for putting that on the record. There is obviously a crisis in housing at present in this country. When we have many constituents who do not have a home at all, why should they be worried about whether the newts down the road have a home?

Simon Marsh: We would accept there is a housing crisis in this country and we do not have a problem with delivering many more homes to meet the country's needs. We would say the environment is not necessarily something that should stand in the way of delivering homes. I am aware that newts and other things can be developers' bugbears, but sometimes we fail to recognise that, actually, the environment has significant economic value, it delivers all kinds of services to society, and most people actually want to live in a quality environment.

When you look at some of the work that Natural England have been doing over the last couple of years in their improvement plan, they have actually done a lot of work to address some of these issues that are brought up by developers around bats and newts and so on, making it easier for developers to get through that process.

Richard Barnes: I would support that. I would also add to the idea about the quality, side: people want liveable cities, liveable towns with health and well being being an integral part of their design and development.

I know you heard evidence in the last session about good design. Part of that is assessing what is there already and making the best of that in designing a new town or development, whether it is being able to use a woodland for forest schools or actually just incorporating the best that is already there at other habitats and open spaces as part of the development. They should go hand in hand, and I do not see why they cannot.

Q198 Chair: There is always a degree to these things, is there not? Some of the examples we get quoted are things such as birds nesting three miles away stopping a development until they have finished and these sorts of things. Are those extreme examples or misunderstandings of the situation, or is it that we have to get a bit more in focus that, yes, the environmental issues are extremely important, but, where they become excessive and so particular, they can actually undermine the whole case for the environment being taken seriously in these matters?

Simon Marsh: I would accept that there are extreme cases. Sometimes people who have a particular objection to a development will bring up all kinds of things as reasons to object to it that are not necessarily valid. However, when you look into how the planning system attempts to protect the environment—and, particularly, the policies within the NPPF—they are actually very positive towards the environment.

The way the NPPF sets it up is not to say, “You can have housing or you can have the environment and you have to trade off between the two.” It is actually about looking for an integrated solution. It is trying to find the way to deliver housing in a quality environment, and that is probably best done through the local plan, rather than an individual planning application.

Q199 Chair: We will come onto the local plan in due course. Richard Barnes, in your evidence you almost seem to be saying to us, “Development is okay as long as there are plenty of trees.” Is that a fair summary?

Richard Barnes: The first thing is that when you do an assessment of an area you look at what you have already. One of the things we seem to be seeing at the moment is that people jump straight to the fourth part of what is called the mitigation hierarchy. They look at what they can do to compensate for the development, whereas what they should be doing is looking at what is there, mitigating and perhaps avoiding it—perhaps by siting the development somewhere else, if it is not a location-dependent development—and then looking at what they can do to reduce the damage and then looking at the compensation side of it.

Sometimes, as I say, we seem to see people going straight to saying what they can do to compensate for the development; that seems to be the wrong way around.

Q200 Mrs Glendon: Mr Marsh, you have just said that the NPPF is very positive for biodiversity. Your evidence suggests that the NPPF has stronger environmental policies than those that preceded it. What differences have the new policies in fact made?

Simon Marsh: That is quite a hard question to answer, because we are only two years into the NPPF. One of the issues actually is getting the evidence to show what difference the NPPF is making. We have supported the call from some other witnesses you have heard to get a proper monitoring framework into place. As you will have seen in our evidence, we have looked at a sample of local plans to see whether they are taking on board the more positive messages of the NPPF about biodiversity. Although there is only a small sample, the picture is mixed. Some of them are doing it quite well; others are missing that opportunity

to set out a more positive vision of what they might be doing for the environment in their area.

Richard Barnes: The Woodland Trust is fighting 282 cases at the moment in England that are on ancient woodland, and we already know of 33 ancient woodlands that have been lost since the NPPF came into force. We do not find that particularly compelling evidence that it is working in terms of ancient woodlands, which are mentioned as an example of irreplaceable habitat in section 118 of the NPPF.

We would be looking for a bit more clarity and strength in the NPPF, in terms of ancient woodland and other irreplaceable habitats, to make sure they get the fuller protection—the same sort of accord as the built environment commonly gets. People understand cathedrals and castles, but in Government documents woodlands are described as our natural cathedrals. We need to give the same sort of consideration that we give to the built environment to parts of the natural environment.

