

**Written evidence submitted by the UK Environmental Law Association (TPW0055)**

**UKELA Response to the Environment, Food and Rural Affairs Committee Inquiry into Tree Planting and Woodlands**

UKELA (UK Environmental Law Association) comprises over 1,500 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law.

**1) Are the UK Government's targets for increasing forestry coverage, and tree planting, for England and the UK sufficiently ambitious and realistic?**

1. The tree planting ambition must be weighed against the potential trade-offs with other land uses and the high risks of failure associated with large scale tree planting. The focus on trees must not distract from the imperative of protecting biodiverse and carbon rich ecosystems such as peatlands, grasslands, saltmarshes and seagrasses, which also deliver a range of other ecosystem services. These remaining, intact ecosystems are critical components of our ambition to reach net zero and must be legally protected, as should more marginal areas, which have potential for repair and restoration. Remaining ancient woodlands like these other irreplaceable habitats, should not be subject to destruction and damage through a biodiversity net gain (BNG) loophole.
2. Tree planting should not be promoted as a carbon solution 'flagship'; rather as a contribution to biodiversity policy objectives and other benefits including carbon capture, flood prevention and wellbeing. Planting is ideally a complementary strategy to natural regeneration, which is widely acknowledged as far more cost-effective, if the right conditions for re-colonisation are in place (see para 6 below). Furthermore, when grants and tax breaks are available for new planting, this can skew decisions, potentially creating a perverse incentive. The rush to plant trees also risks undermining buy-in by local communities and the long-term commitment required for tree maintenance. Nature based solutions will make a significant contribution towards

achieving net zero, but only if there is a commitment to keep fossil fuels in the ground and consumer behaviour changes.

3. Ambitions for tree planting must be informed by habitat mapping (see Clause 98 of the Environment Bill) with high resolution, integrated maps indicating off-limits priority areas where biodiversity/carbon rich areas ‘collide’. As new mapping tools emerge, so should standard principles for mapping the Nature Recovery Network, ensuring that national strategies such as those for trees, nature and peat, are not created in silos and are complementary and consistent across England.<sup>1</sup> A politically clear level of ambition, based on these spatially detailed maps can then translate into deliverable policy, and adapted as new mapping techniques develop and as lessons are learnt on the ground. Without a coherent narrative from government – in this instance, which areas are not appropriate for tree planting - Local Nature Recovery Strategies (LNRS) have no blueprint to deliver biodiversity priorities on the ground.
4. The Tree Strategy ambition to plant 30000 ha or more trees a year to 2050, equates to 90-120 million trees, per annum, with a 60/40 ratio of broadleaves to conifers.<sup>2</sup> This represents a density (3-4000 stems/ha), which is more conifer than broadleaf appropriate. Moreover, current strategy on seed sourcing is over-reliant on the concept of ‘plus trees’, i.e. selection based on traits of commercial, rather than conservation importance and a seed collection strategy is an imperative if genetic lineages are to be maintained.<sup>3</sup> Current guidance on provenance should be evidence-based. Furthermore, this ambition is contingent on ‘improved woodland management’ and strict compliance with the UK Forestry Standard (UKFS) (see below, Q2). Newly planted trees need considerable tending and long-term management, even if they are planted in places which are ecologically suitable. The Committee on Climate Change acknowledges the need for an increase in the skilled silviculture workforce and in trained ecologists and that the tree planting ambition is unrealistic if these requirements are not met.<sup>4</sup> Trees also need a lot of watering for their first five years. This may involve a trade off with the 25 Year Environment Plan goal of ‘Clean and

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<sup>1</sup> For example: <https://explorer.naturemap.earth/>

<sup>2</sup> Committee on Climate Change, *Land Use: Policies for Net Zero* (2020), 33, at n14:

<sup>3</sup> Clare Trivedi and others, *Strategy for UK Forest Genetic Resources* (Royal Botanic Gardens, Kew 2019), 9

<sup>4</sup> Committee on Climate Change, citing CONFOR at n79: ‘800 people would be needed to plant 40,000 hectares annually.’

Plentiful Water’ and has implications for the security and quality of both public and private water supplies<sup>5</sup> (see Q2).

