Planning Reform that works for nature

The Government has a strong mandate on affordable housing and clean energy. It also has a clear mandate for nature, which reflects domestic and international commitments to halt the decline of wildlife, restore water and air quality, and manage 30% of the land and sea for nature by 2030.

There is a risk that without careful planning these goals come into conflict, but we can find solutions.

Nature does not need to be sacrificed to achieve scale and pace of development. The system can be improved to provide greater certainty more swiftly, with advantages for nature and people.

We recommend three areas for action, where an integrated approach to nature-recovery and planning can lead to climate-friendly infrastructure development and nature restoration at scale and pace:

(1) **Restore nature now:** upfront, strategic investment in habitats and species so ecosystems are in better condition, climate resilient and well connected, enabling development in the right place whilst ensuring legal thresholds for harm to habitats are never reached.
(2) **Get the site right:** through integrated national and local spatial planning, with stronger protection for nature and better environmental information, optimising use of space on land and at sea and ensuring development is in the right place.
(3) **Ensure development is green by design**: with space for nature in the fabric of buildings, but also using the opportunity to make space on land and at sea for nature recovery.

These three actions should be supported by making nature restoration an explicit purpose of planning. The objective of meeting targets set out in the Environment Act 2021 and the Climate Change Act 2008 should be reflected in key planning legislation and guidance, as well as the statutory objectives of all public bodies involved in planning and consenting processes.

1. Restore nature now, avoid delay tomorrow

The first reason that nature and development can come into apparent conflict is that nature has been neglected so much that legal and ecological limits are being reached. 19% of species are at risk of extinction in the UK, 0% of rivers are in good overall condition, and only 37% of protected sites are in favourable condition. Restoring nature and taking early action to reduce pollution and over-abstraction can ensure that legal limits are not reached.

When delay happens, the rules for issues such as water pollution, air pollution and over-abstraction can work as an emergency stop to prevent nature from reaching a tipping point. This has led previous Governments to consider "simplifying" regulations, with proposals to strip away protection, putting communities and green charities at loggerheads with Government. A better way to avoid environmental rules like nutrient neutrality delaying development is to ensure nature is in recovery, planning authorities are given the expertise they need, the legislation is being properly implemented and legal thresholds are never reached in the first place.

Rather than wait until problems arise when environmental limits are reached, the Government could speed up planning permission through strategic approaches—investing upfront in nature recovery to make it easier for development applications to meet their environmental obligations. This should be in combination with stronger protection for the UK's wildlife as well as a stronger focus on avoidance within the mitigation hierarchy, so that harm is avoided wherever possible.

This is allowed within the current rules. There are well-established strategic investment programmes, including the Thames Basin Heaths access to nature scheme, the Solent Waders and Brent Geese mitigation scheme, and the District Level Licensing scheme. However, strategic programmes are not yet common or extensive enough to enable development at the scale required.

Although strategic mitigation approaches are not suitable for all species, they do offer opportunities to restore nature and reduce procedural delays. Government should spearhead new approaches to strategic mitigation that do not simply offset harm to nature but invest in greater environmental improvement, so that environmental limits are not reached. This needs leadership and investment.

Restoring habitats — The Conservation of Habitats and Species Regulations 2017

If impacts on sensitive habitats and species are not considered until late in development planning, this can delay and undermine Environmental Impact Assessment. Under the Habitats Regulations, applications cannot proceed if they would have a significant impact on a Special Protection Area (SPA) or Special Area of Conservation (SAC), except for imperative reasons of overriding public interest. However, planning applications routinely present poor quality or incomplete environmental data, which can lead to delays, especially when authorities do not have the resources to implement the law effectively.

Taking a more strategic approach and investing upfront in habitat creation and restoration would ensure the connectivity and condition of high-quality, properly connected habitats for vulnerable species populations. This should be paid for by developers working in partnership with conservation organisations. Site-specific surveys and mitigation will still be needed, but this investment will provide increased resilience, enabling increased development.

This should also include providing ecological buffer zones around protected sites to make them more resilient to development impacts, particularly indirect impacts such as air and water pollution. In this

way, assessment and consenting should be guided by a well-funded strategic plan for investment in expanding and improving quality habitats for nature. We recommend:

- ☑ **A Critical Natural Infrastructure Investment Fund** to address the £3-4bn annual nature finance gap, sustained for at least the duration of a Parliament, and targeted to deliver nature recovery priorities identified with communities through Local Nature Recovery Strategies.

