

**SELECT COMMITTEE ON THE NATURAL ENVIRONMENT AND RURAL  
COMMUNITIES ACT 2006****WRITTEN AND ORAL EVIDENCE****Contents**

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Action with Communities in Rural England and Rural Coalition – oral evidence (QQ 117-126)

## **Action with Communities in Rural England and Rural Coalition – oral evidence (QQ 117-126)**

Tuesday 14 November 2017

11.05 am

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Lord Cavendish of Furness; Lord Faulkner of Worcester; Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 14

Heard in Public

Questions 117 - 126

## Examination of witnesses

Margaret Clark and Jeremy Leggett.

Q117 **The Chairman:** Welcome to you both, and thank you for coming. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript will be taken and published on the Committee website, and you will have the opportunity to make corrections to it where necessary. Would you introduce yourselves for the record? Feel free to make any introductory remarks, but I suspect that most of the stuff will come out during questions.

**Margaret Clark:** Good morning. I am chair of the Rural Coalition. I also chair the Plunkett Foundation and am a member of the national board of the CPRE, both of which are members of the coalition. I led the team at the Countryside Agency that set up the Commission for Rural Communities. Some of my answers might go back to the past a bit.

**The Chairman:** That is probably what we would like to hear.

**Jeremy Leggett:** I am chief executive of the Sussex Rural Community Council and a trustee of ACRE, the national association of rural community councils. I should make it clear that ACRE and the network of rural community councils have a funding relationship with Defra. ACRE is also a member of the Rural Coalition, which Margaret chairs.

Q118 **The Chairman:** Thank you both very much. My first question is about the Commission for Rural Communities and the extent to which its abolition has led to a breaking up and fragmentation of the rural voice. What are the practical consequences of this?

**Margaret Clark:** Members of the coalition feel quite strongly that there is fragmentation now. The CRC was not perfect and it probably lacked teeth, but it managed to raise the profile of rural issues and brought together a lot of diverse rural interests. Since it went, quite a number of bodies have tried to fill the gap, not least the Rural Coalition, but we have no funding. We are underresourced and rely on voluntary input from members. There is now no one body in the lead to turn to if you want to talk about rural issues. There are various bodies, and it is not co-ordinated. That has probably led to the rural voice being diminished, overlooked, and often undervalued. The role of watchdog has virtually disappeared, so no one is holding bodies, not just government, to account.

Resourcing is a major issue. At one of its recent meetings, the coalition thought it would be a very good idea to analyse government departments' annual reports to see whether, across the board, they mention rural matters and what their impact is. However, we have no resource to do that. A body like the Commission for Rural Communities might have done it.

**Jeremy Leggett:** I agree very much with that. There is no shortage of organisations that will claim to speak for the countryside if asked. Some are well resourced, some have a fairly popular mandate. The Commission for Rural Communities brought a clear balance to the rural voice across England, particularly for people who are more disadvantaged by living in the countryside. It is difficult to replicate that without the statutory power that lay behind the commission. We do not have a fragmented voice of the countryside so much; rather, we have a more partial one, which is based on where the power and influence come from in the organisations that feel they can speak for the countryside.

**The Chairman:** Is there a single rural voice? Should there not be diverse inputs from lots of different sectors? My impression is that the countryside is diverse in nature, as are its communities.

**Jeremy Leggett:** I agree. It is extremely diverse. The interests of those for whom living somewhere rural brings a real challenge to their daily lives are not necessarily always going to be the same as those of some others. It would be lovely to have a very co-ordinated voice for the countryside, but it is perhaps more important to have a comprehensive and more broadly encompassing rural policy.

**Margaret Clark:** Some rural voices are more powerful than others, either because of their constituency or because of their funding, or whatever. As Jeremy says, the voice that historically has not been heard is that of disadvantaged rural communities. The CRC and its predecessors set out to find out more about those voices.

**Lord Cavendish of Furness:** I have a supplementary question for both witnesses. Reading your fascinating papers, I cannot make out whether you accept that there is an unavoidable trade-off living in the country rather than a town, and where that stops. You cannot expect everyone to have high opera or whatever. Is there a legitimate trade-off?

**Margaret Clark:** Whether you call it a trade-off or not, I do not think that people who live in the countryside have the same expectations of exactly the same level of services. They do not expect a bus to stop outside the door, or to have Tubes or whatever. But that does not necessarily mean that they should have a very poor quality of service or that services that meet their needs should not be provided in some other ways.

Q119 **Baroness Scott of Needham Market:** We have had quite a number of comments in evidence about the former role of the CRC in the collection of data, which is often very granular, particularly on housing and economic need. There is a lot of concern that this is simply no longer met. Defra has told us that it is not commissioning research. Could you each say something about your observations on the quality and amount of data? Do you have any ideas about how some of the gaps might be filled?

**Margaret Clark:** I agree. Members of the coalition have said that one of their major concerns is the lack of a body of independent or semi-independent research into rural issues. Others, such as universities and the



community interest company Rural England, are trying to do things, but again it is fragmented. There is no forward-looking research programme. The CRC was able to look ahead. For example, not much work had been done on rural disadvantage, but it could see that it was an issue and was able to do a bit of forward planning.

The lack of rural data is worrying. There is no incentive to collect it, and unless there is some impetus behind the need to demonstrate what you are doing in rural areas, you are not going to collect the data. It is a chicken and egg situation. What comes first? What drives that collection? I know that Defra has a statistical digest, and Rural England is trying to produce biennial rural services reports, but only on a few issues. There has been quite a loss there. We would like to see two things. One is a strategic rural research programme. The second is for other government departments' research programmes to be rural-proofed. Their research ought to look at rural issues. I am sorry for that rather long reply.

**Jeremy Leggett:** I agree entirely. If you do not recognise that there is a rural dimension to the way services are delivered, you will never collect the data to help you to understand it. I am afraid that that is the situation that we are rapidly getting into.

**Baroness Scott of Needham Market:** I have lived in and represented a rural area for many years. I suppose some of these issues have always been there. There has always been a sense that nobody understands us. Why is this such an intractable problem for public policy-making?

**Jeremy Leggett:** It does not need to be intractable. We have just never put sufficient political will behind what we have called rural-proofing over the years, and if you do not do that early enough in the process of developing policy and in the mechanisms for delivering policy, you will always be blind to the rural dimension. If that means that you do not even collect the data about it, you will never even be able to inform yourself about it.

**Margaret Clark:** We come back to the fact that it is scattered. There was a lovely statistic a few years back that if you put all the people in poverty in rural areas into one place, it would take up an area as big as Birmingham. That becomes a big problem. But because they are scattered and it is not always seen, it just gets ignored in policy-making.

**The Chairman:** Are you aware of Defra doing any analysis at all, on affordable housing for example?

**Margaret Clark:** It produces statistical research, and it has just strengthened its team to do more work on data analysis and research, but I do not know the detail.

Q120 **Lord Faulkner of Worcester:** I think the answer to my question will be no from both of you, but I will ask it all the same. Do you feel that sufficient support is available for the rural economy following the ending of the Countryside Agency and the regional development agencies? Secondly, do

you have a view on the value of the new structures, particularly the local enterprise partnerships, which have come into being since the passage of the Act?

**Jeremy Leggett:** You are right to anticipate that our answer would be no. We asked our network of 38 rural community councils their view on this area, and the response, particularly to LEPs as the inheritor of some of what the RDAs did in the past, has been that LEPs seem focused on urban outcomes. In the main, the reason given tends to be that their tasking from the centre seems to lead them into that; they are looking for major economic, major housing and transport interventions in urban areas, which simply do not apply to, play well to or compare well with rural development.

**Lord Faulkner of Worcester:** Do they actually work against the interests of rural areas?

**Jeremy Leggett:** Yes, inasmuch as the intervention is focused on urban areas. Whether they actively work against them is hard to say. Of course, at the moment we still have the LEPs' involvement, at least indirectly, in the remaining few years of the EU programmes, so we are still going through the final few years of the EAFRD and LEADER programmes. Clearly, we need to make sure that rural considerations come into the thinking about what might replace those in a few years' time.

**Margaret Clark:** On LEPs, to be fair, one or two have demonstrated a concern for rural areas. There are examples in Derbyshire and Nottinghamshire of dedicated rural groups being put together and rural stakeholder meetings, but the generality of what Jeremy says is true. One problem is that the Countryside Agency and the RDAs managed to get a better understanding of the rural economy, but we seem to have slid back into the view that it is about farm diversification, food and tourism, when actually the rural economy is extremely diverse. It mirrors the urban economy, except in some things like land use, and it has fewer financial services. But its real difference is the heavy dependence on small and very small firms. All the programmes of support to business, even to bigger small firms—I am talking about micro-firms with fewer than 10 employees—are about concentrating in urban centres. We have lost that sense of what the rural economy is about.

The really big loss from losing the Countryside Agency and RDAs is in support for market towns. There was a very good market towns programme and a body called Action for Market Towns, which was making some in-roads into revitalising market towns. That seems to have simply slipped away.

**Lord Faulkner of Worcester:** Would you like to see the RDAs return, not that that is on offer?

**Margaret Clark:** I am not into reinventing things or going back into the past. I would have liked to see the good things that they did being vested in other bodies. What kind of body that is is not a matter for me. It is about what they did and the knowledge that they built up.

**Lord Cavendish of Furness:** I am under the impression that support for LEPs and local government is often conditional on the reform of local government. How much do you think that process is holding up support for understanding rural issues?

**Margaret Clark:** I am not an expert on that local-government angle.

**Jeremy Leggett:** It is a very interesting question. One person's reform may be someone else's something different. As a network of charities working very closely with local government, we see that a lot of local government has moved very strongly to a commissioning model, whereby it delivers very little itself but commissions from others. That has reduced local authorities' memory and knowledge of their area, or their experience of delivery does not fit well with a very straightforward procurement process. There is something in what you say, but I am not so sure that the requirement for reform has such a direct influence on what has happened to rural areas. Other things have driven that.

**Lord Cavendish of Furness:** The word "leadership" has not come up so far, but that is where the big vacuum seems to be.

**Margaret Clark:** Apart from reform happening, lots of local authorities, particularly smaller rural authorities, are sharing services. We have seen quite major cuts in staff across discretionary services and have heard anecdotal stories, such as one person having to cover the whole county to do whatever. When facing some of the cuts and the austerity measures, it is quite difficult to provide leadership in those circumstances; it is about plugging holes, quite often.

Q121 **Baroness Byford:** Good morning to you both. In addition to my declared interests, I should declare two things at this meeting: I am a vice-president of Leicestershire & Rutland Rural Community Council and secretary of the All-Party Parliamentary Group on Rural Services, so I will not be able to take part in the second stage of the meeting, but I can take part at this stage.

The evidence that we have received from various people giving evidence to us has shown that the economic needs of rural areas are not taken account of properly, particularly in the Government's industrial strategy, which was launched earlier this year. You have spoken about the commissioning angle for local authorities, and I totally follow you along that line. Are there other ways in which we could be more supportive or ways in which things could be done differently, without looking over our shoulder all the while?

**Margaret Clark:** The industrial strategy Green Paper, if I may say so, was a missed opportunity. That is a personal view. It is a Green Paper, it is broad brush and it is for consultation, but it says very little about rural; it is very urban and business-focused. Yes, it says that it wants to drive growth across the whole country, but it does not say how it is going to do that. Because it is a Green Paper, we all have an opportunity to influence the next stage, but for me that is almost too late; you are trying to

influence thinking that has already been done, and maybe tinker a bit, rather than being at the heart of it.

It would be very useful as part of that to have some kind of rural economic strategy. I know that a few years back Defra did a rural productivity plan, but I sense that has slid a bit and is being overtaken by the industrial strategy. So it would be really good to do that. Defra is also planning a 25-year environment plan, but we do not know where the rural economy sits within that.

So there are opportunities to address some of those questions at a national level, and we need to be careful that that happens. I do not know whether that happens at the local level.

**Jeremy Leggett:** I agree with all that. It is probably worth reflecting that, even on the most generous measure, less than 10% of the employment in rural areas is in agriculture, land-based industries or industries downstream from there. For much of rural England, the fastest-growing sector is home-based business, which is very flexible, very fleet of foot, and often trades globally from someone's living room. We seem to fail to recognise the extent to which this is driving the economy in rural areas or to make it more possible for that kind of very small business to grow and develop in an appropriate way.

**Baroness Byford:** I am very grateful to you for raising that, because this obviously goes back to one of our earlier problems: broadband. Where good broadband is active it is possible for that to happen, but it is much more difficult when it is not. Some 50% of small and medium-sized businesses are now based in rural areas.

May I take you back to the LEPs, please? Things in the paper suggest that Leicestershire is one county where someone in a rural area can apply if they wish. Is there some way in which we could help other areas that do not realise that LEP money is available to them?

**Jeremy Leggett:** Certainly in the future, once LEADER and some of the other EU-related programmes have finished, it would be a huge benefit if the tasking and directing of LEPs could encourage them to balance the large-scale interventions—which may have plenty of good PR spin-offs—with smaller economic developments in rural areas that would support home-based small and micro-businesses.

**The Countess of Mar:** Do you think there is information failure among the people who produce these Green Papers? In other words, do they have no experience themselves of the countryside and of people working in it, so it does not enter their heads that these should be involved?

**Margaret Clark:** We in the Countryside Agency often used to say that one of the difficulties was that policymakers were, on the whole, embedded in London and very urban centric. I come back to there being no real understanding of the rural economy. Quite a lot of people who are developing these policies—with the best will in the world—think of rural as

farming, horticulture and environment. That is what they see. They see the drivers of the economy as large businesses, whereas that is not always the case. The contribution to the national economy from small, rural businesses is huge.

Q122 **The Countess of Mar:** To what extent have funding cuts to local authorities and government agencies intensified the problems associated with the rural premium: in other words, the additional cost of delivering services in sparsely populated areas? Have rural areas suffered disproportionately as a result of public sector budget reductions?

**Jeremy Leggett:** It has certainly been our experience that reductions in local government budgets have had a definite and greater effect on rural areas. Local authorities will tend to look to ways of assessing needs, particularly using things like the index of multiple deprivation and the joint strategic needs assessment, which are very weighted towards relative deprivation within geographical areas, not towards the needs of individuals and families. An increasing proportion of the budget tends to get focused on an ever-reducing number of wards that are identified as being those most in need. That detracts from the resources going to other places.

If I may, I will give a little illustration. Imagine a few drops of red ink dropped on to a white bathroom floor. You can see where they are and be able to wipe them up relatively easily. You can target your efforts to get rid of them. If you were to drop the same amount of red ink into a swimming pool, you would not be aware that it was there. If you were aware and needed to get rid of it, it would be a time-consuming and difficult process. That is the difference between disadvantage in urban locations and rural ones. That is how local government tends to target when it is short of resources.

We are aware of one or two local authorities that have included rural impact assessments in their policy development at the same time as equality impact assessments. However, as budgets reduce, the feedback is increasingly that that is becoming a formulaic process, with officers simply advising their members: "If we had some more money we could do something about it". Even if you have such a rural-proofing approach in policy formulation, you still have to make relative decisions about targeting resources. In the experience of our network, the targeting tends to be in urban areas of concentrated disadvantage.

**Margaret Clark:** It is important to add that the cuts have been made across all types of authority nationally. Rural authorities have not necessarily been singled out. Of course, they started from a lower base. They get less funding per capita to begin with, and people in rural areas have fewer services. When you cut, you are cutting from a very low base. Even if the cut is 10% across the country as a whole, it has a disproportionate effect, even if the cut is not disproportionate.

The evidence that we in the coalition have been getting is that things such as adult social care and bus services have been particularly hard hit. Some local authorities have withdrawn all bus subsidies. In an urban area, quite

a lot of the bus services are commercially run and are subsidised only in part. However, in most rural areas bus services get a subsidy. If you take that away, you lose the service.

**Baroness Scott of Needham Market:** I am not sure where else to ask this question, so I will ask it at this point. At home in Suffolk, I think I am seeing an increase in what one might call civil society stepping in. In some cases, there is no choice because councils decide to divest—that is the word they are all using—themselves of services and communities and charities step in. What are your thoughts on the role of civil society in all this? Do you see more activity, or is it also struggling under financial pressures.

**Margaret Clark:** Jeremy will have a lot more information on that than I have. I will put my Plunkett Foundation hat on. We support community enterprises and are certainly seeing a lot more interest. Shops have been bought for some time, but communities are buying their pubs and looking at lots of different ways of providing local services. There are organisations, not least Jeremy's one, which are there to help, but they are also underresourced. On the one hand, there is the really positive move of people wanting to help themselves, but there is a lot of rediscovering the wheel because there is no support mechanism to help them to do that; it is underresourced and has been cut. If there were some way of funding that and resourcing it better, you could make a thousand flowers bloom.

**Jeremy Leggett:** I am grateful to Margaret for saying what I wanted to say. If I had said it, it would have sounded like special pleading. Civic society has always stepped in in rural areas. That lovely hall in your village is not run by the local authority but by volunteers. Volunteers already run the car scheme and the good neighbourhood scheme. The trick that we need to turn to help civic society to deal with the reductions in statutory service provision is finding some way of helping the statutory services to break down the silos between themselves. They always, instinctively, look for economies of scale for their particular service. You can get that in the London Borough of whatever; the service can have its own building, staff, infrastructure and all that. In a rural area you cannot get that, so you need services to work together, and you need economies of scope.

That is exactly what happens with village halls. In a town, you would have a theatre, a leisure centre, childcare facilities. In a village, the village hall does all those things, which are run by volunteers. So you have to leverage all that, but you have to get the statutory sector to work with you, breaking down its silos so that things can have sustainable economies of scope. In that way, you can get more involvement from civic society and potentially motivate people to do things for their community.

**Lord Cavendish of Furness:** The flip side to Baroness Scott's observation on civil society, and I find this in Cumbria, is that people, particularly farmers, are being driven out and are leaving parish councils and governing bodies mainly because of the rules and regulations, and in particular the disproportionate effect of regulation. Have you observed any of that?

**Jeremy Leggett:** We hear that all the time, but one never really knows whether people would have got involved and volunteered if it were not for a certain amount of regulation—and there is a certain amount of regulation that you really would not want not to have. Ten years ago we heard rural childcare and youth organisations say, “We’re going to lose all our volunteers if you introduce DBS checks and the like”. We all accept that that has to happen, and it is now part of the fabric of the way in which people get involved. We gave evidence to the Select Committee on Citizenship and Civil Engagement on this very subject, because it looked as if that Committee’s remit was not looking as closely at this side of rural life as it might have done. We have included as an appendix to our evidence to you our submission to that Committee.

**The Countess of Mar:** Following on from Baroness Scott’s question, the evidence from one of you—I cannot remember which—talks about adult social care and how it is let out to big organisations. In the village where I live, there are some retired district nurses who could quite happily organise people in our own locality to provide adult social care. It seems to me that that would be an economy to the local authority, but it is not looking at it that way. Do you agree?

**Jeremy Leggett:** Absolutely, but that could happen only if those services were procured in a way that had been rural-proofed and that looked at the best way of delivering those services in a rural area, rather than a reform of local government and the health system ending up in larger and larger commissioning areas for largescale organisations to deliver within, making it very difficult for more appropriate local approaches, as you describe, to happen in a given small locality.

**The Countess of Mar:** In a lot of cases, these women are on a minimum wage and they have to pay for their travelling time out of it. That seems very uneconomic.

**Jeremy Leggett:** Indeed.

**Margaret Clark:** We at the Plunkett Foundation have found that quite a lot of shops and pubs are providing a social care service for people. It is informal and not recognised, but there are people in the village who they know are not well, need help or whatever, who come in because they are isolated. That is not recognised in the whole scheme of things, so if they are looking at raising money it comes either from the village or from a traditional shop grant or pub grant. The wider role that they are performing is simply not recognised.

Q123 **Baroness Whitaker:** This is slightly a devil’s-advocate question. Is it realistic to expect government policy to be rural-proofed? What are the challenges that currently limit the potential for rural-proofing, and how might these be overcome? Ms Clark mentioned public transport. There is a huge deficit of rural public transport that impedes business, access to services and indeed getting on with life, and I would be interested in your views on what the Government should do.

**Margaret Clark:** I do not see why it is not realistic to expect the Government to be concerned with all their citizens, wherever they live. Geography should not be the determinant of whether or not your interests are looked after. They need to understand—call it rural-proofing or whatever—what it is like to live and work in a rural area. For me, rural-proofing is not only realistic but important. After all, the Government do equality and environmental impact assessments. As we have already discussed, there are challenges to how you do that, certainly to how central government does that because of its very nature.

We come back to the data issue, which again is a chicken-and-egg question: if you want to drive it by saying, “We want to understand what is happening in rural areas and how it impacts on rural citizens”, that will drive the data. The two are very intertwined.

It also means recognising that the expertise is not just within government. Civil servants move around, maybe every couple of years. They have a wealth of knowledge and expertise but probably not a huge amount of rural experience or expertise, so you need to bring in people who have that expertise. That means having a process that is more transparent. Rather than producing a policy that is nicely tied up in ribbons and saying, “Here it is”, and those of us in the rural world saying, “Argh, but it doesn’t work”, there is a need to involve people earlier on in the development of the policy, even before it is a policy. It is about engaging. It is not always clear or obvious whether things have been rural-proofed. They may well have gone through a process, but that is not said.

**Jeremy Leggett:** I could not put it any better. The second part of your question was: what are the impediments? I would say political will. Perhaps there should be statutory backing in some form. We do equalities impact assessments for all policy, and we take that extremely seriously. I do not see why someone, by dint of the geography of where they live, should be seriously disadvantaged in their access to services that the rest of society gets. If you live in a rural area, as we said earlier, you expect to be a little bit disadvantaged—no one expects there to be a district general hospital in every market town—but you should not be seriously disadvantaged. That is perhaps where we ought to put the cut and ensure that everything is rural-proofed to avoid that.

**Baroness Whitaker:** What do you think about another impediment? Where I live, people respond very well, in all the ways that have been discussed, when it comes to services and so on, but on the whole these are only the people who are better off. For various reasons, poor people, who are the most disadvantaged by the lack of rural-proofing, do not quite latch on to how to make it work better. Do you think the Government ignore poorer people? What is all this about?

**Jeremy Leggett:** I hesitate to put it as crudely as this, but it is a question of “out of sight, out of mind”.

**Baroness Whitaker:** Yes, but this is a democracy. Why are they out of sight?



**Jeremy Leggett:** Because of where they live.

**Lord Cavendish of Furness:** May I make a rather raw suggestion: that there are fewer MPs than ever who understand the nature of the countryside? Do you agree?

**Margaret Clark:** MPs come from a wide range of backgrounds.

**Lord Cavendish of Furness:** Well, do they?

**Margaret Clark:** I think they come from a wide range of backgrounds, from what I can tell. To overcome some of those issues, there are groupings in Parliament—Baroness Byford mentioned one—and elsewhere that are about trying to understand the issues of rural areas. It is inevitable that some Members of Parliament who do not come from a rural background represent a rural constituency, but my experience of working with MPs is that they go out of their way to try to find out about issues affecting their constituents.

Q124 **Lord Cavendish of Furness:** That is very reassuring.

My main question is directed initially at Mr Leggett. Your written evidence, which I found tremendously readable if I may say so, calls for responsibility for rural policy to be moved from Defra to the Cabinet Office. Not everybody feels that that is necessarily the holy grail. How would you ensure that such an approach did not create further fragmentation between rural policy and policy on agriculture and the environment, and what are the benefits of your suggestion overall?

**Jeremy Leggett:** I would like to put that proposal into context, if I may. Our view, which has probably come across in the past three-quarters of an hour or so, is that we need a comprehensive rural policy for rural people in England, not just a policy for farming and a policy for the environment. That means something that is then implemented by the Department for Work and Pensions, the Department of Health, the Department for Communities and Local Government, DCMS, all the others. Obviously fragmentation is a worry, but we have no policies for rural areas at all across those areas of government, other than what those individual departments might choose to do, so that fragmentation is already there.

If Defra were empowered by the centre to take that role, I would have no problem with that. The issue is that it needs to be a comprehensive, cross-cutting government policy on rural areas that is then implemented across all departments and policed across all departments. If Defra can do that, fine, but that has not been the case over 16 years of Defra and eight Secretaries of State, presumably because Defra has not been empowered to do so. We already have fragmentation between all the social and economic policies and the policies that Defra is in command of on food, farming and the environment.

On the question of an alternative way of doing it, if we go back 100 years to the equivalent, the Rural Development Commission, its origins were actually in the Treasury. So it is not beyond the scope of the machinery of

government to put the responsibility for a genuine cross-cutting rural policy somewhere where it can be implemented across all of government. If Defra is the right place for that, that is fine. We have a close working relationship with Defra, and I would not want to sully that in any way, but we need a policy for rural people and rural communities that goes across government, not something that is just subsidiary to farming and environmental policy.

**Lord Cavendish of Furness:** Ms Clark, how do you react to the Cabinet Office idea, or indeed to the Treasury idea?

**Margaret Clark:** One problem that can arise wherever it sits is that other government departments see it as Defra's job: "It has rural affairs in its title. Therefore, it does rural. We do what we do"—work and pensions or whatever. We moved around. I worked for the Rural Development Commission when it was under the Treasury. Then we went to the Department of the Environment, then to the Office of the Deputy Prime Minister, and then to Defra. If you remember, there was a rural White Paper in 1995, which was led by the Secretary of State for the Environment, John Gummer—Lord Deben as he is now—who undertook to "expand the remit of the Cabinet Committee on the Environment so that its task will be continually to consider the rural dimension of policy-making right across Whitehall". That was the birth of rural-proofing.

It is about having something that, as Jeremy says, enables the strings to be pulled. It is about having the political will at the heart of government that means that rural issues matter across the board. Whether or not you have a lead department, as there is on welfare, on business or whatever, does not seem to me to matter that much, as long as you have that cross-Whitehall chivvying.

Q125 **The Earl of Arran:** As ever, we come to Brexit. Brexit tally ho! What in your opinions are the potential implications for rural businesses and communities? In your opinion, what should we do to ensure that any opportunities, which must exist, are realised, and the potential threats, which also must exist, are mitigated?

**Margaret Clark:** The Rural Coalition was concerned about the impact of Brexit on rural communities, which led to our publishing a statement in the summer. Our main concern was that the debate seemed to centre on farming and the environment, both of which are critical, and we have farming and environmental interests on the Rural Coalition. But the bit in the middle is being squeezed. Rural communities and businesses not directly involved in those things did not seem to have a voice. Yet the whole of rural England, like the whole of England, wherever you are geographically, will be affected by withdrawing from the EU. Our main concern is making sure that the implications of the negotiations for rural people and businesses and post-Brexit policies are properly rural-proofed. That was our main desire. At another level, this also comes back to the need to have a strong rural voice in those negotiations.

**The Earl of Arran:** Mr Leggett, do you share that view?

**Jeremy Leggett:** I am entirely in accord with that view.

**The Earl of Arran:** Is there any evidence that more and more people wish to move from the towns to the country, to rural communities, or does the evidence not exist because it is not true?