Simon Marsh: It is worth pointing out that a lot of the natural environment policies in the NPPF are actually very similar to what was there before the NPPF. All they have done really is simplify those and present them in a condensed way. What I was pointing out in our evidence was that the biodiversity policies in particular do go a bit beyond that, but, for the policies that are protecting the natural environment, which, if you like, is the bread and butter of what planners do, there has been a degree of continuity with what went before. It is a little bit difficult to tease out what the actual impact of the NPPF was in this.

Richard Barnes: There is an example that we have seen recently that is beginning to concern us where there are applications coming in that we do not feel we have seen before. There is an example the Chair may be familiar with in Sheffield at Smithy Wood, where there is a proposal for a motorway service station where there is no identified need nearby. It is a local wildlife site in greenbelt and it is an ancient woodland on the Ancient Woodland Inventory, and yet an application has come forward. It is the feel that it is not exactly open season, but the pendulum has swung far more in favour of economic development than perhaps we feel it could potentially be, at the expense of the natural environment, whereas, as I say, we would prefer to see the natural environment included in development.

Q201 Mrs Glindon: Mr Barnes, going on from what you said at the beginning and the examples you have given, would you want to say to the Committee that you do still want the wording of paragraph 118 to be tightened?

Richard Barnes: Yes, in our evidence we suggested the terms “overriding public interest”, but perhaps even something for the Committee to recommend is this parity with the built environment. Paragraph 132 uses the words “wholly exceptional” when talking about the built environment and that is something that perhaps could be mirrored for the natural environment in terms of irreplaceable habitats such as ancient woodland.

Mrs Glendon: Can I just ask you, Mr Marsh, if you agree with that?

Simon Marsh: We are agreed that ancient woodland is irreplaceable and needs protecting through the planning system. The issue with the wording about “overriding public interest” was that it might elevate ancient woodlands above the normal protection given to sites of special scientific interest. I do prefer the alternative that Richard just put forward.

However, actually, part of the solution is making sure that most ancient woodlands are actually designated as sites of special scientific interest, because I understand they are quite under-represented in the network as a whole. That would be my preferred solution.

Richard Barnes: I would support that. Only 15% of ancient woodland on the Ancient Woodland Inventory is actually protected as an SSSI; that is quite low compared to other habitats such as lowland grassland, where it is up to 60% or 70%.

Q202 John Stevenson: Richard, you mentioned that you thought the pendulum has swung too far the other way. I would therefore conclude that getting local plans in place is extremely important. Why do you think local authorities are taking such a long time to get their local plans in place?

Richard Barnes: Yes, we have seen, as Simon has, a patchy distribution of local plans across the country and whether they are up to date or not. It could be—I saw the evidence given by witnesses at your previous session—that it is to do with the quite continual changes to the local framework. The planning system has been in place since 1990 now, and there have been changes after changes proposed. It can be quite difficult for local authorities to keep up. There is also the issue that we have seen, certainly in terms of ecological expertise, where there is a reducing ecological expertise within local authorities. That may be impacting, certainly, on that side of it, but perhaps not the whole local planning system for an authority.

Q203 John Stevenson: Simon, in your evidence you have said that getting plans in place is critical for delivering sustainable

development, yet you have been critical of those local plans that have actually been put in place. Is there not an inconsistency there?

Simon Marsh: I have been critical of some of them, anyway. It clearly is critical to get a sound local plan in place. There might be all kinds of reasons why that is not the case. That is not particularly because of environmental issues; it is all around the challenges of the duty to co-operate and getting the five-year housing land supply and the issues with the resources and local planning authorities.

However, I do feel, actually, the huge political and professional weight given to the importance of the five-year housing land supply tends to mean that less attention and investment is actually given to the other things that local plans should be doing. Yes, housing supply is very important, but it is not the only thing we are trying to do through the planning system. Getting a healthy natural environment is critical as well. If we gave as much attention to that as we did to the housing, we would be in a much better place.

Q204 John Stevenson: Do you think, therefore, that when local authorities come to prepare their local plans, they are giving too much emphasis to one area rather than your area of biodiversity?