Protecting rivers — Habitats Regulations & the Water Environment Regulations 2017

Nutrient neutrality rules kick in when water pollution threatens sensitive wildlife sites. The Conservatives' attempt to deal with nutrient neutrality failed. The Government scheme to provide credits was not resourced properly, and its attempts at deregulation would have left rivers polluted. Every planning applicant in a nutrient-stressed area must procure a mitigation credit for every new dwelling proposed. A strategic approach would speed up the system and help ensure certainty of supply, de-linking individual planning permissions from individual mitigation projects. We propose:

- ☑ **A nutrient negativity programme:** requiring applicants to pay a fixed fee into a central pot at the catchment level in order to proceed with planning permission. The pot may be administered by a responsible body such as Natural England, which would use the funds for mitigation, monitoring and maintenance. This approach replaces a case-by-case approach with a more streamlined, strategic scheme, which should aim to reduce nutrient loads over time, not just offset harm on an ongoing basis.

This should be coupled with a much stronger approach to reducing agricultural pollution. For example, nutrient-reduction options could be a mandatory component of ELMs participation in all nutrient neutrality areas, and stronger polluter pays approaches should be introduced with enforcement of the Farming Rules for Water.

Wildlife recovery — the Wildlife & Countryside Act 1981

The law protects species that have declined or are under threat. Protected species rules only affect a small proportion of developments but, where they do, problems can often be attributed to lack of capacity in Local Planning Authorities and agencies or low-quality applications by developers.

Problems can be averted by ensuring that protected species requirements are dealt with more efficiently and reliably by developers and public authorities. In some cases, it is possible to take plan-level approaches to providing suitable habitat; for example, with great-crested newts approaches like District Level Licensing can ensure that populations are maintained. In other cases, for species where this kind of approach does not work, there is still an opportunity to streamline different elements of the licensing system. For example, programmes of earned recognition accredit consultants to meet high professional standards in survey and mitigation work. A pilot for an earned recognition approach for bat species has shown that delays in licensing were significantly reduced. In both cases, the ability to scale schemes will rely on more investment in public authorities to ease bottlenecks. We propose:

- ☑ **Species mitigation licensing approach:** appropriate resourcing of schemes already in place for some species (for example, District Level Licensing, or earned recognition for class-level licences, as appropriate for different species groups) to streamline the species licensing process, supported by additional investment in public authorities to administer the schemes properly.

All these options rely on well-resourced local authorities with appropriate ecological expertise, to ensure that protected species are considered proactively and in a timely fashion, and unnecessary delays are reduced**.**

Mistakes made by previous administrations

The core safeguards put in place by the Habitats Regulations, the Water Framework Directive Regulations, and the Wildlife & Countryside Act should not be weakened. These are the world's most effective conservation rules, proven fit for purpose, and the implementation and enforcement of the rules should be strengthened. The Government should avoid repeating mistakes made in previous planning reform proposals. It should maintain the following fundamental rules:

- ⊗ The duty to achieve favourable conservation status for protected habitats and species.
- ⊗ Requirements to maintain the integrity of the protected sites network and fulfil its goals.
- ⊗ The obligation to fully assess impacts of development proposals on sites and species.
- ⊗ The requirement to seek less damaging alternative solutions.
- ⊗ The precautionary principle and the mitigation hierarchy.
- ⊗ The bar on developments that would harm protected sites except for imperative reasons.
- ⊗ Legal requirements to secure long-term compensatory measures where harm takes place.
- ⊗ Strict species protection rules, including protection for breeding and resting places.
- ⊗ Access to environmental justice and consultation complying with the Aarhus Convention.

Where's the cash coming from?

Biodiversity Net Gain will not fund nature recovery. Impact assessments suggest that BNG will, in practice, just about offset the harm to habitats caused by development. Nationally, the scheme is likely to generate c.£300m per year in offsite investment for nature. This is tiny compared with the £4-5bn annual funding gap for nature estimate by the Green Finance Institute.