**Margaret Clark:** I think it has slowed, although I need to check the figures. I think there is still an outward migration, but it may be more to the smaller market towns than to the deep rural areas. There is a flow of middle-aged or older people moving out of towns and cities and younger people moving in. I know that you are going on to talk about housing, which is at the heart of quite a lot of that. There is still a desire to live in the countryside, but I have not looked at the figures lately and I would have to write to you on that.

Q126 **The Chairman:** One final question: what one recommendation would you like us to put in our report?

**Margaret Clark:** I would like you to give rural-proofing some welly—really give it some teeth—and for rural-proofing to be made more transparent and real across government. I am less concerned about the organisational thing. We need to follow the principle that rural-proofing happens and happens early on in policy-making, at all levels. We are focusing on the national level, but it needs to happen down the line, with anyone who delivers services to the public.

**The Earl of Arran:** Are you sceptical about what is happening?

**Margaret Clark:** There are some good things happening and possibly not such good things happening. We had a meeting recently with the DCLG team, which is doing the Fair Funding review of local government finance. I was very encouraged by how it was looking at rural issues. Perhaps it can get beneath some of this IMD stuff and look at the impacts on rural communities. That is encouraging. But at other times you look at what is happening and you think that it is less so. So there is good and bad.

**Lord Faulkner of Worcester:** This is a left-field question. You have made quite a lot of the fact that people who live in cities do not fully understand the needs of people in rural areas, and I would certainly agree with you. Four and three-quarter million of them listen weekly to a radio show that is supposed to be a portrait of country life. Do you think that “The Archers” encourages an understanding of life in the country, or does it hinder it?

**Margaret Clark:** That really is left-field. I gave up listening to “The Archers” about 10 years ago when I moved to the countryside.

**Jeremy Leggett:** I stopped listening in April 1992.

I would like to see a comprehensive cross-government policy towards rural communities that is established and policed from the heart of government somehow—I am open to how—but with the aim of ensuring that no one is seriously disadvantaged by the geography of where they live. They will

accept being a little disadvantaged, but nobody should be seriously disadvantaged by the geography of where they live.

**The Chairman:** We will keep trying. Some of us have been trying for decades. Thank you both very much.

## **Action with Communities in Rural England (ACRE) – written evidence (NER0022)**

### Introduction

1. The ACREnetwork consists of 38 County level rural development charities and their national association: Action with Communities in Rural England (ACRE). Members of the network have assisted rural communities to manage and adapt to change for over 80 years especially over issues such as affordable housing, access to local services, health & wellbeing and rural isolation.
2. The scope of the enquiry into the 2006 Act is defined by changes to the 'machinery of government' that were created by the Act, their effectiveness and the impact of subsequent changes not envisaged in the Act.
3. ACRE's evidence is being submitted on the behalf of the whole ACREnetwork and therefore encompasses both a national viewpoint on how a rural dimension to public policy has been addressed since the Act came into force and also a more local one, derived from 38 rural development charities experience on how this has been rolled out to local government and government's more local agencies.
4. The evidence is structured in a way that answers the Select Committee's questions 1., 2., 3. and 10. Question 10 appears only to be interested in the impact of Brexit on nature and environmental standards, however we would like to also submit views on its impact on rural communities. We will not address the element concerned with the natural environment other than where 'machinery of government' implications have also had an impact on 'rural proofing' or rural communities in this question.
5. In addition, the current disposition of responsibilities within Whitehall can seem to systematically 'let down' rural communities. However, to understand thoroughly how this has arisen requires extending our evidence back to changes that were made immediately following the 1997 General Election. We have summarised the institutional changes that have taken place since 1997 at the beginning of our evidence and added a short annex about these changes at the end.
6. The concept of communities feeling 'let down' by government also relates to a separate House of Lords Select Committee investigation into 'Citizenship and Civic Engagement', especially Question 9 published by this other Committee. We believe there is clear applicability of our evidence to the questions being asked by both Committees and so we are submitting our evidence to both. The ACREnetwork response to the House of Lords Select

Committee into 'Citizenship and Civic Engagement' has been included as an appendix to this submission.

## **Government and rural communities – a timeline**

'Family tree' of rural non-departmental public bodies concerned with rural people and communities:

1909 to 1998

- Development Commission (DC) – Standing Royal Commission with responsibility to advise government spanning the social and economic health of rural England. Subsequently renamed Rural Development Commission (RDC) and given the powers of a corporate body.

1997 Labour administration

- RDC is wound up
- Economic remit of the RDC passed to new Regional Development Agencies
- New Countryside Agency (CA) is created out of remainder of the RDC and the Countryside Commission
- Countryside Agency comes under the wing of the new Dept. of Environment, Food and Rural Affairs

2006 Natural Environment and Rural Communities Act

- The Countryside Agency is wound up and Natural England created out of the countryside management elements of its remit and most of English Nature.
- The Commission for Rural Communities (CRC) is created from the remaining parts of the CA covering just 'rural proofing' and research / advocacy over rural community issues

2010 Coalition government - 'Bonfire of the Quangos'

- CRC is wound up as a separate non-departmental public body and the core of its functions transferred to a unit within DEFRA known as the Rural Communities Policy Unit (RCPU)

2015 - Ongoing re-focusing of DEFRA on its core and economic objectives

- RCPU is disbanded with various teams within DEFRA picking up liaison with other government departments as resources allow

7. Prior to the 2015 General Election Lord Cameron of Dillington was invited by government to review arrangements for 'rural proofing'. His report and recommendations were published in 2015 and, along with government's response, bear re-reading. They focus primarily on Whitehall mechanisms

that could, if carried out with vigour, enthusiasm and resource create more 'joined up' implementation of policies towards rural areas across government.

8. For Lord Cameron's recommendations to be effective, however, policies towards rural people and services would need to exist, enthusiasm for them would need to stem from political will, and resources would need to be allocated. Government's response was supportive in principle, but was careful not to commit to any of these.
9. This brings us up to the present day and the point at which we start our evidence on the questions raised directly by the Committee.

Evidence to Enquiry: Natural Environment and Rural Communities Act 2006

**Question 1. Are the CRC's original functions of advocate, adviser and watchdog being fulfilled?**

- 10.No.
- 11.The only government, internal, arrangement that appears to have been put in place following the winding up of both the CRC and the RCPU is the allocation of the title 'Rural Ambassador', alongside many other functions, to one of the Ministers within DEFRA. Associated with this role, policy officials within DEFRA retain a watching brief over policy development in other departments, data relevant to DEFRA's responsibilities and externally generated research. It is understood that the current Rural Ambassador puts a good deal of energy into maintaining relationships with junior ministers in other departments in order to keep rural communities on their agenda. It is not clear what evidence exists for the effectiveness of this activity so it is hard to judge from a grassroots perspective if it is making any difference to rural people and communities.
- 12.It should be stressed that whilst the effectiveness of the CRC within Whitehall and Westminster may have been limited, its ability to commission high quality – if lengthy – reports about the impact of a great variety of social and economic issues on rural people had a wide impact. Rural voluntary organisations, including ACREnetwork members, were able to use these reports to demonstrate rural needs to a variety of commissioners, service delivery organisations and funders. To this extent the publishing side of the CRC's activities were effective and have not been replicated.
- 13.It is instructive to look at each of the three functions separately.

**1.1 Advocate**

14. Non-governmental organisations such as ACRE, Rural England CIC, The Rural Services Network, and the Rural Coalition have sought to influence government to ensure policies and delivery are rural proofed. There is limited evidence of this external lobbying being effective at the level of detail that is required. In addition, if any of these agencies receive financial support from government there has been a clear direction given by officials that advice to government resulting from funded activity must not form any part of a case for additional investment in rural areas. We will return under Question 2 to the fundamentals of rural proofing and the relationship to costs of delivery.

15. The role of 'rural advocate' has continued to be pursued by most of the ACRE network at a local level insofar as they are resourced to do this. However, Government Departments tend to seek large scale outcomes from the agencies through which they operate at a local level, based on a very urban view of what needs to be achieved. This limits the effectiveness of local advocacy, however enthusiastically it is carried out by members of the ACRE network.

**Examples include:** The LEPs resourcing and tasking framework places most emphasis on large scale economic development housing and transport initiatives; the Sustainability and Transformation Plans of the NHS are very largely focused on specialist hospital services that require ever larger catchment areas and economies of scale; investment in affordable housing is increasingly only possible if leveraged by large scale urban developments that provide little benefit to rural communities.

16. Advocating for the needs of rural communities to local government must be seen in the context of localism, dramatic reductions in funding, and the rapid move to service commissioning by local government. Taken together, these severely limit the ability of local government to meet the additional costs of providing services equitably in different locations irrespective of the economies of scale that are available in any given place. Detailed knowledge of service delivery has been lost from authorities that have become dominated by procurement and commissioning. This means there is seldom anyone capable of understanding 'rural advocacy' if it conflicts with 'lowest cost procurement'. In many rural areas, social value commissioning is still in its infancy.

**Example:** Social care contracts continue to be let to both private and charitable providers using operational models that ignore differences in travel time between clients in urban and rural areas. Alternatively contract areas combine large urban and rural locations in ways that prevent small scale providers from tendering to meet needs in an economical way at a very local level.

## **1.2 Adviser**



17. The adviser role within Whitehall is more complex. The only source of internal advice to government departments is from DEFRA, however it is hard for DEFRA to sustain the breadth of expertise, the influence or the manpower to undertake this role in relation to other departments. Its manpower and other resources are focused on achieving a number of important specific objectives over: farming, food, environmental protection, flooding and plant & animal health. Giving the Department a remit for everything for which all other parts of Whitehall are responsible – insofar as they apply to rural people and communities – whilst also having no specific objectives for any of them, leaves the Department a near impossible mission. The major management strands and resourcing of the Department's work are, as should be expected, focused on achieving the outcomes over which it has some control, not on the Rural Affairs element of its title over which it does not.

**Example:** If there were to be a genuine 'adviser' role and this were to be effective and cross-cutting throughout Whitehall it would have to have a clear mandate and 'line to power'. To do this it would either have to be rooted in the Cabinet Office or the Treasury, or alternatively have a compelling statutory backing. It would have to be resourced and respected for its role and its advice would need to have weight. A good example would be the Equality and Human Rights Commission.

18. At a local level the charitable nature of ACREnetwork members means that there is seldom much difference between being an advocate for rural areas and an adviser/watchdog. Most ACREnetwork members endeavour to achieve this but walk a difficult tightrope since the bulk of their income is derived from service provision or partnership based development work.

### **1.3 Watchdog**

19. The CRC may originally have been perceived to have a 'watchdog' role. The closest the 2006 Act gets to this is to describe a responsibility for 'monitoring and making reports'. This role does not now exist anywhere and it is a moot point whether attempting to fulfil the 'monitoring and making reports' role of the CRC is what led to it being considered by some to be troublesome and ignored, then committed to the 'bonfire'. A watchdog needs teeth; Westminster has never been willing, even during the CRC's short life, to give a rural watchdog a long enough lead or sharp enough teeth to enable it to be effective.

**Examples:** There was considerable evidence that the payment by results regime put in place through major prime contractors for the Work Programme was leading to rural clients being ignored because a tight payments regime meant a profit could not be made from them. The impact of payment by results may not have been easy to anticipate in advance through 'rural proofing', however an effective rural watchdog would have gathered together this evidence and addressed the issue when it came to light with the DWP. This did not happen.

One of the last actions of the CRC was to highlight the impact on rural 16 years olds of the ending of the Educational Maintenance Allowance, as this

had been widely used to meet exceptional transport costs to post-16 education. No material policy change resulted from this intervention.

**Question 2. Are sufficient measures being taken to ensure that policies are rural proofed?**

20.No

21.However the question of what constitutes 'rural-proofing' needs to be examined to understand why this is both a particularly difficult issue for government and is also not the whole answer.

22.There sometimes appears to be a belief that failure to 'rural-proof' is an oversight and the simple application of a checklist carried out towards the end of a policy design process will overcome it. Alternatively, it is believed that reminding senior officials or Ministers of the need to think about rural areas will result in the application of a little more thought, and the problem will be solved. There are good reasons to think that neither of these are true, especially if the main emphasis is placed on processes within Whitehall rather than engagement of rural people and communities in delivery. These beliefs may also give some clues to the perception in many rural communities of being 'left behind'.

23. In the experience of the ACREnetwork, failure to 'rural-proof' is often a deliberate choice that is taken when budgets are tight, designers of a policy have little understanding of anything other than an urban context, or a desire to target resources in a way that is easy to communicate has triumphed over a good understanding of real community needs. Genuine rural proofing requires three difficult conditions to be met:

1. Policy makers must not only accept that delivery of almost all public goods to dispersed populations will cost more to achieve the same outcome than delivery to concentrated populations, but also that rural people have similar entitlements to urban people.
2. They further need to accept that decisions about how to make best use of the resources that have been allocated must be made as close to rural people as possible and services should be integrated together at the local level in order to achieve 'economies of scope' in rural areas. Commissioning services in narrow silos may achieve good value for money in urban areas but does not do so when population numbers are small.
3. Finally, policy makers must accept that ensuring services reach dispersed populations will not result in national PR opportunities as 'ownership' of delivery must be vested in local communities if it is to be sustained over time and supported by community involvement.

24. In our network's experience, few decision makers are willing to put these conditions in place since they run counter to the instincts and perceived interests of most government departments and their narrowly designed and targeted programmes. Much the same is true for politically led local government. So, in this context, it is not easy for anyone to take the lead on rural policy if the means of doing so is focused on an exhortation to 'rural proof' mainstream policies and programmes. Other approaches need to complement 'rural proofing' at the national policy level.
25. All the evidence from our network suggests that at local level there are few attempts being made to 'rural-proof' mainstream, locally designed, programmes. Where there is evidence of this taking place, it is mostly in places where rural is the mainstream e.g. Cornwall or Northumberland. However, for most of rural England, and for most public services, rural areas are administered as adjunct populations to larger urban areas. ACREnetwork members advocate for rural areas but, as local voluntary organisations, it has become increasingly hard to 'cut into' the policy thought process when the end result is inevitably a competitive public procurement exercise. The requirements of the procurement process seek to weed out any input from organisations with specific expertise that might subsequently be used to bid for delivery of a commissioned service. ACREnetwork members and their rural knowledge often fall into this category as they must fund their operations through service delivery. Alternatively procurement can be carried out on such a strategic scale that engaging communities as part of service delivery becomes barely possible.
26. At national level, despite efforts that have been made to find examples, it is hard to see any evidence of rural proofing filtering down to real changes in policy or approach to delivery. The most recent area of active policy making by government – the Industrial Strategy – shows some signs of 'agriculture proofing' but not of wider 'rural proofing'.

### **Question 3. Co-ordination of rural policy**

27. In full, the questions posed by the Committee concern representation of the interests of rural communities to government and co-ordination of policy towards rural communities. In particular it seeks views on DEFRA's role. The question of whether government should, or currently does, have policies specifically to take account of the unique circumstances of rural communities is not asked. This unasked question does need to be addressed.
28. Government should, but currently does not, have a suite of specific policies towards rural communities that are distinct, but complementary to, its policies over the environment, food production, animal & plant health and water management. Is DEFRA the right department to 'own' these policies on behalf of government? This involves a difficult choice, as rural areas

should be loathed to give up having Rural Affairs in the title of a mainstream Department. However, experience has shown that a 'hybrid' department with direct responsibility for some areas of policy and delivery finds it all but impossible also to carry an indirect, adviser, role over the delivery of all other areas of government policy. The respective responsibilities held by mainstream departments for the 25% of their 'clients' who live in rural areas and the 'special' department that can also be perceived as having an overarching responsibility for this section of the population has proven to be both confusing and hard to put into effect.

**29. Despite the best efforts of a number of Ministers and senior officials since DEFRA's creation, it is hard to avoid the conclusion that the responsibility for a broadly based policy towards rural areas, rural people, communities and businesses needs to lie elsewhere in government. It needs to be located somewhere where its real, cross-cutting, nature can be better and more powerfully exercised.**

30. Four key initiatives need to be taken at national government level if rural communities are to be properly represented in the policy, planning and delivery of public services and also services provided by the market. In summary these are:

- **Rural Policy**  
Policy towards rural communities needs to be formed, and subsequently communicated to all Departments, at sufficiently senior a level in government that Departments cannot ignore it in the face of budgetary pressures. Although there is no direct equivalence, rural communities must be accorded the same level of respect and understanding as other sections of the population who are protected from discrimination that may result from a number of defined 'protected characteristics'. To be effective this must be at the heart of government i.e. the Treasury or the Cabinet Office.
- **Market regulation**  
The UK is a mixed market economy where public goods are often delivered through market mechanisms. It is essential that the statutory mechanisms put in place to regulate and ensure quality in the market for the benefit of the whole population (e.g. Ofcom, Ofgen, CQC etc.) are given a particular role in offsetting market abuse or market failure in respect of rural communities. Rural broadband is an important example, but far from being the only one. It is also important that this role of the regulators is, in turn, policed. To be effective this must relate closely to where oversight of these regulators is placed within government.
- **Commissioning and practical intervention**  
Rural proofing of individual policies alone is insufficient. A mechanism for comprehensively developing and pump priming local community led voluntary / social enterprise solutions to public service delivery in areas of

low population is required. This will need a dedicated source of funds to be used on an 'invest to save' basis that can provide positive incentives for local commissioners to combine budgets to most effectively deliver services alongside rural communities. This approach could build on the previous experience of rural development agencies leveraging funds into rural services through modest grant interventions. Both a source of funds and an arms-length agency to manage them would need to be created as this will need to have a very strong understanding of service delivery in rural areas and long term objectives to improve collaboration between service commissioners.

- **Understanding the rural dimension**

Officials within central and local government need to have an understanding of rural communities positively included in their core training and competencies. The ACREnetwork can both assist with this and help form a long term and positive partnership between government and rural communities. In this way the positive energy that can be found in many rural communities to find solutions to local, rural, issues of service delivery can be built on and factored into the formation of government policy.

31. Lord Cameron's review of rural proofing made an initial recommendation that the role of the Cabinet Office should be strengthened in relation to rural policy, albeit in a partnership with DEFRA Ministers. **We agree, but would go further and suggest that a Cabinet Office Unit should take on the role of rural policy formation and work to a Cabinet Committee on Rural Affairs.** This is the only institutional mechanism, short of re-creating a Standing Royal Commission, which will carry sufficient weight in government. From the creation of this Unit, Lord Cameron's other recommendations would logically flow and could be implemented. The Unit and Committee could take on responsibility for achieving the other proposals outlined above.

32. The long term relationship between the ACREnetwork and government would logically move from DEFRA to the proposed Cabinet Office Unit. If this is considered too executive a role to give such a Unit, an alternative would be the new Agency proposed above to invest in innovative service delivery models alongside rural people.

33. DEFRA's remit for the land based economy, environment and natural resources would be as subject to 'rural proofing' in relation to rural people and communities through the new Cabinet Office Unit as any other part of Whitehall. The emphasis, however, would be more focused on 'community proofing' DEFRA's policies towards the natural environment.

## **Question 10. The 2006 Act and Brexit**

34. In so far as wider rural affairs and rural communities are concerned the structures put in place by the Act no longer exist. They cannot, therefore, be sufficient to prepare for rural policy after exit from the EU.
35. The institutions suggested in answer to Question 3. will give a reasonable chance to develop rural policies beyond those needed just for the environment and the land based economy.
36. It is imperative that a new Rural Policy for the UK is formed over the next few years and that this goes well beyond the current debate about how much resource can be retained in CAP like grant systems. A comprehensive Rural Policy is required, not separate policies for farming and for the environment that are, themselves, unconnected from urban derived policies on all other areas of concern to rural people and communities.
37. The priority for intervention in rural areas as the UK's exit from the EU unfolds has to be:
- mitigation of the additional costs that arise if services are to be provided equitably to dispersed populations by both the public sector and the market,
  - use of any freedoms that arise from leaving the EU, eg over VAT, to improve the viability of rural services and rural community owned assets such as Village Halls and,
  - to ensure rural people and communities are not disadvantaged by the desire of the whole population – urban and rural – to protect the environment and make best use of the countryside's natural and man-made assets.

***This submission has been written by Jeremy Leggett on behalf of ACREnetwork, August 2017***

## **Historical Annex concerning Government and rural communities**

### **Pre- 1997**

38. For most of the twentieth century rural England was served by a Standing Royal Commission known as the Development Commission (DC). From the 1980s this operated under the title 'Rural Development Commission' (RDC). The DC had only an advisory role on socio-economic development throughout non-metropolitan England. Its original purposes derive from its creation in 1909 when rurality was synonymous with poverty, there was large scale population drift away from the land to the new suburbs and English farmers were struggling to cope with technological change and compete with cheaper food imports from the Empire.
39. In the 1960 the DC's role was widened to include social and community issues and in the 1980s it became a corporate body and could take action as well as advice government. The DC had established an agency initially known as the Council for Small Business in Rural Areas (CoSIRA) that provided generic business advice to small rural businesses and often supported them through the rapidly developing new Town and Country Planning process. Its new corporate existence enabled CoSIRA to be taken into the core structure of the RDC and renamed the RDC Business Service.
40. The RDC's social development remit was mainly pursued through a central core grant scheme for the network of County Rural Community Councils. By the mid-1980s there was one of these local organisations serving every one of England's shire Counties and providing a basic set of support services to village communities throughout England. The ACRE network is the national network of these organisations. Once it became a corporate body the RDC was moved under the newly created Department of the Environment (DoE) – the equivalent of the current Department for Communities and Local Government.
41. The first Rural White Paper was a joint initiative of MAFF and the DoE in the final years of the Conservative administration in the 1990s, but with substantial input from the RDC.

### **The Blair administration**

42. In 1997 the new Labour government set about replicating in each of the English regions a version of the Development Agencies that existed in Wales and in the Highlands & Islands. Rather than find new money for this initiative the economic remit of the RDC was transferred to these Regional Development Agencies along with their staff, budgets and premises. The social remit of the RDC was amalgamated with the Countryside Commission to create a new Countryside Agency. It is possible that the conflict that often occurred at local level over economic development between the Countryside Commission's staff and that of the Rural Development Commission may have

led to a belief that a forced marriage of this kind could help to achieve a single view about people's relationship with the countryside.

43. However, the early days of the new administration were coloured by two major rural events: outbreaks of foot and mouth disease and the passage of legislation to outlaw foxhunting. These two events had a strong influence on policy towards rural areas and were an essential context to a second Rural White Paper instigated by the then Deputy Prime Minister. The government created the Department of Environment, Food and Rural Affairs and moved some of the old Department of the Environment's sections into it, also placing the new Countryside Agency under its wing. The break between Government's oversight of local government and its policy towards rural communities was made at this point. This limited the inter-relationships over rural policy and government's mainstream tasking of local government whilst also creating an advocacy role for rural issues within the Countryside Agency and linked to DEFRA.

44. All of government's policy towards rural areas – the natural environment, farming, plant and animal health, water, marine issues and flooding - now came either directly or indirectly under DEFRA. The remaining rural remit of the RDC, that which had been moved into the Countryside Agency, was probably better resourced than ever before, but with limited policy influence alongside the land-based priorities of DEFRA. The social remit consisted mainly of a reducing commitment to the practical work of Rural Community Councils but an increasing budget for research and innovation, especially into ways of working with rural communities that would contribute to the countryside management objectives of the Countryside Agency. The Chair of the CA was given the title 'Rural Advocate' reflecting the CA's intended role within Whitehall on behalf of rural areas.

### **The 2006 Act**

45. The 2006 Act continued this trend of separating rural community issues within Whitehall and placing them away from mainstream policy formation or delivery whilst at the same time exhorting other Departments to 'rural-proof' their policies. The main aim of the Act appeared, at the time, to be consolidation of the responsibilities of English Nature with that of the Countryside Agency. The small social remit of the Countryside Agency did not fit well with this consolidation and so the government also created, under pressure from rural community organisations, the Commission for Rural Communities (CRC). The intention was to create a small government backed, but otherwise independent, NDPB that would be the government's 'rural conscience'. Its intervention was confined to research, publishing, facilitating discussion, encouraging others to 'rural proof' and, ultimately, commenting on rural issues and concerns from an independent standpoint. Its Chair inherited the role of Rural Advocate from the Chair of the Countryside Agency.



46. The role of providing government's ongoing commitment to support the network of Rural Community Councils was taken up by DEFRA directly and administered by their staff in the Government Offices of the Regions. When the Government Offices were closed, DEFRA struck an agreement with ACRE to cascade a national service agreement and grant to the 38 members of the ACRE network.
47. In the light of this historic context it was, perhaps, inevitable that following the 2010 General Election, in the 'bonfire of the Quangos', the final holder of the nation's rural conscience, the CRC, was itself wound up. Its role was absorbed into a unit wholly within DEFRA – the Rural Communities Policy Unit; a Unit that has, in turn, been wound up.
48. Prior to the 2015 General Election Lord Cameron, previously Chairman of the CA and Rural Advocate, was invited by government to review arrangements for 'rural proofing'. His report and recommendations bear re-reading. They focus primarily on Whitehall mechanisms that could, if carried out with vigour, enthusiasm and resource create more 'joined up' implementation of policies towards rural areas across government. However, the policies towards rural areas would have to exist, the enthusiasm would need political will and the resources would need to be allocated. None of these pre-conditions currently seem to apply.

#### Appendix - Evidence to Enquiry: Citizenship and Civic Engagement

#### **Question 9. Why do so many communities and groups feel 'left behind'?**

49. Opinion polls and other qualitative and anecdotal evidence suggest that the prevalence of a sense of being 'left behind' is not just a phenomenon of relatively deprived urban areas but is also very common amongst parts of the rural community. It may be possible to identify specific urban locations where this view is concentrated, in rural areas it is more diffuse and affects particular sections of the population in most rural communities.
50. Since the 2008 financial crisis, and the fiscal / public expenditure action that has been taken as a result, rural areas have seen dramatic economies being made in public services of all kinds. These have included health services, youth provision, library services, public transport etc. In all these services the tendency of those managing diminishing budgets has been to look at unit costs of delivery to individuals and families and seek to reduce services where either the unit cost is highest or the least visibly damaging cuts can be made. For public agencies that serve rural areas as well as urban ones, this has often meant cutting rural services first. For those living in rural areas it is not a matter of perceiving themselves as being left behind, they are being left behind and left out.

51. Government has seen community activity and volunteering as a means of ensuring that preventative services can be retained whilst budgets are protected for acute and emergency response services. This is evident across many areas of public service from the NHS to the Police Service. Rural communities are rightly proud of their tradition of resilience and self-sufficiency. Many feel this tradition has been abused and resources have been wasted in national initiatives where the bulk of the available money has not been used to support local activity but instead to build up new agencies and activity within local government departments. Many volunteers feel demotivated by a tendency to be 'sucked-into' the public sector and their highly risk averse procedures. This tendency for 'top-down' direction from the public sector results in de-motivation of volunteers and is true across many areas, from health and wellbeing services to neighbourhood planning.