Simon Marsh: They know they are going to get challenged on the five-year housing land supply; that is clearly critical to them. However, it does come back to the issue that a lot of local authorities do not have the ecological expertise that maybe they should have to help them deliver a plan that is sound in all aspects. In our evidence, we referred to the fact that a survey done a little while ago now showed that only about a third of local planning authorities had in-house ecological expertise. Our understanding is that things certainly have not improved since then, so that is a real issue.

Q205 John Stevenson: You think it is therefore a failing at the local plan level rather than a failing of the NPPF itself.

Simon Marsh: It is not particularly due to the NPPF. Generally, there is a good set of policies around the natural environment in the NPPF. The problem is with local authorities having the skills and capacity to take that opportunity and to do some good things in their local plan.

Q206 Mark Pawsey: I wonder if I might ask you about your views on the core thread of the NPPF, which is the presumption in favour of sustainable development. We are now building more houses than we have for many, many years. The Home Builders Federation, for example, suggests that the NPPF is doing what it was intended to do, i.e. get more

houses built. Do you support that? Are the principles of sustainable development being administered or implemented appropriately?

Simon Marsh: That is a very good question. It is probably true to say that that is what the presumption in favour of sustainable development was intended to do: deliver more homes. I welcome the fact that the NPPF does refer both to the Brundtland definition of sustainable development and to the five guiding principles in the UK sustainable development strategy. Certainly, when we had the draft NPPF, there were some real problems with the way the presumption was framed, and at the time we objected quite vociferously to that because of the way in which that would seem to undermine protection for our most special places. That problem is now largely fixed in the final draft of the NPPF, at least as far as those national designations are concerned.

However, there is still an open question about whether the impact the presumption is having on the wider countryside, especially the undesignated countryside, the way in which the emphasis on the five-year housing land supply and the very strict tests on viability and land availability might not have actually helped from an environmental perspective. I am not sure I know clearly what the answer is, but we need more evidence to judge the impact of the NPPF on the environment.

Richard Barnes: Yes, I was saying earlier that we are seeing a number of cases—282 in England—where ancient woodland is threatened and 33 have been lost. We see that as a “not very good” indicator for sustainable development.

Q207 Mark Pawsey: Can I just pick you up on that? You said 33 areas of ancient woodland have been lost. These are applications that have been consented since the implementation of the NPPF.

Richard Barnes: Yes, or through appeal.

Q208 Mark Pawsey: Have those arisen in areas where there is a local plan in place or have they arisen through speculative applications because the local authority had failed to do its local plan?

Richard Barnes: I do not have the statistics on that, but, as I say, it is more the feel we are getting for those sorts of developments. Also, as I was saying earlier, part of a sustainable development is assessing what is already there and incorporating and making the best of that for a development.

Q209 Mark Pawsey: I am very interested in these 33 consents you have spoken about. Can you tell us a little bit more about perhaps one or two of them as examples?

Richard Barnes: There are a couple I have been involved in, in public inquiries, and one was for extending a quarry, which apparently had been refused several times previously and then got through. When it was finally consented, it was called in by the Secretary of State and the inquiry happened during the NPPF. There was a different feel for the economic side, obviously, of a quarrying activity that would not have come through in a previous application.

Mark Pawsey: Is it your contention in that case that the definition of “sustainable” was inappropriately applied?

Richard Barnes: Yes, our perception is that that principle had changed and the pendulum had swung more towards the economic side of the three pillars of sustainability on that particular example. We found it difficult to believe that that was sufficient for 32 hectares of ancient woodland to be lost.

Q210 Mark Pawsey: Mr Marsh, do you have any examples you could speak to us about where the presumptions have perhaps been inappropriately applied, either through, again, the local plan or a speculative application.

Simon Marsh: I am not sure I can point to one that is specifically about the presumption. There is a major housing scheme in Kent that we are involved in at the moment. This involves a site of special scientific interest for nightingales, which was being pursued through the local plan, but the local plan has now been withdrawn because the inspector suggested it was unsound. However, the applicant is still pursuing an outline planning application. I am not saying that is specifically all about the presumption, but it may just be that the encouragement that the presumption gives to developers to pursue cases like that might not be helpful.

Q211 Mark Pawsey: Mr Marsh, in your evidence, you said you wanted to see a monitoring and research framework. What criteria would you use to assess whether or not the NPPF is satisfactorily delivering sustainable development?

