

# **Government Response to the House of Lords Built Environment Committee Report on the Impact of Environmental Regulations on Development**

## **Introduction**

The Government welcomes the House of Lords Built Environment Committee's focus on the impact of environmental regulations on development and the Committee's report, published on 21 September 2023. We are grateful to the Committee and thank all those who provided evidence.

The Government is committed to taking forward planning reforms that are intended to not only deliver the housing that is needed but also to provide better protection for the environment. The Environment Act 2021 introduced new requirements for the environment. This includes mandatory Biodiversity Net Gain, so development results in improvements for nature, rather than simply preventing harm. Moreover, existing areas designated for environmental protections will continue to be upheld.

We want to ensure we are enhancing our environment alongside delivering the homes we need. With protection for wildlife, air quality, and ancient trees and woodlands, as well as strong encouragement for the provision of green infrastructure and the re-use of brownfield land, the National Planning Policy Framework complements the ambitions of our Environmental Improvement Plan for a cleaner, greener future.

We note the Committee's concern that Government needs to reconcile environmental protection with the commitment to boosting development. There is a fine balance to strike between these interests, but we believe that through action we have, are and will be taking, that we will achieve this balance and achieve both goals. Details of the actions are set out further in response to specific recommendations.

The Government response to the Committee's recommendations and conclusions is set out in full below and includes input from the Department for Levelling Up, Housing and Communities and the Department for Environment, Food and Rural Affairs.

## Response to the Built Environment Committee's recommendations for Government

This section sets out the Government's responses to the recommendations contained within the Committee's report.

### Government ambitions

**There are legitimate concerns that the Government will not meet its environmental or housing targets on time. The deliverability of its environmental ambitions is particularly drawn into question owing to the limited time afforded to meet them.** (Paragraph 19)

***To balance policy decisions more effectively, the Government should commission a review into the cost implications of satisfying environmental regulations for both housebuilding and large infrastructure projects.*** (Paragraph 27)

### *Government response:*

This Government is committed to leaving the environment in a better state than we found it. We do not agree with the Committee that the deliverability of our ambitions in this space are questionable due to the timelines set for achievement. The Environmental Improvement Plan 2023 sets out how we will deliver our long-term Environment Act targets, matched with interim targets to measure progress over the shorter term. The delivery of Environment Act targets requires a shared endeavour across the whole of Government, business and the individual decisions we all make.

We agree that a review of the specific nature the Committee suggest in paragraph 27 could supplement the existing evidence base for Government decisions on environmental regulation. Defra is already working in several areas to streamline and improve the implementation of environmental regulations and nature protections. A suite of new environmental policies including the introduction of a new system of environmental assessment called Environmental Outcomes Reports will embed environmental targets and more certainty about environmental requirements into the planning system. Reforms are focused on delivering effective solutions which strike the right balance between ensuring necessary protection while reducing barriers to development. The Government already designs policies in a way that mitigates impacts on businesses. Further information on the costs of regulation could help ensure policies mitigate impacts on development whilst also achieving the Government's environmental policy objectives.

The Government is on track to meet its manifesto commitment to deliver 1 million homes over this Parliament. The three highest annual rates of additional housing supply in over 30 years have all come since 2018.

### Balancing competing targets

**It does not help the Government achieve its policy commitments if local planning authorities operate without clear, consistent, achievable, and coordinated national policies. National political leadership needs to be shown in setting out which priorities should prevail when individually important policies conflict with each other.** (Paragraph 47)

#### *Government response:*

We agree that a consistent national approach to national planning policy would be beneficial and that is why, through the Levelling Up and Regeneration Act 2023, we have introduced powers for National Development Management Policies to be produced. These policies will have a statutory footing and help bring a clear, consistent and co-ordinated approach as the Committee rightly suggests would be helpful. We expect to bring forward National Development Management Policies in 2024, following a consultation.

The Levelling Up and Regeneration Act 2023 will also enhance the role of local plans in the system, enabling them to focus on rules for specific local development rather than generic policy, and at the same time make them easier and quicker to produce.

We agree that there is a role for political leaders in setting expectations as to how competing priorities should prevail and Ministers execute this role in making decisions on applications submitted to them through the Nationally Significant Infrastructure Project regime and through exercising call-in powers.

However, these powers are used by exception, In the vast majority of cases, decisions are best made locally, by those who know the area best, and are able to weigh up what is most important, considering the specific details of each case. Relative weight that should be afforded in each case will vary depending on the specific individual circumstances and those circumstances are most often best considered locally.

***Too many local planning authorities do not have an up-to-date local plan. Given the importance of local plans in balancing ambitions for development and the need to protect the environment, the Government should ensure that all local planning authorities have the necessary resources and information to produce a plan. It should explore legislative or legal routes to enforce the requirement for a local plan.*** (Paragraph 48)

#### *Government response:*

This Government is committed to a plan-led system. The Levelling Up and Regeneration Act 2023 sets out our plan-making reforms. We have confirmed our intention to have in place the regulations, policy and guidance by autumn 2024 to enable the preparation of the first new-style local plans whilst still encouraging all relevant councils to move forward with their individual local plan processes.

Our vision for these new-style plans to be simpler to understand and use, and positively shaped by the views of communities about how their area should evolve. We want them to clearly show what is planned in a local area – so that communities and other users of the plan can engage with them more easily, especially while they are being drawn up. We want them to be prepared more quickly and updated more frequently to ensure more planning authorities have up-to-date plans that reflect local needs. And we want them to make the best use of new digital technology to drive improved productivity and efficiency in the plan-making process. Ministerial intervention powers are retained in the new system, and new Local Plan Commissioners may be deployed to support or ultimately take over plan-making if local planning authorities fail to meet their statutory duties.

There will be a requirement for planning authorities to start updating their plans within 5 years of the adoption of their previous plan. Updates will be subject to full consultation and examination to make sure plans remain relevant and can take account of any changes locally.

In the interim, we want local authorities to continue adopting ambitious local plans. Authorities with up-to-date plans will be in the best position to adapt to the new plan-making system. Planning is a statutory function for local government and it is resourced to deliver this function through the annual settlement, supported by the income from planning fees.

***If the Government produces a land use framework it must ensure and demonstrate that all relevant government departments, including the Department for Environment, Food and Rural Affairs and the Department for Levelling Up, Housing and Communities are effectively involved in its production.*** (Paragraph 49)

*Government response:*

Defra made a commitment in the 2022 National Food Strategy to publish a Land Use Framework in 2023. Defra is developing the Land Use Framework with input from other relevant departments, including DLUHC to further understand how the Land Use Framework will interact with the planning system for both plan makers and decision makers.

**As a result of the requirement to mitigate harm at a project level, local planning authorities are attempting to balance decisions between unequally weighted principles. To overcome the statutory weight of environmental protection requires significant expertise and places great additional onus on local planning authorities.** (Paragraph 58)

***If the Government thinks it is appropriate for competent authorities to be responsible for balancing economic, social and environmental priorities at permission stage, it must ensure that the necessary expertise is available within local authorities. Detailed guidance on the process for declaring imperative reasons of overriding public interest must be provided to support legally sound decision making.*** (Paragraph 59)

*Government response:*

The Government agrees that highly skilled planners are fundamental to proactive local planning, securing high quality local design and placemaking, and running an efficient planning service for the communities they serve. They are invaluable in creating communities that people are proud to call home - in beautifully designed places.

However, the Government recognises that local authorities, as well as the wider planning and environmental sectors, face some capacity and capability challenges which have resulted in delays, including in the processing of planning applications, impacting on homeowners and developers alike. A well-resourced local planning authority is crucial to the delivery of all planning functions, including enforcement.

It is important that local authorities take steps to address their own skills shortages and to build the pipeline which allows them to discharge their responsibilities satisfactorily. In addition, DLUHC have developed a comprehensive Planning Capability and Capacity programme which provides more direct support, delivers funding to local government, provides upskilling opportunities for existing planners, and further develops the future pipeline into the profession.

As part of the Secretary of State's Housing Speech on the 24 July, DLUHC have announced the £24 million Planning Skills Delivery Fund to help local planning authorities clear planning backlogs and get the skills in place that they need to respond to changes in the planning system. We also announced £13.5 million for a 'super squad' that will deploy teams of specialists to local planning authorities to accelerate the delivery of homes and development, starting with a trailblazing pathfinder in Cambridge.

Additionally, the Government is taking steps to ensure that statutory consultees are more resourced to provide appropriate and timely expertise to Local Planning Authorities, recognising their key role in the planning system. These are laid out in detail in our response to the recommendations in paragraphs 120-122 of the Committee's report.

***The Government should place the need to deliver housing on a statutory footing equal to that of environmental protection. This will help to ensure balanced decisions can be taken.*** (Paragraph 60)

*Government response:*

Through plan-making and decision-making in planning there already exists a mechanism to balance the need to deliver housing with the need to protect the environment.