52. The Committee asks the question of how barriers to active citizenship can be overcome. In rural areas communities have always looked to themselves to provide some of those services and facilities that the state provides in urban areas. They understand that this is part of what it is to live in a rural area. What they find hard to understand is why the institutions of the state are so reluctant to understand, and take account of, the realities for people living in rural areas. The most frequent anxieties the ACREnetwork hear expressed by rural people when it comes to getting involved in their community are:

- excessive risk aversion and its resulting paperwork within the public sector;
- systems that rely on fast broadband that they either cannot get or cannot afford;
- national initiatives that are clearly designed only for major centres of population;
- complex and expensive consultations over urban initiatives and a reluctance to listen to how decisions will impact rural people in their communities;
- being treated as 'cattle fodder' for national citizenship initiatives that do not understand the commitment that individuals already make to their communities in rural areas.

***This submission has been written by Jeremy Leggett on behalf of ACREnetwork, August 2017***

*7 September 2017*

## **Association of Local Environmental Records Centres (ALERC) – written evidence (NER0066)**

Local Environmental Records Centres (LERCs) are not-for-profit organisations that collect, manage and share local biodiversity information with local and national partners. The network of LERCs covers much of the UK – providing a valuable evidence base that can underpin decision making. The Association of Local Environmental Records Centres (ALERC) is a not-for profit social enterprise supported by 43 LERCs covering 70 % of the UK; our principle aims are to represent the interests of our members and to promote and develop good standards of practice in the collection, collation, management, dissemination and analysis of environmental data.

### **Background**

A primary function of LERCs is to collect, manage and share biodiversity data and information for a defined geographic area including records of species, habitats and designated wildlife sites (including include Local Wildlife Sites<sup>1</sup>). This information comes from various different sources and is sometimes created by the LERCs themselves; much of it is collected by volunteers, referred to as 'biological recorders'.

Biological recorders may be motivated by personal interest or a desire to assist with a specific monitoring scheme or project. As volunteers, they tend to share their data in whatever format suits them. By capturing, collating and quality assuring the information that biological recorders provide, and bringing it into a structured format, LERCs are able to put it to many purposes beyond the one for which it was originally collected. Together with national taxonomic recording schemes<sup>2</sup>, LERCs form a network that mobilise biodiversity information from around 70,000 volunteers<sup>3</sup>.

The activities delivered by LERCs include volunteer support (e.g. training and equipment loan), data management, computerised mapping and data analysis, field survey, and other activities, depending on the needs of differing local biological recording communities.

LERCs are partnership-led organisations. They provide a suite of services based on high quality data that their private, public and larger voluntary sector partners pay to access, to inform the discharge of their functions and legal

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<sup>1</sup> Sites designated for wildlife, but not under any statutory designation. For more information: <http://www.wildlifetrusts.org/localwildlifesites>

<sup>2</sup> Individuals or organisations dedicated to recording one taxonomic group of interest, for the entire country. For more information: <https://nbn.org.uk/wp-content/uploads/2016/02/NBN-52-Bio-Recording-web.pdf>

<sup>3</sup> Pocock et al (2015), The Biological Records Centre: a pioneer of citizen science. Biological Journal of the Linnean Society 115 pp 475-493

duties. LERC partners all have a major interest in the natural environment and include (but are not limited to) local authorities, local Wildlife Trusts, local volunteer organisations, public services (e.g. transport and utilities) and statutory organisations. Until last year, this final category included Natural England.

## **Natural England**

*Question 4: How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions.*

We will focus here on the resources available to Natural England. In particular, access to up-to-date, high quality biodiversity information which should be fundamental to fulfilling Natural England's purpose under the NERC Act 2006: "to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development".

From around 2002 until March 2016, Natural England had funded agreements with all English LERCs which enabled Natural England staff to access and use local biodiversity information to inform delivery of Natural England functions, day to day. The most recent set of agreements commenced in 2015 and had been intended to be renewed annually, through to March 2019, subject to available funding.

Based on feedback from local Natural England officers, we know that the local biodiversity information provided under these agreements was used in many key areas of work, including:

- Management of National Nature Reserves (NNRs)
- Assessing the condition of Sites of Special Scientific Interest (SSSIs)
- Applications under the Environmental Impact Assessment (EIA) (Agriculture) regulations
- Input into pre-planning advice and planning application consultations
- Biodiversity reporting, e.g. on Local Sites in Positive Conservation Management
- Targeting and supporting Countryside Stewardship schemes

In addition to this, the agreements with LERCs supported Natural England's corporate plan objectives in relation to access and engagement, e.g. in providing "opportunities for people to engage with the natural environment ... in ways that meet their needs including health, learning and recreation."

The agreements also appeared to us to be a good fit with Natural England's stated ambition in its corporate plan, to "work with civil society, business and

other public sector organisations to get the most out of collective resources and to deliver better and more joined-up outcomes for the natural environment.”

Nevertheless, in February 2016, Natural England notified LERCs that it had decided to end its agreements with LERCs. As a consequence, on 1 April 2016 Natural England ceased to have access to the high quality biodiversity information that LERCs, working in partnership with local biological recording communities, can provide.

The main reason that Natural England cited for this decision was a “drive for open data”. It was also acknowledged that budget cuts had prompted some “difficult spending choices”<sup>4</sup>.

The ‘open data’ point is more complicated than it may at first appear given that, in collating data from many different sources, LERCs must respect the Intellectual Property Rights of data suppliers. It is also self-evident that funding for the capture and management of local biodiversity data has to come from *somewhere* – if society wishes to continue making use of it.

ALERC is working closely with key organisations nationally to help lead the open data conversation, and ensure there is a clear and positive role for ALERC members. But when it comes to discharging statutory functions relating to biodiversity, we strongly advocate using the best available data and information. LERCs set their own charges for accessing biodiversity data and information, to cover their running costs.

As things stand, Natural England, as an organisation, no longer has access to the high quality biodiversity data and information, supplied by LERCs, that a large number of other organisations continue to use in support of their biodiversity duty under the NERC Act. It has been suggested that, “if there are specific instances where Natural England needs LERC data then they will have to pay for that”<sup>5</sup>. However, in ALERC’s view, this overlooks the fact that biodiversity information supplied by LERCs is fundamental to Natural England’s purpose, and should be routinely accessible to staff across the organisation.

ALERC therefore questions whether Natural England has the resources – in terms of access to data and funding – that it needs to perform its functions.

### **The duty to ‘have regard’ to biodiversity**

*Question 7: Is the duty to ‘have regard’ to biodiversity ... well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?*

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<sup>4</sup> Natural England’s reasons for taking this decision were set out in a joint letter signed by Tim Hill, Natural England Chief Scientist, and Martin Horlock, ALERC Chair, 19 May 2016.

<sup>5</sup> As stated in a joint letter signed by Tim Hill, Natural England Chief Scientist, and Martin Horlock, ALERC Chair, 19 May 2016.

In order to “have regard” to biodiversity it is important first to know what biodiversity (species and habitats etc.) are likely to be affected by a particular decision or activity. That is the rationale for using the biodiversity information provided by LERCs.

Local authorities access data via LERCs in order to help them comply with this duty. In 2015-16 ALERC members covered 314 local authorities and had partnership agreements with 221 of them, meaning that 70 % of the local authorities who could potentially access LERC services are using them. LERCs are used in a number of ways by local authorities to assist with the NERC duty, but essentially their services provide notification of the existence of priority habitats and species listed under the NERC Act. What is unknown is how local authorities who do not have access to this information manage to fully take biodiversity into account, under the duty set out in the Act.

As far as ALERC is aware, the duty is not policed particularly strongly and it would be hard to know if a local authority was complying with its duty. What we do know is that those local authorities using LERC services are finding this a very valuable contribution to ensuring their NERC duty is met.

### **Case study: Biodiversity data, an essential support for NERC action in Hampshire**

Biodiversity data collected and maintained by Hampshire Biodiversity Information Centre (HBIC) supports the work of Hampshire County Council and HBIC's partner organisations. It informs environmental assessment, land management and research by local authorities, developers, utilities, landowners, students, local groups and the public.

Hampshire County Council funds (& hosts ) the Hampshire Biodiversity Information Centre to provide robust, up-to-date biodiversity information to inform:

- the Mineral and Waste Local Plan and subsequent planning applications
- highways schemes and road maintenance programmes
- other major infrastructure
- its own development schemes including major house building
- flood and coastal defence works
- management of its own land comprising county farms, county parks and local nature reserves, and including over 2,000ha of SSSI land and over 150 local wildlife sites

HBIC also manages:

- The Road Verges of Ecological Importance Project of behalf of County Highways
- The Local Wildlife Sites Project on behalf of the Hampshire local planning authorities

The Hampshire Biodiversity Information Centre holds over 6 million species records; 82,000 ha priority habitat mapping and detailed vegetation surveys of 124 (50,000 ha) SSSIs; 4,046 (36,000ha) Local Wildlife Sites, and many other sites. It works in partnership with a large number of species recording groups.

For more information see: <https://www.hants.gov.uk/hbic>

A similar scenario applies to utilities companies, all of whom have the same duty of regard under the NERC Act. Some utility companies use LERC data to assist with complying with the duty. It is not known what biodiversity information the remaining utilities companies use.

There is an even patchier scenario with other public authorities. For example, some transport organisations (particularly in London) have chosen to enter into partnership agreements with LERCs to assist in fulfilling their duty, but they are the exception.

### **Section 41 species**

*Question 11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?*

Section 41 of the Act lists priority species which are to be given special consideration. This list needs regular review due to changes in species distributions caused by numerous factors, including climate change.

*11 September 2017*



## **Association of Local Government Ecologists (ALGE) – written evidence (NER0048)**

### **Association of Local Government Ecologists**

The Association of Local Government Ecologists (ALGE) was established in 1994. It is the only association in the UK that provides support for professional officers with responsibility for biodiversity and nature conservation in Local Authorities and National Parks.

ALGE's aims are to:

- Promote and develop good principles and practice for biodiversity, nature conservation, and sustainable development in local government, including National Parks, through its members;
- Maintain an active advice and support forum amongst its members for the exchange of information and ideas on biodiversity and nature conservation matters;
- Provide regular advice on biodiversity and nature conservation matters on behalf of members to government, local authority associations, chief officer societies and others;

ALGE has members throughout England and within all types of local authority, including county, district, unitary and metropolitan councils, as well as in National Parks.

ALGE also has members in Northern Ireland, Scotland and Wales.

All members of ALGE work as specialist professionals, often working alongside a multi-disciplinary team of landscape architects, archaeologists, countryside and public rights of way staff, and other planning colleagues. They may be the sole representative of the ecological profession in their authority, and may therefore often not have the benefit of direct professional support and advice from colleagues within their workplace on nature conservation and biodiversity matters. ALGE therefore provides a forum for exchange of experience and knowledge and offers support on various topical matters.

### **Rural advocacy and the Commission for Rural Communities**

1. ALGE is not submitting any evidence in respect of the questions posed on rural matters.

## Natural England

*How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?*

2. For many years, ALGE and Natural England (and previously English Nature) have enjoyed an extremely positive and constructive working relationship. However over the past two to three years we have been concerned at the organisation's approach to its functions and the strategic direction it appears to be taking. Generally it would appear that collectively not enough is being done to conserve and enhance biodiversity, with State of Nature reports recording a decline in biodiversity on an annual basis.

3. ALGE considers that Natural England is not sufficiently arm's length, too influenced by other government departments' agendas that are not concerned with the natural environment. Consequently it is no longer the strong voice nor advocate for the natural environment and biodiversity that it once was.

4. ALGE is aware that the legal context around EPS protection, licensing and wildlife crime is complex and many aspects remain untested through the courts. It therefore does not necessarily follow (however much it is intended) that recent changes in Natural England policy towards European Protected Species is necessarily in accordance with the strict statutory requirements of the EU Habitats Directive or other domestic legislation. As an example, we note that there has been a fundamental change by Natural England and Defra since March 2010 in their interpretation of the EPS licensing tests; in particular, with regard to Imperative Over-riding Public Interest Test. In March 2010, it was Defra's stated interpretation of this test that:

*"Imperative reasons of overriding public interest may include a range of public interests, served not only by publicly funded or sponsored developments but also by private developments; for example the provision of housing in areas of clearly identified need or creation of employment in areas in need of economic regeneration. However, only public interests will meet the test and projects that are entirely in the interest of companies or individuals would generally not be considered justification for a derogation". (Taken from paragraph 3 of Annex G Draft government circular: biodiversity and geological conservation – statutory obligations and their impact within the planning system Revised version of ODPM Circular 06/2005 Defra Circular 01/2005. Consultation March 2010)*

Under the above 2010 interpretation, the 'scenario' for the extension of a domestic dwelling that might affect bats - as presented under Natural England's proposed new EPS Policy - would apparently not meet the test of Over-riding Public Interest and consequently neither planning consent nor an EPS licence should be granted. Nor would there be any justification for a precautionary interpretation of the initial evidence and no reason for avoiding a delay in order to obtain all necessary survey information. Although ALGE have invited them to do so, Natural England have provided no justification or explanation for this

significant policy change since 2010, although it would clearly be valuable for a formal new interpretation of the three tests to be published to support Natural England's new proposed policies. In the absence of such explanation/justification, and however well intentioned, ALGE remains concerned about the legitimacy of Natural England's re-interpretation of any legislation through new policies. ALGE would suggest that any change in policy that results in a totally different interpretation of primary and secondary legislation merits robust and transparent justification. To date, we do not have this.

5. ALGE also note that Natural England's Standing Advice has been left un-amended and now conflicts with their new policies. ALGE have offered to assist in revising these to avoid confusion for local planning authorities.

6. Natural England does not have sufficient resources to effectively perform its functions, in particular its roles as advisor, statutory consultee and licencing organisation, as a result of the drastic budget cuts it has faced over the past six year. Insufficient resourcing has meant delays, criticism of services and, ultimately, loss of confidence in the way in which it is executing its duties. This reduction in resource has led to a greater reliance on outdated standing advice and guidance, which does not give ALGE confidence that Natural England's planning function is being properly met. Staff losses has meant that there has been a notable loss of expertise within the organisation, not only affecting the way in which is it able to perform its functions but also, crucially, resulting in non-experts leading technical projects. The reduction in local team resource also means Natural England has a reduced ability to properly engage in, and support, action for biodiversity at a local level – this is very much missed as Natural England have previously been a key partner in such work.

7. Lack of capacity and resources at Natural England often means that others are having to fill the gap – either local authority officers or officers from other statutory agencies – as there is still the need for this expertise. A case in point is the Environment Agency, whose highly knowledgeable officers have assisted some local authorities with important incidents involving protected species or infringements of statutory legislation relating to land management issues, when in truth these should be the prime responsibility of Natural England to respond, intervene, investigate and resolve. The cuts to Natural England are placing huge burdens on others who are struggling to resource them.

8. Communication and stakeholder engagement is also limited. Although Natural England have published their strategy *Conservation 21*, our members are not clear on specifically what work is being taken forward and how they may engage with it. And where new approaches or policies have been introduced, for instance new licensing policies for European Protected Species, there has been limited information circulated and no clarity over how these should be implemented. ALGE's involvement with Natural England over the past 12-24 months has occurred because we have proactively sought it out, rather than Natural England seeing the Association as a key stakeholder representing many local authorities across the country. When consultation does occur, it has felt that this has been tick box exercise with a predetermined conclusion – we've not

felt like our, and others, comments have been listened to or acted on; nor sufficiently explained as to why not.

9. Despite ALGE's criticisms of Natural England, we are keen to state that Natural England is still very much needed; with biodiversity losses continuing we need a strong and sufficiently resourced body, that is respected and listened to, to champion nature in government and continue efforts to conserve, enhance and manage the natural environment. We would also like to note that there are some excellent individuals at the local level, doing valuable work under difficult circumstances and pressures.

*Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?*

10. ALGE refers to the comments previously made, which we feel need to be addressed if Natural England is to be an effective body for the purpose of conserving, enhancing and managing the natural environment.

11. Natural England's role in championing the environment should be removed from politics. It should be the chief promotor that the natural environment is not a barrier to growth but rather should be seen as an asset, which has a key role to play in the economy of the country.

12. Assuming European protected species and habitats will be upheld after Brexit, Natural England should be central to the development of policy and management to continue their protection and enhancement. Translation of the European protection will only be effective if Natural England strongly champion that protected species and habitats are something valuable to be protected and conservation status enhanced and should not be viewed as an unnecessary burden on development.

13. Natural England should also be central to the development and delivery of new land management policy, replacing CAP, which must have biodiversity conservation and enhancement as its key driver.

14. In delivering new protection, policy and management post Brexit, Natural England must be sure to engage with those at the local level (and those with relevant experience and expertise) to ensure they are practical and successful in achieving their objectives. Consultation must be comprehensive and meaningful.

15. Natural England do not appear to be currently driving work on natural capital and biodiversity net gain, significant emerging biodiversity issues. Work on natural capital, which have the potential to radically alter the way society perceives biodiversity, and hence the value it places upon it, is currently being driven by the private sector. Whilst this input is to be welcomed, there needs to be strategic, national level, leadership to ensure that the benefits are available to the wider public, not simply to shareholders. The same can be said for net

gain, which is being driven by the private sector and NGOs. For two key policy areas, Natural England should be assuming the lead strategic role.

*Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?*

16. There has been good, albeit slow (and understandably, given landowner issues), progress on coastal route. Whilst Natural England have led and enabled this access, it is important to note that actually most of it is being delivered by local authorities.

### **Sustainability and biodiversity**

*Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty? What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?*

17. ALGE believes that most local authority bodies are aware of the Duty. However "have regard to" is too passive and vague to have any real impact or bring about any noticeable change. There is also little guidance currently available on what defines "have regard to", with the previous comprehensive guidance released following the Act now seemingly withdrawn.

18. The lack of any reporting requirement and reward/penalty for implementing/not demonstrating the duty of regard means there is little incentive for any local authority, with limited resources, to implement this duty to any significant degree. It is a useful lever in respect of demonstrating to decision makers why biodiversity should be considered and be part of a local authority's agenda, however there is no satisfactory reply to "what is the risk if we don't" given there is currently no need to report. This lack of reporting also makes it difficult to determine if there has been impact as a result of the Act and its duty.

19. Whilst initially the duty was welcomed, in that it made local authorities consider better the impact of their functions on biodiversity, the early enthusiasm for the duty has seemingly waned. As previously mentioned, this is, in part, due to the lack of reporting requirements. But also, the extent to which local authorities are now able to fully discharge this duty has been affected by cuts in local authority spending. In the 2012 ALGE review of the impacts of spending cuts on biodiversity within local government, the majority of biodiversity work areas (which could be considered to be delivering the biodiversity duty) were reported to be facing a budget cut of at least a 60% - this included managing council land for biodiversity, planning advice and corporate biodiversity work. Unsurprisingly budget cuts also resulted in the loss of staff to support the fulfilment of the duty.

20. From previous research undertaken by ALGE, it is known that only one third of planning authorities in England have access to their own 'in-house'

ecologist. A large number of planning authorities (c.65%) have no or only limited (i.e. part-time or shared with another authority) access to any 'in-house' ecological expertise. Our 2013 review of ecological capacity and competence in English planning authorities found that the majority (90%) of local authority planners lack ecological qualifications, have had very little training and consequently recognise that they have only basic levels of the ecological expertise required to discharge duties and national policy.

21. Given the current policy focus on ecosystem services and natural capital, a revision to "regard to biodiversity, ecosystems services and natural capital" should be considered or at least include reference to the latter to in associated guidance. It should also reflect the move from no net loss to net gain.

22. In 2009/10, ALGE contributed to a Defra commissioned *Review of the Biodiversity Duty contained in Section 40 of the NERC Act 2006* (Entec, 2010). Despite making a number of recommendations (summarised below), this work seemed to go no further. The recommendations identified a number of opportunities for improving awareness and implementation of the biodiversity duty, which should be considered by the Select Committee as part of the review of the NERC Act; these included:

- Encourage all local authorities and public bodies to: have a corporate biodiversity strategy (or equivalent); have a 'Biodiversity Champion' amongst their senior managers, who has responsibility for implementation of the duty; have access to ecological advice; produce management plans incorporating a biodiversity element for all their land and buildings; and have access to up to date biodiversity information for their land/buildings.
- Encourage all local authorities to: appoint a council member as a member-level 'Biodiversity Champion'; be an active member of their local biodiversity partnership; maximise the extent of eligible council-owned land in higher level tiers of agri-environment schemes; employ sufficient suitably qualified ecologists to meet their responsibilities under the duty; and have access to up to date biodiversity information for their administrative area.
- Defra to: develop a framework for local authorities to review their implementation of the duty; provide an easily searchable website with information that supports different types of public authorities in implementing the duty; produce a series of short guidance booklets on the duty aimed at different types of public authorities; collate a list of public authorities in England and Wales; undertake a review of legal and ombudsmen's cases relating to the duty; and investigate the best means of promoting the duty with community councils.

*How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?*

23. The English duty is much weaker and has not had the same level of political support or promotion.

24. In Wales, the new duty's requirement to enhance rather than consider and also report is considered a significant improvement and step forward. With the Welsh Government's backing, it gives greater political support and has helped raised the profile of biodiversity within local authorities.

25. The use of "further" in the Scottish duty is a more proactive approach however experience from Scotland would suggest that the duty still doesn't carry much weight. There is a requirement to report and whilst not onerous, there is no penalty for not reporting so it remains to be seen whether all comply.

26. However the inhibiting factor remains for all three duties, not matter how strongly worded and supported – that being lack of sufficient resources to fully implement the duty.

### **The changing context since 2006**

*Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit? Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?*

27. Notwithstanding Brexit, a key change since 2006 has been a shift towards enabling development – it appears that biodiversity is even less valued now than it was in 2006, with a push for growth at seemingly any cost, despite annual reports of a decline in biodiversity. This is at odds with other policies such as net gain and the need to value natural capital; and fails to recognise that the natural environment is an integral part of growth and is instead seen as a barrier.

28. The reduction in grants to local authorities since 2011 has resulted in resources being diverted to statutory and, what are considered, core services – in many areas this does not include services concerned with ecology/biodiversity. This is a significant change in the landscape to which the NERC Act was first introduced. It means that the emphasis on local delivery, both via the NERC and the 2012 Natural Environment White Paper, is likely to result in biodiversity targets not being met (in particular net gain) as sufficient resources are not available.

29. Local Nature Partnerships should be given stronger weight and increased resources to deliver biodiversity net gain in conjunction with the Local Enterprise Partnerships. The focus and drive for the LNP has faltered in many areas because of a lack of funding and this needs to be rejuvenated to ensure biodiversity is a key component of economic initiatives. Specific funding for LNPs through Government would be a way of demonstrating the importance of biodiversity to the economy.

30. Any replacement legislation for the EU Directives must ensure strong provision for protected habitats and species and those charged with overseeing

and ensuring this protection. The structures to enable this must include sufficient alternatives for enforcement and scrutiny, currently provided by the European Commission and the Court of Justice of the European Union .

This response has been collated by Elizabeth Milne, Chair of Association of Local Government Ecologists

*11 September 2017*



## **Bat Conservation Trust – written evidence (NER0061)**

The Bat Conservation Trust welcomes the opportunity to provide evidence to the House of Lords Select Committee “to consider and report on the Natural Environment and Rural Communities Act 2006”. Our response is limited to questions 4 and 5.

### **Natural England**

#### **4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

##### 4.1 Natural England’s Purpose

4.1.1 Natural England’s general purpose set out under the Natural Environment and Rural Communities (NERC) Act 2006 is “to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development”.

4.1.2 Natural England has a wide range of functions that support this general purpose and other obligations arising from other statutory instruments. Notwithstanding the response made by Wildlife Countryside Link which we support, we are unable to comment widely as to how well their functions fit to help deliver sustainable development and whether sustainable development is indeed being achieved; however, we can offer as a good example, one way in which Natural England has worked with Bat Conservation Trust and volunteers to help householders deal with the problems around bats.

4.1.3 Under the Wildlife & Countryside Act 1981 (as amended) an owner or occupier of a domestic property is obliged to contact Natural England to seek their advice in reasonable time before carrying out any activity that might impact on bats so that they can receive appropriate advice before undertaking such activities<sup>6</sup>. However, Natural England’s duty to provide advice under NERC 2006, is limited in extent. Section 4 Natural Environment and Rural Communities Act 2006<sup>7</sup> says that Natural England may give advice and not must give advice.

4.1.4 Since 2004, Natural England has provided a Bat Advice Service using a network of volunteers to visit householders. This enables the Bat Conservation Trust as managers of this service (on behalf of Natural England) to provide site-

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<sup>6</sup> s10(5). A person shall not be entitled to rely on the defence provided by subsection (2) or (3)(c) as respects anything done in relation to a bat otherwise than in the living area of a dwelling house unless he had notified the [F2conservation body][F3for the area in which the house is situated or, as the case may be, the act is to take place] of the proposed action or operation and allowed them a reasonable time to advise him as to whether it should be carried out and, if so, the method to be used.

<sup>7</sup> Natural Environment and Rural Communities Act 2006 section 4 “Natural England may give advice to any person on any matter relating to its general purpose—

(a)at the request of that person, or

(b)if Natural England thinks it appropriate to do so, on its own initiative.”

specific advice and assistance. It provides much needed help to Natural England staff who would themselves otherwise have to provide that advice. The numbers of calls received each year have increased as householders have become more aware of their responsibilities: in 2016<sup>8</sup>, for example, Bat Conservation Trust received 14,781 enquiries of which 12,182 were dealt with by Helpline staff and 2,266 were handled by the Out of Hours service. For England, the Helpline dealt with 4,943 roost enquiries on behalf of Natural England, which resulted in 1,410 roost visits to provide further advice. The Helpline also provides vital advice about the small risk of rabies to enquirers who may come into contact with bats, and this helps to minimise the risk of a rabies incident by advising enquirers about safe ways to contain bats. The Bat Conservation Trust Helpline is often the first point of contact for members of the public and bat workers reporting allegations of criminal offences involving bats. Feedback from the public has shown that the Helpline service is highly valued and welcomed.

4.1.5 It is of concern that with ongoing budget constraints it is hard to comprehend how Natural England can continue to provide effective advice without compromising its duty to ensure that the natural environment is conserved. Any reduction in this service could lead to adverse impacts on bats which may only be detected once bat populations have decreased. This would set back all the good work and advances that UK Government and DEFRA has put in place since 1981. It is anticipated there would be a more immediate backlash from roost owners who feel unsupported.

4.1.6 Natural England will need to rely more heavily on working with its partners to help fill any gaps and we anticipate that Natural England's Bat Advice Service will become ever more important over the coming years and that this service will require continued financial investment from Natural England.

## **4.2 Skills and experience lost**

4.2.1 As a consequence of on-going austerity measures imposed by the UK Government there have been large cuts to Natural England's budget. By 2020 this is estimated to be 27% and with this a reduction in head count of 20%. A reduction in experienced and skilled staff now dealing with extremely heavy workloads and under severe pressure are typically causes of low morale.

