

The Planning & Infrastructure Bill: Briefing for Second Reading

This briefing is on behalf of [Wildlife and Countryside Link](#) ahead of Second Reading on 24 March.

Planning should be a powerful lever to tackle nature loss and climate change as well as meeting housing and low-carbon infrastructure needs. At the moment, however, the system does not properly consider the urgent environmental issues in land allocation and planning and development decisions.

The Planning and Infrastructure Bill is a chance to improve the system for development and nature. We welcome Government's recognition that housing and renewables development can go hand-in-hand with nature recovery and signals of that intention in the Bill. **However, the provisions in the Bill are not currently sufficient to deliver nature's recovery alongside sustainable development. Unless environmental requirements are strengthened, the bill could seriously weaken nature protection.**

Planning systems should be designed to minimise harm to nature, but that is not enough. The Government should actively plan for nature recovery through the planning process, working with communities and scientists to allocate space for the recovery and creation of natural infrastructure.

Part 3 proposes environmental delivery plans (EDPs) to address impacts from development on protected sites and species at a strategic level. An ambitious and well-designed strategic approach to meeting some legal environmental requirements has the potential to help drive recovery, if requirements on developers are rigorous enough. Without appropriate safeguards, these changes could cause significant harm to wildlife. We recommend the bill should:

- (a) legally guarantee nature benefits will significantly outweigh any harm;
- (b) ensure harm is avoided as a first priority, with any compensation delivered upfront;
- (c) apply scientific safeguards to ensure EDPs are only applied where they will work; and
- (d) ensure that Ministers can only amend EDPs to deliver greater environmental benefits.

Even with improved EDPs, the bill should be strengthened. **To deliver its Environmental Improvement Plan, Government must put nature at the heart of the planning system.** We recommend:

1. **A nature and climate duty for all planning authorities** to ensure that all planning decisions and policies are in line the Climate Change Act 2008 and the Environment Act 2021.
2. **Stronger protections for irreplaceable habitats** (chalk streams, peatlands and ancient woodland) and Local Wildlife Sites and more places designated for nature to recover; and,
3. **A new wildlife chapter in the Building Regulations** to require development are packed with habitats and wildlife, so that all development is wilder by design.

Putting nature at the heart of planning will help deliver the environmental targets, as well as create a greener planning system that delivers for nature, climate, people and sustainable development.

Section 1: improving the planning system

For Government to meet its nature and climate targets, the planning system should integrate nature recovery alongside development. Three important reforms are missing from the bill and should be added during passage: (1) a climate and nature duty for planning authorities; (2) protection for nature sites identified in Local Nature Recovery Strategies; and (3) new biodiversity building regulations.

Greener planning 1: Nature and climate-compatible decisions

One of the goals of land use planning is to achieve sustainable development, as stated in the National Planning Policy Framework (NPPF). However, the existing duty to promote sustainable development in the Planning and Compulsory Purchase Act 2004 and the commentary in the NPPF are weak and vague. The NPPF presumption in favour of sustainable development favours short-term economic considerations over environmental objectives.

Similarly, existing duties on public authorities such as Local Authorities tend to be weak and unmeasurable. For example, Local Authorities are subject to the biodiversity duty established by the Natural Environment and Rural Communities (NERC) Act 2006 and updated by the Environment Act 2021. However, the duty is loosely defined, with no measurable objectives, so it is often deprioritised by Local Authorities and does not guide decision-making.

A new nature and climate duty on all planning authorities should require planning policies and decisions to contribute to meeting Climate Change Act 2008 and Environment Act 2021 targets. Aligning planning policies and decisions with net zero and nature's recovery will ensure the planning system considers nature and climate from the outset, steering development to the right location, making space for nature, and embedding environmentally-friendly design in development.

Greener planning 2: Making more space for nature

The planning system should protect or allocate space for important nature sites to thrive, to enable habitats and wildlife to recover, and to connect habitats in resilient networks. Protected sites already play an important role in protecting the most important nature sites and wildlife, such as salmon, red kites, and water voles. This should be expanded to also protect potential nature sites identified in Local Nature Recovery Strategies (LNRs).

LNRs identify some of the most important sites for nature and potentially important sites in a local area. While there is a duty on planning authorities to take account of LNRs in the local development plan, the guidance merely states that local planning authorities 'should be aware of those areas mapped and identified... and [consider how these should be reflected](#) in their local plan.' In practice, areas identified in LNRs will be afforded little protection in local development decisions.

LNRs should be given more weight in the planning system by giving planning policy protection to the important and potential biodiversity areas they identify. No area identified as a designated site for nature or priority enhancement areas identified in Local Nature Recovery Strategies' habitat maps should be granted for development permission, except in exceptional circumstances. This could form part of a 'Wildbelt' designation.

Protections for irreplaceable habitats (e.g., blanket bog and ancient woodlands) should also be strengthened and updated to also recognise chalk streams and species-rich grasslands as irreplaceable habitats. Local Wildlife Sites should receive strengthened and more specified protections in the planning system.