National planning policy is clear that the purpose of the planning system is to contribute to the achievement of sustainable development. This includes pursuing economic, social and environmental objectives in mutually supportive ways.

The Government does recognise that the interaction of nutrient pollution and the Habitat Regulations (leading to the need for nutrient neutrality in some areas) has created a situation where some local authorities have not been able to make the balanced judgement that planning policy allows for. Whilst understanding the point the Committee makes, not

everything is solved by placing it on a statutory footing, and there are dangers in over-legislating.

Every nutrient neutrality catchment is different, and local authorities will be best placed to make decisions on how to support strategic management and mitigation plans in their areas. That is why, at the point of Natural England issuing advice in March 2022, the Government immediately made available £2.7 million funding to lead Local Authorities for each of the 27 nutrient neutrality catchments. This funding was targeted to support local authorities in their response to the issue, enable the nuances of nutrient pollution in specific catchments to be understood, the required strategies for restoring habitats sites to be formulated, and for mitigation solutions to be identified.

The Government has continued to provide funding to support Local Authorities in nutrient neutrality catchments. The Local Nutrient Mitigation Fund of £110 million over this year and next is awarding funds to support quality proposals to deliver nutrient mitigation. This was announced at on 22 November in the Chancellor's Autumn Statement.

***The Government should review the requirement for mitigation to be available at the time of, and directly linked to, a planning application. It should explore legislating to allow development to proceed where a deliverable plan is in place to address pollutants or the condition of a protected site, which has taken into consideration development ambitions set out in the local plan.*** (Paragraph 61)

***Following the passage of the Levelling-up and Regeneration Bill, the Government should provide clear advice as to what assumptions local planning authorities and developers can make regarding requirements for nutrient neutrality in light of the 2030 deadline for upgrading wastewater treatment works.*** (Paragraph 62)

*Government response:*

Given the extremely disappointing decision made by the House of Lords in September, the Government is now not intending to bring forward primary legislation on nutrients neutrality in this parliament. As a direct consequence, many thousands of homes will be delayed, and people will have to wait to move into a place of their own. Democracy had made a choice, much as the Government regrets it. Instead, following the Levelling Up and Regeneration Act 2023 coming into force, local planning authorities and developers can assume that wastewater treatment work upgrades will be completed by 2030, and should factor that assumption into any decision making for the purposes of an assessment under the Habitats Regulations.

The issue of nutrient pollution is a pressing issue and one which the Government is taking steps to address. On 13 September 2023, the House of Lords voted against Government proposals intended to unlock 100,000 homes between now and 2030 whilst protecting and improving the environment. The Government's reforms would have provided the certainty for which local authorities, communities and developers have been calling, by making a targeted and specific change to the law so that there was absolute clarity housing development could proceed in areas currently affected by nutrient neutrality. At the same time, the Government had set out a wider environmental package aimed at tackling the underlying sources of nutrient pollution, restoring nature, and supporting our commitment to leave our environment in a better state than we found it.

Taken together, these reforms would have benefited communities and the environment. They would have allowed for the delivery of more than 100,000 new homes. However, the legislative proposals were not accepted. The Government carefully considered the case for reintroducing these measures through new legislation in the Fourth Session of this Parliament, but recognised the significant risk of extended uncertainty for developers and local planning authorities if a new Bill were to be delayed in its passage.

It is important that planning applications are considered and assessed in line with the requirements of the Habitat Regulations Assessment, to ensure that projects do not have an adverse effect on Habitats Sites. However, this does not preclude the use of strategic approaches and the Government supports strategic mitigation approaches to addressing the issue. The Government has been clear that nutrient neutrality can only be an interim solution. Removing the need for nutrient neutrality requires sites to be set on a pathway to restoration, and this remains our goal.

The Government will continue to review the Planning Practice Guidance to ensure there is clarity around the range of options available for enabling development whilst ensuring there are no adverse effects to Habitats Sites. This includes revising the guidance for planning decision-makers and plan-makers to support the implementation of the provisions in the Levelling Up and Regeneration Act 2023.

The duty to improve wastewater treatment by 1 April 2030 as introduced to the Water Industry Act through the Levelling Up and Regeneration Act 2023, – which will be implemented from 26 January 2024. In designated catchments, this duty will significantly reduce mitigation costs for developers, while also reducing the load of nutrient being discharge to these important Habitats Sites. Designated catchments and specific wastewater treatment works which will be upgraded under the new duty will be publicly listed, with the requirement for developers and local authorities to consider the upgrades as certain for the purposes of an assessment under the Habitats Regulations.

**The Government and Parliament have vital roles to play in taking decisions balancing environmental priorities with key issues such as the viability of ongoing housing development or the UK’s food security. (Paragraph 66)**

***The Government should confirm if it was aware of the likelihood that productive farmland would be taken out of use because of the nutrient neutrality advice and if it adapted its food strategy in response. (Paragraph 67)***

***The Department for Levelling Up, Housing and Communities and the Department for Environment, Food and Rural Affairs should issue joint advice on where and when, if at all, the practice of discontinuing farming owing to any impact mitigation requirements for housebuilding is applicable and acceptable. (Paragraph 68)***

*Government response:*

The Government is aware that nutrient neutrality creates a driver for nutrient mitigation delivery on agricultural land and it will be necessary for some land use change to enable the delivery

of sustainable housing development. However, there are often other ways of delivering nutrient mitigation which have wider benefits, such as wetlands or innovative treatment technologies. The Local Nutrient Mitigation Fund will promote innovative approaches to delivering mitigation and strategic approaches at a catchment level that enable more effective mitigation solutions.

In line with the environmental principles the Government is committed to tackling pollution at source and so reducing the need for nutrient mitigation. This is why the Levelling Up and Regeneration Act 2023 requires the upgrade of wastewater treatment works to significantly reduce a major source of nutrients, whilst also reducing the mitigation burden on development.

Where mitigation is required, there are a range of different options that mitigate against nutrient pollution, including grey infrastructure and nature-based solutions. Where land is taken out of agricultural production to help reduce nutrient pollution this also brings opportunities for wider environmental benefits for nature and recreation.

Natural England's Nutrient Mitigation Scheme seeks to invest in interventions that optimise land use and, where possible, avoid use of best and most versatile agricultural land.

***The full suite of environmental regulations delivered through the planning system should be reviewed and, if necessary, considered for amendment to ensure that they are in line with the Government's environmental principles policy statement.*** (Paragraph 76)

*Government response:*

Defra is keen to make our nature protections system as effective as possible and to support delivery of our legally-binding environmental targets. We are working with DLUHC to identify how environmental regulations and the planning system can best work together. The Office for Environmental Protection recently made recommendations on environmental assessments, to which we will respond in due course. Defra also has a commitment to undertake a Post Implementation Review of the Conservation of Habitats and Species Regulations 2017 and Conservation of Offshore Marine Habitats and Species Regulations 2017 by the end of 2024, which will examine whether the regulation has delivered its objectives and what changes may be appropriate. This review will necessarily consider interactions with the planning system. Moreover, we are undertaking improvements to species licensing approaches where these interact with the planning system including introducing and rolling out an Earned Recognition scheme for bats and piloting Species Conservation Strategies.

We are introducing Environmental Outcomes Reports, a new framework of outcomes-based environmental assessment which will ensure the ambitions of the Environment Act 2021 and the current Environmental Improvement Plan are placed at the centre of environmental assessment. When implementing Environmental Outcomes Reports, we will ensure that the new system aligns with the environmental principles.

Furthermore, mandatory design codes at the authority wide scale will mean that developers will be set much clearer expectations on the design of development. The National Model

Design Code encourages local design codes to set expectations of how developers should design for nature – for example, open space and natural flood management.

From 1 November 2023 Ministers of the Crown have had a duty to have due regard to the environmental principles policy statement when making new and revised policies. Defra is working closely with other Government departments to support them in implementing the duty. The policy statement sets out how policymakers should take a proportionate approach, balancing social, economic, and environmental considerations in making policy, since these factors are all interlinked.

***The Government must prioritise implementing the Integrated Plan for Water and publish the information sought by its arm's-length bodies, including setting out the balance of priorities between farming and other sectors in addressing nutrient pollution. In doing this it should be cognisant of the experience in the Netherlands.*** (Paragraph 83)

*Government response:*

Implementation of the Plan for Water is underway, with some key actions already achieved. Defra has established a delivery programme to manage delivery and reporting on improving our water system. Defra will continue to work closely across Government, including with ALBs, to deliver on our commitments.

The Plan for Water is built around a catchment approach to managing the water system, including delivering integrated catchment plans. These catchment plans will incorporate actions to meet our ambitious Environment Act targets and implement the Plan for Water catchment-by-catchment and community-by-community. The plans will set out the key issues and priorities for action, including priorities identified in Local Nature Recovery Strategies.