4.2.1 David Webster (then Natural England Chief Executive Officer) in an interview in 2014 admitted that the staff losses damaged Natural England's expertise and skills. "Inevitably, you can't have 500-plus people leave the organisation without losing experience," he said, "and what you've got to bear in mind is clearly those type of schemes are more attractive to people who've got lots of experience who are closer to retirement. But inevitably, that's where the funding took us."

4.2.2 This means it will have a "significantly reduced national capacity". Fewer experienced and skilled staff dealing with extremely heavy workloads and under pressure to make bigger compromises are typically causes of low morale. The

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<sup>8</sup> [http://www.bats.org.uk/data/files/BCT\\_Helpline\\_Annual\\_Report\\_2016.pdf](http://www.bats.org.uk/data/files/BCT_Helpline_Annual_Report_2016.pdf)

skills and dedication of Natural England staff remain a massively valuable resource that should be valued. That skill only comes with time and is not easy to replace and is dangerous to lose.

4.2.3 The resource issues that Natural England face have led them to seek more ways of increasing their income through charging for services such as pre-application advice. Some staff have reported that “We are here to be ecologists not consultants. Our staff resource will be increasingly focused on work where there is a financial incentive rather than a conservation concern.”

### **4.3 Operational changes**

4.3.1 There has also been a drive within Natural England to change the way it operates. Whilst radical change may have become necessary this cannot be without consideration of the impacts of these proposed changes on the core role of Natural England to protect England’s special habitats and species.

4.3.2 Innovative approaches have been developed by the Natural England team charged with this task and this necessitates a very high standard of internal communication with the species and habitat specialists within the organisation. In the rush to bring about change, this important internal consultation must not be overlooked.

### **4.4 Not fit for purpose IT systems making streamlining initiatives falter**

4.4.1 We are aware that there are ongoing delays experienced in Natural England processes, such as licensing, and as a result, clean sheet alternatives being sought. The reason for the slow or failing processes are not always inherent within the processes themselves but are caused by their IT systems being no longer fit-for-purpose. These IT systems have been modified to keep them operational but are no longer capable of producing the outputs needed nor in a timely manner.

4.4.2 There is a more cost effective and relevant solution to hand. An investment in IT would see significant improvements and in the long (and indeed medium/short) term would be much more cost effective than throwing out an overall process when it is the IT that is deficient.

## **5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

5.1.1 It is not possible to predict what changes to the remit and responsibilities of Natural England should be as a result of Brexit until it is clear on the outcome of Brexit negotiations with the EU, and the result of the passage of the EU (Withdrawal) Bill.

5.1.2 We would suggest the following changes to Natural England’s remit:

- Natural England’s purpose should be brought into alignment with that in Wales under The Well-being of Future Generations Act 2015<sup>9</sup> which requires each public body to carry out sustainable development and the Environment (Wales) Act 2016<sup>10</sup> which is to pursue sustainable management of natural resources.
- Natural England’s duty under section 4 Natural Environment and Rural Communities Act 2006 should be strengthened from may provide to must provide advice.
- Natural England IT systems need to be better resourced.

I trust that you will find our comments of use. Should you wish to explore any of these further then please do not hesitate to contact to me.

Kit Stoner  
Joint Chief Executive Officer

*11 September 2017*

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<sup>9</sup> Well-being of Future Generations Act 2015 section 3 (1)Each public body must carry out sustainable development

<sup>10</sup> Environment (Wales) Act 2016 section 5(2)The Body must—  
(a)pursue sustainable management of natural resources in relation to Wales, and  
(b) apply the principles of sustainable management of natural resources, in the exercise of its functions, so far as consistent with their proper exercise.

## **British Caving Association – written evidence (NER0033)**

This submission relates principally to question number six, 'Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access.'

1. Caving is an established outdoor activity very much enjoyed by those who participate. Early activists include the poet William Wordsworth, who found material for his famous poem, the Prelude, in the caves he visited in the Yorkshire Dales. Today, most exponents of caving enjoy the physical challenge, the adventure and wild environment, and the social camaraderie for which the sport is famous. Caving promotes physical fitness – indeed, it is impossible to conduct without maintaining a healthy physical condition – and psychological well-being.

2. There are two principal avenues to participation in caving, instructed and recreational. Instructed caving tends to focus on schools, outdoor centres and army cadets who are mostly under 18s. This avenue has an estimated participation level of around 150,000 individuals per year. Recreational caving involves more regular participation of individuals who would consider caving as 'their sport'. These would be mostly over 18s and belong to university and regional caving clubs, as well as groups of friends with common interests. The British Caving Association (BCA) has 6000 members and estimates there are a further 6000 non-members who would consider themselves cavers.

3. The value of caving activities to the rural economy is thought to be in the order of £10 million per annum. This may not seem much compared to other activities, but it is focused on specific rural areas where it does make a difference. Caving is often more popular during the winter season, when outdoor visitor numbers are much reduced in those areas, so benefiting local businesses.

4. Caver numbers peaked in the 1980s and 1990s and have been in decline since the foot and mouth outbreak of 2001, when most caving areas were closed for an extended period.

5. Gaining access to caves is a major barrier to participation for many people. Across the country, and within the caving regions themselves, there is a huge difference in the type of access permitted to caves. For some caves, there is access for everybody, either free or with a 'trespass' or parking fee. For others, there are special access arrangements which restrict access to members of certain groups or clubs only. Typically, such caves require a permit which must be applied for in advance. For some caves, unfortunately, there is no official access at all. The type of access system applied does not generally reflect the difficulty or danger of the cave, but more often the attitude of the landowner to visitors, and their own liability concerns.

6. Some of Britain's most sporting caves are restricted by 'closed seasons'. Often these are not, as you would expect, due to land management reasons or conservation concerns, but due to the personal preference of the landowner or tenant. The same restrictions do not apply to other outdoor users who exercise rights over the same land. Certain caves have access restrictions that have little justification, where the suspicion is that it is the control of access that is enjoyed by those who administer it.

7. The Countryside and Rights of Way Act 2000 (CRoW) improved access to the outdoors for many activities such as climbing, gill scrambling, fell running and rambling on land designated under the act, principally mountain, moor, heath, down and registered common land. In some of our major caving areas, many caves are located on this land type. In the wider northern caving area centred on the Yorkshire Dales National Park there are some 2500 cave entrances, of which 1800 are on CRoW access land.

8. DEFRA/Natural England (NE) take the view that caving does not come under the Act. They state that a cave is not part of the land and caving is not an 'open-air recreation' as defined by the Act. However, the advice from Paul Johnson, the principal specialist in statutory access at Natural England, does confirm that any member of the public may walk to any cave entrance across 'access land' designated by the CRoW Act, and that they may descend into the entrance for an indeterminate distance. In Mr Johnson's view, 'a cave on a hill that faces out into the open air' is covered by CRoW. But, he goes on, 'the question in each case would then be how far inside a cave of this type, if it were deep, a member of the public would have to go before the rights ceased to apply because use no longer amounted to open-air recreation'. Mr Johnson has suggested that this distance could be to the limit of daylight penetration. This submission argues that position is onerous and discriminatory towards cavers, as opposed to other lovers of the outdoors. Furthermore, it is not a proper reading of the Act, and it does not reflect the will of Parliament in enacting it.

9. A legal opinion prepared for members of the British Caving Association by the eminent public lawyer, Dinah Rose QC, eloquently sets out the long background to the CRoW Act, and its emergence from the desire exhibited by governments over decades to open up our wild countryside for outdoor recreation. In Ms Rose's view, to exclude caving from the scope of the Act simply because parts of caves have roofs is neither logical, nor in accordance with the wishes of Parliament when it passed the Act. She states:

*'The intention of the legislation is to permit access to the countryside, for the purposes of the recreations that may be carried out in such areas. "Open-air" in this context is best read in the sense of "outdoor" (ie., not within a building). Excluding caving from the definition on the ground that caves are underground tunnels would lead to arbitrary distinctions. Some caves include shafts which are open to the sky.*

*'It is easy to see why Parliament was not intending to permit the public to access buildings. It is much harder to see why it should have been concerned to permit*

*access only to locations with a view of the sky, or unconstrained air. Caving is an activity of the same kind as climbing, abseiling, scrambling, canyoning and walking, all of which are obviously intended to be included within CROW. There does not appear to be any policy reason for excluding caving from the scope of the Act.*

*'It is harder still to see why Parliament should have intended, as Natural England apparently believe, to include within the scope of CROW caves which are "open to the sky", on the side of mountains, or with open shafts, but to exclude cave systems with underground passages. The distinction is unprincipled. It tends to undermine the policy of the Act, by placing an arbitrary restraint on some forms of caving but not on others...*

*'Put shortly, the interpretation of "open-air" in CROW as meaning "open to the sky" rather than "outdoor" is in my view too technical and narrow, and does not accord with the policy of the act, or lead to a rational outcome.'*

*'I conclude, ...that the better view is that caving is a form of 'open-air recreation' for the purposes of CROW, and that cavers are permitted to enter and remain on access land as shown on relevant maps, including cave systems falling within those areas, for the purpose of recreational caving.'*

10. The BCA and its officers have conducted an exhaustive search of Hansard, which has not turned up a single comment from anyone involved in the parliamentary debates suggesting that caving ought to be treated in a different manner to its sister sports. Indeed, speaking for the then-government in the House of Lords, Baroness Farrington successfully urged the withdrawal of an amendment which listed the activities that would be covered by the Act. She did so by arguing that such a list would be 'undesirably restrictive and unnecessary,' and would, wrongly, 'exclude activities which can properly take place inside or outside... activities not necessarily carried out in the open air.' In the then-government's view, only activities which were specifically *excluded* from the CROW Act, such as hanggliding, would not be covered. The Rt Hon Chris Mullin, Parliamentary Under Secretary of State for the Environment, Transport and the Regions clearly stated in April 2000, 'We are trying to allow everything that is not specifically excluded.' There is no schedule that lists caving as such an excluded activity.

11. Despite a strong argument to confirm access for recreational caving under the CROW Act, Defra and Natural England choose to adopt a negative view. They do admit that their view is not definitive, and that a court may decide differently. However, court action for individuals or small organisations is high risk, and in any case beyond the normal resources of the BCA.

12. NE's approach to caving does not appear to be in line with its statutory responsibilities of 'promoting access to the countryside and open spaces and encouraging open-air recreation'. Nor does it conform to Defra's 8 point plan to 'realise the immense potential for outdoor recreation in National Parks'.

13. The British Caving Association position is well supported by organisations such as the Sports and Recreation Alliance, British Mountaineering Council, Outdoor Industries Association, British Canoeing, British Orienteering, etc. In addition a number of prominent individuals have made the following comments;

*"The whole purpose of the Countryside and Rights of Way Act was and is to allow people the freedom to roam, to walk, climb and explore, and to experience the wonders of our natural world. That surely must include venturing right into caves as well as venturing across our mountains and moorland."*

Lord Chris Smith. April 2016 (Chairman of the Environment Agency 2008-2014)

*"I cannot see for the life of me why DEFRA is taking the wholly illogical stance of denying that caves are covered by the open access freedoms granted by the CRow Act."*

The Rt Hon David Davis, MP. December 2015

14. In our experience we do not find that Defra/NE take a position which promotes better access when given the opportunity. Furthermore we find some evidence that Defra/NE take the most restrictive view and interpret legislation in narrow ways unconducive to improving access to the outdoors. Natural England tell us that they commonly use the term 'on foot' in relation to the CRow Act as can be seen in this Parliamentary written answer below

#### **Caves: Written question - 31768**

Q

Asked by James Heapey (Wells)

Asked on: 18 March 2016

Department for Environment, Food and Rural Affairs

Caves

Commons

31768

To ask the Secretary of State for Environment, Food and Rural Affairs, with reference to the Countryside and Rights of Way Act 2000, what her policy is on the extension of the definition of mapped open countryside to caves.

A

Answered by: George Eustice

Answered on: 29 March 2016

Section 2(1) of the Countryside and Rights of Way Act 2000 provides for a right of access **on foot** for the purposes of open-air recreation to land which has been mapped as open country (mountain, moor, heath and down) and registered common land.

The Government has no plans to extend the definition of mapped land under that Act to apply to caves.

Members of the committee may remember that amendments to include the term 'on foot' were specifically rejected in both the House of Lords and the House of Commons debates at the time. The government at the time considered a



narrow definition would prevent visitors sitting to eat, bird watch or read a book, let alone prohibit the use of disabled person's apparatus. Yet they have adopted the term for common usage.

15. In our dealings with Defra/NE we have found them to take a negative approach to cave access with no justified reason. Using narrow interpretations when this suits and illogical arguments, all to support their own view, does nothing to promote access. Our only conclusion is that they lack understanding of certain common outdoor activities and are consequently overly cautious in their approach to access. Rights of access to caves exist in Scotland without problem and we wonder when England and Wales will catch up.

*9 September 2017*

## **British Ecological Society – written evidence (NER0068)**

Founded in 1913, we are the world’s oldest ecological society, with over 6,000 members worldwide. As the voice of the UK’s ecological community, we communicate the value of ecological knowledge to policymakers and promote evidence-informed solutions. [www.britishecologicalsociety.org](http://www.britishecologicalsociety.org)

### **Introduction**

1. In line with the expertise of our membership, our response will focus on the questions related to the nature conservation functions of Natural England, sustainability and biodiversity, and the changing context since 2006.

### **How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

#### *Fulfilling the mandate*

2. Natural England’s general purpose, as defined by the NERC Act, is to “ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development”. There are a number of different functions within this mandate, including biodiversity conservation, landscape enhancement, and the promotion of public access to and enjoyment of the natural environment. We do not have a position on whether or not Natural England should fulfil a range of functions.
3. It is difficult to objectively assess how well Natural England has fulfilled its functions, as the Act did not establish any quantitative benchmarks, for example related to the state of natural capital assets, against which to judge it.
4. To set Natural England’s mandate in a wider context, it is important to note that recent assessments of the state of England’s natural environment have painted a mixed picture. England lacks a comprehensive regular assessment of the state of its natural environment (in contrast to the State of Natural Resources report for Wales<sup>11</sup>), with a strong reliance on data supplied by non-governmental organisations<sup>12</sup>. However the most recent England Biodiversity Indicators show clear deterioration in the status of both priority species and species in the wider countryside, and negligible change in the condition of protected areas (despite an increase in their extent due to new marine designations)<sup>13</sup>. These trends should be viewed in the context of the

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<sup>11</sup> Natural Resources Wales (2016) *State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources, Technical Report*.

<sup>12</sup> Hayhow *et al.* (2016) *State of Nature 2016*. The State of Nature Partnership.

<sup>13</sup> Defra (2017) *Biodiversity 2020: a strategy for England’s wildlife and ecosystem services – Indicators*. Defra, London.

considerable resource constraints placed on Natural England, as outlined below.

5. The Government's 2010 review of wildlife sites, *Making Space for Nature*<sup>14</sup>, highlighted the importance of both quality protected sites and landscape-scale measures for the creation of a "resilient ecological network". However the trends outlined above indicate both insufficient progress of targeted conservation measures and the lack of appropriate action in the wider countryside. This is acknowledged in Natural England's new conservation strategy, which outlines the need for a "fundamental" shift to work at a "much larger scale"<sup>15</sup>.
6. Natural England's primary mechanism for fulfilling its conservation mandate in the wider countryside has been the delivery of agri-environment schemes under the Common Agricultural Policy. Across the EU, while some targeted agri-environment measures have successfully delivered local biodiversity benefits, for example under the Higher Level Stewardship scheme in England, they have failed to deliver large-scale environmental improvements<sup>16</sup>.
7. Developing a post-Brexit system of agricultural support based on the delivery of environmental outcomes and public goods (such as flood mitigation or recreation) offers an opportunity to improve environmental outcomes in the wider countryside<sup>17</sup>. Such a system could cut across Natural England's diverse functions, and should be underpinned by collaboration with other agencies with overlapping mandates, such as the Environment Agency and local authorities, as well as farmers, local communities and other stakeholders.

### *Resource constraints*

8. A major constraint on Natural England's recent ability to fulfil its mandate has been the significant cuts to the agency's budget since 2010. As an executive non-departmental body, Natural England's primary source of funding is grant-in-aid from Defra. This grant has been reduced by roughly 60%, from £263 million in the 2009/10 financial year<sup>18</sup>, to £106 million in 2016/17<sup>19</sup>.

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<sup>14</sup> Lawton, J.H. *et al* (2010) *Making Space for Nature: a review of England's wildlife sites and ecological network*. Report to Defra.

<sup>15</sup> Natural England (2016) *Conservation 21: Natural England's Conservation Strategy for the 21<sup>st</sup> Century*

<sup>16</sup> Batáry, P. *et al* (2015) The role of agri-environment schemes in conservation and environmental management, *Conservation Biology*, 29(4), pp1006-1016.

<sup>17</sup> See our response to the Environmental Audit Committee inquiry on the Future of the Natural Environment after the EU Referendum <http://bit.ly/2lbB0bD>

<sup>18</sup> Natural England (2010) Natural England Annual Report and Accounts: 1 April 2009 to 31 March 2010

<sup>19</sup> Natural England (2017) Natural England Annual Report and Accounts: 1 April 2016 to 31 March 2017

Correspondingly, the agency's total expenditure has fallen from a high of £257 million in 2010/11<sup>20</sup> to £155 million in 2016/17<sup>9,21</sup>.

9. These budget cuts have led to significant reductions in staffing levels – over 20% since 2010<sup>22</sup> - and a corresponding loss of specialist (including ecological) expertise within the organisation. These resource constraints have had impacts on the ground, for example through the reduction in staff capacity to spend time in the field. A review of a recent agri-environment scheme found that in seven years only 24% of agreements kept the same adviser, and the lack of follow-up visits limited scheme effectiveness<sup>23</sup>.

**Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

10. The Act introduced a duty on all public authorities to have regard to "the purpose of conserving biodiversity", defined broadly as being "in relation to a living organism or type of habitat, restoring or enhancing a population or habitat".
11. Only one review of the impact of the duty has been conducted, in 2010<sup>24</sup>, which found that awareness of the duty varied considerably between different public bodies, and while a wide range of work relating to biodiversity conservation had been carried out, this could not all be attributed to the duty. Lack of money, resources, and tailored guidance were identified as key barriers to implementation of the duty.
12. The review made a number of recommendations for improving awareness and implementation of the biodiversity duty, including encouraging all public bodies to have a corporate biodiversity strategy and to be able to access appropriate ecological advice, and for Defra to produce sector specific guidance on implementing the duty. These recommendations have so far not been put into practice by government.
13. The lack of ecological expertise within local authorities – who have an important role to play in implementing the biodiversity duty – is of particular

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<sup>20</sup> Natural England (2011) Natural England Annual Report and Accounts: 1 April 2010 to 31 March 2011

<sup>21</sup> Expenditure does not include the Rural Development Programme (agri-environment schemes), which is delivered by Natural England, but accounted for by Defra.

<sup>22</sup> <https://www.civilserviceworld.com/interview-dave-webster-natural-england>

<sup>23</sup> Boatman, N. *et al* (2014) *Agreement scale monitoring of Environmental Stewardship 2013-4: Assessing the impact of advice and support on the environmental outcomes of HLS agreements*. Natural England Contract reference LM0432.

<sup>24</sup> ENTEC (2010) *CTX 0811: Review of the Biodiversity Duty contained in Section 40 of the NERC Act 2006. Final Report*.

concern, with a 2013 study concluding that only one-third of planning authorities in England have access to in-house expertise<sup>25</sup>.

14. Guidance available to public bodies on implementing the biodiversity duty is limited and has been reduced over time. While detailed guidance (182 pages) was produced in 2007<sup>26</sup>, this has since been withdrawn and replaced with a single webpage<sup>27</sup>, in line with a general consolidation of published environmental guidance as part of Defra's Smarter Environmental Regulation Review<sup>28</sup>.
15. Improved monitoring of the implementation of the biodiversity duty by Defra would assist in determining whether further work is required to raise awareness of the duty.

**What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

*Defining biodiversity*

16. While understood simply as 'the variety of life on earth', biodiversity is a multifaceted concept that can be defined and measured in different ways. This complexity is illustrated by the Convention on Biological Diversity (CBD), which defines biodiversity as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and ecosystems."<sup>29</sup>
17. The relative importance placed on these different aspects of biodiversity has changed as different framings of the purpose of conservation have emerged, underpinned by advances in ecological science<sup>30</sup>. While a focus on preserving habitats and species populations (as suggested within the duty) may prioritise the number of different species ("species richness"), recent approaches that emphasise the dependence of people on ecosystem processes may place more importance on the diversity of roles species play within ecosystems (functional diversity)<sup>31</sup>, and the overall resilience of these ecosystems<sup>32</sup>. Recent research suggests that focusing solely on species

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<sup>25</sup> Oxford, M (2013) *Ecological Capacity and Competence in Local Planning Authorities: What is needed to deliver statutory obligations for biodiversity?* Report published by the Association of Local Government Ecologists.

<sup>26</sup> Defra (2007) *Guidance for Public Authorities on Implementing the Biodiversity Duty*. Department for Environment Food and Rural Affairs: London.

<sup>27</sup> <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>

<sup>28</sup> <https://www.gov.uk/government/collections/better-regulation-in-defra>

<sup>29</sup> <https://www.cbd.int/convention/articles/default.shtml?a=cbd-02>

<sup>30</sup> Mace, G, (2012) Whose conservation?, *Science*, 345, pp1558-1560.

<sup>31</sup> Petchey, O.L. and Gaston, K.J. (2006) Functional diversity: back to basics and looking forward, *Ecology Letters*, 9, pp741-758.

<sup>32</sup> Oliver, T.H. et al (2015) Biodiversity and resilience of ecosystem functions, *Trends in Ecology and Evolution*, 30(11), pp673-684.

richness is insufficient to capture changes in biodiversity in changing environments<sup>33</sup>.

### *Ecosystem services and natural capital*

18. Since 2006, the concepts of “ecosystem services” (the benefits people derive from the natural world e.g. food, flood protection or recreation) and “natural capital” (the stock of natural assets from which these benefits flow, e.g. clean air, water or soil) have become increasingly influential in ecological science and environmental policy. This approach seeks to quantify and value the societal and economic benefits derived from the natural world, as exemplified by the UK National Ecosystem Assessment<sup>34</sup>, and the work of the government’s Natural Capital Committee<sup>35</sup>.
19. Natural England’s recent conservation strategy, includes “growing natural capital” as one of its key principles<sup>5</sup>. However a duty to conserve natural capital or ecosystem services is not currently enshrined in English legislation.
20. It is important to note that neither natural capital nor ecosystem services are synonymous with biodiversity. The relationship between biodiversity, ecosystem processes and the provision of ecosystem services is complex and uncertain, as is the relationship between natural capital “assets” and benefits. Biodiversity can be understood as both an element of natural capital that underpins the provision of services (and is therefore integral to the maintenance of those assets), and as an output, or benefit in its own right<sup>36,37,38</sup>. Some critics have argued that because of this complexity, biodiversity is often insufficiently represented in natural capital accounts<sup>39</sup>.
21. Similarly, with respect to ecosystem services, while studies have suggested that species rich communities may have a higher level of ecosystem function<sup>40</sup>, and there are often synergies between maintaining and enhancing ecosystem services, and conserving biodiversity, this is not automatically the case. For example, focusing on protecting pollination services may recognise the importance of wild bees, but could also focus efforts on the small number

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<sup>33</sup> Hillebrand, H. *et al* (2017) Biodiversity change is uncoupled from species richness trends: consequences for conservation and monitoring, *Journal of Applied Ecology*, DOI 10.1111/1365-2664.12959.

<sup>34</sup> UK National Ecosystem Assessment (2011) *The UK National Ecosystem Assessment: Synthesis of the Key Findings*. UNEP-WCMC, Cambridge.

<sup>35</sup> <https://www.gov.uk/government/groups/natural-capital-committee>

<sup>36</sup> Adams, W. (2014) The value of valuing nature, *Science*, 346 (6209), pp549-551

<sup>37</sup> Mace, G.M., Norris, K. and Fitter, A.H. (2012) Biodiversity and ecosystem services: a multilayered relationship, *Trends in Ecology and Evolution*,

<sup>38</sup> Mace, G.M. *et al* (2015) Towards a risk register for natural capital, *Journal of Applied Ecology*, 52, pp641-653.

<sup>39</sup> Bolt, K. *et al* (2016) *Biodiversity at the heart of accounting for natural capital*. Cambridge Conservation Initiative.

<sup>40</sup> Lefcheck, J.S. *et al* (2015) Biodiversity enhances ecosystem multifunctionality across trophic levels and habitats, *Nature Communications*, DOI: 10.1038/ncomms7936

of common species that carry out most crop pollination, at the neglect of rare species that are infrequently observed on crops<sup>41</sup>.

### *Modification to the duty*

22. Any modification of the duty to incorporate ecosystem services and/or natural capital, should therefore be considered as an addition to rather than a replacement of the existing biodiversity duty.
23. An exemplar of this approach is the enhanced “biodiversity *and resilience of ecosystems* duty” recently introduced in Wales through the Environment (Wales) Act 2016. Public bodies must “seek to maintain and enhance biodiversity...and in doing so promote the resilience of ecosystems”, taking into account: diversity between and within ecosystems, connections between and within ecosystems, scale of ecosystems, the condition of ecosystems (including their structure and functioning), and the adaptability of ecosystems. However as this duty is relatively new, its effectiveness has not yet been tested in practice.
24. While this enhanced duty better reflects current scientific understanding of the value of ecosystems and biodiversity, it also introduces new challenges of measurement, particularly given the focus on resilient ecosystems. Resilience can be defined as the degree to which an ecosystem can resist or recover rapidly from environmental disturbance, and is increasingly recognised as an important feature if ecosystems are to adapt to a changing climate, withstand shocks and sustain delivery of vital ecosystem services<sup>42,43</sup>. However the definition and components of resilience, and its relationship to biodiversity, are subjects of live scientific debate<sup>44</sup>. Establishing appropriate measurements and indicators for resilient ecosystems is therefore a significant challenge<sup>45</sup>, although recent advances in biomonitoring technologies offer a potentially powerful approach<sup>46,47</sup>.
25. The introduction of a broader natural capital duty could extend beyond biodiversity to include a duty to maintain and enhance a range of natural capital stocks, including clean water, air and soil. For any such duty to be effective, it would require a comprehensive framework for measuring, monitoring and valuing natural capital, including quantifiable scientifically-based target outcomes. Aligning the biodiversity duty with such an approach

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<sup>41</sup> Kleijn, D. *et al* (2015) Delivery of crop pollination services is an insufficient argument for wild pollinator conservation, *Nature Communications*, DOI: 10.1038/ncomms8414

<sup>42</sup> Oliver, T.H. *et al* (2015) Biodiversity and resilience of ecosystem functions, *Trends in Ecology and Evolution*, 30(11), pp673-684.

<sup>43</sup> Welsh Government (2017) *Natural resources policy*. Welsh Government, Cardiff.