5. Shifts from grassland to woodland habitat creation may not work everywhere. Researchers have advised that if the 34% of Scotland's land area, earmarked for its woodland expansion potential, is planted, this risks jeopardizing soil (and ecosystem) C stocks on extensive heather moorlands and heathlands with organic horizons of <50 cm depth.<sup>6</sup> The impacts on soil carbon storage in previously unforested habitats must be fully understood before changes in land-use result in a sink turning into a source, thus compromising the ability to meet net zero targets.
6. Natural regeneration is far superior to new planting from a biodiversity perspective, favouring local races of a tree species rather than imported ones and reducing disturbance to remaining habitat biodiversity. In many cases where fragments or at least a few species of previous native woodland remain, clearing the land and replanting on recently degraded ancient woodland is disastrous for biodiversity and boosts carbon emissions for some time after. If there is nothing left, new planting is worthwhile, but using, where possible, local stock to reduce risk of disease spread.<sup>7</sup> We should also consider the need for native shrubs and ground flora as well as trees, to create more varied habitat.
7. The RSPB’s ‘Protecting Nature’s Carbon Store states that ‘In total, 545 million tonnes is stored in the top 30cm of soils in the most nature-rich areas alone – equivalent to four times the UK’s annual greenhouse gas emissions. Yet two-thirds of this carbon store by volume has no protection.’<sup>8</sup> Only 2-4% has had restoration work in the last 30 years. If not restored, carbon emissions from peatlands and other irreplaceable habitats will likely cancel out any gains from tree planting.

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<sup>5</sup> Ellie Crane, *Woodlands for Climate and Nature: A review of Woodland Planting and Management Approaches in the UK for Climate Change Mitigation and Biodiversity Conservation* (RSPB 2020)

<sup>6</sup> Nina L. Friggens and others, ‘Tree Planting in Organic Soils Does not Result in Net Carbon Sequestration on Decadal Timescales.’ 26 *Glob Change Biol* 5178

<sup>7</sup> Clare Trivedi and others, *A Strategy for UK Forest Genetic Resources* (Royal Botanic Gardens, Kew 2019), 5

<sup>8</sup> <https://storymaps.arcgis.com/stories/fe3455a345bf45ce9b72d70ae75f933b>

## **2) Are the right structures in place to ensure that the UK wide target for increasing forestry coverage is delivered?**

8. Forestry is an activity, so it is an increase in tree canopy that is needed to sequester carbon, not necessarily an increase in commercial forestry. To date, tree planting targets in England have not been given statutory backing, but DEFRA's recent Targets Policy Paper<sup>9</sup> states that the government will develop evidence as to whether statutory long-term targets for trees would be appropriate to increase planting. Any statutory tree planting targets should sit within the Environment Bill biodiversity target framework and be treated as part of a coherent package to deliver a diversity of habitats, including woodland. It is unclear whether tree planting for BNG will count towards the proposed tree-planting target or be an additional gain. If BNG is replacing lost trees, it should not be counted towards carbon targets.
9. UKELA's May 2020 submissions to the Environment Bill noted that the Bill framework should be strengthened to ensure Environment Improvement Plans (e.g. The 25 Year Environment Plan) contain clearly defined and measurable actions that contribute to achieving statutory targets. Interim targets also need to be legally binding to keep long-term targets on track. The OEP needs to be well-resourced and independent so that its scrutiny and enforcement functions can be exercised effectively. However, in terms of enforcement it will be unable to hold the government to account for any failure to meet targets until 2037, unless the Bill is amended to include a duty to meet interim targets.
10. It is unclear how targets can be set without national level spatial mapping for protection and restoration areas and multi-party agreement over remaining land allocation: i.e. the overarching, clear and coherent narrative from central government referred to in para 3 above. Any tree planting targets should be set at devolved level where geographies and practical implications are best understood. The West of England Nature Partnership (WENP) is an example of a regional authority, cross-interest group, which has as its starting point for its Nature Recovery Network, an active, adaptive spatial planning system to identify its ecological priorities. WENP

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<sup>9</sup> <https://www.gov.uk/government/publications/environment-bill-2020/august-2020-environment-bill-environmental-targets#part-b-an-overview-of-the-scope-of-targets>

emphasises that these standard principles for NRN mapping must be established so that NRN networks can knit together.<sup>10</sup>

11. The LNRS and ELM schemes should guide delivery of biodiversity priorities on the ground under the Nature Recovery Network ‘umbrella’ policy; the LNRS at local authority level; ELMs at individual farm or landscape level. As the vast majority of new woodland needs to be on privately owned land, it will be dependent on the right incentives being in place. Private landowners and farmers are best placed to make decisions on how natural regeneration/afforestation fits into their other land-use plans. Any targets will also have to take account of statutory requirements under the River Basin Management Plans and also water priority areas.
12. LNRS spatial mapping, if informed from national ‘protect and restore’ red lines will only be effective if the Environment Bill is amended to ensure that NRNs and LNRS are taken into account in the exercise of public authority functions, including development control decision making. Moreover, local authorities will need to be properly resourced to produce LNRS and have access to adequate environmental data on which to base them. It is important that LNRS provisions are implemented without delay, once the Bill receives Royal Assent.
13. Targets for planting may be better set after the potential for natural regeneration is estimated. Spatial mapping of ancient and natural woodlands could support targets for areas suitable for natural regeneration, if necessary, supplemented by planting. This will necessitate large-scale, co-ordination of deer control. Grants should be available to support natural regeneration schemes, with government guidance, published following proper consultation with stakeholders informing realistic targets and delivery plans. Advice should be taken from Natural England and devolved agencies, external academics and NGOs (e.g. the Woodland Trust). Advice should be published, based on public consultation and targets must be evidence based.
14. £640 million has been allocated through the Nature for Climate Fund to increase tree planting and restore peatland, but the National Audit Office has commented that there

