

HM Government – Written evidence (IER0030)

PURPOSE OF THE INQUIRY

This inquiry will assess the governance, the associated costs for developers and promoters, and the impact on the delivery of projects, of nationally defined environmental regulations in England. The Committee is not seeking to evaluate the merits of individual environmental regulations but rather how these are implemented through the planning system and the interactions between different environmental regulations.

Regulations aimed at managing the effects of development on the natural environment play an important role in underpinning and shaping the planning system. The purpose of the planning system is to deliver sustainable development. This is summarised in the National Planning Policy Framework as meeting the needs of the present without compromising the ability of future generations to meet their own needs, with the objective of protecting and enhancing our natural, as well as our built and historic environment.

Proportionate and well-designed regulations are necessary both to stay on track to meet our legal targets for nature's recovery, and to ensure that poor environmental condition does not itself become a barrier to economic development. This may arise where the unfavourable condition of legally protected sites results in additional obligations falling on developers – as seen in the case of “nutrient neutrality” – or where the loss of environmental services on which we all depend directly inhibits the viability of new development. Environmental protections are therefore essential to sustainable long-term economic growth and the wider social good.

This response focuses on regulations primarily aimed at protecting our natural environment. It does not cover regulations aimed at protecting our built or historic environment or the building regulations.

In providing this evidence, Defra and DLUHC have sought to give an overview of the position across the Town and Country Planning Act system but have limited our response to the most significant areas of environmental regulation.

1. What environmental regulations need to be considered when undertaking development? When during the development process are they most likely to be encountered?

The environmental regulations that apply will depend on the size, nature and location of development. The key environmental regulations relating to development are as follows. Please note that while this is not a comprehensive list, it reflects key environmental considerations. The environmental regulations do not necessarily apply in all cases and will depend on the size, nature and location of development.

Prior to planning application (location and project site selection stage)

The Environmental Assessment Plans and Programmes 2004 Regulations (also known as Strategic Environmental Assessment or SEA)

The Conservation of Habitats and Species Regulations 2017

Environment Act 1995 (Part IV Air Quality Management Areas – limit development that will worsen air quality in identified areas)

Project development and application (initial consenting stage)

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

Environmental Protection Act 1990

Section 23 of the Land Drainage Act 1991

The Planning (Hazardous Substances) Regulations 2015

Wildlife and Countryside Act 1981 (Protected Species Licences)

The Town and Country Planning (Tree Preservation) (England) Regulations 2012

The Hedgerow Regulations 1997

The Environment Act 2021

Following receipt of planning permission (additional consenting and implementation stages)

Pollution Prevention and Control Act 1999 and The Environmental Permitting (England and Wales) Regulations 2016

Section 61 of the Control of Pollution Act 1974 (construction noise)

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When looking at the regulatory landscape, it is important to consider these regulations in the wider policy context for development. The National Planning Policy Framework (NPPF) sets an expectation that planning policies and decisions should contribute to, and enhance, the natural and local environment whilst regulations will require specific regulatory tests to be passed. Many of the actions identified as meeting regulations will also be linked to requirements set out in the NPPF and the interplay between the two must be considered, with respect to avoiding duplication and maximising effectiveness of delivery. Any assessment of the regulatory framework should consider this. Furthermore, the planning system supports the implementation of environmental regulation, for

example, through helping to safeguard international, national and local designations, and protected landscapes.

The Committee will be aware that the Levelling Up and Regeneration Bill is seeking to secure powers to reform the current environmental assessment processes of Strategic Environmental Assessment and Environmental Impact Assessment through the introduction of Environmental Outcomes Reports. In addition, Government has committed to implement schedule 3 to The Flood and Water Management Act 2010 subject to final decisions on scope, threshold and process, while also being mindful of the cumulative impact of new regulatory burdens on the development sector. There will be a public consultation later this year with implementation expected during 2024. We are also implementing policies under the Environment Act 2021 (i.e. biodiversity net gain).

2. What is the single biggest challenge for developers and promoters in fulfilling environmental requirements? How could this be resolved?