Effective strategic solutions require upfront investment, alongside a rigorous requirement to avoid harm wherever possible. This can be funded through a combination of public and private funds:

- **Developer contributions:** strategic schemes like the district licensing programme are funded by developers upfront, investing through public bodies like Natural England, or through private companies.
- **Polluter pays obligations:** a "Nature Recovery Obligation" on key polluting sectors could drive private investment in strategic nature recovery projects. It should comprise requirements for key sectors to disclose impacts on nature, plan to be "nature positive", and pay a levy proportionate to their impacts.
- **Public funds:** previous Governments provided short-term cash injections for strategic schemes, such as Natural England funds to generate nutrient neutrality credits. This could be supported through new measures on land value capture, for example.

As well as helping to reduce delays to planning, investing in the UK's critical natural infrastructure is sound economic policy; 12% of UK GDP could be lost in the next decade if nature decline continues.

2. Get the site right: spatial planning

Delays can be caused by poor site allocation or poor information, leading to development proposals in the wrong places. Causes include lack of strategic planning for nature, nationally and locally; uncertainty in planning processes; and lack of data and ecological expertise.

Many applications are slowed down by poor quality environmental information, poor adherence to the law, and late consideration of biodiversity in the process, when developers submit poor-quality applications. More clarity in developers' environmental responsibilities, standards for environmental information and assessments, and strict sanctions where they fall short would help avoid lengthy delays.

Clearer spatial planning, backed by a stronger protected sites network and a more modern environmental assessment can ensure better use of limited space. Clearer rules for developers about the standards of information required and about proper adherence to mitigation and avoidance requirements could help to speed up the system.

Make space for nature with strategic planning

The Government has recognised the need to protect and effectively manage at least 30% of the land and sea for nature by 2030. Currently, just over 3% qualifies on land and 8% at sea. The "30x30" goal should be reflected in spatial allocation for nature, nationally and locally.

The previous government's Planning White Paper faced united criticism because it proposed zonal planning that reduced assessments in some areas without any plans for increasing investment or protection for habitats, and because it stripped away people's ability to guide development decisions. Nevertheless, spatial planning offers an opportunity for more certainty and speed for development in appropriate places if it is matched by a clarity on the space needed for nature. We recommend:

- **National spatial plans, which allocate space for nature**—including a land use framework and a marine spatial plan. These should be target-driven, with spatial goals for climate and nature, and integrated with the Strategic Spatial Energy Plan and other strategic infrastructure plans. They should be able to guide planning, permitting and financial incentives, steering decisions away from harmful choices, and rewarding nature-positive planning. And they should be transparent and adaptive, so the public can see whether government is on track for nature.
- **Local Nature Recovery Strategies** should be strengthened to inform planning decisions. New area-based goals for nature-recovery should be set in tandem with the Government's proposed housing targets, with LNRSs identifying priorities to meet them. Funding should be allocated for LNRS priorities, alongside a long-term action plan to ensure delivery. New Environmental Improvement Areas (or a "Wild Belt") should be identified with local communities to help reach 30x30 quickly and to meet local habitat restoration targets.

Safeguard the most important nature sites

The network of protected sites is in urgent need of restoration. These should be the finest nature sites, but only 37% of Sites of Special Scientific Interest are in good condition. The Government should:

- » **Rule out development that would affect the National Site Network** of protected sites and revise the NPPF to reinforce that Sites of Special Scientific Interest and Local Wildlife Sites should be protected from the impacts of development—direct, indirect and cumulative.
- » **Rule out development on irreplaceable habitats,** these are often rare, vulnerable to ecosystem collapse and highly ecologically distinctive.
- » **Level up all protected sites** to the same level of protection as the national site network. This could speed up and simplify planning processes, at the same time as improving nature.
- » **Renew National Parks and Protected Landscapes** with investment in nature recovery, and new regulations and guidance to ensure they are managed to contribute to nature and climate recovery, and ensure they are fit for purpose to contribute to 30x30 and Environment Act delivery.