Greener planning 3: Going Wilder by Design

Too often, development misses the opportunity to incorporate habitats and nature enhancements in the fabric of buildings and built infrastructure. Building with nature in mind can reduce the impacts of development on biodiversity and, in some cases, even provide opportunities for supporting the recovery of species. By including nature in development, communities can benefit from more natural spaces and the joys of nature near home, with all the health and wellbeing benefits that can provide.

Many nature-friendly design elements such as swift bricks, hedgehog highways and green roofs are low-cost and easy to implement, with important benefits for biodiversity. Some are already being implemented by progressive developers. However, a voluntary approach has not been enough to mainstream nature-friendly design across the development industry.

We recommend the introduction of regulations and policy, including a new biodiversity chapter of the Building Regulations, to make nature-friendly building features, such as swift bricks, hedgehog highways, and green biodiverse roofs and walls, mandatory. Alongside nature-positive building requirements, the Government should also strengthen existing standards for development on water efficiency and energy efficiency. This should be alongside wider nature-friendly design, including maintaining existing site habitat features such as trees and implementing sustainable urban drainage. By ensuring new development provides homes for both people and wildlife, the Government can deliver its housing targets alongside contributing to nature recovery.

Section 2: Specific provisions in the Bill

Part 3 of the Planning and Infrastructure Bill introduces Environmental Development Plans (EDPs). Where a proposed development would harm a legally-protected site or species, these provisions allow developers to pay a Nature Restoration Levy as a way to discharge their legal responsibilities for nature if an EDP is in place. An EDP is a plan developed by Natural England or another designated delivery body to ensure that the relevant environmental feature is improved overall at a relevant “strategic” scale, such as a species population or a river catchment.

Strategic approaches of the kind proposed under Part 3 can work well for some environmental issues, such as water pollution. For others, such as some protected species which are site-loyal and for irreplaceable habitats, they could be completely inappropriate. We support the principle of an EDP approach for some environmental features, where environmental requirements can be fulfilled more expeditiously and with provable benefits for nature and development. However, the provisions in the bill are currently too wide-ranging and there are risks that without safeguards, these proposals could cause significant harm to wildlife. Stronger safeguards are needed to ensure that the EDP approach is only applied where it can be genuinely environmentally-positive.

Safeguard 1: Beyond offsetting

The Government’s approach is intended to ensure that payment of a Nature Restoration Levy leads to benefits for a protected environmental feature that go beyond simply mitigating harm. Clause 55 introduces the “overall improvement test”, under which an EDP may only be agreed if benefits for natural features affected “outweigh” harm. This approach could be capable of maintaining and even improving some outcomes for nature, if applied to specific and appropriate issues such as nutrient neutrality, water availability and air quality, but it is not appropriate for some environmental issues, such as some protected species and irreplaceable habitats (as detailed on page 5).

Lessons from similar approaches, such as Biodiversity Net Gain (BNG) and nutrient neutrality, show that there is often under-delivery of environmental benefits under this kind of offsetting approach. Typically, schemes like BNG and many carbon offsetting programmes build in additional requirements for nature benefits to make good on any shortfall, such as the 10% gain requirement in BNG. The Government’s expectation is that 10% BNG is likely to effectively amount to offsetting harm.

As the bill is drafted, EDPs could be agreed with only marginal expected benefits for protected features. This would allow damaging development to proceed without any real guarantee of the “win-win” needed to benefit nature. Instead, the intention of these provisions should be to deliver overall improvements in nature, so that nature is no longer in a degraded state. For example, if the Government begins with an EDP for water pollution, the aim should not simply be to offset damage from new development, it should be to reduce overall pollution loads so that legal limits are ultimately no longer a problem for development and nature can recover.

We recommend that the overall improvement test is strengthened, with a legal requirement for benefits for protected features and for nature more broadly that lead to “significant environmental improvement”—a legal benchmark established under the Environment Act 2021.

We also recommend that the viability test for the Nature Restoration Levy is removed. The levy must be able to adequately fund the measures outlined in the EDP that are necessary for mitigation and compensation.

Safeguard 2: Avoiding harm

The mitigation hierarchy is a fundamental principle of environmental planning. It requires developments to avoid harm, before mitigating damage and finally compensating for residual effects. The EDP approach should be required to follow the principles of the mitigation hierarchy, including **an explicit duty on developers to avoid harm wherever possible**. This is often the simplest way to ensure sustainable development. The Bill should be amended to reinforce developers’ requirement to avoid harm to protected features wherever possible, even when an EDP is in place.

Where harm does take place, mitigation and compensatory measures should usually be delivered upfront. This avoids damage to nature now, in return for uncertain future benefits for nature. We welcome the Government’s Budget initial allocation of £14 million to the Nature Recovery Fund, which will allow some “pump priming” of actions to restore nature. Additional actions should be undertaken upfront, paid back by developers on a cost-recovery basis. The presumption that compensation should ordinarily be delivered upfront should be written into the Bill, with a hard line that this should always be the case if there is a risk of irreparable damage to specific natural features.