<sup>44</sup> Hodgson, D. *et al* (2015) What do you mean, ‘resilient’?, *Trends in Ecology and Evolution*, 30(9), pp503 – 506.

<sup>45</sup> Natural Resources Wales (2016) *State of Natural Resources Report (SoNaRR): Assessment of the Sustainable Management of Natural Resources: Technical Report*. Natural Resources Wales.

<sup>46</sup> Bohan, D.A. *et al* (2017) Next-Generation Global Biomonitoring: Large-scale, Automated Reconstruction of Ecological Networks, *Trends in Ecology and Evolution*, 32(7), pp477-487.

<sup>47</sup> Evans, D.M. *et al* (2016) Merging DNA metabarcoding and ecological network analysis to understand and build resilient terrestrial ecosystems, *Functional Ecology*, 30, pp1904-1916.

could include a corresponding target for biodiversity gain. Defra's forthcoming 25 Year Environment Plan for England should provide such a framework<sup>48</sup>.

**How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

26. The four nations of the UK each have slightly different legal biodiversity duties that apply to all public bodies. Outside of England, these duties are contained within the Nature Conservation (Scotland) Act 2004 (amended by the Wildlife and Natural Environment (Scotland) Act 2011), the Wildlife and Natural Environment (Northern Ireland) Act 2011, and the Environment (Wales) Act 2016.
27. The legal biodiversity duty in Scotland and Northern Ireland is similar in structure to the English duty, yet places a more direct obligation on public bodies to "further the conservation of biodiversity". As outlined above, the Environment (Wales) Act 2016 introduced an "enhanced" biodiversity duty in Wales.
28. To date there has been no substantive research or evaluation comparing the impact of these different duties on biodiversity conservation outcomes across the UK. The 2010 Defra review of the English biodiversity duty found no evidence that the Scottish duty had been more effective at delivering biodiversity benefits<sup>14</sup>.

*Reporting requirement*

29. In Scotland and Wales, the biodiversity duty is enhanced by the requirement that public bodies must report on how they are implementing and complying with the duty at three-yearly intervals. Introducing a reporting requirement could provide a simple way of strengthening the English duty.
30. Local authorities in England were previously expected to report against their performance in managing local wildlife sites, as a proxy for the state of local biodiversity (National Indicator 197)<sup>49</sup>. While this indicator was relatively weak given that it was not related to planning, it was discontinued in 2010, and there are now no requirements on public authorities to report on any aspect of biodiversity performance. Reporting requirements could potentially be extended to large businesses, as has been introduced for greenhouse gas emissions by the Climate Change Act 2008 and the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013<sup>50</sup>.

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<sup>48</sup> Natural Capital Committee (2016) *Improving Natural Capital: An assessment of progress*. Fourth report to the Economic Affairs Committee.

<sup>49</sup> Butterworth, T. and Martin, R. (2008) *National Indicator 197*, South East England Biodiversity Forum.

<sup>50</sup> <https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses>



31. While introducing a legal reporting requirement will not automatically lead to full implementation of the biodiversity duty, it provides a clear measure of success. A review of the first round of reporting against the Scottish duty found that 44% of public bodies had submitted reports, with lack of awareness, resource constraints and insufficient guidance cited as barriers to greater compliance<sup>51</sup>. Similarly, effective monitoring of biodiversity outcomes, not just intended actions, is essential.

**Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

32. The structures established by the NERC Act, coupled with the Government's proposals in the European Union (Withdrawal) Bill to transfer all EU law onto the UK statute book, do not currently contain sufficient provisions to guarantee appropriate protection for environmental standards following Brexit. While the EU (Withdrawal) Bill may transfer the letter of the law, the loss of the supervisory, enforcement and scrutiny functions of the European Commission (EC) and the Court of Justice of the European Union (CJEU), without adequate replacement by domestic alternatives, risks undermining the effectiveness of legislation and therefore maintenance, let alone improvement, of environmental standards<sup>52</sup>.

33. One of the functions of the EC is to monitor Member State compliance with and implementation of the commitments made under EU laws; a function that has been particularly active in the environmental field. This is achieved through regular reporting requirements, and distinctive enforcement powers including a formal notice from the EC, a Reasoned Opinion, and application to the CJEU, which has the power to impose financial penalties on Member States. The EC's citizen's complaint procedure allows anyone to alert it to a possible infringement free of charge.

34. In Ministerial statements<sup>53</sup> and the accompanying notes to the European Union (Withdrawal) Bill<sup>54</sup>, the Government has stated that existing domestic legal provisions, primarily the system of judicial review, will provide the core mechanism for holding Government to account for its legal environmental obligations following Brexit. However the UK Environmental Law Association (UKELA) has stated that "judicial review is not equivalent to an independent supervisory body such as the European Commission"<sup>39</sup>, and a recent House of

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<sup>51</sup> Daly, E. Fenn, T., and Miller, J. (2016) Evaluation of the Compliance and Quality of Biodiversity Duty Reports 2015. Scottish Government Research Findings 4/2016. Scottish Government: Edinburgh.

<sup>52</sup> UKELA (2017) *Brexit and Environmental Law: Enforcement and Political Accountability Issues*. UKELA, Bristol

<sup>53</sup> HL Deb 23 March 2017, vol 782, cols 342-43. <http://bit.ly/2vcC7h6>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627999/Environmental\\_protections\\_factsheet.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627999/Environmental_protections_factsheet.pdf)

Lords inquiry reported that evidence strongly suggested “that an effective and independent domestic enforcement mechanism will be necessary”<sup>55</sup>.

35. UKELA have suggested that Brexit offers an opportunity to “innovate and improve on our domestic mechanisms for ensuring that duties on government and other public bodies are properly implemented”<sup>42</sup>. This could include amending reporting requirements from the European Commission to the UK Parliament and devolved legislatures, or the creation of an institution such as a “Parliamentary Commissioner for the Environment” to provide independent environmental expertise in the supervision of government and public bodies, able to resolve disputes and helping Parliament to ensure accountability.
36. Given the lack of parliamentary time and willingness to introduce wholesale changes to UK environmental law before Brexit (in line with the principles of the European Union (Withdrawal Bill)), amendments to the NERC Act could present a possible means of embedding some of the supervisory and enforcement functions and institutions outlined above into UK law. However without substantial additional resources, expertise and the establishment of appropriate institutions, this would not replace the oversight and accountability frameworks performed by EU institutions. Clarity over governance arrangements and the future role of existing institutions, including Natural England, should be established as soon as possible.

**Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

37. Section 41 of the Act requires the Secretary of State to publish a list of “the living organisms or types of habitat” that are “of principal importance for the purpose of conserving biodiversity” (commonly referred to as priority species and habitats), and to take steps that are “reasonably practicable” to further their conservation. Importantly, these species are recognised in the National Planning Policy Framework<sup>56,57</sup>. However, in the context of the resource constraints outlined above, Defra funding to Natural England is often insufficient to adequately monitor certain species, or conduct research to understand the reasons for their decline, before even considering practicable, evidence-based conservation action.
38. This lack of successful conservation action is demonstrated by the index of relative abundance of UK priority species, which has exhibited a 32% decline since its 1970 baseline, and an 18% decline since 2010<sup>3</sup>. Similarly, a 2013 expert assessment of priority actions needed for the recovery of species identified under Section 41 of the Act identified the majority of actions as “yet to start”<sup>58</sup>. Amending the Act to clarify the minimum compliance

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<sup>55</sup> <https://publications.parliament.uk/pa/ld201617/ldselect/lddeucom/109/109.pdf>

<sup>56</sup> Department for Communities and Local Government (2012) *National Planning Policy Framework*. Department for Communities and Local Government, London.

<sup>57</sup> Hopkins, G.W. and Thacker, J.I. (2016) Protected species and development control: the merits of widespread invertebrate species in the European Habitats Directive and UK legislation, *Insect Conservation and Diversity*, doi: 10.1111/icad.12171

<sup>58</sup> <http://publications.naturalengland.org.uk/publication/4958719460769792>

requirements for Section 41 could help to drive appropriate action, if accompanied by sufficient resources.

*11 September 2017*

## **Broads Local Access Forum – written evidence (NER0047)**

1. The Broads Local Access Forum (BLAF) considered a report on the Select Committee's call for evidence on the review of the Natural Environment and Rural Communities Act 2006 at its meeting on the 6<sup>th</sup> of September and resolved to submit the following answers to questions 4, 6, 7 and 9 set out on the call for evidence document.
2. *Question 4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide ranging functions fit together and does it have the appropriate powers and resources to perform these functions?*

The experience of the BLAF and officers of the Broads Authority is that there has been a significant and ongoing reduction in the level of support that the Forum receives from Natural England and less emphasis placed on its access functions by local staff. This must be due a reduction in the resources made available to Natural England for access work. In our view this reduction in resources appears to have resulted in a reduction in the number of former Countryside Agency staff who used to provide advice and support to access forums. Previously Natural England officers regularly attended Forum meetings and organised regional meetings and conferences on access issues. These regional and local meetings were invaluable for forums as they allowed us to share knowledge and best practice on approaches to access management, project design and funding. The BLAF does not consider that the introduction of the Huddle forum has in any way replaced the previous situation where Natural England staff were easily available to provide advice and facilitate discussion on access issues. In our view this lack of emphasis on the access element of Natural England's functions at a local level calls into question whether the wide ranging functions of Natural England do in fact fit well together and moreover whether the level of resources made available to Natural England are sufficient for all its functions to be delivered in an effective way.

3. *Question 6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting access?*

Generally the BLAF has noticed a significant decline in the amount of resources allocated to the management of access to the countryside across government as a whole. For example even though it has a remit for recreation the Environment Agency does not now put any resource to this area of its work at a local level. The county councils have also cut back on the maintenance, improvement and promotion of existing routes and have a significantly reduced capacity to promote projects for the creation of new routes without EU funding which will no longer be

available after Brexit. Further, the removal of access payments from agri-environment schemes funded through the Rural Payments Agency has resulted in a large part of the permissive access network that was created through the stewardship schemes disappearing. This has fragmented a local access network which was only recently created through the agri –environment schemes but rapidly became extremely important for countryside access at a local level as the routes provided valuable links with the existing rights of way network. The combined effect of these constraints has resulted in a situation where Natural England, other partners and the public authorities generally are being less effective in promoting better access and moreover resulted in a reduction in the quality of access being provided by government and the public authorities. The BLAF would therefore advocate that government adopts a more joined up approach to enabling and promoting access with Natural England being given sufficient funding to carry out its various functions and consideration being given to reinstating access payments in any agri-environment schemes introduced after Brexit.

4. *Question 7. Is the duty to have regard to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?*

There is certainly knowledge of the duty amongst those bodies to whom it applies but whether there is understanding of what the duty means is debateable. If the duty is to remain “to have regard” to biodiversity, the BLAF feels that this doesn’t make it sufficiently clear what bodies actually need to do, and advises that government should consider providing full guidance on the matter to the relevant bodies.

5. *Question 9. How does the English duty to “have regard” to biodiversity compare to the Scottish duty to “further” biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?*

In the context of countryside access in the national parks biodiversity and sustainability are extremely important issues as one of the most common reasons people access the countryside is to experience biodiversity and nature. There is substantial evidence of biodiversity decline in the Broads amongst certain species and the BLAF and officers of the Broads Authority consider that the English duty does not compare favourably with the situations in Scotland and Wales. The English duty should therefore be redefined to ensure some sort of parity in legislation throughout the UK and clear guidance given to bodies covered by the Act as to how they should apply the duty.

Author: Adrian Clarke Senior Waterways and Recreation Officer, Broads Authority on behalf of the Broads Local Access Forum

11 September 2017

## **Dr Stuart Burgess CBE – oral evidence (QQ 18-24)**

Tuesday 5 September 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (Chairman); Earl of Arran; Lord Faulkner of Worcester; Lord Foster of Bishop Auckland; Lord Harrison; Countess of Mar; Baroness Parminter; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 3

Heard in Public

Questions 18 - 24

## Examination of witness

Dr Stuart Burgess.

Q127 **The Chairman:** Good morning, Dr Burgess. Thank you for coming to give evidence to the Select Committee on the Natural Environment and Rural Communities Act 2006. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript will be taken and published on the Committee website, and you will have the opportunity to make corrections to it where necessary. From your perspective as the former chairman of the Commission for Rural Communities, what would you say it achieved in its time, and is there anything it did less well than it should have done? What do you think it could have achieved given more time?

**Dr Stuart Burgess:** Lord Chairman and members of the Committee, I am delighted to be here and to be able to put forward some answers to the questions.

The most important of the CRC's achievements was that it gave a rural voice to almost 12 million people living in rural England. The rural voice was about giving a voice especially to the social and economic needs and issues of the countryside. It also related well to communities and to government. As the Chairman knows, I had dual roles: chair of the Commission for Rural Communities and that of the rural advocate. These two were related in many ways and brought together some of the powerful voice that I believe the CRC and the rural advocate gave to rural community issues. The role was grounded because I made many visits around the countryside and travelled extensively around rural England. I met people in pubs, village halls and so on. So the initial answer is that the body gave that rural voice and helped people to have the kind of focus that could relate well to government.

The other part of the answer relates to the evidence-based work and reports that we did, and the focus in particular on some of the major issues facing rural communities. For example, affordable housing is the No. 1 issue out there in rural England. It has been for a number of years and still is. I am a great personal supporter of building 10 or 15 affordable homes in every village, because that creates sustainability for the future of rural communities.

Linked to that, we did a major piece of work on the digital divide, which is about broadband and mobile phone access. The emphasis was on helping the rural economy to grow and develop without rural broadband. There are many places—I chair a charity in Somerset—where rural broadband is almost non-existent. That is almost unacceptable in today's world and needs to be addressed. We put a lot of effort into that.

Another great achievement was in transport, where we gathered shared practice. There are no easy answers on rural transport, but the CRC gathered examples of some very good practice. Cumbria and especially

Lincolnshire, for example, produce some good models. We were able to gather that shared practice and try to replicate it in other areas.

Another achievement that I want to dwell on for a moment because of my great interest in social justice—my background is in the church, as many of you will know—related to the rural disadvantaged. For any Government, that is hard to take on board for the countryside. The perception of a rural idyll and of everyone being rich in the countryside is wrong. The CRC's research came up with figures—they were challenged by government, as was its right—showing that around 1.5 million people in rural areas live in disadvantage and below the poverty line. It was a great achievement to highlight that and to bring it to government's attention.

We made a major contribution in relation to health. A lot of people who live in rural areas are elderly and suffer from health problems. We had a major input into the Darzi report on the future of the NHS and highlighted some of the major rural issues faced at that point. We produced an annual countryside report, which was a great gathering of data. It was interesting that Jim Paice, who was then a Defra Minister, held up the countryside report at a party conference and said, "This is my bible about the countryside". There is a sense in which that was true, because it gathered the insights, the figures and the data that provided the evidence for building on some kind of research.

Perhaps I might mention two other major achievements. The first was to do with the rural economy. We produced in my estimation an important contribution to the rural economy. The rural economy has the ability to produce an enormous amount of money. The research that is being done at Newcastle at the moment, for example, estimates that the rural economy is worth around £400 billion. When we were doing our piece of work, we did not come up with the figure of £400 billion but with £250 billion to £300 billion, to be improved on.

The perception is that the rural economy is based on farming and agriculture. That is true up to a point. Agriculture has shaped the wonder and beauty of our countryside. On the other hand, the majority of businesses in the countryside are not related to agriculture and farming. I worked especially with WiRE—Women in Rural Enterprise—and pay tribute to the work that they did, because we linked together and were able to provide some good evidence of how the rural economy could be enhanced. Towards the end of the CRC, we were able to produce one of the best reports that it achieved. It was about the future of the uplands and brought together a lot of good evidence-based work, and it showed how interrelated the agriculture industry is with the social and economic needs and issues of the countryside. The uplands report is a very good example of what we achieved.

What did we do less well? For me, the greatest challenge was rural proofing. How do we make sure that all government Bills are rural-proofed, have a rural dimension and take "rural" seriously? My own perception is that it was dependent on the Ministers in particular departments. In education, for example, the Ministers with whom I worked then took rural



proofing very seriously, because it was a major issue. It is still a major issue. Most of the money to fund schools goes, as we know, to urban schools. We need money put into rural schools. Rural proofing was dependent on the priorities that particular departments set. If rural proofing was not embedded in those departments' and their Ministers' thinking, it had a much lower profile than hitherto. In the departments where it was embedded—I have given education as a good example—rural proofing worked extremely well where it was seen. However, it was really hard, and with hindsight we could have done it better.

How we could have done it better is still a big challenge to me, because, as I have said, it depends on the priorities of the departments. Had CRC had more time—I wish that it had had, but it was not to be—there are a number of things that I would like to have done. The first was the implementation of some of the recommendations of the uplands report that I have already referred to. After the CRC was abolished, I did some work on helping set up a college in Newton Rigg in Cumbria for young hill farmers, but there were other recommendations that I would have liked to have time to work on. As I indicated, it came right at the end of the demise of the CRC.

I would like to have done further work on the rural economy. I am a great believer in the rural economy and looking at how it can be more efficient and how it can work. That is linked to broadband, obviously. As a very good example, I remember visiting a micro business on a little industrial estate in Bideford. Fortunately, it had good broadband. It was doing high-precision medical work and sending it out to Africa. It just showed what can be achieved. The potential, I believe, is still there in the rural economy.

I would love to have done more work on housing. Towards the end of the CRC, I was doing quite a lot of work with Lord Taylor—Matthew Taylor—on community land trusts. The community land trust is still one of the major ways forward. I would love to have spent more time with him; he has developed a good model in Cornwall that can be replicated. I am a great personal fan of community land trusts. If we had had the ability, I would have put my energy into doing some work on that.

I would also have done work on encouraging the voluntary and community sector out there in rural communities. As I travelled extensively around rural England, I was very impressed by how committed many people are. One good example is in Blisland in Cornwall, where the local community got together. Fortunately, they had some Objective 1 money, but they managed to raise money themselves to build a community hub. It was a place where the doctor called, it was the place where they established an internet café, and it was a shop and a great facility. We have more shared ownership now in the form of community pubs and shops. I would have liked the ability to encourage that sector as well.

I hope that has answered some of your questions.

**The Chairman:** Thank you very much for that most comprehensive response.

Q128 **Baroness Whitaker:** Dr Burgess, you have obviously demonstrated a degree of independence in the very interesting account that you have given. What was the benefit of having a rural voice sitting outside a government department, and were there any drawbacks?

**Dr Stuart Burgess:** I think there was great benefit in having an independent rural voice. I guarded my independence quite strongly. I was very conscious that my duty was to stand apart from politics and political parties. I went to all the party conferences and I related well, I believe, not only to Ministers but to shadow Ministers. I think that the role being independent was especially valued by local communities as I went out there. They did not see me as a representative of Defra or the Government, which was marvellous. When that happened, I thought that I was making a point and had achieved something.

I also think that local communities, because I stressed my independence, felt that they could trust me to be able to go back to government and to relate their issues and concerns. Obviously, it had to go through a particular process, but that strong independent voice was very important. I believe that I gained that kind of respect. The independent voice also gave me the ability to act speedily. As a good example of this, foot and mouth broke out in Surrey at the time of the party conferences. I went down there and was immediately called to Cumbria, because there was a great debate about whether the movement of livestock should continue. I was able to have that independence outside the strictures of the political framework, which was vital.

As for drawbacks, I saw none whatever, to be honest. You can probably tell that I thoroughly enjoyed my work as chair and rural advocate, but I highly valued my independence. In the end, it is about relationships: how do you relate to people and how do you gain their confidence not being part of government but being paid by it? It is about walking that fine line but gaining their trust.

**Baroness Whitaker:** We live in a time when politicians and Governments are perhaps not as highly regarded as in the past. Is it all the more important to have an independent voice to advocate rural interests?

**Dr Stuart Burgess:** I believe so now, building on my experience. All I can say is that I found that incredibly valuable. To gain that respect for independence is built on trust. That is not to say that politicians cannot be trusted—I would not want to say that for a moment—but to stand apart gives you some kind of authority.

Q129 **Baroness Parminter:** What concerns did you have when the CRC was disbanded, and did they materialise?

**Dr Stuart Burgess:** Obviously, I was concerned about the loss of the rural voice, the loss of that great feeling of independent expert advice to government on rural issues and rural policy, and the loss of good evidence-based reports. The CRC put in an enormous amount of time and expertise. I pay tribute to the staff of CRC, who provided some good evidence-based reports. That is lacking.

Also lacking is the emphasis on the social and economic issues and the needs of the countryside. There is greater emphasis on farming and agriculture—I have some very good friends who are farmers who work in the agriculture industry, and I am very committed to them. What has been lost is the emphasis on the more social and economic issues that I have identified, such as housing, broadband and transport. I can quite see how and why it has happened, but it has been a great loss. The uplands report was a superb example of how you bring those two elements and those two sides together, but with the demise of CRC that emphasis has been lost. My feeling is that research and analysis are now driven by political priorities. I can see the reason for that, but it means that many rural issues, and concerns that I have in particular, have been side-lined.

**Baroness Parminter:** You clearly articulate the case that evidence base is important. The task we face now is that when we leave the European Union we will have even less evidence, because until now we had to report on policy issues to the European Union, but that will fall away. If you had a magic wand, in what way would you bring back the evidence base that you think is critical to your policy? What would the mechanism be, and who would do it?

**Dr Stuart Burgess:** My feeling is that government has to do it. I do not think anyone else will. In the light of Brexit, for example, it is right for rural policies to be rethought. I think the mechanism for doing so would be trying to bring together both the agricultural interests and the social and economic issues. I think that is possible. What happened in the Act was the separation of some of those issues. I agree that the mechanism might be difficult to achieve, but it is very important—at least, if we had a magic wand—to be able to bring those two sides together so that there is interrelatedness in the whole.

Q130 **Lord Foster of Bishop Auckland:** You spoke very eloquently about the importance of a strong, independent rural voice. How do you think the three main roles of adviser, advocate and watchdog are being fulfilled in government now, if at all?

**Dr Stuart Burgess:** As far as I know, there seems to be little evidence of that happening. The advocacy voice, for example, has been lost. In the documents that led up to the abolition of the CRC it was said that the MPs, and there are many of them, who represent rural constituencies would be those advocates. I agree with that, apart from the fact that many MPs have a lot of duties to perform, and advocacy of the rural issue can be only one part of their business. The advocacy voice is lost also because there is no one person or organisation bringing it all together, and although I applaud the MPs in their rural constituencies and the work that they do, there needs to be an overarching voice coming through that picks up all those different strands and has the ability to share best practice. There is lots of good practice out there that could be shared. The advocacy is rather lost.

Defra has proposed a document about how departments should ensure that rural proofing takes place, but my understanding is that it is too late in the game. I am a great believer that if we are going to do rural proofing at all

it has to be right at the beginning of the legislation and not halfway through. In other words, it has to be conceptual; it has to be in the philosophy and the thinking before it gets to hard legislation. Although I applaud the fact that Defra has produced that particular document, it is too late.

There is a lack of integration of policy across government departments and between central and local government. It is interesting that the recent rural economy initiatives have come from No. 10, such as the rural economics growth plan, or from the Treasury, such as the rural productivity plan, and not from Defra. That says it all to me. It is also interesting that Defra is preparing 25-year strategies for agriculture and for the environment but not for the rural economies and the communities. It is a great shame that that has been missed.

Obviously, I applaud the fact that there is support for rural social innovation, ACRE and the RFFs, but on the whole many of these roles have now been lost, sadly. Some are there but at a very low level. We need to recapture some of those roles to make an impact for the rural communities. That is what I am about: trying to improve the lot of rural communities, to help them to face some of their issues and concerns and to change and transform the countryside.

**Q131 Lord Faulkner of Worcester:** Can I ask you a slightly personal question? When you got word of the abolition of the commission, how did you and your fellow commissioners feel about that? Did you read about it, as a number of non-departmental public body heads did, in a piece in the *Daily Telegraph*, for example, or were you properly consulted?

**Dr Stuart Burgess:** We were properly consulted, I was properly consulted, and I pay tribute to the people who put me in the picture on what was happening. There was a little twist in all this. Obviously, the CRC was part of the bonfire of the quangos, and I was very keen in the discussion with Defra that the independent rural voice should not be lost. I pushed that pretty hard with Ministers and with civil servants in Defra. The compromise was made that CRC would be part of the bonfire of the quangos but that there would be an office for the rural advocate in Defra holding on to the independent rural voice, with a small budget. That was agreed within Defra and by the Secretary of State, Caroline Spelman. Then, sadly in my estimation, it was pushed back by the Cabinet Office and the whole thing was lost.

To answer your question, I was consulted, but I was sad that we lost both strands: the CRC and that independent rural voice.

**The Chairman:** If there was to be a body charged with rural advocacy, where within government should it sit—or without government maybe, I do not know?

**Dr Stuart Burgess:** I think I would argue for it to be in the Cabinet Office. That might not be very popular, because the Cabinet Office might want to push things out, as it were, but that would give it a very central role and

give certainty and support to rural communities out there. It is very important to give the 12 million rural people that kind of support.

**Q132 Lord Faulkner of Worcester:** Can you think back to the 2006 Act? How well do you think it engaged with social and economic rural issues in general—apart, obviously, from the creation of the CRC?

**Dr Stuart Burgess:** My personal reflection on the Act is that it is very farm-centric. As I said, in a sense I have nothing against that because I have a great commitment to agriculture myself. But it did not take on the importance of communities and issues out there, and in a sense it was a retrograde step to take. I think it worked against the integration of rural policy by separating the environment and the social aspects of delivery, and the uplands are, I think, an example of that.

The economic and social aspects were to be addressed, as we know, by the CRC and indeed by the RDAs, neither of which now exists. The CRC lacked the money but did a valuable job with limited resources. It also lacked delivery powers, which was a shame. If it had had the ability to deliver more, that would have been helpful. I know that you, Lord Chairman, know a good deal about the discontinuation of the market towns initiative, for example, which was part of that. I do not think that the rural unit that was set up has been an adequate substitute for what has happened.

**Lord Faulkner of Worcester:** That is what you would describe as a being missing from the structures in the provisions in the Act?

**Dr Stuart Burgess:** Indeed.

**Baroness Whitaker:** We have had evidence about an inherent tension between agricultural interests and environmental interests and that Defra is therefore not the best structure for dealing with these issues. What is your view about that, because the environmental side is perhaps a little apart from the social and economic issues that you talk about, and perhaps that is a way of trying to take account of the inherent value of the kind of countryside that we have, which is part of our national identity and brings in all sorts of other considerations beside social and economic issues? I am talking really about the kind of governance structure that we ought to have. I quite take your point about independence, but if you are independent you lose a certain amount of power. If you have your Cabinet Office structure, which is a very interesting idea, what should happen about strife between agricultural interests and environmental interests, or do you think there is no inherent problem?