They will enable joined up decision making to help identify what and where actions will deliver the most benefit for water and nature on the ground bringing together all of the delivery partners involved.

The Government is already implementing changes to ensure that key sectors are taking necessary action to reduce nutrient loads. For example, through the Levelling Up and Regeneration Act 2023, the Government is requiring that water companies invest in improving wastewater treatment in parts of the country where Habitats Sites are in unfavourable condition due to nutrient pollution.

On agriculture, the Government has doubled the Catchment Sensitive Farming advice partnership budget to £15 million per year to cover all farmland in England, made budget available to the Environment Agency for over 50 more officers to conduct over 4,000 regulatory inspections each fiscal year, and plan to invest £200 million to improve slurry management to help farmers go beyond compliance and better manage livestock nutrients and prevent pollution.

***The Government should develop integrated plans for addressing all areas of conflict between development and environmental policies before legal backstops are reached and development is halted. These must include implementation plans and be in line with the environmental principles policy statement.*** (Paragraph 84)

*Government response:*

In the long term, the Government is committed to leaving the environment in a better state than we found it.

This year alone we have published our Environmental Improvement Plan which builds upon the vision set out in the 25 Year Environment Plan; our Plan for Water which is delivering more investment, stronger regulation and tougher enforcement to deliver clean and plentiful water now and into the future, and our Air Quality Strategy which sets out actions to tackle emissions of the most harmful pollutants.

We are piloting protected sites and species conservation strategies which will aim to develop strategic approaches to comply with legal obligations to deliver benefits for protected habitats and species and provide options for mitigation so development can proceed. Five research and development pilots are underway for Protected Site Strategies, testing their full potential at different geographical scales and for a range of on and offsite pressures. The learning from these pilots will help to determine where these strategies will be most helpful.

Furthermore, we are delivering our new Environmental Land Management schemes which invest in the foundations of food security, pay farmers for actions that support food production and can help improve farm productivity and resilience, while also protecting and improving the environment.

These national plans and strategies will serve to improve the overall quality of the environment on a strategic level, reducing instances of conflict with development.

In the short term, as set out in more detail above, the Government is taking steps to address nutrient and water neutrality including Natural England launching their Nutrient Mitigation Scheme, and making provisions to upgrade wastewater treatment works in the Levelling Up and Regeneration Act 2023.

The Government consultation which closed in September on operational reforms to the Nationally Significant Infrastructure Project consenting process set out our proposals to strengthen the pre-application process and ensure consultation is effective and proportionate, to enable issues to be identified and potentially resolved earlier in the process.

***We welcome proposals in the Levelling-up and Regeneration Bill for the Environment Agency to review the environmental permits of plants which discharge treated effluent into catchments impacted by nutrient pollution. This should be expanded to agricultural activity. The Environment Agency should inspect all farms within the 27 catchment areas subject to nutrient neutrality advice by the end of 2024 to ensure they are***

***operating within their permitted pollution levels and enforce standards on those that are not.*** (Paragraph 85)

**New development can contribute to environmental damage; however, it is important that the ongoing and long-term impact of historic housing stock and agricultural practices are addressed.** (Paragraph 89)

*Government response:*

The Government recognises the importance of tackling agricultural runoff as a key source of nutrient pollution to our most at-risk protected sites and watercourses. We have set a legally binding target under the Environment Act 2021 to reduce nitrogen, phosphorus, and sediment from agriculture entering the water environment by 40% by 2038; and an interim target of 15% by 2028 in catchments containing Habitats Sites in unfavourable condition due to nutrient pollution.

Regulation will play a vital part in meeting those targets. Our focus is on raising compliance levels with these regulations and increasing farming standards accordingly. We have expanded the Environment Agency's farm inspector workforce, with 50 additional officers carrying out over 4,000 inspections in the 22/23 fiscal year.

Environment Agency inspectors are a valuable resource and must be used where they can have the greatest impact. That is why the Environment Agency take a risk-based approach to farm inspections, with focus on areas of the greatest risk of agricultural diffuse pollution including the catchments of protected sites in an unfavourable condition due to nutrient pollution.

This action will support the work toward the legally binding target under the Environment Act 2021 to reduce phosphorus loadings from treated wastewater by 80% by 2038 against a 2020 baseline, with an interim target of 50% by 31 January 2028. This target will ensure that the ongoing pollution from historic housing stock is addressed, across the country.

***The Government should explore how mitigation schemes could finance improving existing housing stock, building on the model in Crawley. It is unlikely that this approach will provide sufficient offsetting to meet housing demand, but it should be considered a key part of the solution and a suitable route to contribute to the Government's levelling-up mission to improve housing quality.*** (Paragraph 90)

*Government response:*

The Government is already committed to improving existing housing stock through the Environmental Improvement Plan, as part of the roadmap on water efficiency in new developments and retrofits.

We are utilising a similar model to Crawley in Cambridge, where water scarcity and impacts on the environment have resulted in 9,000 homes and 380,000 square meters of office space being unable to proceed through planning.

The package of measures we have announced totalling £9 million on water scarcity in Cambridge will go further to tackle this issue than Government has done anywhere ever before. This recognises both the importance of water as an enabler of future growth as well as our duty to protect the environment. By driving significant water savings, the range of measures demonstrates our clear commitment to ensuring that stalled development can proceed. We are also funding pilots in agriculture and nature-based solutions which can deliver a wider range of environmental benefits beyond saving water.

We are supporting the council in efforts to make sure new developments proposed as part of the local plan can be as sustainable as possible, including whether new houses in planned developments such as Waterbeach and Hartree can be made more water efficient. We will deliver this through measures to improve the water efficiency of existing homes and commercial property across Cambridge, to help offset demands created by new developments in the local plan.

Our Plan for Water also sets out that we will develop clear guidance on ‘water positive’ developments and roles for developers and water companies, including water company incentives. This will be based on the experiences in Cambridge and Crawley to support development in areas of water scarcity across England.

**The condition of protected areas in the UK has a direct impact on development. When not maintained, their poor condition can cause an immediate halt in housebuilding. Statutory bodies and others have known about the poor state of some protected areas for several years but there has been no overall improvement. (Paragraph 96)**

***Given the importance of site condition and classification to the planning process and decision making there should be greater transparency over the assessment process. Natural England should publish its detailed scientific justification for any site assessment in an easily accessible and understandable format. (Paragraph 97)***

***Natural England’s new Protected Sites Strategy approach should be extended to all protected sites in an ‘unfavourable’ condition. These strategies should include a time-bound action plan for restoring its condition in line with the environmental principles policy statement. (Paragraph 98)***

*Government response:*

The Environmental Improvement Plan published in January 2023 confirms the Government’s commitment to restore 75% of our Sites of Special Scientific Interest to favourable condition by 2042. It also set two interim targets which support the delivery of that 2042 goal. The interim targets are that by 31 January 2028: all Sites of Special Scientific Interest will have an up-to-date condition assessment; and 50% of Sites of Special Scientific Interest will have actions on track to achieve favourable condition.

Sites across the UK are monitored in line with the Joint Nature Conservation Committee’s Common Standards Monitoring Guidance. Natural England also publishes Site Assessment

Standards: Monitoring in Natural England. Data on protected sites can be accessed on Designated Sites View.

Protected Site Strategies, introduced in the Environment Act 2021, will be most valuable where there are complex offsite issues affecting site condition but may not be appropriate for all sites in 'unfavourable' condition. Five research and development pilots are underway, testing the full potential for Protected Site Strategies at different geographical scales and for a range of on and offsite pressures.

## Public sector structures and resourcing

**Restructuring Defra's arm's-length bodies could distract from the Government's targets for 2030. Nonetheless overlap between the agencies must be reduced to deliver the best value for money and reduce delays and confusion for developers.** (Paragraph 104)

***The Government should publish its response to the Nature Recovery Green Paper by the end of 2023. If structural changes are not made, a clear plan for eradicating unnecessary overlap and improving cross-organisational work should be published. This must focus on improving engagement at a project level.*** (Paragraph 105)

*Government response:*

During summer 2022 the department undertook an analysis of arm's length body structures, roles and responsibilities. We are now working closely with arm's length bodies to put in place a strong relationship and sponsorship framework to assure delivery and promote joint working towards our ambitious shared goals.

Separately, and as described below, we are taking steps to ensure that Defra's arm's length bodies have sufficient resource to carry out their roles effectively.

Moreover, the Government's Environmental Improvement Plan, our delivery plan for protecting nature and achieving the apex goal of halting the decline in biodiversity, reflects the principles of the Nature Recovery Green Paper. We continue to look for ways to make our nature protections system and the supporting processes more effective.

