

Cutting Red Tape Review of House Building

Wildlife and Countryside Link Response (January 2016)

Wildlife and Countryside Link brings together 47 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land.

As part of its Regulatory Fitness and Performance Programme, the European Commission is currently undertaking a 'Fitness Check' of the EU Birds and Habitats Directives – our most important nature conservation laws – to assess whether they remain 'fit for purpose'.¹ The European Commission's 12-week online public consultation undertaken as part of the 'Fitness Check' witnessed the unprecedented participation of more than half a million people – over 100,000 of which were from the UK – making it the largest ever response to an EU public consultation.

This response is submitted on behalf of Wildlife and Countryside Link but is underpinned by the Joint Links evidence submission to the European Commission 'Fitness Check' stakeholder consultation in April 2015 on behalf of the UK NGO sector, which was supported by 100 organisations from across all four country 'Links': Wildlife and Countryside Link, Scottish Environment Link, Wales Environment Link and Northern Ireland Environment Link.²



Kate Jennings
Chair, Joint Links REFIT Task and Finish
Group



Victoria Bankes Price
Chair, Wildlife and Countryside Link Land
Use Planning Working Group



Dr Elaine King
Director, Wildlife and Countryside Link



Wildlife and Countryside Link
89 Albert Embankment, London, SE1 7TP
W: www.wcl.org.uk

Wildlife and Countryside Link is a registered
charity (No. 1107460) and a company limited
by guarantee in England and Wales (No.3889519)

¹ http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm

² <http://www.wcl.org.uk/habsregs.asp>

Introduction

During the last parliament, the government initiated a number of 'Red Tape Challenge' reviews with the explicit aim of identifying ways of reducing the cost of regulation to business. For example, a review of housing and construction sector regulations was undertaken that led to a review and simplification of building regulations and local housing standards. A review of biodiversity regulations was also undertaken, to which 84% of responses were in support of keeping or strengthening existing regulations and only 2% were in support of removing or weakening them.³

However, given the ambitious house building targets the current Government has set itself, alongside its desire to further reduce the cost of regulation to business, another 'Cutting Red Tape' review process has recently been launched. The stated aim of the house building review is *"...to identify...unnecessary regulatory barriers to growth and associated costs to the house building sector, while ensuring necessary protections are maintained...[it] will examine any aspects of regulation or the way it is implemented which could be made simpler, more cost-effective, efficient, proportionate, or consistent."*⁴

According to the Government's press release for the house building review, a number of priority issues for this review have been raised by its Housing Implementation Task Force, including *"...environmental requirements, particularly EU rules such as the Habitats Directive."*⁵

Here, we set out our views on house building and the EU Birds and Habitats Directives.

House Building and the EU Birds and Habitats Directives

Nature is in trouble in the UK. The 2013 State of Nature report highlighted that 60% of the species monitored in the UK over the last 50 years are in decline, with 31% declining strongly. House building and other forms of built development have been an important contributing factor to these declines.⁶

Housing development that is undertaken in the wrong place or in the wrong way can cause serious problems for wildlife and the wider environment. Therefore, we support the need for a well functioning regulatory/planning system to ensure that all housing development is sustainable, consistent with the protection of the natural environment for both current and future generations. Unfortunately, and in spite of the safeguards set out in legislation and planning policy guidance, the environmental dimension of sustainable development is all too often given insufficient weight in practice (e.g. by planning inspectors and local authorities).⁷

When it comes to environmental legislation, the EU Birds and Habitats Directives represent the cornerstone of EU-wide efforts to halt and reverse the loss of biodiversity, providing *"some of the most important protection for our rarest, most threatened habitats and species"* according to the UK Government's own review.⁸ Together, they establish a robust yet flexible legal framework for protecting rare or threatened species and habitats across their natural range within the EU via the designation of a network of protected sites and the establishment of a robust system of species protection measures. Scientific evidence shows that the Directives have been delivering

³ Lodge, M., & Wegrich, K. (2015). Crowdsourcing and regulatory reviews: A new way of challenging red tape in British government?. *Regulation & Governance*, 9(1), 30-46.