Engagement with developers and promoters carried out as part of the evidence base for reforms in the Levelling Up and Regeneration Bill found that a shortage of planners in planning authorities, and particularly a lack of experienced planners confident in dealing with the environmental effects of larger-scale development, was the biggest impediment to effective process and decision-making.

Practitioners working on Strategic Environmental Assessments and Environmental Impact Assessments raised issues with the environmental assessment process with several main factors. These included duplication with matters already considered throughout the over-arching planning process which the assessments inform and a reliance on subjective, 'professional judgement' in assessments, making them particularly vulnerable to legal challenge. Another issue mentioned was a lack of integration between the various environmental assessment processes (Strategic Environmental Assessment, Environmental Impact Assessment and Habitats Regulation Assessment) in practice, requiring specific environmental issues to be revisited, even where they had been previously addressed in another assessment. A lack of post-development monitoring activity also meant there was uncertainty over the effectiveness of mitigation measures, which resulted in the same issues being repeated in subsequent applications.

The powers we are taking to replace the processes of Strategic Environmental Assessment and Environmental Impact Assessment with Environmental Outcomes Reports in the Levelling Up and Regeneration Bill aim to improve integration between assessments; streamlining assessments by reducing duplication with matters considered elsewhere; and replacing subjective assessments of the significance of an effect with assessments against outcomes, measured using indicator sets of quantifiable, publicly accessible, data. Clearer monitoring and reporting requirements will close the circle capturing data to

inform, and simplify, the next generation of development and assessment activity. This aims to make the environmental assessment process more efficient and more effective, addressing the current challenges while driving better outcomes for the environment.

3. Are changes in environmental regulations governing development clearly communicated? Is sufficient support available to help developers and promoters fulfil their responsibilities?

The Government and its associated regulators publish guidance on the requirements of environmental regulations on GOV.UK, adhering to standards designed to be naturally user friendly, and to follow a consistent, predictable, format. Planning Practice Guidance aimed at local planning authorities and developers provides information about how regulation fits into the planning process. Natural England and Environment Agency provide standing advice, e.g. on protected species or the interactions between planning permission and environmental permitting, to help planning authorities and developers understand legislative requirements.

Changes to regulations are clearly communicated and support for implementation, via our environmental statutory consultees, is tailored depending on the nature of the change. This can include capacity building and sharing evidence, data and expertise.

The digitalisation of the planning system through the Levelling Up and Regeneration Bill 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. These reforms will enable greater consistency and transparency of planning data, utilising data standards and collecting information using a standardised approach. This will enable greater consistency and availability for key datasets that underpin the planning system; including environmental data. This will in turn support better environmental outcomes in plan-making and decision-taking.

This shift will underpin a more efficient and responsive planning ecosystem. Open, standardised planning data will be more readily available, helping developers and other actors in the planning process assess suitable sites for development faster, identify environmental impacts and options to mitigate adverse effects far more quickly, and make monitoring the outcomes of development easier.

4. What are the costs of meeting environmental regulations for developers? How does this vary for types of developer or promoter and in different locations?

There are a number of environmental regulations that will affect development costs. Costs are always site specific and depend on a number of factors such as

the condition of the land; the nature and scale of development, and any wider locational issues or requirements to be addressed. Where new regulations are introduced, an assessment is made of their impact on development cost in the form of an Impact Assessment (or de minimis assessment for lower-cost measures).

Engagement with users suggests that costs associated with meeting environmental regulations are minimised by seeking planning advice early. We understand that when planning advice – whether from the local planning authority, statutory consultees or a professional planning consultant – is sought early, project and compliance costs can be minimised as the project has been designed to accommodate environmental constraints from the outset. This saves time and money.

5. Is there sufficient coherence between different environmental regulations? How could regulations be administered in a more systematic and coherent way?

The current suite of environment regulations has evolved gradually reflecting different domestic priorities and the UK's various international obligations and is well established in the planning system.

Changes to permitting have removed duplication and simplified consenting, for example, allowing developers to apply for one permit covering many activities. We are continuing to streamline processes while focusing on delivering our environmental ambitions, e.g. through the new system of Environmental Outcomes Reports. The Environment Agency is also continuing to streamline operational delivery of permitting, including by improving digital systems and continuing to invest through its Regulatory Services Programme in the IT infrastructure for permitting.