**Dr Stuart Burgess:** There is a relationship between all of them. I realise the problem when I say that the rural voice could be in the Cabinet Office, because then there is the environment and agriculture to consider, as you rightly said. There is a need to get the relationship right between the Cabinet Office and wherever the other areas are located, for example in Defra, because in the end it is about relationships. If you get that relationship right, it can work. Obviously there is that connection between

the environment, agriculture and all the social issues and concerns, but because the environment issues can be so large and the agriculture issues can be so large and dominant, the rural voice is lost. If I may, I suggest that the rural voice in all this is so very important and could influence the insights into agriculture and the environment.

**Baroness Whitaker:** In the Cabinet Office, are you advocating a rural interests Minister, or are you saying that there should be an independent adviser to the Cabinet Office?

**Dr Stuart Burgess:** I would go for an independent adviser.

Q133 **Baroness Scott of Needham Market:** Staying with the overall theme of the way in which government engages in rural issues, can you name something that gives you cause for optimism at the moment—something that is going well—and something about which you are more worried?

Finally, if, when we produce our report, there is one recommendation in it that would make you say, “Yes, that is just what I wanted to see in there”, what would that be?

**Dr Stuart Burgess:** One thing that is going well is in farming and agriculture. Because of Brexit, for example, we have the demise of the common agricultural policy, the single farm payment and rural development funding such as LEADER. There is an onus on Defra at the moment to deliver after Brexit, and quite rightly. How do you get that right for the farming community? Although a lot of it is uncertain at the moment, a lot of energy is being put into that at the moment, which is great.

One thing that is not going well is delivery on affordable housing, which is quite tragic, because it is the key to the transformation of rural communities. A good example is Holy Island. A number of years ago people there got together and produced some affordable housing, which transformed that community.

Sorry, your last point again?

**Baroness Scott of Needham Market:** One recommendation that would gladden your heart if we were to make it.

**Dr Stuart Burgess:** It would gladden my heart if an independent rural voice was established.

**The Chairman:** That might be one conclusion that we come to. You have mentioned the rural voice several times. Perhaps stepping back from that, is there any other way, apart from establishing a new independent body, that we could turn the volume up on? How do we re-establish the rural voice? In the same breadth, how do we get rural poverty and deprivation back on to the political agenda?

**Dr Stuart Burgess:** You get it back on the agenda by having this independent rural voice, to be perfectly honest. If you had it, that person would pick up those issues, bring them to the fore and make certain, hopefully, that notice in government was taken.

**Lord Harrison:** As an ardent atheist, I picked up your hint of your Methodist background. Would you like to comment on that and link it to your passion for housing and strengthening communities? I ask that, because 10 years ago I had a very long debate in the Chamber on the failure to transform, especially in the countryside, places of religion into places that strengthened local ties.

Another of the phrases that you have used this morning is “shared accommodation”; things could be done in churches and Methodist halls in order to provide for people the strength they need.

**Dr Stuart Burgess:** Thank you for your question. I have great respect for you. I was chair of the York and Hull Methodist District before I became the successor to the Chairman. There, I gained an insight into all those rural issues. You are absolutely right, and forgive me for not saying it before, that the churches in the countryside, irrespective of denomination—I am rising above denominations at the moment; yes, I am a Methodist—are more than well placed to deliver on many of those issues.

I can assure you that I have challenged a number of Churches, especially the Church of England and my own Church, the Methodist Church, on affordable housing, for example, so I am not coming down entirely on the Churches at this point. There are many good examples, such as churches hosting post offices and libraries, and I am a great believer that every rural village should have some kind of hub. I am not particularly concerned about whether it is a village hall, a pub or a church, but there needs to be a focus, and if you have a focus you can transform the communities and bring together so many of the delivery points. The Churches are well placed to do that. If I may, I challenge the Churches through this Committee to do that. Because they are present in rural communities, nearly all rural communities have some kind of church. In my estimation, it is a nonsense—I will put it quite strongly—that many of those buildings are standing idle during the week and could be used as a great hub to transform rural communities.

**Baroness Parminter:** You have talked a lot about the importance of an independent rural voice. When you were in the roles that you were in, how did you respond to the view that there is no such thing as a rural voice because you have exactly the same problems in rural communities as in urban communities; it is just that, because of the location and sparsity of population, you have different solutions? Equally, communities differ from Cumbria to Cornwall to Surrey et cetera. Could you give to the Committee some confidence that there is such a thing as a need for a rural voice, as opposed to the case you made very coherently for rural evidence?

**Dr Stuart Burgess:** You are absolutely right that communities across the country, in Cumbria and Cornwall et cetera, are very different, but there are many linkage points. It is important to bring those common strands together and to link them. The rural voice picks them up. You are absolutely right, too, that many issues in rural and urban areas are the same, such as affordable housing. I do not think that broadband is, nor is transport, but there are challenges relating to schools. There are particular

issues out there in the countryside. I still believe that that single rural voice can pick up those themes and feed them in to the evidence that you are talking about. Evidence is very important, and I am a great believer in producing strong, evidence-based work. But it has to be rooted somewhere. The rural voice can provide that sense of rootedness.

**The Chairman:** You have mentioned EU money twice—Objective 1 money in respect of Blisland in Cornwall and LEADER funding. Post Brexit, if there was to be some funding by the Treasury, how would it best be delivered? Would it be through local authorities? Would it be through a Defra delivery body? Would it be through DCLG or perhaps the LEPs? How do you see that sort of money coming down to the communities and the rural economy, where it really matters, throughout England?

**Dr Stuart Burgess:** That is a very interesting question. I have had quite a lot of dealings with the LEPs, especially down in Cornwall—you mentioned the Objective 1 money there. The LEP could be a way forward if it was rethought, because some LEPs that I have come across are still very urban focused. It is important to make sure that they take on board that there is nearly always a great rural dimension to the areas that they cover. The LEPs could be explored.

**The Earl of Arran:** What do you think will happen to Cornwall without European money?

**Dr Stuart Burgess:** It is a very interesting question that I am not sure I am qualified to answer.

**The Chairman:** Thank you very much, Dr Burgess, for coming to give us evidence today.



**Chartered Institute of Ecology and Environmental Waste Management and National Biodiversity Network – oral evidence (QQ 89-94)**

Tuesday 31 October 2017

12.10 pm

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; Baroness Whitaker.

Evidence Session No. 11

Heard in Public

Questions 89 - 94

## Examination of witnesses

Dr Jo Judge and Dr Stephanie Wray.

Q89 **The Chairman:** Thank you both very much for coming to see us. I have to make the usual introductory remarks. You have in front of you a list of interests that have been declared by Members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be published on the Committee website and you have the opportunity to make corrections to that transcript, where necessary. Would you like to introduce yourselves and say a little about yourselves? An opening statement is very welcome but we are happy to, perhaps, elicit the knowledge from our questions, whichever you prefer.

**Dr Stephanie Wray:** Thank you very much. I am Stephanie Wray. I am an ecologist by profession and am president of the Chartered Institute of Ecology and Environmental Management, which is the leading membership organisation for professionals working in the natural environment.

**Dr Jo Judge:** I am Jo Judge. I am chief executive of the National Biodiversity Network. The network is a partnership for nature and we have over 160 members, predominantly all of the wildlife charities, as well as working closely with CIEEM and statutory body agencies. We are an umbrella organisation aiming to facilitate the collection, collation, sharing and use of biodiversity data.

**The Chairman:** Thank you very much. As you know, we are looking at the 2006 NERC Act—not only the effectiveness of its clauses but the effectiveness of the institutions that it has set up. My first question is: how well do you think Natural England fulfils its role of carrying out and facilitating conservation and monitoring biodiversity? To what extent have the recent budget cuts affected its ability to do this?

**Dr Stephanie Wray:** Ultimately, we believe that Natural England is not achieving its core objective, in that it is not achieving its general purpose to ensure that the natural environment is conserved, enhanced and managed for the benefit of future generations as well as the present generation. We can see it is not achieving that because biodiversity is, quite clearly, in decline. We are not achieving our 2020 targets. UK priority species are declining—they have declined 18% since 2010—and many actions for priority species and habitats are identified as being yet to start, and it is 2017.

Clearly, a significant number of those issues are related to Natural England's budget. We have heard this morning already that Natural England's budget has been cut by some 60% in recent years. This has led to Natural England, of necessity, having to focus on SSSIs and international sites and not their wider biodiversity duty. They are responding to planning applications with "No comment" rather than "No objection" because they do not have the resources to deal with local issues, whereas local issues are, of course, part of the stepping stones that build up to a landscape-scale approach to nature conservation. They are relying on standing

advice, some of which is clearly out of date, and have been traditionally focusing on the wrong end of the process—so putting a lot of investment and resources into pre-planning or pre-granting of licences and very few resources going into monitoring of the efficacy of mitigation measures put in place and monitoring the effect that is having on our nation's biodiversity. I would like to say there have been some really good innovations over recent months and years to try to redress that balance in terms of innovation and a way of driving positive change in the organisation, but at the moment we are spending a lot of effort looking at the wrong end if we want to benefit biodiversity.

**Dr Jo Judge:** I would echo pretty much everything Stephanie has said. We acknowledge that there are some very dedicated and experienced individuals within Natural England who are doing the best they can in the situation they find themselves in. The budget cuts have had a huge impact on Natural England's ability to achieve its aims. The loss of staff has been a big problem, especially compounded by the fact that quite often those members of staff are the more senior and more experienced. There has been a big loss of that experience from Natural England over the past few years. As Stephanie said, they are not able to discharge some of their functions; they are focusing on some pieces of legislation without looking at species perception and licensing as much and there has not been as much site designation as there used to be. Monitoring is also a massive issue in that very little goes on at the moment. The budget cuts have also impacted on their ability to work with some of their partners and get the additional resources they need from outside Natural England to ensure that they can do their duty, because the cuts in Natural England's budget have led to cuts in funding for other groups.

**Lord Cavendish of Furness:** Is it established beyond all doubt that biodiversity has gone down by this specific percentage? Who says? Is it peer reviewed? What is the status? I am rather new to this Committee.

**Dr Jo Judge:** It is in the *State of Nature* report published last year by the RSPB, but pretty much anyone who has done anything in ecology and biodiversity has put work into that report.

**Lord Cavendish of Furness:** Thank you.

Q90 **Lord Faulkner of Worcester:** One of the partners that Natural England had until 2016 was the local environmental records centres. Those agreements have now been terminated, I understand. They say they are going to use open data in future, or have done since then, which they claim produces better value for taxpayers' money. Would you agree with that? I suspect you would not from the expressions on your faces. Can you share with the Committee what you think the consequences of that decision have been?

**Dr Jo Judge:** The local environmental records centres do a huge amount on the ground, working with volunteers, collecting and collating biodiversity data, verifying that and making it so that it is in a position to be used for planning policy decisions, et cetera. The decision to remove

that funding was quite baffling and surprising, given that it was less than a year into a four-year contract and it was done with very little warning or notice. It has impacted on Natural England's ability to get the data they need, especially at a local level, but also at all levels, because now they do not have the capture resolution data directly from the local environmental records centres, and the data that is generally open is at a lower resolution. That will have a huge impact on, as I say, local decisions, in particular. With anything they do they are not getting the highest-quality data that is available to them. As well as the local records centres, some of the national schemes and societies—the Botanical Society of Britain and Ireland or Butterfly Conservation—also do not readily give over capture resolution data because they are not receiving any funding for it.

**Lord Cavendish of Furness:** I think the question I was going to ask has been answered. Do you think Natural England has access to sufficient biodiversity data? I think you said no. How does the biodiversity data that Natural England has access to affect decision-making and advice at the local level?

**Dr Stephanie Wray:** Natural England's advice at a local level has to be informed by data. They are a science-based organisation; they are giving effective ecological advice. To do that they need both national datasets, the sorts of datasets we see as open source, and specific local records that come through from networks of amateurs in many cases. Those two systems of data have to marry up, so we build a top-down strategy for how we manage biodiversity but we also build from the bottom up as to what we have, where we have it and what are the most effective places to make alterations. Not having such ready access to the bottom-up data and not having the bottom-up data necessarily collated and passed on in the right way because of the limitations on budgets at the local records centres will cause us a problem at a critical time in deciding how we manage the natural environment in the UK.

**Dr Jo Judge:** I do not have much to add on that.

Q91 **Baroness Byford:** Do you think that the natural capital approach will bring benefits? How do you see that working? Often in the past we have talked about the environment, and we talk about water and soils, particularly, but we do not talk about landscape or well-being. I would be interested to hear your comments on that.

**Dr Stephanie Wray:** Natural capital is more than the latest in a long series of ecological buzzwords. We have talked about ecology and biodiversity and now you hear people talking about natural capital. It is much more than that; it is a way of understanding all the services the environment provides for people. Using that approach we can be better understood; we can talk to people in clear terms about the things the environment provides for us rather than talking to other scientists about biodiversity. Also, if we couple a natural capital approach with the approach for net gain, moving on from no net loss into net gain for biodiversity, for the environment, then we start to have a system where we can see real improvements.

**Dr Jo Judge:** Natural capital and net gain can play a real part in helping us to conserve biodiversity. Part of that, as Stephanie said, is that you can talk to developers and economists in terms they understand, which is clarity for them rather than “nature is wonderful and we should preserve it for nature’s sake”—which we obviously should as well. The thing about natural capital is that it takes quite a lot of experience and high-quality data to make sure it is done right. We need to get that part right before we start adding in something else.

**Baroness Byford:** I think that is quite fair—I will not share your thoughts on that. It is interesting that in the observation you have just made you said it will be easier to talk to people. Do you feel, as scientists—which, presumably, both of you are—that you tend not to have the opportunity to talk more to the public in fairly simple language so the public understand the benefits of natural capital? I am sure if you mentioned it out in the streets now there would not be many people who would know what you are talking about. Biodiversity they might and the decline in birds, bees and other things they might, but we need the general public to buy into the importance of what we are talking about at the moment. I wonder if you have observations on that.

**Dr Stephanie Wray:** Yes, I think it is important that we can engage as widely as possible. I started my introduction by telling you that I was an ecologist and by that I mean that I am a scientist in a fairly numerate discipline rather than some kind of lifestyle choice. I think the word “ecologist” has been misappropriated somewhat in that way. I have spent a lot of my career trying to persuade people that what I do is a science—looking at evidence and being focused on that—and somewhere along the line we have forgotten to talk to the general public in very clear terms and explain that water, clean air and soils are important.

**Dr Jo Judge:** Absolutely. Prior to my role in the NBN I was a research scientist on wildlife behaviour. I have noticed, over the past few years in particular, that if you say the word “scientist” quite a lot of people switch off, especially after the whole Brexit campaigns. We need to engage more with the public and be able to explain what natural capital, net gain and biodiversity mean to them, and show them how it affects their everyday life, rather than thinking of something that just scientists, developers or politicians are interested in.

**Baroness Byford:** Do you think part of that responsibility should be with Natural England as well?

**Dr Jo Judge:** To some degree, yes. It is not just the organisations that they work with; they work with individuals, especially for species licensing and that sort of thing. Perhaps having a bit more education in that rather than what is, quite often, a box-ticking exercise would be useful.

**Baroness Whitaker:** Do you think the natural capital approach would help with day-to-day decision-making at local level and provide a clearer way to account for the value of the natural environment? Is that what you are saying?

**Dr Stephanie Wray:** I think it can. However, in order to implement it in day-to-day decision-making you need access to qualified, good advice at a local level. That is missing in a lot of local decision-making.

**Dr Jo Judge:** For it to work well it is not only ecological advice; you need economists involved and people who are involved in infrastructure and planning. If it is done properly, yes, it could be a real help, but we have to make sure that if it is going to be done it is done to the best of the abilities we have.

**Viscount Chandos:** Staying on natural capital, do you think that public authorities should have a duty regarding natural capital that would extend or absorb the current NERC Act duty to have regard for biodiversity?

**Dr Jo Judge:** Again, it comes down to resources. At the moment it would be something that public authorities probably would not be able to do because they do not have the experience or the budget. If that was all in place then, yes, I think it could play a part, but it is not an easy or quick thing to do. It might be quite difficult for it to be embedded to that level in day-to-day work.

**Dr Stephanie Wray:** I would strongly advocate that the duty should be extended to include natural capital; it should be extended to include the principles of net gain as well. It should also be a requirement that local authorities and other bodies, where they require this advice, take that advice, have that advice in-house or procure that advice from another source where they need to, so that they can make decisions in light of the best possible scientific evidence and advice on the impact of their decision-making on the natural environment.

**Viscount Chandos:** Do you see any downside? Is there a risk that biodiversity would somehow be weakened within a natural capital framework as opposed to on a stand-alone basis?

**Dr Stephanie Wray:** No, I do not think that is the case. That is because where I come from, as an ecologist, the members of CIEEM are used to juggling lots of different, complex requirements within a complex ecosystem. Yes, it is difficult to keep all the plates spinning but, no, it is not impossible.

**Dr Jo Judge:** I would agree with that.

Q92 **Lord Cavendish of Furness:** In rather longer a life than I care to admit, I have noticed that science sometimes goes unchallenged because a scientist said, "Here is the data", when the empirical evidence is ignored. What capacity do you have for having iteration processes where you can say, "The evidence on the ground seems to conflict with data. Can we look at it again?" What is the scientific approach?

**Dr Stephanie Wray:** That is a basic tenet of our approach in monitoring biodiversity and impacts on the natural environment. When you seek to manage a site for nature conservation benefit, you will put in place a series of management prescriptions. It might be about how you cut grass with

hay cuts and aftermath grazing. You will put in place a monitoring programme, you will look at how the botanical biodiversity changes and, if you see that things are not progressing in the way you thought they might or in the way that best supports increasing biodiversity, you will change the management prescription. There is a feedback loop from monitoring.

**Dr Jo Judge:** Any science should welcome any challenge to the perceived norm. You have to be able to look at things and say, “This isn’t going quite the way we thought it was”, and have another look at it.

**The Earl of Caithness:** You have answered the question I wanted to ask. I am going to ask a more general question. If you were the Secretary of State with the idea of this 25-year environment plan, what would be your inclination to improve the current situation? For instance, would you include natural capital? From what you have said, that is going to be a huge training and education programme. Would you build on the present system with Natural England? How would you get more and better data and scientific advice on which to base your recommendations to the country?

**Dr Jo Judge:** A simple question. I think the 25-year plan should definitely include natural capital and net gain—perhaps not as something we start immediately but as something we work towards. With Brexit we have an opportunity to improve the legislation surrounding biodiversity, nature and the environment as a whole. We need to strengthen, especially in England, the legislation we already have and include scrutiny, monitoring and evaluation of what is happening. That all needs time and resources. I have forgotten the rest of the question. I did not write it down. I will pass over.

**The Earl of Caithness:** I am not surprised.

**Dr Stephanie Wray:** If I was Secretary of State—and since Mr Gove has already told us he is a “shy green”, I am sure he is thinking along the same lines—I would definitely propose a new Environment Act. We have talked about that this morning, building on the provisions of the EU regulations and elements of the common agricultural policy and common fisheries policy to enhance and deliver real benefits. I would look to draw on the lessons learned in Wales and Scotland and develop an ambitious strategy to protect our most vulnerable habitats and species. I would use the Lawton principles, as the Government have suggested they intend to. That could be based on the framework of Defra’s 25-year plan. As far as I am concerned, the 25-year plan is still a unicorn because nobody outside of Government, I believe, has seen it yet. If and when a 25-year plan is produced, that could be an opportunity to work on elements of natural capital and net gain if widened to include the devolved Administrations and consulted on widely. I would look for an approach to land management and management of marine resources which would deliver public benefits, public goods for public money, and look to restore damaged ecosystems. For that we need good data. We need data about where the most effective actions can be put in place. Finally, I also agree with earlier comments today that we need a strong enforcement body and office for environmental regulation.

**The Earl of Caithness:** One quick follow-up question: would you keep Natural England or would you amalgamate Natural England with part of the Environment Agency and take the enforcement powers into a separate body?

**Dr Stephanie Wray:** That is a very interesting question. There are a number of different ways you could structure it. The regulation and enforcement body I am talking about is at a UK framework level, so replacing European Union functions. That would be a replacement for or iteration of JNCC rather than Natural England and you would require organisations such as Natural England to function at devolved Administration level.

**Dr Jo Judge:** I agree. There are several ways you could slice it up, but I am not quite sure exactly how you would do that. A body that is seen as independent that does the monitoring and enforcement is vital if we are going to make a difference.

**Lord Cavendish of Furness:** Can I ask why net gain is seen to be so far off? Good practice produces instant results, almost, does it not? One thinks of river management. Surely, net gain could be achieved with good practice in much shorter order than you have suggested.

**Dr Stephanie Wray:** I think net gain is getting a lot of traction now in, for example, infrastructure development and some more residential development, and so forth, through the planning process. The land affected by the planning process and infrastructure development is relatively small compared with land that is affected by food production, for example. If we apply those principles of net gain to how we incentivise farmers and landowners, we have massive opportunities, by following good practice, to get real improvements, yes.

**The Chairman:** Can I drag you back a moment? In your discussions on natural capital there seemed to be a divergence of opinion between you as to whether local authorities could take on this whole concept.

**Dr Stephanie Wray:** There is.

**The Chairman:** Can I take you back one step further and on to the biodiversity duty? That already sits uneasily with the local authorities; they are not really making it work effectively and nobody seems to be driving it. What needs to change to make that work? Is it the wording, as in Wales and Scotland, or is it some sort of reporting mechanism or accountability?

**Dr Jo Judge:** At the moment, as it stands, there is a duty to take biodiversity into consideration but there is no guidance on what that means. There is no reporting on it and no real incentives or disincentives for taking biodiversity into account. Because there is no reporting, we have no way of seeing what impact the NERC Act has had on biodiversity. I feel it needs to be strengthened. Scotland is slightly better and further in conservation, but the Environment (Wales) Act that came in last year takes it further with not only taking care of but enhancing biodiversity. We need



to bring that into the legislation for England. I also think we need to have a reporting mechanism, but it has to be an effective reporting mechanism that has checks and balances to see whether people are doing what they are supposed to be doing.

**Dr Stephanie Wray:** I believe the existing duty is very weak. One can have regard to something and take it into account and weigh it in one's decision-making and do exactly the opposite, on the balance of the considerations. I do not believe the duty, as worded at the moment, promotes the protection or enhancement of biodiversity. The wording would need to change. Guidance is essential. The guidance Defra produced and then withdrew went some way to helping authorities understand how to implement it. It is quite a nebulous concept if it is not part of your day-to-day job, and they needed guidance on what it meant and how they could implement it. If you put those things in place—if you strengthen the wording and guidance on what is required, if you provide a requirement for people to take advice from experts on it and if you have a reporting mechanism—you would, presumably, have a much more effective duty.

Q93 **Baroness Whitaker:** I see, according to your very interesting evidence, that we have a new Act compensating for the loss of EU oversight. I think I heard we have a new independent structure. What about new legal powers? I have heard about stronger reporting mechanisms, but do you think we should have different kinds of sanctions? What else?

**The Chairman:** This is post Brexit we are talking about.

**Baroness Whitaker:** Post Brexit to compensate for the loss of EU oversight.

**Dr Jo Judge:** We need both incentives and sanctions. At the moment, there is no real bite to our biodiversity legislation. We need to change that, but it does not have to necessarily all be by sanctions; it can be incentives. If we are going to strengthen the legislation, as has already been said, we need to make sure there are guidelines for what people are meant to do and what is considered acceptable in terms of what they are doing for the environment and biodiversity. Having those powers in place is the first step, but you also need to make sure that the right amount and kind of monitoring is happening to ensure that people are doing what they say they are doing and, if they are not, for there to be sanctions, which I do not think there are at the moment.

**Dr Stephanie Wray:** Yes, I agree that a range of measures are necessary and a new body such as an environmental regulator would be able to replicate the sorts of functions of the EU through providing informatives and providing the equivalent of what would be an infraction notice. Perhaps the planning courts could be extended as the planning and environment courts to deal with the role of the ECJ.

**The Chairman:** What role would your new independent environment commission play in all this?

**Dr Stephanie Wray:** They would be holding the Government to account through how we extended, interpreted and developed new environmental legislation, and would be monitoring the implementation of that legislation through the devolved Administrations.

Q94 **The Chairman:** A final question, up in the air: what one recommendation—only one—would you want us to put forward in our report?

**Dr Stephanie Wray:** Probably the biggest change in this report would relate to strengthening the biodiversity duty through incorporation of principles of natural capital and net gain.

**Dr Jo Judge:** I would agree with that but, since it has already been said, I will give you another one. Underpinning all this we need high-quality data to be able to do any of this. It is making sure that biodiversity collection, sharing and use are properly valued and appropriately funded, and built into pretty much everything we do.

**The Chairman:** Great.

**Baroness Byford:** As we are now looking at a digital age and everything is so much more easily accessible, do you not think it will be easier to collect data? What is it about collecting data? It is there; it is not as if you have to write screeds out.

**Dr Jo Judge:** The vast majority of the biodiversity data in the UK is collected by volunteers rather than professionals. I hope they would not mind if I say they are generally of an older demographic, shall we say, and some of them are very tied to writing things down in their notebooks and either putting it in a spreadsheet or passing it on to somebody else to deal with. With the technology and the Acts we have coming, there has never been an easier time to collect that data and make sure you have accurate data, to a certain extent. They also mean that you have to have a validation process because if you have people who have less expertise in making records you need to make sure that the records are right. Using data that is wrong could have a negative impact rather than a positive one. With the data-sharing infrastructure that the NBN provides, for example, yes, with technology we should be able to get more of it, especially when we are going to have remote sensing data from drones, potentially. A DNA sequencer that you can plug into your phone is being developed. That will make things easier to record. There is still this large amount of data that is recorded in a more traditional way. There are also issues about the fact that, if the people who collate and curate that data are not properly funded, they do not make that data openly available at a high resolution because they rely on the services they can provide based on the data that they have.

**Baroness Byford:** Before I pass it over to your colleague, one of the questions I wrote down earlier was: are there too many organisations dealing with various aspects of biodiversity that makes this quite a problem? I add that for you. I do not mean to be critical of them but, as

you have said, there is a huge amount of people collecting various data from different places.

**Dr Stephanie Wray:** There are, and the benefit of a national network is to try to bring all those datasets together. That said, a lot of conservation organisations are fairly collaborative.

**The Chairman:** We will end on that note. Thank you both very much for coming in. It has been a very good evidence session. Thank you.

## **Chartered Institute of Ecology and Environmental Management (CIEEM) – written evidence (NER0030)**

### **Introduction to CIEEM**

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has 5,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Environmental Policy Forum
- European Network of Environmental Professionals
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network

### **Rural advocacy and the Commission for Rural Communities**

**1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?**

1. No comment.

**2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**

2. We do not believe that policies across government are subject to a sufficient degree of scrutiny as to their effects on the natural environment. Given our concerns regarding the European Union (Withdrawal) Bill and the potential for lack of scrutiny and enforcement post-Brexit, CIEEM advocates the creation of a new, independent Environment Commission to replace the role of the European Commission and European Court of Justice (see answer to Question 5).