Simon Marsh: We would want to see a broad programme of research and monitoring that is right across the social, economic and environmental aspects, so that it is not just picking out one specific thing. Clearly, we would want it to be considering biodiversity issues and the impact on sites of special scientific interest, and other science should be part of that. Ancient woodlands would also be useful.

Q212 Mark Pawsey: May I ask about an issue that is not dealt with in the NPPF? House builders, and developers generally, are concerned about the sequential approach of environmental issues: that often you do not get involved until an outline consent is available. Would it be beneficial if you were to start your work in respect of a particular application at an earlier stage?

Simon Marsh: Absolutely. We would always encourage developers to come to us at the earliest stage if there is likely to be a sensitive environmental issue and discuss that.

Q213 Mark Pawsey: Do you sense they are not doing that adequately? It is a broad brush, I know.

Simon Marsh: You could probably point to examples where that does work and where it does not. Our experience is that where developers do not talk to us or to Natural England in the first place, that is where you are likely to get problems further down the line. That is usually where causes of delay come in.

Q214 Mark Pawsey: Mr Barnes, is your experience the same?

Richard Barnes: Yes, pretty much. I mentioned earlier about the assessment process as the first part. Some of that could be led through the plan, where they have looked at their local wildlife sites system and identified sites, if they are looking forward. Also, the developer should, as I say, assess the site they are looking at and look at the opportunities on the site for including natural features within any development. As I said, sometimes we are finding they appear to be going straight to the development and compensation side, rather than looking at the more sustainable—

Q215 Mark Pawsey: So you would welcome more dialogue with house builders and commercial developers.

Richard Barnes: Yes, even before it gets to the application stage. Yes, there might have been a lot of investment by the developer if they get to the application stage and find something that they could have discovered through consultation.

Q216 Simon Danczuk: The RSPB have noted that over a third of councils do not have in-house ecologists. It sounds like a nice thing to have, but you would accept that it is an unaffordable luxury for the vast majority of our hard-pressed councils, wouldn't you?

Simon Marsh: I would not accept that it was a luxury. Having access to the right specialist expertise is really vital if local authorities are going to deliver their statutory obligations, because they do have

obligations under the Natural Environment and Rural Communities Act to protect biodiversity. They have obligations in the planning system as well.

Simon Danczuk: But you are not arguing that every council should have an ecologist.

Simon Marsh: I would say that there are different ways of doing it, not necessarily just having an in-house ecologist, which I understand might be difficult if you are a small authority. Authorities might be able to have joint units; they might be able to rely on external expertise. There are different ways of doing it, but I would say that—

Simon Danczuk: The third you talk about do not have any expertise in the way that you are describing.

Simon Marsh: No, that third have no in-house expertise at all.

Simon Danczuk: They do not need to, according to you. They do not need to have in-house expertise, as you have just said.

Simon Marsh: I was about to say that there was a study that Defra carried out—I think in 2010—on how well the previous biodiversity policy was being implemented. One of the findings of that was that, actually, having an in-house person was a very strong indicator of where you would get good outcomes for biodiversity. I accept it may not be the only way of doing things, but it can have very positive benefits.

Q217 Simon Danczuk: Richard, how would you rate the expertise of the average local authority when it comes to woodland and trees?

Richard Barnes: Again, I am not sure if we have the same statistics that the Association of Local Government Ecologists' report has for tree officers, but we certainly share the concerns about ecological expertise and the sharing of that.

We have been asking whether there are any survey results so far for tree officers. Certainly, the anecdotal evidence is that there is less expertise available or they are being stretched, in terms of the numbers of the team are being reduced, and so their capacity to get involved with planning applications is reduced.

Q218 Simon Danczuk: So you are really worried about that.

Richard Barnes: Yes, it is a concern. However, as I say, there are different ways of getting that expertise, but it is making sure they have reliable, high-quality expertise. That will lead to a more sustainable development.

Q219 Chris Williamson: Simon, you said that the Committee would need to return to look at how best to carry out strategic spatial planning. Are you suggesting that we should be returning to the regional spatial strategy?

Simon Marsh: No, I would not dare to suggest that, really. It is clear that authorities are struggling with the duty to co-operate at the moment, especially in areas where there is no culture of co-operation, which there is in some areas. The natural environment obviously does not respect local authority boundaries. Often, a district or unitary authority boundary is not really a suitable scale to be doing proper planning for the natural environment. Whether it is across a river catchment area, an estuary or whatever, they typically cross many local authority boundaries.