⁴ <https://cutting-red-tape.cabinetoffice.gov.uk/house-building/>

⁵ <https://www.gov.uk/government/news/cutting-red-tape-review-will-give-construction-industry-the-foundations-to-get-britain-building>

⁶ Department for Environment, Food & Rural Affairs. (2011). *Biodiversity 2020: A strategy for England's wildlife and ecosystem services*.

⁷ House of Commons Communities and Local Government Committee. (2014). *Operation of the National Planning Policy Framework*. Fourth Report of Session 2014–15.

⁸ HM Government. (2012). *Report of the Habitats and Wild Birds Directives Implementation Review*.

improvements in the status of protected species in the face of a range of growing pressures, despite inadequate resourcing and incomplete implementation.⁹

Without the Directives, nature in the UK would be in a far worse state. The network of sites protected under the Directives represent the foundations of UK nature conservation and a core component of the UK's natural capital, supporting the delivery of a wide range of ecosystem services essential for human health and well-being.

Too often presented as a barrier to growth, the Directives (and the domestic legislation that implements them) instead provide a 'litmus test' for sustainable development and a stable and predictable 'level playing field' for businesses across the EU. Many industries from ports and shipping to major renewable energy producers on land and at sea have developed ways of working effectively with these laws to ensure developments do not cause unacceptable damage to wildlife.

As it stands, the Directives do not prevent development; they simply ensure that it is undertaken in a way which is compatible with the protection of biodiversity.¹⁰ Together, they apply a clear and practical set of tests to all developments to ensure that those which do not adversely affect sites and species of conservation concern may continue, and that those which cannot be progressed without such effects are only permitted if and when strict tests are passed (the damaging effects are unavoidable, are warranted by the importance of the development or activity, and can be compensated for).

In the case of species, for example, all European Protected Species are strictly protected for good reason (e.g. due to the fact that they are rare or threatened across Europe). In those cases where a protected species is likely to be affected by a development, a licence can be granted for specific purposes as long as the relevant licensing body is satisfied: (i) that there is no satisfactory alternative and, (ii) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a Favourable Conservation Status in its natural range.¹¹

There is no evidence to suggest that the requirements outlined in the Directives are resulting in significant unnecessary costs to developers as a whole. For example, it has been estimated that the direct costs of environmental regulations to the construction sector are equivalent to approximately 0.2% of total sector turnover, only a small proportion of which relate to biodiversity regulations.¹²

Specifically in relation to the Directives, the available evidence strongly suggests that they do not represent a significant barrier to house building in England, and there is no substantive evidence to support the accusation that they are routinely used to successfully block otherwise unwanted or unpopular development.

The UK has the second lowest % coverage of Natura 2000 sites of any EU Member State (8.5%), and according to the latest figures from DEFRA: (i) less than 0.05% of planning permissions each year in England require a licence for European Protected Species reasons; and, (ii) less than 0.5% of land use consultations received by Natural England each year are objected to on Habitats Regulations grounds, and most are successfully dealt with at the planning stage.

In the relatively small number of cases where issues do occur, evidence suggests that it is generally a result of inadequate implementation/implementation decisions rather than any

⁹ Sanderson et al. (2015). Assessing the Performance of EU Nature Legislation in Protecting Target Bird Species in an Era of Climate Change. *Conservation Letters*; Donald et al. (2007). International conservation policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813.

¹⁰ Sustainable Development Commission. (2007). *Turning the Tide: Tidal Power in the UK*.

¹¹ http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

¹² Department for Environment, Food & Rural Affairs. (2015). *Emerging Findings from Defra's Regulation Assessment: First update covering 2012*.

problems with the legislation itself, as recognised by the 2012 Habitats and Wild Birds Directives Implementation Review in England. Specifically, the Review concluded that “...in the large majority of cases” the implementation of the Directives was working well, but that there was some scope for improving implementation to reduce costs and delays to developers.¹³ The recommended measures were based on substantial and considered evidence provided by a wide range of stakeholders, and were broadly welcomed by both the industry and NGO sectors. Since the 2012 review, there have been notable improvements in the cost-effective implementation of the EU Nature Directives in England. For example, Natural England have made a number of changes to their species licensing system since the 2012 review, which are estimated to have already delivered savings to developers of approximately £400,000.¹⁴