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<sup>10</sup> <https://www.wenp.org.uk/>

is no point of responsibility for monitoring spend or cost on an ongoing basis, so it is difficult to measure benefit for money received.<sup>11</sup>

15. All tree planting in the UK, is subject to the rules and guidelines in the UKFS and all forestry grant schemes are conditional on adherence to the UKFS. However, there is no mandatory due diligence required of the applicant for new woodland applications. Recent events demonstrate that both the forestry regulators and funders are not validating applications before entering into contracts with landowners. Planting continues on wet heaths, some with areas of deep peat and where hydrology will be compromised, bringing planting schemes into conflict with both the 25 YEP water goal, the commitment to reduce water abstractions and with private water supply rights.
  
16. The Forestry Commission recently approved a plantation on a peat bog at Berrier End in Cumbria in a previously undamaged bog and wet heath landscape.<sup>12</sup> It has admitted the contravention of its own standard - but the damage is done. This is an example of lack of joined-up thinking on tree planting between agencies, and underlines the need to have safeguards to ensure other valuable habitats are respected as we seek to increase woodland cover. As aforementioned, these safeguards should include national principles, but also the updating of the UKFS to include adherence to the IUCN position statement on trees.<sup>13</sup> The UKFS recognises that important peatland habitats can occur on shallower peat soils, yet shallow peat soils below the 40/50cm threshold are still considered suitable for tree planting. Mapped peatlands (IUCN UK Peat Strategy) cover 2.6 million ha, but there is an equivalent area of shallow peaty-soils, which support EU Annex 1 priority habitats and which provide valuable carbon storage. In this respect, UKELA welcomes the Scottish Environment minister's statement on 26 November 2020 that: 'We will also revisit the current definition of peatland and take expert advice on whether it should be revised and a stricter definition imposed'.<sup>14</sup>

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<sup>11</sup> NAO, *Achieving Government's Long-Term Environmental Goals, HC 958 (2019-2021)* (HM Government 11th November, 2020)

<sup>12</sup> <https://anewnatureblog.com/2020/11/06/berrier-farm-under-trees-100-acres-of-peat-bog-heath-and-wildlife-rich-grassland-destroyed-by-tree-planting/>

<sup>13</sup> IUCN UK, *Position Statement: Peatland and Trees* (IUCN National Committee United Kingdom 2020)

<sup>14</sup> <https://www.gov.scot/publications/werritty/>

**3) How effective is the co-ordination between the four nations on forestry issues, including biosecurity, plant health and other cross-border issues?**

17. There is a problematic mismatch between trying to have a UK policy on an issue which is a devolved responsibility without any clear mechanism for agreeing strategies and collaboration. There is likely to be a divergence of environmental regulation moving forward with OEP and Environmental Standards Scotland (ESS).

**4) Why were previous ambitions for increasing tree planting in England not met and what lessons should be learned?**

18. Opportunity costs for landowners, regulatory barriers, complex and tortuous funding streams, the lack of short-term financial return uncertainty of outcome, lack of expertise in forestry/concern about tree disease and the legal permanence of conversion to woodland land classification are all reasons for lack of take-up.

**5) In relation to increasing forestry coverage in England, what should the Government be trying to achieve? For example, how should the following policy objectives be prioritised?**

**Mitigating or adapting to climate change**

19. Increasing canopy cover (which is not the same as the activity of planting trees) should be a long-term strategy in terms of climate change and mitigation. Healthy peat bogs and soils continue to draw down and store carbon for millennia, whereas in a re-stocked conifer plantation, there may be short term gains, but these are at the expense of considerable long term losses. It should be noted, that most forestry planted on peat is used for pulp, biofuel and is short-lived.<sup>15</sup> Forestry grants should not be approved where tree planting detracts from other ecosystems, which are naturally treeless, important carbon stores, biodiverse and more resilient.<sup>16</sup> This is already the case

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<sup>15</sup> Crane, 2

<sup>16</sup> Nathalie Seddon and others, 'Grounding Nature-Based Climate Solutions in Sound Biodiversity Science' 9 Nature Climate

under the UKFS, but evidence of collaboration between agencies should be more accessible to the public.