Safeguard 3: Scientific evidence

The Government has committed to a “modular” approach to EDPs, covering protected features one by one. Existing laws continue to apply to features not covered by an EDP. For example, an EDP may enable a strategic approach to water pollution, while existing species protection continues to apply.

We welcome that approach, but the bill does not include a rigorous process for adding new protected features. This introduces a risk that in future EDPs are applied to inappropriate habitats or species, or used at an inappropriate geographical scale, without evidence that the approach will benefit nature.

The Bill should be strengthened to guarantee that EDPs are only brought forward where there is rigorous, independent scientific evidence, including from relevant ecological survey data, including site-specific surveys where needed, that a strategic approach could work for the particular environmental impact and that the plan would lead to a significant improvement. Great scientific rigour is needed, particularly for species, and a strategic approach will not be appropriate for some environmental issues, including many protected species and irreplaceable habitats.

Safeguard 4: Amendments to the EDP

Under Clause 58, the Secretary of State may amend an EDP. As drafted, the Secretary of State may act on the basis of advice from Natural England, but need not do so. While the overall improvement test applies, this is not a sufficient safeguard to ensure that these broad powers are used appropriately. We recommend that the Secretary of State's power is tightened so that amendments can only be made that would increase benefits for nature.

A National Spatial Plan

These improvements – a nature duty; protection for more sites; and requirements for development to be wilder by design should be supported with a national spatial plan for England.

This long-term National Spatial Plan should set out how targets, such as protecting at least 30% of England for nature and meeting net zero, are met alongside other objectives. The Plan should have a 20-year horizon and be updated every 10 years on a rolling basis.

From an environmental perspective, the National Spatial Plan should identify Critical Natural Infrastructure such as protected sites, irreplaceable habitats such as chalk streams and peatlands, at least 30% of land and freshwater for nature, and the nature-based solutions needed alongside other infrastructure needs such as energy, transport, and new towns. This plan should integrate existing spatial frameworks such as the Land Use Framework, Strategic Spatial Energy Plans, catchment plans, proposed Spatial Development Strategies, and other strategic spatial strategies.

Monitoring and enforcement

The Environmental Development Plan (EDP) approach can only succeed if it is backed by strong monitoring, enforcement and advice.

At the moment, Natural England is significantly under-resourced and further significant cuts to the regulator are expected. Unless the regulator has sufficient capacity to design suitable EDPs, monitor their effectiveness, and enforce long-term nature enhancement requirements, the scheme will surely fail.

Local Authorities are suffering from similar under-resourcing in ecological advice, environmental planning, and inspection capabilities.

Any shift to an EDP approach must be accompanied by a significant uplift in regulatory, enforcement, and environmental advice and data capacity for regulators and Local Authorities.

Section 3: Further amendments for nature

In addition to the areas set out above, there are a number of further additions to the Planning and Infrastructure Bill that could increase the contribution that planning makes to nature's recovery.

The Forestry Commission should be given a nature duty. Currently, the Forestry Commission favours commercial considerations over growing and maintaining biodiverse woodland habitats. With a nature remit, the organisation could give greater weight to habitat recovery in the woodlands they manage, balancing out the historic focus on commercial timber.

The Planning and Infrastructure Bill offers a prime legislative opportunity to bring forward promised reforms to National Parks and National Landscapes. **The Bill should introduce a nature recovery purpose for Protected Landscapes** and institute the promised governance reforms.

Conclusion

The Environmental Development Plan provisions in Part 3 have potential, but to reduce serious risks to nature they must be tightened with—a stronger requirement for nature benefits to “significantly outweigh” harm; clear developer duties to avoid harm and for compensation to be delivered upfront; and less leeway for politicians to amend EDPs, except to increase benefits for nature.

Changes to fundamental environmental laws like the Habitats Regulations are fraught with risk, and amendments should only be made on the basis of trust and cooperation between environmental experts and government. Some Government rhetoric labelling environmental law as a blocker of development is inaccurate and divisive. We welcome the more serious dialogue carried out by DEFRA and MHCLG and invite Government to work with communities and ecological experts to ensure that the potential for nature restoration and sustainable development to go hand in hand is realised.

Overall, we recognise that nature and development can go hand-in-hand, and the Planning and Infrastructure Bill introduces some of the architecture needed to ensure that can happen. However, at the moment the Bill is missing several significant reforms needed for nature—a climate and nature duty for planning authorities; stronger protection for irreplaceable habitats and new nature sites; and Building Regulations for biodiversity.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 86 organisations to campaign for nature, climate, animal welfare and a healthy environment for everyone. Wildlife and Countryside Link is a registered charity number 1107460 and a company limited by guarantee registered in England and Wales number 3889519.

Link is also a partner to the Better Planning Coalition, a cross-sector group of organisations working to deliver a planning system fit for people, nature and the climate.

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