Our proposed reforms of Strategic Environmental Assessment and Environmental Impact Assessment through the Levelling Up and Regeneration Bill is one example of how we are progressing improved coherence, with a particular emphasis on avoiding duplication. We will clarify the role that SEA should play in identifying opportunities to avoid impacts on protected sites, thus allowing projects to avoid the need for assessment under the Habitats Regulations. Where impacts on protected sites are unavoidable, information from the SEA should contribute to the Habitats Regulation Assessment.

6. What impact do Government bodies such as the Environment Agency and Natural England have on planning and development decisions? How effectively do these bodies work together? How does the Environment Agency interact with development as both regulator and owner of land and other assets?

The Environment Agency and Natural England are statutory consultees for planning applications within their remit as well as for Nationally Significant Infrastructure Projects and local authority local plans, so their advice is embedded into the planning process. For example, between April 2021 and March 2022:

- Natural England received over 17,000 planning applications in 2021-2, responding to 90% within 21 days or otherwise agreed deadlines and objecting to fewer than 1% of cases.
- The Environment Agency responded to consultations and pre-application enquiries on over 11,000 proposed developments, responding to 88% within 21 days or otherwise agreed deadlines. Between April 2015 and March 2022, 97% of planning decisions were in line with Environment Agency advice on flood risk.

The decision to grant or refuse a planning application rests with the local planning authority taking in to account all relevant planning considerations, including the advice of consultees. These bodies also work directly with developers in an advisory role, for example, on design or environmental mitigation to prevent costly issues arising that could stop or hold up projects. The Environment Agency and Natural England are also working to improve data and information to underpin environmental protection. This includes updated flood data and mapping as well as green infrastructure mapping.

The Environment Agency and Natural England (along with other government bodies such as Forestry Commission) work closely together locally and nationally on development matters, albeit with distinct statutory roles and responsibilities. This includes jointly developing detailed information for developers on how to get environmental advice and when to consult them on planning proposals. They are also working closely on implementation of Environment Act targets, biodiversity net gain and Local Nature Recovery Strategies. They are working together, through the Joint Operations Leadership Team, to prioritise actions which coordinate and streamline involvement in development proposals, for example through early collaboration on Nationally Significant Infrastructure Projects.

The Government has also committed to consult on whether to make water companies statutory consultees on certain planning applications. This commitment was made during the report stage of the Levelling Up and Regeneration Bill and in the Plan for Water.

7. What role does Natural England play in monitoring and implementing these regulations? How does Natural England's involvement affect the delivery of new development?

As part of Natural England's advisory role in the land use planning process, Natural England provides advice on environmental assessments to ensure

compliance with relevant environmental policy and legislation, address adverse impacts on the natural environment and secure effective mitigation measures and opportunities for environmental enhancement. Natural England has specific roles in relation to protected sites. It also offers early advice to developers on wildlife licensing and undertakes compliance checks to ensure licences are operating as intended with action taken to investigate and rectify non-compliance. Natural England will have a role in monitoring and evaluating the implementation of mandatory Biodiversity Net Gain, including being the operator of the Biodiversity Gain Sites register.

Natural England is actively working to improve the implementation of regulation through strategic licensing approaches. For example, through its district level licensing scheme for Great Crested Newts which enables the developer to make a conservation payment to fulfil requirements for a licence with no further obligations. The aim of this is provide a quicker regulatory process, cost savings and reduce delays compared to traditional mitigation licences, as well as better outcomes for the species. They have also been trialling a new approach to bat licensing through the Bat Earned Recognition Pilot. The pilot looked to streamline the licensing process through accrediting ecologists, enabling them to have greater discretion to progress. It is estimated that this could be used for up to 90% of applications and aims to provide better outcomes for bats and more timely decisions for users. Evaluation of the Pilot suggests that the accreditation can play a role in raising professional standards, and as well as reducing licensing burdens. We anticipate a 58% reduction in preparation time.

8. To what extent are the information needs of the planning system proportionate?

All development – ranging from a roof extension to a new nuclear power station – can have an impact on the quality and nature of the surrounding environment. However, we want to ensure the information required at the planning application stage is proportionate to the scale of development and nature of the environmental impact being proposed, so that the system functions effectively.