**We were pleased to discover that there is a Ministerial Taskforce on Nutrient Neutrality. We do not know what its remit and objectives are. It is disappointing that such cross-governmental working was not in place before housebuilding was effectively halted across 14 per cent of the country's land area.** (Paragraph 111)

*Government response:*

The Ministerial Taskforce on Nutrient Neutrality is focused on the delivery of sustainable development in catchments subject to nutrient neutrality advice and ensuring that the issue of nutrient neutrality is addressed. It includes representatives from Government, including Natural England, Homes England and Environment Agency.

***The Government should pave the way in innovating how organisations collaborate and drive change. It should ensure that the delivery expertise and market understanding in Homes England and the Planning Inspectorate is accessible to all departments making policy that will affect development. As far as possible, practitioners should be included in policy development. When introducing new regulations or requirements on the planning system or for development, all government departments should be mandated to consult Homes England and the Planning Inspectorate.*** (Paragraph 112)

*Government response:*

The Government agrees with the Committee that delivery expertise and market understanding of some of our key Arm's Length Bodies should be accessible in our policy design. However, we do not agree that it is necessary to mandate all government departments to consult Homes England and the Planning Inspectorate to achieve this as it is already happening through existing mechanisms. Homes England aligns with DLUHC's goal of delivering high quality housing and regeneration to create thriving places, as well as safer and greener buildings. To do this effectively and efficiently, we work together to maximise the use of skills and knowledge in both organisations through a relationship of interdependence called a Policy Delivery Partnership. This way of working enables us to better deliver our shared objectives for communities across the country and builds on our relationship of interdependence – drawing on the wealth of policy and delivery expertise in both organisations, respectively, at the right time and in the right way. All colleagues across the department and Homes England are expected to work in accordance to the Policy Delivery Partnership principles, these are:

- Joint working, we rely on each other to achieve our objectives through building strong and supportive relationships
- Working for ministers, we work together to advise ministers through sharing products and briefing ministers together
- Openness, we have open exchange of information and expertise, whilst recognising that some commercially sensitive information needs to be protected

The Planning Inspectorate occupies a privileged position in the planning system, working regularly with actors to implement policies which lead to a range of social, economic and environmental benefits. It can use the insight of this position provides to help develop policy which functions well, is consistently applied, and reduces demand for its services. Given this, the Planning Inspectorate works closely with a range of public bodies, including DLUHC. This includes providing expert advice on the likely on-the-ground impacts of policy and legislative proposals as well as a 'critical friend' role, advising on improvements to the overall functioning of the system. This role is especially important as the sector prepares to implement significant and wide-ranging changes brought about through the Levelling Up and Regeneration Act 2023 and other planning reforms.

Defra will continue to draw on the same expertise, both through close working with DLUHC and receiving input and advice directly from Homes England and the Planning Inspectorate on relevant reforms, such as Biodiversity Net Gain.

***When developing new advice or guidance which will affect the planning system, Defra and its agencies should undertake and publish an impact assessment. This should include insights from across government.*** (Paragraph 113)

*Government response:*

Defra observes the Better Regulation Framework and undertakes Impact Assessments for statutory provisions that relate to business activity as defined by the Better Regulation

Framework. As such, Defra and its agencies do not routinely undertake Impact Assessments when developing advice or guidance relating to existing provisions in law.

Regardless, Defra and its arms' length bodies regularly work with colleagues across Government to build their expertise into policy and guidance and will continue to do so as we address new or evolving regulatory issues.

**Public bodies are facing challenges recruiting and retaining ecological expertise. It is necessary to bring expertise into the system through recruitment or training current staff.** (Paragraph 120)

***Additional funding has been provided for statutory bodies. In 2024, a review should be undertaken of the availability and accessibility of expertise in Natural England and the Environment Agency to identify and address any remaining gaps in expertise.*** (Paragraph 121)

***Statutory consultees should ensure sufficient resource is available for them to work with developers to address issues raised during the statutory process in a timely manner.*** (Paragraph 122)

*Government response:*

A well-resourced Planning system is crucial to the delivery of all planning functions, including those of statutory consultees. As set out earlier in the response, the Government's comprehensive Planning Capability and Capacity programme will provide more support, deliver funding to local government, and provide upskilling opportunities for existing planners.

The Government recognises the important role statutory consultees play within the planning application process, providing expert advice to local planning authorities and applicants on technical matters such as flood risk, biodiversity, heritage, and highways safety. However, these organisations are facing growing financial and resource pressures which will become more acute as the volume and complexity of projects increases.

This is why we are introducing a cost recovery mechanism through the Levelling Up and Regeneration Act 2023 to enable prescribed statutory consultees to charge applicants for providing advice, assistance, or information in respect of planning applications (including Listed Building Consent and Hazardous Substance Consent). This will help these organisations better resource their services to provide reliable, quality advice on proposals; and support the faster delivery of planning applications.

Cost Recovery powers will cover substantive engagement throughout the process from pre-application engagement (including where applicants enter into a voluntary agreement with statutory consultees to provide advice or assistance as part of the planning application), all the way through to discharge of conditions and reserved matters, between the statutory consultee and applicant.

In addition, the Government has provided £5.6 million over the 2023-24 financial year to increase the number of staff at Defra's Arms' Length Bodies, supported by internal changes

to improve efficiency. For example, the Environment Agency has set up a new National Infrastructure team to support local operational teams by responding in an agile way to workload peaks. Natural England will similarly ensure that resource is directed to high impact projects and is promoting Service Level Agreements to ensure complex issues are addressed before submission and reduce risk of delay.

***The Government should introduce targets for stakeholder satisfaction for its arm's length bodies as part of the proposed new planning performance framework. Feedback from developers and infrastructure promoters should be regularly sought and acted on.*** (Paragraph 123)

*Government response:*

Article 23 of The Town and Country (Development Management Procedure) (England) Order 2015 requires statutory consultees to report annually to the Secretary of State on their performance with regard to their duty to respond to consultation. DLUHC also meets regularly with key statutory consultees, including the so-called Big 6 (Environment Agency, Natural England, Historic England, Health and Safety Executive, National Highways and the Coal Authority) to discuss performance and other issues.

On 28 February 2023, DLUHC published our consultation document 'Stronger performance of local planning authorities supported through an increase in planning fees'. This set out our proposal for the introduction of a new planning performance framework which would measure the performance of local planning authorities across a greater range of metrics, including qualitative measures relating to customer satisfaction.

A wide range of comments were received, and this feedback is being drawn upon as we further develop our proposals. It is our intention that the new planning performance framework would relate to the performance of local planning authorities, rather than arm's length bodies.

However, Defra is working across Government to define and develop a set of key performance indicators that specific statutory consultees report against for services they provide across the Development Consent Order application process. These Key Performance Indicators will accompany the proposed charging system; ensure smoother routes through the consenting process; consider the quality of customer service provision; be tailored to each organisations' context, nature of advice provision, and decision-making or regulating responsibilities; and be timely and transparent.

***The Environment Agency and Natural England should support the formalisation of a role for those experts who are part of the Nationally Qualified Mark Scheme. They should explore using this resource to provide independent reviews of relevant environmental assessments, funded by the developer, where the capacity is unavailable internally.*** (Paragraph 124)

*Government response:*

Defra group supports accreditation for experts who undertake assessments and the Environment Agency has advocated for the industry led initiative, the National Quality Mark Scheme for Land Contamination Management since its inception in 2016.

Natural England and the Environment Agency are increasing their capacity to respond to planning and infrastructure projects, with Natural England operating a framework contract to secure expert technical advice where needed, and the Environment Agency implementing a Geoscience technical skills recovery programme to help rebuild technical resilience.

**We welcome the Government taking steps to address the funding shortfall in local authority planning departments.** (Paragraph 133)

*Government response:*

From 6 December 2023, planning fees will increase by 35% for major applications and 25% for all other applications. For the first time, an annual indexation mechanism will also be applied, from 1 April 2025, which will maintain the real value of the fees income. We will continue to keep fee levels under review.

***The Government should complete its proposed fees review within the next 12 months to provide greater long-term certainty for planning departments and applicants. The proposed skills and resources strategy should be published by the end of 2023.*** (Paragraph 133)

*Government response:*

The Government will keep planning fees under review. A review of fees within 12 months would not provide sufficient time to assess the impact of the fee increase but we intend to formally review fees at the appropriate time and within three years. This will also give time for many of the current reforms, including those in the Levelling Up and Regeneration Act 2023, to be implemented. Together with the fee increase of 35% for major applications and 25% for all other applications, the annual indexation mechanism which will apply from 1 April 2025 will provide greater long-term funding certainty for planning departments and applicants.

Furthermore, since the publication of the Planning for the Future White Paper in August 2020, we have engaged with key stakeholders to ensure we understand the capacity and capability challenges that local authorities, and the wider planning sector, are facing.