**3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

3. Defra must take the lead in co-ordinating policy for rural areas. However, the environment, sustainability and the link to rural affairs do not exist in isolation, and therefore must be considered across all of government. Other departments must also be involved in decision- and policy-making, including the Department for Communities and Local Government, Department for Transport, Department for Business, Energy & Industrial Strategy, Department for Education, Department of Health, and Treasury as well. This cross-government collaboration is needed in relation to, for example, planning, housing, transport infrastructure, and funding. Again, CIEEM advocates the need for a new, independent Environment Commission to provide accountability post-Brexit.
4. Government decision- and policy-making processes must all be underpinned by science and evidence. CIEEM is a chartered body with over 5,000 professional ecologists and environmental managers whose expertise and experience present an extensive resource that is available to government on research, policy, legislation and implementation in relation to the environment. CIEEM would be happy to discuss how this could be offered.

**Natural England**

**4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

5. Natural England does have a wide-ranging set of functions, from rural payments to marine management, biodiversity conservation, protected species licensing to countryside access and recreation. We applaud Natural England and its staff for their commitment to nature conservation, however, the organisation is severely under-resourced for the range of tasks that it is expected to deliver. Severe funding cuts during this and the last parliament have meant that Natural England is struggling to keep up with its obligations.
6. The loss of staff over this period has resulted in a draining out of skills and knowledge, an increasing reliance on standing advice and a tick-box approach which results in frustration, delays and a lack of confidence in the organisation. The solution is to build a much stronger regulator, rather than to continue to cut it until it has no value and is abolished. CIEEM and its members have seen the results of the above first-hand through delays in the licensing system and in the new innovations being implemented and proposed by Natural England.
7. Whilst innovation is necessary for progress, Natural England has been forced to implement new projects and policies at an accelerated rate that does not

allow adequate time for testing or for pilot schemes to fully report. CIEEM supports Natural England's new strategic landscape approach<sup>59</sup> to nature conservation, but this must be delivered in a timely way and appropriately resourced.

8. CIEEM also notes that the rate of change at Natural England has had implications for others in the sector including local authorities, who have had additional pressures added to their workloads, and ecological consultants, who have struggled to keep up with the implications for their businesses of, for example, policy changes.
9. The UK government's changed approach to guidance, through abolishing departmental and agency websites and creating the new gov.uk resource, has had a detrimental impact on certainty and clarity in the sector and for the natural environment. For example, this government made the decision to no longer publish or host any form of guidance or best practice and to simply address the requirements of the legislation. This has resulted in the loss of much valuable guidance, including in relation to how public bodies should implement the biodiversity duty, which has been replaced by a simple webpage.

**5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

10. There is still uncertainty regarding what the policy and legislative landscape will look like post-Brexit. However, the European Union (Withdrawal) Bill currently provides little in the way of scrutiny or enforcement, including for the natural environment. Partly for this reason, CIEEM is advocating the below with respect to Brexit:
  - Biodiversity 'net gain' must be central in new policies for land (e.g. CAP) and marine (e.g. CFP) management.
  - Brexit is an opportunity to restructure species and sites protections in a logical, hierarchical structure.
  - CIEEM advocates the creation of a new environmental commission to work towards new Environment Act(s).
11. Natural England has a central role to play in developing new approaches to land and marine management, specifically with regards to replacements for the Common Agricultural Policy and the Common Fisheries Policy, which we advocate must change, respectively, to payments only for public benefits and to fisheries being part of an integrated and holistic marine environment management strategy.
12. Natural England will also have a central role in developing a new hierarchy of protected sites and species protections. Although we understand the level of work required to undertake such a task, we foresee – if not necessarily immediately – that there will be change over time once we have left the EU

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<sup>59</sup> Natural England (2016). *Conservation 21: Natural England's Conservation Strategy for the 21<sup>st</sup> Century*.

and using European designations will become less relevant and the UK will start to diverge from the evolving EU legislation. To avoid this piecemeal approach CIEEM recommends using the opportunity to re-think the system.

13. CIEEM reiterates its offer of help and advice in implementing the above recommendations.

**6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

14. CIEEM has no specific comment to make here other than to say that additional resources would help in the delivery of improved access, which in itself would have wider social and economic benefits.

**Sustainability and biodiversity**

**7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

15. There are differing levels of understanding of the biodiversity duty in those organisations to which it applies. In some instances this relates to whether or not the organisation has access to ecological expertise. In many instances, these bodies do unfortunately lack this expertise. Research by the Association of Local Government Ecologists (ALGE)<sup>60</sup> suggests that less than a third of local authorities have any in-house ecological expertise, meaning that the biodiversity duty is addressed by other staff such as planners. Planners are ill-qualified to make biodiversity decisions and are not competent to do so; they do not claim to be so either but the requirement falls to them due to lack of resources. This lack of ecological expertise has knock-on effects on other sectors of the economy, such as development and infrastructure, which are open to challenge later in the process and can cause delays and add costs.

16. CIEEM advocates that all local authorities should be required to employ (or contract) a competent ecologist to advise them on aspects of policy or their duty that could have impacts on the natural environment. We would be happy to give further evidence on how to develop the intelligent client function, which we have been developing alongside the Landscape Institute.

**8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

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<sup>60</sup> Oxford, M (2013). *Ecological Capacity and Competence in Local Planning Authorities: What is needed to deliver statutory obligations for biodiversity?* Report published by the Association of Local Government Ecologists.

17. It is clear from the UK's own biodiversity indicators – and those of NGOs such as the *State of Nature* reports<sup>61</sup> – that the UK's biodiversity continues to decline. Therefore, the biodiversity duty is not having the desired impact. CIEEM strongly recommends that the duty on public bodies must be changed to an obligation of 'net gain'.

18. This government's ambition, which CIEEM applauds, is to be the first to leave the environment in a better state than they found it. If this is to be achieved there must be change. Business as usual is not working and there is an ongoing attrition of biodiversity and ecosystems. Therefore, there must be an obligation to deliver 'net gain' in order to enhance and restore biodiversity.

19. CIEEM has developed 'net gain' principles<sup>62</sup> for development with CIRIA and IEMA, and is now working on the guidance to build on the principles. This work could be expanded to the wider management of the countryside through the replacement of the Common Agricultural Policy, which would include the work of public bodies.

**9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

20. The duty in Scotland and Wales is better than the requirement in England, however, there is still the issue that the requirements need underpinning by the appropriate resources for delivery and implementation.

**The changing context since 2006**

**10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

21. See answer to question 5.

**11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

22. CIEEM supports the recommendation of the British Ecological Society that any modification to the duty should add obligations regarding natural capital and ecosystem services.

*8 September 2017*

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<sup>61</sup> Hayhow *et al.* (2016). *State of Nature 2016*. The State of Nature Partnership.

<sup>62</sup> <https://www.cieem.net/biodiversity-net-gain-principles-and-guidance-for-uk-construction-and-developments>



## **Community First Yorkshire – written evidence (NER0017)**

### **Rural advocacy and the Commission for Rural Communities**

Q1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of being fulfilled?

1. Advocate, adviser and watchdog functions are not being fulfilled consistently or constantly across Government in the absence of a cross cutting policy unit or commission. Rural advocacy is not seen as a priority for a particular departmental or Government agency.
2. Local advocacy is happening through networks such as ACRE Network of Rural Community Councils and RSN (Rural Services Network). Local members of these networks actively engage with national agendas to seek to influence and shape plans. Locally members are well embedded in economic, health and community structures to feed in and facilitate conversations regarding all aspects of rural needs and opportunities. Close and regular contact is made with local authorities, LEPS, CCGs, national parks, AONBs, voluntary and community groups, etc.
3. Officials often point to Food, Farming and Rural Networks as being a rural influencer – in fact these are not funded and generally led by the farming lobby. This is fine if it is clear that the views are from a narrow representative group, and that the intention is not for a broad spread of views to be gathered. But without a clear indication and planning for a wider range of views it should not be assumed that 'food and farming' networks effectively represent rural views.
4. There are pockets of advice within both DEFRA and DCLG and their agencies, which seek to support rural interests but that is limited to the scope of their departmental remit. The focus on rurality and the issues raised, tend to come from the service delivery perspective of departments such as Health and Education, as they seek to identify ways of ensuring equality of access and take-up of services by people living in rural areas compared to people living in more urban and populated areas. There are concerns that Brexit can unduly distract Defra from other on-going priorities for rural communities.
5. Advice is being provided by organisations within the voluntary and community sector (VCS), or other agencies such as National Parks, LEADER Groups, AONB, NFU, waterways authorities etc. For VCS organisations their funding is not secure for the long term and often annually from multiple sources, putting at risk retaining people with the right level of knowledge, skills and experience to provide good quality advice.
6. Nationally and through formal structures there does not appear to be a strong emphasis on 'watchdog'. Locally local authority planning processes through various levels of planning consideration seeks to draw in views on

development and also local communities have a route to raise issues of concern and be part of the local watchdog function. Rural interest groups provide an informal watchdog function and through networks and contacts are able to raise concerns with public bodies and Government departments.

7. There is not a consistency of approach or common cross-cutting priorities to provide a collective structure within which policies and plans to be shaped.

Q2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?

8. Rural proofing is not part of common practice among planners and funders, nationally and locally. If it is done it is at the end of a planning process as a headline check. Rural proofing does not shape planning from the start. For example one or two paragraphs is often all that is asked for in tender documents to show how hard to reach communities will be engaged with, this does not go far enough in terms of detail; costings in funding does not reflect it has been proofed from a financial basis.
9. Part of the role of ACRE Network of Rural Community Councils members locally is to provide the rural proofing check and challenge to strategies and plans for an area or nationally. A recent example is feedback on the consultation on the UK Industrial Strategy, and the response from Community First Yorkshire highlighted rurality amongst other issues which the strategy did not address:

'Rurality and sparsity of people, businesses and opportunities – the Industrial Strategy should have the scope to ensure investment to create economic and business growth in rural areas of the country. To do this it is essential to recognise that there will not be the same critical mass of numbers in rural areas as other parts of the country and value for money, output and other measures need to be flexible enough to accommodate investment in areas of sparsity. Investment priorities for rural areas should be opened up by the strategy, to enable local residents to have access to training, apprenticeships, career and entrepreneurial opportunities. This should be routed in Government cross-departmental working, linking education and the work of DWP more closely with BIS. The Industrial Strategy should set out a new basis for planning and investment, linking with the National Parks, Environment Agency and cross-government departments such as DEFRA, Department for Education and its agencies and investment arms.'

10. More importantly rural proofing is not central to commissioning, and as more and more cross-region and national providers are successful in their tendering, the reach into rural areas is not as effective as it could and should be, rural communities are not where providers first go to get some early wins on a contract and local working does not to build on the strong networks which exist in rural areas. A stronger rural proofing model feeding into the

planning and tender assessment stages of procurement would ensure a great focus is given to delivery and reach of services into rural areas.

11. Community First Yorkshire has asked if plans have been rural proofed, and responses tend to be no or that there is no recognition of the proofing guidance. If this is happening in North Yorkshire and it is not doing this as a matter of course, the same is very likely elsewhere.
  12. Rural proofing of superfast broadband installation policies and procurement specifically permit agreements such as BT leaving 1% unfinished to avoid Universal Offer, this is not acceptable and would not meet rural proofing criteria. Also the concept that 10MG is acceptable for rural areas is creating a two tier economy. Rural proofing has failed spectacularly in this regard and should be an area for further review to understand why and who is accountable for allowing this two tier commitment to be deemed acceptable. This failing is being felt in economic, education and will be increasingly impacting the roll-out of new ICT-led methods of health, wellbeing and social interaction and delivery of services. It might be said that an increased investment should be made to secure better broadband speed in rural areas to overcome the discrimination which is inherent in the location of businesses and residents and distance to services and facilities.
  13. Policy for rural areas does not have a single lead, which is to be expected. Lead roles are cross department, cross local authorities and national, regional and local. Like economic and health strategies it is needed at all these levels. A national strategy is needed to set the overarching framework for planning and investment. This is then amplified by Government departments, local authorities and other planners, as they bring into the framework their respective areas of responsibility, with their particular focus and associated plans and investments. Overall lead could sit within or outside government, the benefits of the options needs to be explored.
- Q3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?
14. DEFRA and DCLG have key roles in coordinating policy for rural areas. The interests of rural communities are represented but it is currently unstructured and uncoordinated. Where it is effective is effective because the parties providing and listening to representation are keen to be open and responsive. It could be more effective and efficient if it were done via one structure which operates both nationally and locally. The organisations involved in that structure need to be positioned and given a remit to influence the plans of and be seen as a cross departmental resource. The structure is in place via rural networks which could work collaboratively on representation and producing the framework as outlined in the response to Q2.

15. The ACRE Network of Rural Community Councils receive Defra grant funding which is absolutely essential for a strong rural voice and for ACRE members to have the capacity to rural proof when requested eg the Health Weight Strategy was rural proofed last year which takes time and is done as part of the Defra grant work, but it does not have the full impact without the follow up needed to ensure it is implemented.

### **Natural England**

Q4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?

16. The fit between its wide ranging functions is timely to be reviewed in the context of the changing roles of local government, national Government departments and agencies, and the socio-economic context of the countryside.

Q5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?

17. Changing responsibilities will come with Brexit, in particular shaping and embedding national Government legislation as the Great Repeal Bill and the second the Bill which converts all EU law into United Kingdom law are implemented. This will include laws and directives to be turned into UK law before Brexit is completed in mid-2019. These laws will need the necessary checks and balances in place to ensure they are enforced and there is a route for challenge, which may open up gaps in responsibilities and roles that Natural England and other parts of local and national Government will be required to fill.

18. Of concern are the resources being diverted to Brexit, and pre and post DEFRA planning, which will limit the attention given by all agencies to the interests of rural communities.

19. Changes to local Government roles and resources also has an influence on the remit of Natural England, such as less resources going into building inspectors and pathways management.

Q6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?

### **Sustainability and biodiversity**

Q7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

Q8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

Q9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?

**The changing context since 2006**

Q10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?

20. Close attention needs to be given to check that clauses and legislation from EU law are covered by the Act and Government departments continue to cover the necessary responsibilities to ensure appropriate protection for nature and environmental standards following Brexit. Any gaps in standards will need to be put in place through legislation.

Q11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

21. Parts of the Act will need reviewing in the light of other legislation and plans for post-Brexit. In particular the UK Industrial Strategy will have opportunities and challenges which the legislation and Natural England, will need to respond to, to ensure rural communities are protected and best placed to benefit from the new vision.

Response on behalf of: the voluntary and community sector North Yorkshire and Rural Community Council for North Yorkshire, one of 38 Rural Community Councils which make up the Network of Rural Community Councils (Action with Communities in Rural England).

*6 September 2017*

## **Condover Parish Council – written evidence (NER0008)**

**Submission from: Condover Parish Council (near Shrewsbury in Shropshire)**

**Concerning: The missed opportunity to effectively ensure the hedgerow and associated habitat and species diversity protections in the NERC Act 2006 address and resolve conflicts between and within prevailing Planning Regulations and the Hedgerows Regulations 1997**

### **A Call for Changes to the Legislation to Better Protect Hedgerow Habitats and Species**

#### **Summary**

Although legislation is in place which seems to intend to protect hedgerows and the habitats they provide for a diverse range of species, the range of legislation currently in place does not in practice provide the protection required. The central problems refer to:

1. The 'relevant' date (for planning purposes)
2. Admissible sources of documentation and evidence to protect wildlife
3. Timing of submissions to remove hedgerows – encourages planning applications 'out of season'
4. Omissions in wildlife and habitat legislation, including NERC Act 2006, at the interface with planning regulations
5. Insufficient recognition of species diversity within environmental / ecological networks, and landscape value
6. Negatively framed legislation to permit removal of hedgerows rather than to promote support and management of hedgerows within the natural environment

The Submission made here is founded on an evaluation of the Hedgerows Regulations 1997, undertaken by Shropshire Council in 2013, in collaboration with Condover Parish Council. It shows how successive legislation has to date continued to permit removal of hedgerow habitats as a consequence of points 1 – 6 above

#### **The Evaluation**

##### **1. Background**

The Hedgerows Regulations 1997 (hereafter referred to as 'the Regulations') were made under section 97 of the Environment Act 1995 and came into operation 1st June 1997. They introduced arrangements for a Local Planning Authority (LPA) in England and Wales to protect important hedgerows in the countryside, by controlling their removal through a system of notification.

The Regulations apply to agricultural hedgerows and set out the mechanisms by which an 'applicant' gives notice to remove a hedge to the LPA, the factors which

the LPA should consider in deciding whether or not to issue a Hedgerow Retention Notice, the circumstances in which a Hedgerow Replanting Notice can be issued and the mechanism by which appeals can be made by the ‘applicant’ and are decided by the Secretary of State.

Schedule 1 to the Regulations sets out in 8 paragraphs the criteria that must be used by an LPA in determining which hedgerows are important. The criteria relate to the value of a hedgerow from archaeological, historic, landscape or wildlife perspectives. If a hedgerow qualifies under any one of the criteria then it is important and the LPA can issue a Hedgerow Retention Notice to prevent its removal. The presumption is in favour of protecting and retaining important hedgerows, but an LPA cannot refuse consent if the hedgerow is not deemed to be important.

Shropshire Council became a unitary authority in April 2009. Since that time (to 2013) it has determined 112 Hedgerow Removal Notices. Of these, 94 (approximately 84%) resulted in the hedgerow being removed, 16 (approximately 14%) met the criteria for being important and have been protected by issuing a Hedgerow Retention Notice and 2 (approximately 2%) were notices to remove multiple hedgerows which resulted in some being removed and some being retained. In other words, of the notices dealt with by Shropshire Council, roughly 6 times as many have resulted in a hedgerow being removed as retained.

This ratio would appear to be at odds with national policy and direction set out in recent documents such as the Lawton Review<sup>1</sup>, the Natural Environment White Paper<sup>2</sup> and the National Planning Policy Framework (NPPF)<sup>3</sup>, as well as local policies on landscape and environmental networks.

This document appraises various aspects of the Regulations and presents a series of recommendations which if adopted could strengthen the legislation in order to protect a greater proportion of hedgerows than is currently the case.

## **2. The ‘relevant date’**

Many of the criteria used to determine a hedgerow’s importance require reference to records made before the ‘relevant date’, this being the date the Regulations were made ie 24th March 1997. Any more recent records cannot be used, other than those made during the on-site survey of a hedgerow following receipt of a notice to remove it.

This applies to the historic and archaeological criteria covered in Paragraphs 2, 3, 4 and 5 of Part II of Schedule 1 to the Regulations and also Paragraph 6, which covers rare birds, animals and plants. Wildlife records are further restricted to the most recent record during the 5 year period (for animals and birds) or 10 year period (for plants) before the relevant date.

There appears to be no justification for these arbitrary periods. In fact ecologically speaking a record made within the last year has far more relevance than one made 15 - 25 years ago, yet it would be excluded from consideration under the present criteria.

- **Recommendation 1:** the Regulations should be amended to include any valid historic, archaeological and wildlife records made since the relevant date. In the case of wildlife records this should mean records for protected or threatened species within the 20 year period prior to the date a Hedgerow Removal Notice is submitted.

### **3. Sources of documentation for Paragraph 6 (wildlife value)**

A hedgerow, to be considered 'important' for wildlife, must be shown to contain those species

listed in Section 6(3) of the Regulations at the time of the site visit, or have associated a valid record at a biological record centre at the appropriate date. The species list includes all those on Part 1 of Schedule 1, Schedule 5 or Schedule 8 of the Wildlife and Countryside Act (W&CA) 1981 (as amended), those birds categorised as declining breeders from the 1990 Red Data Birds in Britain<sup>4</sup>, or endangered, extinct, rare or vulnerable vascular plants<sup>5</sup>, insects<sup>6</sup>, other invertebrates<sup>7</sup> and stoneworts<sup>8</sup> from the 1983, 1987, 1991 and 1992 Red Data Books respectively.

Qualifying records are thus becoming further out of date with each passing year and the Regulations offer no means of updating or refining the species lists to take account of changes to populations or status of nationally or locally protected or threatened species. Also, the Regulations currently offer no scope for reflecting the wider biodiversity value of hedgerows, over and above the protected or threatened species listed in Section 6(3) of the Regulations.

- **Recommendation 2:** there should be a regular review of species listed in Section 6(3); perhaps every 5 years or so, or at least in line with reviews of legislation such as the W&CA and current editions of the relevant Red Data Books.
- **Recommendation 3:** the Regulations should be amended to allow flexibility of the species listed, in order to take account of recognised nationally and locally threatened species (for example farmland birds) other than may be listed in the W&CA or Red Data Books.
- **Recommendation 4:** the Regulations should be amended to encompass all types of recognised biological record centres.

### **4. Timing of submission**

A Hedgerow Removal Notice must be considered and either the removal agreed or a Hedgerow Retention Notice issued by the LPA within 42 days following receipt of the notice. If the LPA makes no response within 42 days then the hedgerow may be legally removed.

The timing of submission is critical in evaluating a hedgerow during the site visit, both for detecting the presence of rare or protected species and observing ground flora woodland species (listed in Schedule 2 to the Regulations) that may be associated with it. Herbaceous plants with non-persistent foliage are unlikely to be detected during winter months. Surveys in winter months are also unlikely to confirm the presence (or likely absence) of bats, Great Crested Newts or Dormice in a hedge. For these species targeted, repeated surveys over a



period of months is the recommended method for ensuring that the potential has been fully explored (relevant guidance is issued by Natural England and the Bat Conservation Trust among others).

These issues can be addressed through the recommendations for Section 5 below.

### **5. Conflict with other wildlife and habitat legislation**

Under the Natural Environment and Rural Communities Act 2006 'every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. This duty is reinforced by the Conservation of Species and Habitats Regulations 2010 (as amended) which require a competent authority, such as an LPA, in exercising its functions to have regard to the requirements of the European Council Habitats Directive 1992 (on the Conservation of Natural Habitats and of Wild Fauna and Flora).

However, the Hedgerows Regulations state that an LPA may not ask for more information to accompany a Removal Notice than the form in Schedule 4 requires the applicant to give. This information is only: name of applicant, address, reasons for requested removal, information to support any claim that a hedge is under 30 years of age and confirmation that the applicant is the owner/tenant of the land or otherwise eligible to apply for a removal.

There is no scope within the Regulations for an LPA to request or require ecological surveys from the applicant (as an LPA would do for a planning application under government guidance and recent case law), or little scope for an LPA to gain an extension of time until an appropriate time of year for ecological surveys to be undertaken (under the Regulations the applicant is under no obligation to grant such a request for extension of the 42 day notice period). This appears to be at odds with national and European legislation relating to the conservation and protection of species and habitats.

- **Recommendation 5:** the Regulations should be amended such that a Removal Notice must be accompanied by a valid ecological assessment carried out at the appropriate time(s) by a suitably licensed and competent ecologist; or
- **Recommendation 6:** where insufficient ecological information is submitted with a Hedgerow Removal Notice to allow the LPA to properly assess the potential impact on rare or protected species and habitats, the LPA may issue a Retention Notice until such time as suitable ecological surveys have been obtained.
- **Recommendation 7:** the form in Schedule 4 of the Regulations should be amended to reflect the requirement for relevant ecological surveys to take due account of European and other protected species and habitats in accordance with the Conservation of Habitats and Species Regulations 2010 (as amended) and other relevant legislation.

### **6. Species Diversity and Associated Features**

Paragraphs 7 and 8 of the Regulations deal with species diversity within a hedgerow (woody hedgerow species are listed in Schedule 3). They also incorporate associated features which include the 'connectivity' of the hedgerow to other hedgerows, ponds and broadleaved woodland, the presence of standard trees, banks, walls, ditches, woodland ground flora species and nearby parallel hedgerows and the absence of gaps. Paragraph 8 relates to hedgerows which are adjacent to a statutory public right of way. Hedgerows containing at least 7 woody species or certain minimum numbers of species and associated features are deemed to be important.

Under the Regulations associated features only become relevant if a hedgerow contains a certain (arbitrary) number of woody species. This downplays the importance, notably to landscape and wildlife, of a strong network of hedgerows, interconnecting with each other and linking valuable habitats.

- **Recommendation 8:** the Regulations should be amended so as to uncouple species diversity from the 'connections scoring 4 or more points' associated feature. This feature should become a criterion for an important hedgerow in its own right, to give due recognition to the value of an interlinked network of hedgerows.
- **Recommendation 9:** the list of connected habitats that contribute towards the necessary points score for the 'connectivity' associated feature should be expanded from ponds and broadleaved woodland to include any nationally or locally designated priority habitat.
- **Recommendation 10:** whilst all badger setts are protected under the Badgers Act 1992, main setts should be included within the list of associated features.

The Regulations stipulate exactly which 30m sections of a hedgerow must be surveyed in order to assess its species composition. Species present but found outside the relevant 30m sections do not count. Furthermore, where a hedge is surveyed in a number of plots, it is the average number of species across all plots that count. Both these factors serve to restrict the number of hedgerows meeting the criteria for importance.

- **Recommendation 11:** the Regulations should be amended to remove the restriction specifying particular 30m sections of hedgerow to be surveyed for woody species. The entire length of hedgerow should be taken into account when assessing the species composition, as is the case with associated features.

## 7. Landscape Value

The European Landscape Convention, which as a Treaty came into effect in the UK in March 2007, is the first international agreement on landscape devoted to the protection, management and planning of all landscapes in Europe. It places this important resource alongside biodiversity and cultural heritage.

Paragraphs 6 - 8 are titled in the Hedgerows Regulations as 'Wildlife and Landscape', yet landscape is not mentioned at all in these sections. Paragraph 5(b)(ii) deals with the historic value of field systems and does refer to landscape, in so much as a hedgerow is important if 'it is part of, or visibly related to, an existing building or feature associated with a pre-1845 field system that was recorded by the LPA before the relevant date as a key landscape characteristic for the purposes of development control'.

This sole reference to landscape character within the criteria, which furthermore is time-limited to before the relevant date (24th March 1997), underrepresents the role of hedgerows as key determinants of field pattern and the significant contribution they can thus make to landscape character and appearance.

- **Recommendation 12:** the criteria defining important hedgerows should be expanded to include a hedgerow which forms a key component of high significance within a recognised landscape character assessment, where the aim is to conserve, restore or enhance the landscape character type to which the hedgerow contributes.

Paragraph 6 of the Regulations relates to records held at a biological record centre run 'by or on behalf of' local authorities. Many record centres are now run independently, although they may have a service level type agreement with the local authority.

- **Recommendation 13:** the Regulations should be amended to remove the reference to the 'relevant date' in respect of Paragraph 5(b)(ii), such that any currently adopted LPA development control document may be used, irrespective of the date it was prepared.

## **8. Environmental / Ecological Networks**

Chapter 117 of the NPPF highlights the role of planning policy in identifying, mapping, preserving, restoring and recreating ecological networks.