However, in a number of cases what was proposed by the 2012 review fell short of what was required and in others, calls for support in specific areas were not reflected in the measures identified. In addition, despite the findings of a subsequent DEFRA review of the implementation of the recommended measures which suggested that the vast majority had been completed, many are in fact ongoing actions which have since been abandoned or sidelined, suggesting a lack of political will to see through their delivery. Some of those delivered have failed to deliver real change, some have resulted in perverse outcomes, and a small number remain undelivered, two years after the deadline for their implementation.¹⁵ As stated by Energy UK – the trade association for the UK energy industry – in their response to the current ‘Fitness Check’: “We consider that the recommendations... are significant and many are yet to be fully implemented.”¹⁶

Here, we re-iterate some of the implementation issues that remain, progress made to date and what further action is needed to fully address them.

- **Capacity/expertise of competent authorities and statutory bodies:** the capacity and expertise of competent authorities and statutory nature conservation bodies is key to the smooth functioning of the planning and licencing system (e.g. to support the robust, consistent and proportionate assessment of plans and projects). In terms of competent authorities, the most recent Knight Frank annual house builder survey found that the single most important measure that policy makers could take to boost housing supply would be to provide additional resources to local authority planning departments, followed by improved skills training for the industry itself.¹⁷ However, the majority of local planning authorities (>60%) now lack in-house ecological expertise, and statutory nature conservation bodies have suffered significant budget cuts (>40% in real terms for Natural England) leading to a loss of capacity/technical expertise in dealing with Natura 2000 and European Protected Species issues. Together, these factors limit the speed, quality, and consistency of advice and decision-making. There are a range of steps that could be taken to enhance the capacity and expertise of these bodies, including investment in training and enhanced sharing of best practice, but a lack of staff resources remains a limiting factor.
- **Guidance:** clear, consistent, and easily accessible guidance plays an important role in the smooth functioning of the planning and licensing system. However, recent changes have reduced the availability of high-quality guidance. Following the 2012 review, draft versions of new ‘overarching’ guidance on the application of Directives in respect of both species protection and appropriate assessment under Article 6 of the Habitats Directive were twice issued for consultation. However, both drafts were seriously flawed. As far as we are aware, no final version has ever been published. Under a larger DEFRA process, Natural England have been working to improve their guidance for a number of years, but work remains to be

¹³ HM Government. (2012). *Report of the Habitats and Wild Birds Directives Implementation Review*.

¹⁴ <https://www.gov.uk/government/publications/wildlife-licences-european-protected-species-newsletters>
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367276/natural-england-improvement-plan.pdf
http://www.wcl.org.uk/docs/Joint_Links_UK_Hab_Regs_Review_Implementation.pdf

¹⁵ http://ec.europa.eu/environment/nature/legislation/fitness_check/evidence_gathering/index_en.htm

¹⁶ Knight Frank. (2015). *Gaining Ground: Housebuilding Report 2015*.

done to ensure that the new 'simplified' guidance provides the detailed information required by end-users (e.g. developers, consultants, local planning authorities etc.), particularly in relation to the promotion of best-practice.