The Capacity and Capability programme is our response to this, working with partners across the planning sector, to ensure that local planning authorities have the skills and capacity they need, both now and in the future, recognising resource challenges. This programme includes the Planning Skills Delivery Fund which is a £24 million fund to help local authorities clear their planning application backlogs and get the right skills in place to deliver the changes set out in the Levelling Up and Regeneration Act 2023. We have also announced £13.5 million for a

'super squad' that will deploy teams of specialists to local planning authorities to accelerate the delivery of homes and development, starting with a trailblazing pathfinder in Cambridge.

***The Government and statutory bodies must meaningfully consult local planning authorities on new advice and policy which will have an impact on their decision making as competent authorities. This process must allow sufficient time for expertise in handling new policy issues to be developed.*** (Paragraph 135)

*Government response:*

The Government regularly engages with local authorities, businesses and others who might be affected by new policy or changes to existing policy, as this is a fundamental principle of good policy making. To be lawful, a public consultation must be fair, meaningful, contain sufficient information to enable intelligent consideration and response, and responses must be capable of shaping the final policy.

In the case of nutrient neutrality, a judgment by the European Court of Justice in 2018 (known as the 'Dutch Nitrogen Case') established the case law that necessitated that advice. As a result of that case Natural England was required to advise competent authorities in all affected areas of England that where protected sites are in unfavourable condition due to excess nutrient pollution, the ability to consent to projects and plans which would increase nutrient loads was limited. This was because wastewater or manure from agricultural development would cause an adverse effect. Since this was causing de facto moratoria in some catchments, nutrient neutrality was developed at pace as a mechanism by which developers can demonstrate, consistently that there will be no adverse effects.

The Government recognises the pressing issue of nutrient neutrality which is impacting on housing delivery across 62 Local Planning Authorities in England and recently introduced legislation, by way of amendments to the Levelling-up and Regeneration Bill to address this issue while continuing to protect and improve the environment. The House of Lords did not accept these amendments into the Bill. Natural England will continue to deliver the existing Nutrient Mitigation Scheme and will continue to work with local authorities, the private sector and others to tackle nutrient pollution and work towards the long-term health, resilience and restoration of protected sites.

***Local planning authorities should work with local partners and, where relevant, upper-tier authorities to share expertise and drive economies of scale. The approach taken by Warwickshire County Council should be considered a best practice example and delivered through two-tier authorities, mayoral combined authorities and joint ecological units.*** (Paragraph 136)

*Government response:*

As set out earlier in the response, the Government recognises that local authorities and the wider planning sector face serious capacity and capability challenges. To address this, we

have developed a Planning Capability and Capacity programme, which includes the Planning Skills Delivery Fund which is a £24 million fund to help local authorities clear their planning application backlogs and get the right skills in place to deliver the changes set out in the Levelling Up and Regeneration Act 2023.

We have also announced £13.5 million for a 'super squad' that will deploy teams of specialists to local planning authorities to accelerate the delivery of homes and development, starting with a trailblazing pathfinder in Cambridge.

We have also granted £1.6 million to the Local Government Association to deliver the Pathways to Planning graduate programme. In addition to providing new funding for the RTPI Future Planners Bursary Scheme.

## Project-specific challenges

**It is unrealistic to expect the market to immediately provide a private sector mitigation solution for new regulatory schemes, especially where there is political uncertainty about their longevity. (Paragraph 143)**

***When new types of mitigation are required owing to advice from statutory consultees, the Government should work with Natural England to provide public sector mitigation schemes in the immediate term. These can be closed to new applicants or become a provider of last resort when a private sector market has developed. (Paragraph 143)***

**The lack of managed credit-purchase mitigation schemes for specific pollutants or in certain areas is restricting developers' ability to gain planning permission. (Paragraph 144)**

***Mitigation networks, organised by Natural England, should be created to share expertise and learning between affected local planning authorities. These networks should develop standard mitigation models for local planning authorities to use when a new requirement comes to their local area. (Paragraph 144)***

***Where there is a model in place for cost recovery through the planning process, the Government should provide up front funding to local planning authorities to undertake mitigation activity. This could be repaid through the creation of a local credit scheme to ensure that mitigation schemes are available to all developers. (Paragraph 145)***

**There is a preference among developers of all sizes for off-site mitigation to be managed centrally with clear and predictable costs to allow them to factor these into land value calculations. In these circumstances, the costs can be borne by a development and the outcomes provide greater benefit to the environment. (Paragraph 153)**

*Government response:*

62 local planning authorities have received advice from Natural England, issued in line with their statutory duties and relevant case law, across 27 catchments (equating to 14% of England's land area). This has led to delays to house building in some cases where there is not yet sufficient mitigation available. This is a barrier to the Government's ambition of delivering 300,000 homes per year by the mid-2020s.

Natural England is continuing to deliver the Nutrient Mitigation Scheme in line with the Environment Secretary's direction of 28 July 2022. Recognising the urgent need for more housing, the scheme was developed at pace with pump priming from Government so that mitigation for nutrient pollution could be put in place as quickly as possible in affected areas.

The Government acknowledges the need to establish and further increase the supply of nutrient mitigation to enable sustainable development to come forward in the catchments of Habitats Sites affected by nutrient pollution.

Natural England works with local authorities in their role as Statutory Consultee for Habitats Regulations Assessments and share expertise with the private sector and others to tackle

nutrient pollution and work towards the long-term health, resilience and restoration of protected sites. The Nutrient Mitigation Scheme is designed to complement and not compete with existing local and private schemes.

DLUHC has provided support to local planning authorities affected by nutrient neutrality, through the Planning Advisory Service which supports monthly meetings between officers in the affected catchments, advice and support publicly on the Planning Advisory Service website. This complements the funding that DLUHC made available to catchments in March 2022, to put in place dedicated officers at a catchment level to co-ordinate and delivery interventions at a catchment level.

***Natural England's District Level Licensing scheme for great crested newts has reduced costs and increased certainty for infrastructure and housing developers where it operates while maximising the benefits for species conservation. The Government should expand this approach to other protected species.*** (Paragraph 154)

*Government response:*

Whilst the District Level Licensing approach for Great Crested Newts is well suited to the species due to its distribution and ecology, this approach may not be readily applied to other protected species.

The Government is already pursuing ways, such as the Bats Earned Recognition scheme, to improve species licensing approaches to provide benefits for both the species and developers.

We are also exploring the use of Species Conservation Strategies in delivering strategic licensing approaches through three pilots for water vole, dormice and widespread reptiles.

***The Government should support the authorities responsible for local nature recovery strategies to ensure that they bring together information and actions to enhance the environment. Relevant authorities should develop biodiversity net gain credit schemes which support the delivery of local nature recovery strategies so that off-site delivery continues to benefit residents in the local area.*** (Paragraph 155)

*Government response:*

The Government is providing Local Nature Recovery Strategies responsible authorities with funds, guidance, data and on the ground support to help them prepare high-quality strategies for nature recovery and environmental improvement.

Local Nature Recovery Strategies are a new system of spatial strategies for nature recovery and wider environmental benefits introduced by the Environment Act 2021, they will be a key source of information to support and inform plan-making. Government recently (30 June) announced that 48 Local Nature Recovery Strategy areas and confirmed they would receive their allocation from a £14 million funding pot.

The Government is providing Local Nature Recovery Strategies responsible authorities with funds, guidance, data and on the ground support to help them prepare high-quality strategies for nature recovery and environmental improvement.

Government will publish guidance on how local planning authorities should consider Local Nature Recovery Strategies in plan-making. Local Nature Recovery Strategies and Biodiversity Net Gain can work together to direct habitat enhancement to the right places relevant to local needs and opportunities. We welcome local authorities creating or enhancing habitats on their own land to supply the Biodiversity Net Gain market with biodiversity units. On 29 November, we published the draft regulations which set up the publicly accessible biodiversity net gain site register for the allocation of offsite biodiversity gains. Following parliamentary approval, this register will be open for business from January 2024.

***More detail should be provided on the proposed approach to monitoring and enforcing the long-term delivery of biodiversity net gain. Where local planning authorities are required to undertake ongoing monitoring, the Government should provide sufficient resources for this. The Office for Environmental Protection should have a role in ensuring local planning authorities undertake ongoing monitoring and enforcement.*** (Paragraph 158)

*Government response:*

To support the implementation of Biodiversity Net Gain, the Government has already committed over £15 million this year to help Local Planning Authorities prepare.

Under the statutory framework for Biodiversity Net Gain, every grant of planning permission is deemed to have been granted subject to a general biodiversity gain condition to secure the biodiversity gain objective. This condition requires Local Planning Authorities to approve a Biodiversity Gain Plan before the commencement of development. The Biodiversity Gain Plan will set out how the biodiversity gain objective of at least a 10% gain will be met for the development granted planning permission. On 29 November, the Government published the detailed draft regulations and guidance prior to commencement of mandatory biodiversity net gain from January 2024.