### **Promoting biodiversity and nature recovery**

20. How trees and their habitats work for the benefit of biodiversity, landscape and public wellbeing should be the main priority and interdependencies acknowledged. We should acknowledge the importance of thorny scrub in protecting tree seedlings and in providing habitat for a wider diversity of species than is found in many adjacent woodlands.

### **Increasing biosecurity and plant health**

21. Regeneration from trees with local provenance is more likely to result in trees which are better adapted to local conditions, healthier and resilient.

### **Improving human well-being and health**

22. Trees are part of the landscape mosaic and local communities should be closely involved in planting decisions. Open landscapes and coastal ecosystems also benefit well-being and health and there should be a balanced approach.

### **Protecting natural and cultural heritage**

23. No comment.

### **Food security**

24. It is important to coordinate new woodland creation with the perceived, growing urgency for food security, including conservation of high-grade arable land.

### **Creating commercial opportunities from forestry, tourism and recreation**

25. Planting of native trees for small-scale commercial use, such as fine furniture, artisan products, future bio-energy opportunities with CCS should be considered. More controversially, non-native conifer planting with lower biodiversity value may be possible for such purposes in limited areas.

### **Any other priorities**

26. There should be a commitment to plastic reduction and the changeover to biodegradable tree guards or alternative methods, such as fencing and herbivore management.

**(6) Are the right policies and funding in place to appropriately protect and manage existing woodlands in England? How will prospective changes to policy and legislation affect this?**

27. The percentage of English woodland sites classified as SSSIs in April 2019 in favourable condition was 36.1% (out with the national forests) and 37.4% in the nation's forests.<sup>17</sup> Natural England is not sufficiently resourced to undertake the necessary monitoring of these nationally important sites, so in many cases we do not know exactly what condition these sites are in.<sup>18</sup> Overall, only 49% of broadleaf woodland in England is in active management.<sup>19</sup> In this respect, we welcome DEFRA's Targets Policy Paper proposal for a target for terrestrial protected site condition, but it is difficult to see how the current low levels of funding can support the necessary monitoring needed to provide the underpinning data.

28. It is encouraging that the NPPF has put the protection of ancient woodlands and individual trees on a similar footing to listed buildings. Paragraph 175c states:

‘development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists’.

29. However, ‘wholly exceptional reasons’ include ‘For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and

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<sup>17</sup> Forestry Commission, *Corporate Performance Indicators* (2019), 44, 68

<sup>18</sup> Ibid, 68: ‘Unfortunately Natural England have much reduced the number of condition assessments they complete. This means the changes in conditions in SSSIs will be more slowly identified. We are working with Natural England to explore options to remedy this.’

<sup>19</sup> ‘Active’ just means that there is a management plan in place, even if that plan says that there is no intervention in woodland.

Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat'. Indeed, ancient woodlands/trees have been lost in the construction of HS2. In our latest written evidence to the Environment Bill,<sup>20</sup> UKELA questioned the exclusion of mandatory BNG from development consent orders for NSIPs under the Planning Act 2008 and the breadth of the power given to the Secretary of State to define other exceptions. UKELA considers it important that the requirement for BNG applies to all land use planning matters and is not just limited to those within the scope of the Town and Country Planning Act 1990. It is a contradiction in terms to say a habitat is 'irreplaceable' but can be compensated for. We reiterate UKELA's comments on the Environment Bill that a definition of 'irreplaceable habitat' is required and reaffirm our willingness to assist in what is an important discussion requiring urgent attention.<sup>21</sup>

30. The short period (a minimum of just 30 years management obligation) for which new woodland habitats are protected under BNG is not long enough to enable the development of well-functioning ecosystems, even on a par with the degraded natural habitat they may be replacing. UKELA has already commented that the 30 years obligation appears to be an arbitrary decision and has called for biodiversity replacement and gain to be permanent and to be delivered in perpetuity.<sup>22</sup>

UKELA

3 December 2020

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<sup>20</sup> <https://publications.parliament.uk/pa/cm5801/cmpublic/Environment/memo/EB55.pdf> , para 49

<sup>21</sup> <https://publications.parliament.uk/pa/cm5801/cmpublic/Environment/memo/EB55.pdf> , para 52

<sup>22</sup> <https://publications.parliament.uk/pa/cm5801/cmpublic/Environment/memo/EB55.pdf> , para 51