- **Early engagement by developers/competent authorities:** close and collaborative relationships between developers, planners, consultants, competent authorities/statutory nature conservation bodies, and NGOs are vitally important. Where environmental issues are addressed as early as possible in the development/planning process through proactive engagement, it is usually possible to avoid/minimise costly delays and ensure that development proceeds in a timely manner and in a way that safeguards the environment. For example, early engagement can prevent the potential for delays to arise as a result of the need for surveys to be conducted in particular seasons, and in many cases can help to ensure that negative impacts on protected species or sites are avoided. Initiatives such as the Partnership for Biodiversity in Planning – a cross-industry partnership of 17 key organisations representing the planning and conservation sectors – are currently working to develop a new set of practical tools for developers and planners that includes an innovative web-based planning tool and a 'one stop shop' for guidance relating to protected species in the planning process that should help to enable works to be efficiently scheduled and minimise any costly delays associated with obtaining appropriate ecological evidence.¹⁸
- **Information on conservation status/objectives (species):** the lack of a clear definition and assessment of Favourable Conservation Status for European Protected Species at appropriate spatial scales has necessarily resulted in a more precautionary approach to decision-making (e.g. by local planning authorities and statutory nature conservation bodies) than would have otherwise been the case as it is not known what scale of impact might prove significant. In some cases, this is resulting in unnecessary costs and delays to house-builders/developers. For example, in its response to the 2013 Balance of Competences Review (Environment and Climate Change) in relation to the Habitats Directive, the Home Builders Federation highlighted the issue of the precautionary approach, clearly stating that *"the problem lies with the UK government agencies' interpretation of the Habitats Directive, rather than the EU Directive itself"*.¹⁹ Work in this area is starting to make progress, in particular thanks to improvements in our ability to cost-effectively monitor and assess species distributions (e.g. in the case of Great Crested Newts), but more work is urgently required.
- **Strategic and evidence-based approaches to species derogation licencing:** steps to assess and define at the national and other appropriate spatial scales for European Protected Species are a prerequisite for the effective conservation of these species. The next step is to develop a more strategic approach to derogation licensing based on this improved information. In the case of Great Crested Newts, a set of pragmatic solutions that work within the existing legal framework are currently being developed as part of the work of the Great Crested Newt Task Force – a partnership of NGOs, government departments, and statutory nature conservation bodies – that was established following the 2012 review. The work of the Task Force should enable a more strategic, evidence-based approach to the assessment of development impacts and the provision of compensation/mitigation measures, focusing less on the often costly (and sometimes ineffective) development-specific protection of every individual newt and provision of mitigation/compensation and more on the approaches needed to enhance the conservation status of newt populations as a whole.²⁰ This new approach is currently being piloted with Woking Borough Council in Surrey with the objective of delivering better outcomes for developers and newts.²¹ If this pilot is successful, the new licensing process will be rolled out at the national level.

¹⁸ <http://www.biodiversityinplanning.org/>

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279198/environment-climate-change-evidence-all.pdf#page=951

²⁰ Simpson, P. (2015). Meeting the FCS Test for European Protected Species: A Different Approach? *In Practice*, Issue 89.

²¹ Natural England. (2015, 27 August). *Pilot project aims to help great crested newts*. Press release.

- **Setting clear conservation objectives (sites):** clear and quantified site-specific conservation objectives for Natura 2000 sites are important not only for nature conservation, but also a means of providing clarity for the purposes of informing evidence-based appropriate assessments of development proposals. However, in many cases the existing information available on site conservation objectives is entirely generic in nature, failing even to mention the conservation status of the species/habitats for which such sites have been designated. Unfortunately, progress in addressing this issue following the 2012 review has been extremely limited; conservation objectives developed in line with a new and improved approach developed following the 2012 review have only been delivered for a handful of sites.
- **Strategic approach (sites):** there are a number of positive examples of how a more strategic approach to assessing development impacts on protected sites and establishing appropriate mitigation solutions has helped to minimise any unnecessary costs to developers/house builders in those situations where large numbers of small-scale developments have had the potential to cumulatively result in a significant adverse effect on one or more protected sites. For example, in order to accommodate the sustainable development of new housing in the areas surrounding the Thames Basin Heaths SPA, an innovative strategic approach was devised in order to enable any planning application for housing development outside of a 400m 'exclusion zone' which met defined mitigation standards to proceed without the need to undertake an appropriate assessment. The standards applied were deemed to ensure that such developments would not be likely to have a significant effect on the integrity of the SPA. They comprised measures to divert recreational pressures from the SPA and to manage recreational use of open access areas. This type of approach is now being successfully rolled-out across a number of other areas.
- **Access to/availability of data regarding protected species and sites:** a lack of systematic survey/monitoring data for protected species and habitats, combined with inadequate efforts to properly collate the existing evidence, has sometimes resulted in unnecessary costs and delays to house-builders/developers by leading them to undertake additional survey work that would otherwise have not been required. This is further exacerbated by a lack of clarity on conservation objectives for species and sites (see above). Similar issues exist in relation to mitigation measures (see below). Improving the evidence base (e.g. in relation to Great Crested Newt distributions – see above) and making the data easier to access has the potential therefore to deliver significant benefits for developers, reducing uncertainty and associated costs.
- **Invest in research into the effectiveness of mitigation/compensation measures:** further research is required to improve our understanding of the impacts of particular activities on the conservation status of different species, and the effectiveness of the range of mitigation options available (via the collection and analysis of post-development monitoring data), as recognised by the 2012 Review. Existing evidence suggests that, for example, although Great Crested Newts thrive at some mitigation sites, in other cases populations are not self-sustaining or connected with those in the wider countryside.²² The failure by competent authorities to require adequate post-construction monitoring of impacts and the efficacy of mitigation, combined with a lack of transparency regarding the results of such monitoring, means that actual (as opposed to theoretical) impacts remain unquantified over time and that decisions remain locked in a precautionary system. The precautionary approach will always have a role to play where uncertainties persist, but in many cases improved monitoring and reporting of impacts and the efficacy of mitigation measures could be used to better inform decision-making and future best-practice guidance.