Failure to deliver gains for biodiversity which are secured can result in enforcement action by the planning authority or the responsible body for registered off-site gains. Planning authorities have a range of existing planning enforcement tools at their disposal, and the Environment Act 2021 includes mechanisms to ensure commitments through conservation covenants are adhered to.

The Office for Environmental Protection has powers that enable it to hold all public authorities to account for their implementation of any legislative provisions that fall under the definition of environmental law as set out in the Environment Act 2021. The Office for Environmental Protection publishes its own strategy and enforcement policy independent of Government, which sets out how it will carry out its work within this remit.

***The requirement for robust environmental data accompanying development applications should remain. However, the Government should ensure that local planning authorities are mandated to validate a planning application if it fulfils the published list of information required.*** (Paragraph 164)

*Government response:*

The National Planning Policy Framework clearly states that local planning authorities should only request supporting information, which is relevant, necessary and material to the application in question.

Through the Growth and Infrastructure Act 2013, the Government has brought the legislation on information requirements into line with the National Planning Policy Framework by introducing a requirement that information requested with a planning application must be reasonable.

The Government has reintroduced the ability of applicants to appeal against non-determination, where they consider that a local authority has unreasonably withheld validation.

***The Government should ensure that where planning applications are delayed in the planning system beyond the statutory or agreed time limit the lifespan of necessary surveys is extended.*** (Paragraph 165)

*Government response:*

The Government has identified several issues associated with the current system of environmental assessment, including the absence of essential baseline data on the environment, and a lack of monitoring activity which would routinely collect environmental data, so it is readily available to inform future applications. We are working with users, experts, environmental groups, and regulators to design and deliver a streamlined system that is fit for purpose - ensuring the assessment process properly supports decision-makers so that decisions are made on the best possible information.

The Environmental Outcomes Reports consultation which closed in June 2023 sought views on how a new assessment framework could work to minimise the data burden on developers at the time of submission of an application. We understand the need to apply a more consistent, streamlined and digitally enabled approach to the way planning applications are made, which is proportionate to the scale of the development and to ensure faster and better decision making. Through the Levelling Up and Regeneration Act 2023 we are introducing powers which will enable the Government to change how information requirements are met when an application is made, including how it can be submitted.

**There will always be a requirement for some site-specific environmental information, but improved and accessible baseline data would reduce costs for developers, improve**

**the quality of information available and, if provided by an independent body, reduce conflict in the planning system. (Paragraph 172)**

*Government response:*

The Government is aware that the absence of widely available baseline data is a major issue for developers. In our reforms to environmental assessment, we will clarify monitoring requirements so that we have data on the state of the environment in a particular area over time. We are also working to improve the relationship between the strategic and project level tiers in environmental assessment, and strengthen the processes which underpin strategic approaches to mitigation.

Our renewed emphasis on monitoring will ensure that the effects on the environment are as predicted, and mitigation proposed prior to the decision is working as envisaged at the time of the decision. This will ensure better environmental data is available to make the next round of assessments easier, reducing costs and delays.

The digitalisation of the planning system through the Levelling Up and Regeneration Act 2023 will shift the current semi-analogue system based on documents, to one that is data-driven, standards based, and powered by modern user centred products and services, enabling greater consistency and transparency. Open, standardised, data will be more readily available, reducing time spent debating the validity of the data at examination and increasing trust in the process.

The Government's response to the National Infrastructure Commissions report on improving nationally significant infrastructure planning<sup>1</sup> published on 22 November set out what Government is doing to ensure environmental data supports and guides developers through the planning system, securing best outcomes for both development and the environment.

***Alongside its work to digitise planning, the Government should consider the expansion of the Natural Capital and Ecosystem Assessment Programme. Any approach should prioritise the delivery of terrestrial information for areas of high housing and infrastructure demand over a blanket national approach. The Government should clarify when the proposed data sets will be available, develop a paid-for system for the private sector to utilise the data and confirm how often information will be updated. New technologies and innovations should be utilised to ensure data remains usable and useful in the long term. (Paragraph 173)***

*Government response:*

The Natural Capital Ecosystem Assessment programme is delivering a nationwide survey of England's land, coast, and sea that is due to be established by April 2025: mapping the location, extent and condition of our natural capital assets and ecosystems. Through comprehensive monitoring, innovative measurement and the development of tools and

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<sup>1</sup> <https://www.gov.uk/government/publications/government-response-to-the-national-infrastructure-commission-report-on-improving-nationally-significant-infrastructure-planning>

guidance, the programme is providing insights on how and why our environment is changing and the impact of this – so that we can better protect and manage our natural capital for people and the planet.

***The Planning Inspectorate’s work to introduce data standards for Nationally Significant Infrastructure Projects should be expanded to all projects of the scale which requires an Environmental Impact Assessment and should be suitably adapted for smaller housing developments.*** (Paragraph 174)

*Government response:*

The data standards that the Planning Inspectorate are working on in relation to Nationally Significant Infrastructure Projects do not relate specifically to environmental data. Rather, these standards flow from the powers in the Levelling Up and Regeneration Act 2023, to enable in due course a streamlined standardised process of submitting and assessing Development Consent Order applications that are processed by the Inspectorate, with increasing integration with wider digital planning, environmental assessment and monitoring systems. In particular, the powers in the Act will now allow for the submission of planning data, in addition to the already prescribed documents needed to support an application that is submitted to the Inspectorate for development consent. This will allow items such as survey data to be submitted electronically and independently to the document in which it is usually contained (i.e. in the Environmental Statement which is the product of the Environmental Impact Assessment process) and provide better access to such data for stakeholders, the Planning Inspectorate, Examining Authority and consenting departments.

The Planning Inspectorate has been working with Government Digital, relevant public bodies and industry to agree appropriate data standards and sharing arrangements. Although these data standards will be introduced first in the context of development consent order applications, the intention is for them to be as consistent as possible both across all planning casework, such as planning appeals, and with external data sources, to avoid duplication or the need for reformatting between different holders of information particularly in the public sphere for all planning and environmental data.

***To create consistency for developers and improve community engagement with the planning process, the Government should develop templates and exemplars for those assessments most regularly undertaken by developers.*** (Paragraph 176)

*Government response:*

The main reason for the Government’s reforms to environmental assessment is that the current process produces reports that are too long; are inaccessible and cumbersome to navigate; and highly repetitive.

There was a clear message from developers during engagement carried out in 2022 on the reforms to environmental assessment that they would like to see more detailed Government

guidance on environmental assessment. We will prepare technical guidance, including templates and prototypes to reduce the size of reports and make them more accessible.

The digitisation of planning will also minimise any burden on public authorities as the development of reusable data sets will speed up the reporting process and deepen our understanding of the environment, allowing both data and best practice to be more easily shared.

**Brownfield development is a key government policy supported by the public and vital to delivering homes.** (Paragraph 180)

*Government response:*

The Government agrees that brownfield development is key to delivering homes and as such strongly encourages the re-use of suitable brownfield land. National planning policy expects local planning authorities to give substantial weight to the value of using suitable brownfield land within settlements; including by supporting appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. This is particularly important for development to meet our housing needs and to regenerate our high streets and town centres.

The Government has already introduced a range of policy and funding incentives to support the development of brownfield land, including:

- uplifting local housing need by 35% in the top 20 most populated cities and urban centres
- requiring every local authority to publish a register of local brownfield land suitable for housing in their area
- introducing “Permission in Principle” to speed-up housing-led development on land included in brownfield registers
- amending permitted development rights and use classes so that yet more homes can be created and commercial buildings can change easily between uses, helping make best use of existing buildings. We continue to keep permitted development rights under review to explore ways they can further support housing delivery
- the £550 million Brownfield Housing Fund and the £180 million Brownfield Land Release Fund 2 (building on the success of the initial £75 million Brownfield Land Release Fund)
- the £4.3 billion Housing Infrastructure Fund is supporting a number of brownfield projects, and the £1 billion Brownfield, Infrastructure and Land Fund, launched in July, will unlock up to 65,000 new homes across the country.

We have further committed to making the best use of brownfield land and increasing densities by introducing new ‘street vote’ powers in the Levelling Up and Regeneration Act 2023. This will allow residents to propose development on their street and support gentle increases in densities through well-considered, well-designed and locally supported proposals.

The Secretary of State’s Written Ministerial Statement (published 6 December 2022) confirmed that the new Infrastructure Levy will allow local authorities to set different rates in

different areas, for example lower rates on brownfield over greenfield to increase the potential for brownfield development. That will allow them to reflect national policy, which delivers our brownfield first pledge by giving substantial weight to the value of using brownfield land. New measures in the Levelling Up and Regeneration Act 2023 will further empower local leaders to regenerate our towns and cities.