One of the things I do like about what the NPPF says about the duty to co-operate is it makes it very clear it is not just about housing and employment; it is about a wide range of strategic issues, including the natural environment and biodiversity. However, it does seem to us that without some more strategic overview, it is probably at a level that is less than what we had in the regions but is more than just a single local authority—that is what you really need to deliver effective planning for biodiversity.

Q220 Chris Williamson: Other than persevering with a duty to co-operate, then, what other things ought to be considered now, if anything, as a way of improving the present situation? You are saying some areas are struggling to implement the duty to co-operate.

Simon Marsh: Where they are struggling at the moment is on the housing issues. We do not see many signs that they are struggling under the environmental issues, but that is partly—maybe mainly—because they are not actually seizing the opportunities to do this kind of more positive, visionary planning for biodiversity and they are not really getting tested under the duty to co-operate.

Q221 Chris Williamson: Do you have any thoughts about what might be done instead of or in addition to the duty to co-operate to make it work better? You are saying you do not think we should return to the regional spatial strategies and the duty to co-operate is not working quite as it ought to be. Is there anything else that you would like to see put in place to make it work better?

Simon Marsh: There could be a range of options. It is probably going to vary according to the geography and the circumstances of the area. You could, for example, see where there are combined authorities, as we are seeing in some of the larger city regions, they could be doing

work on the strategic planning, not just for homes and jobs but for the environment as well. That kind of thing might be—

Q222 Chris Williamson: Are you suggesting we want more combined authorities? We should encourage more authorities—

Simon Marsh: I am saying where there are combined authorities that should be part of the mix of things.

Q223 Chris Williamson: Richard, you said that moves towards deregulation in planning are leading to further delays and confusion. I just wondered if you could say a bit more about that and what you mean. What are the consequences of these delays?

Richard Barnes: It is more uncertainty for everyone, both the people trying to support the natural environment but also the developers themselves. If there were more clarity about what was on or off the table in terms of, say, incorporating good habitats into a development, there would be less time wasted on fruitless applications and public inquiries where time is taken to come to a decision through an inspector's decision or a Secretary of State's decision. If there were more clarity and more certainly, it would benefit both parties.

Q224 Chris Williamson: In terms of what your thoughts are with regard to the consequences of the present situation, you think inappropriate applications are going forward.

Richard Barnes: Yes. If there are more challenges, both through appeals and the time taken on those, that does not help either the NGOs, Natural England or developers. It would be better if it was fairly clear—with the wording, perhaps, that we have suggested—and for the NPPF to tighten things up and make it a little clearer.

As I say, echoing what Simon said, we should actually be looking positively at the natural environment and at how that can be part—and it should be part—of sustainable development. It should be used as an asset where there is green infrastructure, both inside and outside towns.

Q225 Chair: Finally, I want to come back to something Simon Marsh said. I understand that you referred earlier to a local plan being withdrawn. I think it was the Medway Local Plan.

Simon Marsh: Yes.

Chair: The issue there was that Natural England declared as an SSSI a site that the local planner had designated for development. What that meant in the end was that the development could be pursued without the local plan constraining it; it was simply back to the principle of

sustainable development and, "Let us hope it all works out." The withdrawal of the local plan actually reduced the protection for that site and other similar sites.

Simon Marsh: You would hope that once the plan was withdrawn the developer would not pursue the outline permission, because you should really be doing it through the planning process. The issue was really around what the alternatives are. If that is a highly significant environmental site, the need was really to go back to the local plan and the land availability studies that were going on and think about what the alternative ways of delivering that number of homes are within the local authority.

Q226 Chair: Would that not be done better through a local plan rather than having no local plan? Would that issue not be better addressed with a local plan being in place?

Simon Marsh: Yes, you should do it through the local plan. However, the problem is the local plan was found not sound on that basis, so the need is to go back and rethink the local plan strategy.

Q227 Chair: In the meantime, an application has come in to develop that site and there is no local plan there to offer protection.

Simon Marsh: Yes, so you default to the policies in the NPPF that protect sites of special scientific interest, which are reasonably strong in themselves.

Chair: Thank you both for coming to give evidence this afternoon. Thank you.