The largest forms of developments are subject to Environmental Impact Assessment. There is currently some duplication, however, between what is required to be assessed under the town and country planning regime and what is required to be assessed through the environmental assessment processes we have inherited from the EU, and as a result are often overly complicated. Our reforms to Environmental Outcomes Reports will address this.

More generally, 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.

9. How far do the key actors in implementing environmental regulations have sufficient resources to carry out their responsibilities?

The lack of resources in the planning system is an industry-wide recognised and frequently raised issue. Knowledge of the complex landscape of environmental regulation only comes with experience of more challenging planning applications and builds up over time. Much of this knowledge has been lost from local authorities due to their inability to retain experienced planners and lack of in-house ecologists. This results in delays in processing planning applications as issues come to light late in the consenting process as planners have not had previous experience of these types of developments. Local planning authorities struggle to recruit a range of specialists including in environmental planning.

The funding shortfall for the planning application service is estimated to be in the region of £225 million annually (approximately 33%). We want to reduce this funding shortfall and create greater financial sustainability for all local planning authorities.

On 28 February we published the technical consultation 'stronger performance of local planning authorities supported through an increase in planning fees'. The consultation seeks views on proposals to increase planning fees by 35% for major applications and 25% for all other applications. The consultation also seeks views on how we can build the capacity and capability of local planning authorities.

We have already started to work alongside the sector to design a suite of targeted interventions to support the development of critical skills and to build capacity across local planning authorities. This includes engaging with stakeholders responsible for implementing environmental regulations.

To support the development of our planning capacity and capability programme we will be carrying out research in the coming months on skills and capacity in local planning authorities.

We are providing £1 million funding to Public Practice to support their work in helping councils to recruit and develop skilled planners, increase awareness about careers in local government and share best practise around improving communities in the public sector. We also continue to provide ongoing funding to the Planning Advisory Service to support the capacity and capability of local authorities. This includes providing specialist training and peer support as well as the delivery of a series of bespoke events on the Levelling Up and Regeneration Bill to support local authorities.

We are also continuing to support local authorities through the development of new digital tools that will help to make planning processes more efficient.

10. Are there further significant changes which would improve this system?

Better integration of environmental regulation into the planning system would ensure all issues are considered together, and in the correct sequence.

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. The new system of environmental assessment, Environmental Outcomes Reports, proposed in the Levelling Up and Regeneration Bill will allow the government to ensure the ambitions of the Environment Act 2021 and the 25 Year Environment Plan are placed at the centre of decision-making.

Reforms will address the evolution of the current system that has gradually made assessment less proportionate, less effective and cumbersome, with a level of bureaucracy beyond its original intentions. The outcomes-based approach will allow the government to set clear expectations on how plans and programmes should demonstrate they are supporting wider government environmental objectives. This will then be followed up with robust monitoring measures that will close the loop of assessment, ensuring that reporting is accurate, and allow data to be captured and fed back into the system. Comprehensive technical guidance, including on how to measure the contribution of a plan or project to an outcome, will be produced which will ensure authorities are equipped with the best possible information when reporting and decision-making.

National Development Management Policies are being introduced by the Levelling Up and Regeneration Bill. Giving National Development Management Policies statutory status will give greater clarity as to the weight of national planning policies in planning decisions, including important national policy-based protections. They will make it easier for applicants to align their proposals with national and local policy requirements and, where they wish, to go beyond them. We expect this to be particularly valuable for SMEs.

Increased capacity of statutory consultees is fundamental to deliver effective and timely advice, therefore it is essential that these bodies are resourced effectively. Taking steps to improve cost recovery whilst ensuring access to high-quality advice and overall service improvements (e.g. reduced risk of delays to determination times), will provide a stable long-term funding basis for the vital work of statutory consultees. Amendments to the Levelling Up and Regeneration Bill will enable statutory consultees to recover costs from applicants for the advice they provide in relation to Development Consent Orders (as part of schemes coming through the Nationally Significant Infrastructure Project route) and planning applications (through the Town and Country Planning Act route), which will enable greater cost recovery, ensuring that they can continue to support and enable development schemes which support economic growth and regeneration.

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