The Government has also committed to a review into identifying further measures that would prioritise the use of brownfield land. Further details will be announced in due course.

***The Government should ensure that remediating brownfield sites is not disincentivised by biodiversity net gain requirements. Local planning authorities should be able to moderate biodiversity net gain requirements for sites on their brownfield registers.*** (Paragraph 180)

*Government response:*

On 29 November we published the detailed draft regulations and guidance for Biodiversity Net Gain which will ensure brownfield development can contribute to our aim of enhancing biodiversity across England. Many brownfield sites offer significant potential for achieving biodiversity net gain because of their low baseline biodiversity value, and as these sites are often urban and suburban locations, practical enhancements such as street trees, green roofs and rain ponds which achieve net gain for a development will directly benefit local communities as well as nature.

The Government recognises that some brownfield sites can face viability pressures. That's why Biodiversity Net Gain has been designed to deliver a minimum 10% net gain relative to the existing baseline for a development. The statutory metric has low values for many urban habitats and existing sealed surfaces such as tarmac, buildings or highways have a zero score meaning they are effectively exempt from the net gain requirement under the de minimis exemption. This exemption applies for developments that do not adversely impact on existing habitats below a stated threshold. The Government will keep the implementation of Biodiversity Net Gain under review.

**The interaction between planning permission and permitting is causing delays on some sites, with a specific impact on the development of brownfield land.** (Paragraph 186)

***The Department for Levelling Up, Housing and Communities should work with the Department for Environment, Food and Rural Affairs to review planning and permitting requirements for brownfield land and eliminate overlap. This should include checks on how brownfield sites are assessed to ensure public sector resources are used most effectively.*** (Paragraph 186)

*Government response:*

The Department of Levelling Up, Housing and Communities and the Department for Environment, Food and Rural Affairs recognise the importance of brownfield development to

clean up contaminated land, improve the environment and regenerate places, and regularly engage on such matters.

The planning system works alongside the Environmental Protection Act, Building Regulations and Environmental Permitting Regulations. To ensure a site is suitable for its new use and to prevent unacceptable risk from pollution, the implications of contamination for development should be considered through the planning process to the extent that it is not addressed by other regimes.

National planning policy expects local planning authorities to give substantial weight to the value of using suitable brownfield land within settlements; including by supporting appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.

To prevent unacceptable risk from pollution, the implications of contamination at a proposed development site should be carefully considered by the local authority. The developer is responsible for ensuring development will be safe.

The Environment Agency has taken a supportive approach to the use of the CL:AIRE Definition of Waste Code of Practice, where excavated materials can be safely and appropriately reused under a regulatory position without waste controls. They are currently reviewing it to bring greater certainty to developers, helping them to identify and effectively manage risks on contaminated sites. Additionally, the Environment Agency is refreshing the guidance for developments which require both planning permission and environmental permits. This guidance advises that for cases where the planning and permitting interface is more complex, that the applicant parallel tracks the permit and planning application so issues can be resolved in parallel, avoiding delays.

***The parallel approval approach for permits and planning applications used for Nationally Significant Infrastructure Projects should be expanded to all brownfield and housing developments significant enough to justify an Environmental Impact Assessment.*** (Paragraph 187)

*Government response:*

The Government has found that there is considerable duplication between what is considered at the planning stage and what is considered under, or through other consenting regimes such as environmental permitting. Many of the matters considered under the framework of environmental assessment for planning are then reconsidered, often in more detail, when a permit is required. The permit may stipulate a change to the scheme to make it acceptable, or require a particular form of mitigation, which then may require a further planning permission in itself, or a review of the previous permission.

A key aspect of our reforms to the current system of environmental assessment is reducing duplication in assessment across consenting regimes and we will look at how to improve interaction with environmental permitting.

***The Government should ensure that existing planning consents, which cannot be commenced because of an inability to clear conditions owing to new advice under the habitats regulations, are automatically extended for a further three years.*** (Paragraph 192)

***The Government should remove the need for a habitats regulations assessment to be undertaken for post-permission approvals for at least three years and for longer where development has been substantially started within the appropriate timescales for the development.*** (Paragraph 193)

**We were disappointed to learn of the Government's decision to not consult on nutrient and water neutrality guidance despite time being available. This choice was unnecessary and led to serious ramifications. It is indicative of a wider issue: communication on new or evolving environmental regulations is often not provided in a timely way, lacks detail and practical solutions, or is difficult to understand. This inhibits the ability of developers and local planning authorities to respond appropriately, so delaying development.** (Paragraph 199)

*Government response:*

These measures would require legislative changes. The Government previously brought forward amendments to the Levelling Up and Regeneration Bill with this objective in mind. The Government's reforms would have provided the certainty for which local authorities, communities and developers have been calling, by making a targeted and specific change to the law so that there was absolute clarity housing development could proceed in areas currently affected by nutrient neutrality. At the same time, the Government had set out a wider environmental package aimed at tackling the underlying sources of nutrient pollution, restoring nature, and supporting our commitment to leave our environment in a better state than we found it.

Taken together, these reforms would have benefited communities and the environment. They would have allowed for the delivery of more than 100,000 new homes. Unfortunately, despite strong support from local authorities and house builders, they were voted down by the House of Lords. Choices have consequences, and, regrettably, we now must go forward based upon these choices.

The Government wants to provide certainty for house builders and local authorities. We will unlock housing as quickly as possible in affected areas through the Natural England led Nutrient Mitigation Scheme, the Local Nutrient Mitigation Fund, and the continued advice and guidance to house builders, Local Planning Authorities, and mitigation providers. Government has taken substantial steps to tackle nutrient pollution at source while unlocking sustainable development across the country. Nutrient neutrality, the delays it is causing to housing delivery, and the wider need to restore our waterways are government priorities.

The Government has been clear in its commitments to uphold, not weaken, environmental protections. We must ensure the existing regulatory system continues to operate effectively to ensure valuable sites are properly protected. We continue to look for ways to make our nature protections system and the supporting processes more effective.

***Those who deliver policy through the planning system should be consulted on the content and drafting of relevant advice. Defra and DLUHC should work with Natural England and the Environment Agency to develop a suitable consultation method which can be used ahead of issuing advice under the Habitats Regulations. Where necessary this should allow for confidential discussions.*** (Paragraph 200)

*Government response:*

The Government acknowledges the value of consultation and that it is highly desirable wherever possible when changes to environmental regulation are to take place. However, the independent role of statutory bodies needs to be maintained so that the advice they give under the Habitats Regulations and in relation to planning can be relied upon by local authorities and developers.

The planning system should be genuinely plan-led; providing a framework for addressing housing needs and other economic, social and environmental priorities. It is important that environmental matters are considered at the earliest stage of the planning process, with advice being factored into the plan-making process, based on advice from statutory consultees at the earliest opportunity. This should allow for strategic considerations, through environmental assessment. The existing process of Sustainability Appraisal should be used to set objectives which could include prevent deterioration of current water body status, taking climate change into account and seeking opportunities to improve water bodies.

**We are sympathetic to the fact that the use of secondary legislation will allow for regulations and policy to respond to the “fast-changing nature of environmental science”. This does not preclude the Government from setting out how the policy will be implemented in the immediate term.** (Paragraph 201)

*Government response:*

The new system of Environmental Outcomes Reports will be more dynamic, and the Government will want to be able to update its approach as our understanding of the issues and complexities of environment assessment deepens. This would not be possible if requirements were set in primary legislation. In order to secure this flexibility, we have carefully considered the structure of these measures and the balance between primary legislation, secondary legislation and guidance.

The Environmental Outcomes Reports consultation which closed in June 2023 sought views on how this new framework could work as a replacement to the existing environmental assessment regimes. It has allowed us to listen to stakeholders to ensure we retain and enhance the elements of the process that add value, while removing areas of duplication or confusion. We will further develop and refine the detail of the new assessment framework by using feedback from this consultation.

***Given the impact of uncertainty in the planning system on the delivery of new homes, the Government should ensure that policy is communicated clearly and in a timely manner. For a transition period to be successful stakeholders need to know to what they are transitioning. Statutory dates for the implementation of new regulations should reflect the lead times for development with the full policy detail available.*** (Paragraph 202)

*Government response:*

The interaction provisions are designed to ensure a smooth transition from the current system to reporting through Environmental Outcomes Reports. The Government intends to bring forward reforms in a measured way which requires the ability to ensure interaction between reformed and unreformed regimes as we transition to the new system. Replicating the old interaction provisions, with no power to implement new ones, risks creating practical challenges that could increase the risk of duplication and miscommunication between regimes.