²² Lewis et al. (2014). *Examining the fate of local great crested newt populations following licensed developments*. Unpublished report to Defra, WM0321; Stone et al. (2013). Mitigating the effect of development on bats in England with derogation licensing. *Conservation Biology*, 27(6), 1324-1334.

- **Address biodiversity declines in the wider countryside:** in order to effectively and efficiently conserve protected species, action to address declines in the wider countryside is essential. A coordinated and consistent policy response to the pressures and threats driving the declines of protected species in the wider countryside requires better integration of biodiversity considerations across all relevant areas of government policy (e.g. agriculture).

It is therefore essential **that biodiversity is properly accounted for by the planning system.** Both the England Biodiversity Strategy to 2020 and the National Planning Policy Framework (NPPF) recognise that the protection and improvement of the natural environment should be a core objective of the planning system. At the same time, the NPPF and associated Local Plans are key to delivering a sustainable supply of housing.²³ Local Plans in particular provide “*the framework for development across England*”.²⁴ However, the findings of a recent report commissioned by the RSPB and the Wildlife Trusts assessing the extent to which the biodiversity-focused policies of the NPPF have been positively integrated into new Local Plans across England suggest that further efforts are required. The report found that less than one third of Core Strategies assessed present a clear strategic approach to planning for biodiversity and only 20% identifying cross-boundary biodiversity matters that might need to be addressed in co-operation with other local planning authorities.²⁵ In order to improve the situation for developers and wildlife, we recommend that both DCLG and DEFRA, working with statutory agencies and the Planning Inspectorate, make greater efforts to encourage and support local planning authorities to ensure the effective implementation of the NPPF through the biodiversity policies in their Local Plans. This should include the development of a coherent strategic and spatial vision for the protection and restoration of biodiversity by every local planning authority.

Next Steps

At the meeting of the EU Environment Council in Brussels on 16 December 2015, the draft Council Conclusions on the Mid-Term Review of the EU Biodiversity Strategy to 2020 were adopted. A written statement to the House of Commons on the topic of the Council Conclusions was made by Rory Stewart (Parliamentary Under Secretary of State for the Environment, Food and Rural Affairs) on 12 January 2016. According to the statement, “*the UK raised concerns over the implementation of the Nature Directives*” but concluded that the best way to address these would be “*through looking at much better approaches to implementation.*”²⁶

We welcome the UK Government’s recognition of the need for better implementation of the Nature Directives. We also welcome the new initiative recently proposed by the Minister to bring together developers, NGOs and other stakeholders to identify and address the key implementation challenges that remain following the 2012 UK Government review of implementation in England.

²³ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/built-environment-committee/built-environment/written/23102.pdf>

²⁴ <https://www.gov.uk/guidance/local-plans>

²⁵ https://www.rspb.org.uk/Images/Nature_Positive_Local_Plans_Research_Report_May_2015_tcm9-407749.pdf

²⁶ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-12/HCWS462>