Invest in better decision-making

The last government hollowed out the ability of public bodies and local authorities to effectively plan for nature. The result has been that many project proposals reach an advanced stage before environmental concerns are discovered, leading to delay. Investing in better environmental information (multi-use, up-to-date and available to interested parties) and expertise could save species and habitats as well as time and money:

- ☑ **Full Strategic Environmental Assessment of all programmes and plans,** land and sea, identifying areas for nature recovery, as well as areas where expedited assessment can be considered.
- ☑ **Strengthen environmental data requirements** and disclosure rules to reduce delays, including new standards, openness and interoperability requirements for environmental data.
- ☑ **Introduce clearer rules on environmental planning requirements, and sanctions for non-compliance**, including evidence that impacts have been avoided wherever possible. Sanctions could include a moratorium on re-applications if developers fail to meet required standards.
- ☑ **Invest in ecological expertise for planning authorities** and statutory consultees such as the Planning Inspectorate, Natural England, Crown Estate and the Environment Agency, to improve ecological expertise and capacity to advise and scrutinise planning applications, as well as for habitat creation, BNG delivery, monitoring and management.

Public bodies' duties

The Environment Act 2021 set legally-binding targets to halt the decline of nature. These targets should be central to decision-making by all relevant public bodies, including in delivering the purpose of planning—sustainable development.

In order to integrate environmental objectives well in day-to-day decision-making, relevant statutory bodies should have a statutory purpose to contribute to delivery of those environmental targets. For example, this should apply to Local Planning Authorities, so that they are able to balance development needs with positive environmental objectives. It should also apply to bodies fulfilling public functions, such as the Crown Estate, in the allocation of the seabed for the purposes of nature restoration and offshore wind generation.

Cascading the objectives of the Environment Act and the Climate Change Act through planning laws and through relevant public bodies would ensure an integrated approach to development, and efficient allocation of land and sea space for nature and for development.

3. Major projects: green by design

The Government's programme of significant infrastructure development is an opportunity to use strategic land acquisition and major investment programmes to contribute to nature recovery.

New towns and major housing developments

New communities should aim not just to offset their impact on the natural world, but to achieve a significant improvement in the state of the natural environment. If they are sited well, avoiding nature rich habitats, a small additional investment could achieve significant gains for biodiversity. We recommend new towns should be planned from the outset to:

- ☑ Avoid harm to any irreplaceable habitats, protected sites and Local Wildlife Sites
- ☑ Achieve at least 30% biodiversity net gain
- ☑ Build to 80 litres per person per day water efficiency standard and net zero energy efficiency
- ☑ Meet Natural England Access to Natural Greenspace Standards
- ☑ Include nature-positive design in development, such as swift bricks and bee bricks
- ☑ Follow Local Nature Recovery Strategy priorities to maximise benefits to nature

Offshore wind development

Offshore wind is a significant opportunity for decarbonisation but could cause serious harm to nature unless it is well planned. The UK has some of the busiest maritime areas in the world and marine biodiversity is already under existential pressure, so an active approach to marine nature recovery must be part of offshore development, which takes into account all pressures on the marine environment. We recommend:

- ☑ a marine spatial plan, integrating nature, energy and fisheries into a single strategic plan
- ☑ a new Marine Policy Statement, strengthening nature-recovery requirements
- ☑ enforce a robust approach to compensation, in line with the law (rather than current practice)
- ☑ a presumption for nature-inclusive design proposals in all licence conditions from 2025
- ☑ renewed guidance on avoidance and mitigation, laying out template measures where possible
- ☑ a requirement for "seabed leases" for nature to make space for Marine Net Gain
- ☑ a biodiversity non-price factor in the allocation of Contracts for Difference for offshore wind
- ☑ reducing fishing opportunities to scientifically-defined sustainable limits

Reducing delays in court

Access to environmental justice is a basic legal principle that should not be compromised. There is no evidence that inappropriate legal challenges delay major infrastructure. Environmental charities undertake legal challenges as a last resort and have a good record of success. Delays are often caused by lack of resource in the courts leading to logjams, lack of candour by Government Departments, and lack of policy clarity. To reduce unnecessary delays for major infrastructure, we recommend:

- ☑ Investment in courts' capacity and timelines for initial court stages and judgments.
- ☑ New duties and codification of candour for public bodies;
- ☑ Guidance to Departments about when they should not oppose permission for review.
- ☑ Revised National Policy Statements with clarity on net zero and nature requirements.

☑ If major planning rules are clear upfront about what kind of development is compatible with net zero and nature-recovery, the need for lengthy litigation to determine a path is diminished.

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