While we want to realise the benefits of reform as quickly as possible, we recognise the need to manage the transition to the new system carefully. Now that the Levelling Up and Regeneration Act has received Royal Assent, we plan to bring forward draft regulations that will be informed by our initial consultation and ongoing programme of user and stakeholder engagement. In this recent consultation, we sought views on the length of transition required.

***By the end of 2023, the Government should publish its timeline for reviewing and updating all National Policy Statements.*** (Paragraph 206)

*Government response:*

National Policy Statements, which are agreed by Parliament, underpin the Nationally Significant Infrastructure Project system. They give developers and communities clarity about the standards necessary to secure planning consent and provide a framework for consideration of individual projects.

The Government's programme for reviewing and updating the National Policy Statements is as follows:

- Following public consultation earlier this year, the Department for Energy Security and Net Zero aim to designate the suite of revised Energy National Policy Statements ENs 1 – 5 by the end of the 2023. These National Policy Statements fully reflect the strategic importance of new energy infrastructure for delivering the UK's energy security and affordability and to deliver on net zero. A new National Policy Statement for nuclear energy infrastructure deployable after 2025, replacing EN-6 that was designated in July 2011, is currently under preparation.
- The Department for Transport is reviewing the existing National Networks National Policy Statement which was designated in 2015. The Department consulted earlier this year on a revised draft and this has also been going through its parliamentary

scrutiny process. Subject to ministerial and parliamentary approval, Department for Transport aim to designate the revised National Policy Statement early in 2024.

- The Secretary of State for Transport announced a review of the Ports National Policy Statement on 14 March 2023. Department for Transport are currently undertaking that review, with the aim of potentially consulting on a revised draft of the National Policy Statement during 2024.
- The Secretary of State for Transport decided in September 2021 that it was not appropriate to review the Airports National Policy Statement at that time. The Government has been clear that the issue of whether to review the National Policy Statement would be considered again after the Jet Zero Strategy was finalised and we have more certainty through further aviation demand forecasting about the longer-term impact of COVID-19 on aviation demand.
- The Water Resources National Policy Statement was designated on 18 September, providing a clear framework for those making development consent applications for water resources infrastructure such as major dams, reservoirs and facilities enabling the transfer of water resources. The National Policy Statement also supports the implementation of the Government's Plan for Water and securing our water supplies by enhancing the resilience of water infrastructure.
- A decision on whether to review the Wastewater National Policy Statement, which was designated in March 2012, has not been made at present. The Government will consider whether to review when we understand the type and scale of nationally significant wastewater development required in sewerage undertakers' next asset planning period (2025-2030).
- It is not intended to consider whether to review the Geological Disposal National Policy Statement (which was designated in 2019) at the present time.
- A decision on whether to review the Hazardous Waste National Policy Statement, which was designated in June 2013, is dependent on a review of the Hazardous Waste Strategy for England being completed first. Defra is currently considering timelines for completion of this work.

### Impact on smaller developers

**Effective moratoria on housebuilding caused by advice such as nutrient and water neutrality risk putting small developers out of business in affected areas.** (Paragraph 214)

**All public sector development mitigation schemes should prioritise provision for small developers.** (Paragraph 214)

**Following the passage of the Levelling-up and Regeneration Bill, the Secretary of State should use their powers to ensure that all wastewater treatment works with capacity for a population of 250 are upgraded by the 2030 deadline.** (Paragraph 215)

#### *Government response:*

Natural England will continue to deliver the existing Nutrient Mitigation Scheme in line with the Environment Secretary's direction of 28 July 2022. Natural England will continue to work with Local Authorities, the private sector and others to tackle nutrient pollution and work towards the long-term health, resilience and restoration of protected sites. The Nutrient Mitigation Scheme is prioritising provision for small developers and further details about plans will be set out shortly.

The nutrient pollution provisions in the Levelling Up and Regeneration Act 2023 place a new statutory duty on water companies in England to upgrade wastewater treatment works to the highest technically achievable limits in designated areas by 2030. This will drive considerable improvement at wastewater treatment works discharging to areas of the country particularly impacted by nutrient pollution. Developers that bring forward new developments served by wastewater treatment works subject to the duty will benefit from these improvements - this is the case for both large and small developers.

We have carefully defined the scope of the statutory duty to balance our ambition to improve water quality with the impact on water bills. Our analysis shows that applying the duty to smaller wastewater treatment works would only marginally improve the impacts on the water environment. However, it would increase costs by over £1 billion, and these costs would be passed on to water bill payers.

**Allowing local planning authorities to require biodiversity net gain ahead of the delayed statutory deadline negates the benefit of this accommodation. Where the Government has announced a transition period and implementation date local planning authorities should not be able to act ahead of it.** (Paragraph 219)

#### *Government response:*

Under the Environment Act 2021, Biodiversity Net Gain will become mandatory for most major development from January 2024, for small sites from April 2024 and for Nationally Significant Infrastructure Projects it is planned for 2025.

Ahead of that local planning authorities and developers may choose to deliver Biodiversity Net Gain either under planning policy or on a voluntary basis in line with the National Planning Policy Framework, which has included policy to minimise impacts on biodiversity and provide net gain where possible since 2012.

***The Government should ensure that local planning authorities are prohibited from introducing biodiversity net gain requirements above the 10 per cent minimum for small sites. These sites should be exempt from following the mitigation hierarchy and immediately permitted to deliver an offsite solution.*** (Paragraph 220)

*Government response:*

We believe that 10% strikes the right balance between development and the need to reverse environmental decline. This is based on evidence conducted early in the policy on the impact of a mandatory approach on housing viability.

There are transitional arrangements for small sites to allow the sector longer to prepare, and specific exemptions, such as the de-minimis exemption for development impacting habitat below a specified threshold.

It will generally be inappropriate for plans or supplementary planning documents to include policies or guidance which are inconsistent with the Biodiversity Net Gain framework, for instance by applying Biodiversity Net Gain to exempt categories of development or encouraging the use of a different biodiversity metric or Biodiversity Gain Hierarchy. Local authorities must take into account the Biodiversity Gain Hierarchy when considering whether the biodiversity objective has been met and this will include consideration of site specific circumstances. For example, on small sites where there may not be land available to achieve net gains on site alongside other land use policy requirements.

Plan-makers may seek a higher percentage than the statutory objective of 10% Biodiversity Net Gain, either on an area-wide basis or for specific allocations for development through the local plan process. However, such policies will need to be evidenced including as to local need for a higher percentage, local opportunities for a higher percentage and any impacts on viability for development. We will continue to keep this policy under review and will consider taking action in the future should that be necessary.

***Large, and growing, up-front costs disincentivise developers of all sizes from entering the housing market. For smaller developers with limited access to finance they are a greater burden. Whilst developers are willing and able to cover these costs in many circumstances, they should not be asked to fund inapplicable surveys.*** (Paragraph 223)

*Government response:*

There will be a transition period for small site development before the mandatory Biodiversity Net Gain requirement comes into force to lessen initial burdens and allow smaller developers more time to prepare for Biodiversity Net Gain. To further help small developers we have

provided a simplified small sites metric to streamline the process for calculating net gains for small sites where there is no priority habitat present.

Additionally, the Biodiversity Net Gain hierarchy asks for developers to consider what they can do to deliver Biodiversity Net Gain on site through development design, before they buy off-site units or statutory credits. There are specific exemptions, such as the de-minimis exemption for development impacting habitat below a specified threshold and the small-scale self and custom build exemption, that may be applicable to some small site development.

***The Government should review the range of ecological assessments required of developers. It should issue guidance to local planning authorities on which assessments can be discretionary for smaller sites, rather than required up front.*** (Paragraph 224)

*Government response:*

The Government understand the need to apply a more consistent, streamlined and digitally enabled approach to the way planning applications are made, which is proportionate to the scale of the development and to ensure faster and better decision making.

Through the Levelling Up and Regeneration Act 2023, we are introducing powers to change how information requirements are met when an application is made, including how it can be submitted.

These reforms will enable greater consistency and transparency to planning data by utilising data standards and collecting information using a standardised approach. This will enable greater consistency and availability of planning information.

We are mindful of the pressures faced by small and medium-sized enterprises and housebuilders, as these powers will need secondary legislation to be brought into effect, we will fully consider what is the most proportionate approach, including consideration of the needs of these groups.

Although not an ecology assessment, the example of the requirement for a site-specific flood risk assessment is raised in the report. The Government takes the risk of flooding seriously, and the National Planning Policy Framework sets out a clear, over-arching policy and criteria for managing development in areas of flood risk.

For larger projects, the Government's move towards an outcomes-based approach to environmental assessment will allow the assessment process to demonstrate whether the project supports the delivery of the Government's environmental outcomes. These outcomes will ensure the ambitions of the Environment Act 2021 and the current Environmental Improvement Plan are reflected in the planning process.