The government White Paper 'The Natural Choice'<sup>2</sup> also recognises the importance of ecological networks. Chapter 2 'Protecting and Improving our Natural Environment' contains a text box reproduced in italics below:

### *Natural networks*

*The natural environment is sometimes seen as a series of disconnected places: gardens, parks, farmland, forests, coastland, wetlands, rivers and seas. We should be thinking not of isolated spots of green on a map of England but of a thriving green network linking wildlife sites with farmland, forestry and urban parks and gardens across the country.*

- **Recommendation 14:** the criteria defining important hedgerows should be expanded to include a hedgerow which forms an integral element of an Environmental / Natural / Ecological Network, linking areas of high biodiversity value, as identified within an adopted LPA development control document.

### **9. Underlying Approach of the Regulations**

In addition to the specific issues with the criteria highlighted above, there is a more fundamental problem with the whole removal notice premise, in that it does not encourage landowners to manage their hedgerows in an environmentally acceptable or beneficial manner. Cross-compliance requires farmers to keep their land in Good Agricultural and Environmental Condition in order to qualify for Single Farm Payment. However, providing a farmer has complied with the requirement to submit a notice under the Regulations, removing hedgerows does not necessarily impact on their ability to claim payments, even if the land is under an agri-environment scheme.

Over time a hedgerow can decline and individual component shrubs and trees may die, causing a hedgerow to become 'gappy'. This may be exacerbated for example by excessively frequent or severe flailing, or inappropriate use of pesticides. Under the Regulations gaps over 20m are considered to constitute a break, perhaps turning one hedgerow into two. This may result in a hedgerow being downgraded in terms of the criteria for determining importance, thus facilitating future removal. This applies equally to important hedgerows and others that do not meet the criteria.

- **Recommendation 15:** as an alternative approach to amending the Regulations as suggested in recommendations 1 – 14 above; the basic principle underlying the Regulations should be reversed, such that all hedgerows should be deemed important and retained and maintained in a satisfactory condition. Permission should be sought from the LPA to remove a hedgerow rather than notice be given. The onus should be upon the applicant to demonstrate that a hedge is not important and provide the supporting evidence, including an ecological survey carried out by an independent, competent ecologist, where necessary.

*1 September 2017*

## **Cotswold District Council – written evidence (NER0056)**

### **Evidence Paper submitted on behalf of Cotswold District Council and West Oxfordshire District Council on 11th September 2017**

*This response has been collated by Melanie Dodd, Biodiversity Officer, as an employee of the district councils.*

#### **Rural advocacy and the Commission for Rural Communities**

No evidence to submit with regard to questions 1-3.

#### **Natural England**

*4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?*

- a) Natural England (NE) is an important agency and it needs to be well-resourced and have more authority to lead and advocate biodiversity conservation nationally and become more involved locally. NE needs to be the national focus for biodiversity conservation and enhancement, and other related initiatives such as Natural Capital. We need a strong and sufficiently resourced body, which is respected and listened to by all sectors, to champion biodiversity in government.
- b) At the local level it is important to recognise that there are some excellent individual NE staff doing valuable work in difficult circumstances, including covering wider geographical areas and therefore being unable to attend relevant partnership meetings or become actively involved in projects.
- c) Since the budget cuts and the loss of staff from NE, there have been issues with how the organisation works with partners, particularly local government. There has also been a notable loss of expertise from the organisation.
- d) NE does not seem to have sufficient resources to perform its functions highlighted by the increasing reliance on Standing Advice and the lack of appropriate guidance being published.
- e) There has been a lack of clarity over the new European protected species licensing approach with minimal communication before the changes were introduced. Local planning authorities are still expected to consider the 3 derogation tests and apply the Standing Advice this conflicts with the new approach.
- f) Local NE teams have a reduced ability to properly engage and support action for biodiversity at the local level, and the relationships built up over the years have been damaged as a result.
- g) There has also been a lack of communication with local planning authorities, particularly with regard to their new strategy Conservation 21 (partnership working with local planning authorities does not seem to be a priority) and the introduction of new licensing policies for European protected species. Although there was a public consultation on the EPS licensing policies, the outcome seemed to have been pre-determined, as there were no opportunities for follow-on discussions to even out some of

the issues, and there was no feedback on how the comments had been considered.

- h) As a relatively new member of staff to a local planning authority in England, it is noticeable that getting to know your local NE team is increasingly difficult when staff members are moving on to new roles within NE or are unable to attend meetings due to an increased workload. This does nothing to improve the public face of the organisation.

*5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?*

- a) With reference to the comments above, these issues need to be adequately addressed in consultation with partner organisations, especially the updates to standing advice, to ensure that NE is an effective body for the purpose of conserving, enhancing and managing the natural environment, otherwise national biodiversity targets are not going to be met.
- b) NE must be a strong advocate for biodiversity, valuing the natural environment and ensuring its protection and enhancement at the national level, which is one-step removed from the political agenda. Biodiversity conservation and enhancement is not up for debate, but politics can still create conflict or result in a lack of action at any level – national, regional or local. It must be understood that NE represents the interests of the natural environment before any other agenda, but is willing to work in partnership to secure enhancements that also benefit society and the economy. Politics should understand the importance of the natural environment and let NE do its job. Biodiversity is not necessarily a barrier to development and should be viewed as a positive asset – e.g. Natural Capital.
- c) NE should be a custodian for the protection of sites and species, ensuring that their conservation status is enhanced.
- d) Changes to the approach to species conservation should be made in partnership with other organisations to ensure that they will be successful, including meaningful consultation with those “at the coal face” rather than imposing these changes without any guidance.
- e) NE should be driving the natural capital agenda and a key partner in the production of guidance, e.g. biodiversity net gain. This is currently being driven forward by the private sector and NGOs. For these two key policy areas, NE should be assuming the national strategic role and publicly backing these initiatives.
- f) NE needs to improve its public face and work more effectively at the local level.

*6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective has Natural England – and other partners – been in promoting better access?*

- a) Access to the countryside seems to have been one of the top priorities for Natural England over recent years. However, a lot of work is also being

done by local authorities. Access needs to be well-managed and resourced.

- b) Without adequate funding, increased access could lead to detrimental impacts on biodiversity.
- c) Promotion of access needs to run alongside an education programme to raise awareness of the countryside code, etc.

### **Sustainability and biodiversity**

*7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?*

- a) Biodiversity conservation and enhancement has not become a mainstream issue in the work of local authorities despite the duty to 'have regard' for biodiversity in all functions.
- b) The term '*have regard*' is too vague and it is unclear what this means in practice.
- c) There is little incentive for local authorities, with limited resources, to implement the duty to a significant degree – no reward for doing well (and spending money on it that could be allocated elsewhere) and no 'punishment' for those that have not embraced the duty.
- d) The duty was initially useful in raising awareness of the importance of biodiversity and demonstrating to decision makers why it should be considered as part of the local authority's agenda, but this has decreased over time, particularly when there is no satisfactory reply to the question "*what is the risk if we don't have regard for biodiversity?*"
- e) Most biodiversity-related work is still either carried out by or referred to the local authority Biodiversity Officer/Ecologist rather than being seen as an issue for all departments to consider. Corporate plans might refer to conserving the natural environment, but there are very few examples of specific actions relating to biodiversity.
- f) Further work to raise awareness of the duty and to get local authorities in England to do more for biodiversity at the highest level is required. A lot of good work is being carried out at the officer level (e.g. Biodiversity Officer comments on planning applications) or in partnership with other organisations and groups such as the Wildlife Trusts, Cotswold Conservation Board (AONB), Cotswold Water Park Trust, Wild Oxfordshire, TOE2 (Oxfordshire) and others, but there is still not much emphasis on biodiversity at the corporate level or by councillors (i.e. the decision-makers). The emphasis should be that all decisions should consider biodiversity impacts (positive or negative) and all projects should include a contribution towards biodiversity conservation or enhancement.
- g) The guidance produced by DEFRA does not appear to have been adequately promoted and no follow-up monitoring was undertaken. Considering the duty is 11 years old, it has not become an integral part of the decision making process.

*8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?*

- a) Many local authorities were initially forced to “sit up” and recognise the impact of their work on biodiversity, particularly through land management and promoting awareness of local wildlife, however, with budget cuts in recent years, the positive contribution made in the early years of the duty has slipped. For example, the management of council-owned land to increase its biodiversity value and the good work of local communities and volunteers have not been maintained. Land management for biodiversity is a long term requirement and political short-termism can be a problem.
- b) The duty was used as a reason for employing biodiversity officers, particularly in Wales.
- c) Political buy-in from all parties for a long-term strategy is necessary. The introduction of related funding (e.g. the Nature Fund in Wales in response to the State of Nature report) and corporate accountability would significantly improve the impact of the duty.
- d) The duty should be updated and made stronger to reflect ecosystem services and Natural Capital, or at least these new approaches should be included in updated guidance.
- e) Biodiversity is not an entity on its own; it has a major impact on the economy and social cohesion, and has been shown to be vital for good mental and physical health.
- f) There still seems to be a misunderstanding or a preconception that enhancing biodiversity would cost more, e.g. by changing the management of grasslands, rather than as a cost benefit. Recent work on payments for ecosystem services, pollinator action plans and other initiatives needs to be used to encourage and support local authorities to invest in new approaches and to see the long term benefits. Green infrastructure is also a related topic that has become a big issue for local authorities, featuring in the emerging Cotswold and West Oxfordshire District local plans. Biodiversity accounting is also an important step forward and further work is necessary to ensure that developments contribute towards a net gain in biodiversity.

*9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?*

- a) The English duty is much weaker and does not have the same level of political support.
- b) In Wales, the new duty has provided a level of scrutiny in the delivery of biodiversity conservation and enhancement within local authorities, requiring them to produce “Forward Plans” and to report on implementation of these every 3 years (first report due in 2019). It also specifically refers to enhancement.
- c) The importance of biodiversity to people has been recognised and promoted nationally by the Welsh Government, particularly with regard to public health and wellbeing and through the publication of their Nature Recovery Plan. This process ensures that biodiversity is viewed as a



- priority across all government sectors and raises the profile of biodiversity within local authorities.
- d) Reporting on progress inspires local authorities to take a more active role and to develop their strategies for considering biodiversity at all levels and in all departments.
  - e) Biodiversity conservation and enhancement needs to be a mainstream consideration and should be an important action with corporate plans to make any real difference.
  - f) What can actually be achieved is restricted by the limited amount of resources to accompany the duty and a funding mechanism should be introduced to raise its profile and ensure effective delivery on the ground. Real benefits could be realised if there were funding available to push local authorities in the right direction.
  - g) The term “further” seems to be more proactive, but it is still too ambiguous and vague.
  - h) Clear guidance is required to explain what Government expect from the duty, which should include a reporting and award scheme.
  - i) No matter what words are used, the need for sufficient resources is the limiting factor.

### **The changing context since 2006**

*10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?*

*11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?*

- a) In recent years there has been a shift in priority to enable development, particularly housing, and biodiversity has become even less valued than in 2006 despite the findings of the State of Nature reports. For development to happen regardless of the consequences for the natural environment goes against the 2006 duty and environmental standards should be increased. This is at odds with other policies such as net gain and natural capital, and new initiatives such as natural flood management and natural health service. Recognition of the role that the natural environment plays in our lives is essential and it needs to be included in political debate.
- b) Development should be delivering a net gain in biodiversity in the near future and Brexit could be a real opportunity to make these changes.
- c) There needs to be strong provision for habitats and species previously protected by EU Directives and those charged with overseeing and ensuring this protection.
- d) The natural environment should be viewed as an integral part of growth, but instead it is still seen as a barrier. It must be recognised that people want nature, value it and want access to it; in fact, people *need* nature and this must be a higher priority than at present.
- e) Sustainable development needs to be effective for the economy, society and the natural environment.

- f) A better solution is required that brings all these issues together rather than competing against each other.
- g) Local Nature Partnerships should be given stronger weight and increased resources to deliver biodiversity net gain in conjunction with the Local Enterprise Partnerships. The focus and drive for the LNP has faltered in some areas and this needs to be rejuvenated to ensure biodiversity is a key component of economic initiatives. The Gloucestershire LNP has a good relationship with the LEP and there have been a number of joint initiatives. Specific funding for LNP through Government would be a way of demonstrating the importance of biodiversity to the economy.
- h) Any new environmental legislation to replace the EU Directives must ensure strong provision for protected species and habitats, and the role of NE and others involved in enforcing this legislation. Governance will be a key issue and there must be sufficient structures in place to ensure enforcement and scrutiny, which are currently provided by the European Commission and the Court of Justice of the EU. The general public need to understand the process and realise the need for this governance.
- i) Education is an important way of fostering an understanding of the natural environment amongst children and adults; as well as TV programmes such as Springwatch and Autumnwatch, etc, the national curriculum should ensure that all children get to experience the natural environment and re-connect with nature. This should not be a token gesture and outdoor learning should be well-resourced so that all children get the opportunity to participate. This would also contribute towards reducing obesity.
- j) All initiatives relating to the natural environment such as those relating to green infrastructure and climate change adaptation should include biodiversity objectives as a standard requirement.

[END]

*11 September 2017*

Country Land & Business Association (CLA) and National Farmers Union (NFU) – oral evidence (QQ 48-58)

## **Country Land & Business Association (CLA) and National Farmers Union (NFU) – oral evidence (QQ 48-58)**

Tuesday 17 October 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Baroness Byford; The Earl of Caithness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Parminter; Baroness Whitaker; Baroness Scott of Needham Market.

Evidence Session No. 7

Heard in Public

Questions 48 – 58

## Examination of witnesses

Christopher Price and Guy Smith.

Q48 **The Chairman:** Thank you very much, Mr Price and Mr Smith, for coming to see us. It is very good of you to come and help us in our deliberations. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website and a transcript of the meeting will be taken and published on the Committee website. You will have the opportunity to make corrections to that transcript where necessary. I should probably declare an interest as a member of both the CLA and the NFU, before we even start.

Do either of you want to give any introductory remarks or do you want to go straight into questions? Do you want to say who you are and your experience?

**Guy Smith:** I have no great introduction. I am vice-president of the National Farmers' Union and I farm in Essex, where there are some farmers in the parish, despite what Mr Bonner might have thought.

**Christopher Price:** I am director of policy and advice at the CLA. I am a lawyer by background. I have been with the organisation since 2002 in a variety of different roles.

Q49 **The Chairman:** Okay, thank you both very much. My first question is this: do the Government as a whole have a coherent rural vision?

**Guy Smith:** Yes and no. It is a very good question and I am very pleased that this Committee is looking at this at this time. In my experience, the vice-president of the NFU gets a good trawl across Whitehall. I am in to BEIS to talk about broadband, DCLG to talk about planning, DCMS to talk about broadband, the Home Office to talk about labour and rural crime. I do not often get to the Treasury, which is always a frustration, and of course my first port of call is Defra, which we know picks up most of the issues I am interested in.

Sometimes you find joined-up thinking and coherence across departments. I always remember going into the Department for Work and Pensions to talk to the Secretary of State about farmers' access to rat poison. I am not sure the Secretary of State thought he was going into politics to discuss such mighty matters, but it is an important one for our members. It was strange that it was being picked up there, but there was an understanding of the impact on agriculture coming back from Defra, so sometimes it works.

Sometimes you feel that it is not joined up enough and some issues fall between departments rather than being picked up between them. As Tim has just gone through—I am sorry to bang on about Brexit; often it is a stamina job for the British population to engage with this challenge, but it is extremely important to my members—we will be the industry most impacted by Brexit going forward. We have had 45 years of policy being

devised and constructed in Brussels, often despite the desires of the British Government, rather than because of their desires. Then it has been implemented and delivered in Whitehall, primarily through what was then the Ministry of Agriculture, Fisheries and Food, and then Defra and its agencies, Natural England and the RPA.

Now we are on the cusp of a complete change, whereby policy will be devised within Whitehall, not just delivered. Rather than the Treasury just handing its money to Brussels and seeing it washed back out, it will have to decide what level of funding it wants to give to rural areas and agriculture, so we live in very interesting times.

With the right decisions made over the next two years, I am convinced this is an opportunity. We could see a flowering of our rural areas and our farmers. We could be producing more of our food needs from our own resources. However, with the wrong policies and with things not being thought through, we could simply end up importing more of our food from other parts of the world where standards—let us not say they are worse—are different.

**Christopher Price:** In answer to your specific question, no, the Government do not have a clear vision. First of all, I query whether they should be expected to have a clear vision of rural policy per se. You can get into an awful mess having debates about what rural is or is not and what comes within it. That is all very gratifying from an intellectual perspective, but it does not really move things on. I suggest that it makes more sense to think of the whole variety of closely connected areas of activity. The Government should have a vision on the full range of those things.

As Guy Smith has said, rural areas and the countryside are probably the area of government activity most directly affected by Brexit. Agricultural policy, environmental policy, water policy and climate policy are all European competencies. There are concerns. The Government have been reasonably clear about what they want from some elements of agricultural policy and perhaps rather clearer on environmental policy, particularly in the last few months. But people who live and work in the countryside are entitled to have a much stronger steer on the direction of travel so they can start preparing for whatever the future may hold for them.

**The Chairman:** Touching on the Commission for Rural Communities for a moment, I am sure you both remember it well. Was it an effective organisation? Should it be replaced? What did it do well? What did it do less well?

**Christopher Price:** It produced *The State of the Countryside* reports, which as Tim Bonner said were an extremely useful source of data. There were a few other reports that were of use. In terms of its function as a rural advocate, regrettably it was limited. From our perspective, we are very lucky to have our own department in Defra. When I speak to my equivalents in other member states, they say how lucky we are to have a department that deals with both farming and environment, rather than

having two departments squabbling. But an awful lot happens in the countryside that is outwith Defra's scope. We have talked about planning and broadband already. It is about how you influence those departments.

To my mind, the way it works is by Defra having input into those departments. With the best will in the world, other attempts at rural proofing or rural advocacy have not really had any great effect, because those departments can ignore them. They have their own priorities; they think of Defra as being there for the countryside, so they do not really engage.

When things work it is because someone in Defra knows whom to speak to in the other department. At ministerial level, there was a Minister in the closing days of the Labour Government called Jane Kennedy, who I thought got it. She was very good at phoning up her equivalents elsewhere and saying, "No, this needs sorting". At the official level, you find it with people who have worked in other departments and who have contacts. They can almost call in favours. It is that sort of thing that works.

We are supportive of what the current Government are doing in appointing Lord Gardiner as rural ambassador, with a reasonably well structured and funded team behind him that does the spade work to support him in his role. It seems to us that is the way to go ahead rather than some of the things that have been tried and not worked that well in the past.

**Guy Smith:** I agree. I read Mr Burgess's recent evidence to you. He made a very good account of himself. He was a good champion of rural areas and he had an important role in that respect. I know that my members in the uplands liked his initiative to look at that area, which is very important.

On the downside, it was a very thinly resourced role with very few staff. The danger is that there is an element of nominalism: the Government think they have covered that off because they have created a post. I accept what Christopher says about Lord Gardiner being an effective champion.

My other concern with Mr Burgess's evidence was that there tends to be a presumption: "Agriculture is already well covered, is it not?" I understand where that comes from. It comes from the old CAP culture that is embedded in our membership of the European Union. We are about to embark on a very different world where I am not sure we can assume agriculture is well covered because we will no longer be members of the European Union.

**The Chairman:** What did you think of Tim Bonner's view that rural proofing perhaps could be done from the Cabinet Office rather than from Defra? You would thereby have a more senior position from which to influence other departments.

**Guy Smith:** It is a good idea. That is where it should come from. It should come from the top of government. I agree with you.

**Christopher Price:** I would query whether it would get the right priority. In practice, the Cabinet Office will spend its time thinking about a lot of

other things. One of the attractions of the current approach is that you have a Minister whose principal job is to do that. He has a team behind him who can help him with the evidence and find him a way around Whitehall. I suspect that will work better.

**Q50 The Earl of Caithness:** You have rather answered my question, but I want to follow up from the Chairman and pick up the point about putting rural proofing into the Cabinet Office.

I advocated putting the internet and social media into the Cabinet Office, because again that covers every aspect of our lives, whether you are in the rural or the urban area.<sup>63</sup> It is such an important area. The Government rejected that on the very good grounds that if a Minister is directly responsible you get far more result at the end of the day. Otherwise, you have to feed everything into the Cabinet Office, the Cabinet Office becomes a massive, bureaucratic organisation and it all fails. Here you are as Secretary of State for Defra. What are you going to do to improve rural proofing?

**Guy Smith:** Picking up the specific example of broadband and internet coverage, which—you are right—is a very important issue, my industry, farming, is on the brink of a technical revolution. It could be transformed by the use of things like, would you believe, boluses that will sit in a sheep's stomach and report the temperature of the sheep back to the farmer through the internet. There is no end to the exciting possibilities.

However, it needs to be backed up by broadband. At the moment, it is picked up by DCMS. Would it be better picked up by the Cabinet Office? That may be so. One weakness we find with broadband is that there is a failure to understand the rural context. For instance, when broadband speed is assessed, it is done to the point of the cabinet. That is the broadband cabinet, not the one in No. 10, I should add. The presumption is that once it has got to the cabinet it is quickly out to users.

But that is an urban understanding of broadband. It fails to understand that in a rural setting the distance from the cabinet to the end user, particularly to the farmer, is considerably greater. We would argue that there is an urban metric used to understand the provision of broadband, and you need a rural voice in there to understand it. At the moment, we do not see that in DCMS.

As to whether it could come from the Cabinet Office, which has a greater view of this, that would be a good challenge. I would like to think, yes, it could. It would also give priority to what has to be one of the most fundamental challenges in front of government today: making sure that all our citizens are properly engaged and have good broadband and cell phone

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<sup>63</sup> While recently serving on the House of Lords Communications Committee, during their inquiry and report 'Growing up with the internet' (2nd Report of Session 2016-17). Published 21 March 2017 - HL Paper 130.

provision. That is the way you function in this modern society, whether we like it or not.

**Christopher Price:** Most of the problems with rural policy, particularly the socioeconomic aspects of rural policy, are to do with sparsity. You have people who are a long way away from other people and settlements. Essentially, it comes down to a matter of costs. It is about whether someone has the clout to persuade people in other departments that they should be allocating part of their budget to providing universal coverage of whatever it is: broadband, mobile and other things. They have to have the detailed knowledge to explain why that extra expenditure is required.

To my mind, that is better done by someone at ministerial level with the data behind him or her rather than just having someone with an anodyne, generalist mandate to make sure things are okay in rural areas. That is why I favour the current situation, certainly over those that have been tried before.

**The Earl of Caithness:** Chairman, I ought to have declared my interest not as a member but having worked very closely over many, many years with both organisations.

Q51 **Baroness Byford:** May I also declare my interests in both organisations and make a similar comment?

The questions I have for you today are not directly farming questions, but slightly reflective ones. The NERC Act, as we remember, abolished the Countryside Agency. Some responsibilities were passed on to the RDAs, which in turn have been closed down. My first questions to you both is this: does that matter now? Has that gap been filled? What is happening? I would like to have a supplementary after you have had a go at those.

**Christopher Price:** We are getting there. The attraction of the RDAs was that they provided universal coverage of the country; there was no empty space. They had proper rules of governance, so they were required to take into account a whole range of issues that came up within their areas. That meant it was relatively easy for us to represent—I am not sure if this is the right word—minority interests, to have our voice heard and to engage.

When the LEPs were set up, which was a much more bottom-up approach, we and other rural organisations had difficulty getting our voices heard. Quite often they were set up by the economic development department of the local authority, which called in people from Business Link and chambers of commerce, who did not really have any understanding or recognition of the importance of rural business or the countryside, and did not know who to speak to.

It was terribly hard to get engagement for quite some time. I am pleased that in recent years that has changed quite a lot. Most LEPs now have rural or farming members on their boards and are addressing rural and farming issues. But it has taken a long time to get back to the reasonably satisfactory state of affairs we used to have.



We have a range of other people in the same space as well. National park authorities are trying to take some of that role for themselves. LNPs are trying to act as a counterbalance to LEPs, which makes things all a bit messy and uncertain. So much of this depends on volunteering. There are only a certain number of people with the right abilities who are willing to put the time in to make sure these sorts of structures work, whereas with something that is dealt with by officials, as the RDAs were, they kind of have to do it.

**Baroness Byford:** But you would not replace them.

**Christopher Price:** No.

**Baroness Byford:** You wish to see something more structured.

**Christopher Price:** Yes. We are getting there now, but it has taken a long time to get there.

**Baroness Byford:** Are the LEPs developing into that?

**Christopher Price:** They are, yes, now they have been given more in the way of powers, direct budgets and things.

**Guy Smith:** I would agree with what Christopher said. Can I pick up one role of the Countryside Agency? It may seem very trivial, but I am going to suggest it is not. You may remember this. This is how the countryside code was promoted. I do not know whether Lord Cameron did the voiceovers, but it was very effective. It at least made an effort to get people to think about people visiting the countryside.

One of the biggest issues that comes over my desk as vice-president of the National Farmers' Union is rural crime. It fundamentally impacts on my members' enjoyment of life. Issues such as fly-tipping, stock worrying and hare coursing are probably more important issues to them on a day-to-day basis than Brexit is. They want me to take action on these issues.

Obviously, dealing with rural crime is multilayered: it goes from parish, to district, to county councils and county policing. Baroness Byford, you know this story. It goes right up to national government in terms of sentencing policy. How we deal with that is a big challenge, but one key part of this is education. The Countryside Agency recognised that. It was proactive in wanting to educate visitors to the countryside. "Keep your dog on a lead. Be mindful of going into fields where there are cattle and young stock". There was a really important role there about understanding that.

As a Government, if you are going to encourage access to the countryside through the CROW Act—or, as we see now, through coastal access—we as a farming community are comfortable with it, as long as it involves people acting responsibly when they arrive. Alongside those initiatives, you need an element of education so that people who visit the countryside understand the environment they are in and they understand how, maybe innocently, they can interrupt or interfere with farmers going around the challenge of producing food.

The Countryside Agency had a good educational role in the countryside code, which now seems to be forgotten. I do not see it being picked up anywhere else—not by Natural England or regionally.

**Baroness Byford:** One of the things we have talked about is bringing together the three elements: the farming, the environment and the social community. Some of these very rural areas need to be helped to develop their own rural economy. I know we have spoken about broadband being essential to that, but is there anything else you would add that would boost the growth of jobs in rural areas? I am not looking at farming jobs.

**Christopher Price:** There are two things. The first is the planning system. We have a rather cumbersome, baroque and unclear planning system. If it is going to work, it needs to be properly funded, and it is not. The number of worthwhile developments that do not happen because people are frightened of working their way through the planning system is significant, which is a ridiculous state of affairs. It is one of the things on which the CLA has lobbied for as long as I have been involved.

To give an example, take something as straightforward as the conversion of redundant barns to residential or commercial use. Everyone recognised it was a good idea. The Government issued some guidance encouraging planning authorities to allow it. That did not happen. We collected the evidence and went back. After a while, some permitted development rights are granted, but local authorities in certain areas seem to go out of their way to frustrate that happening. We go back to the Minister and get more guidance, and eventually it starts to come through, but it is just an absurd state of affairs that it takes so much to convert your barn into a holiday home or whatever.

The other issue is how we generally support people in marginal farming areas. In many cases, they are never going to earn a living as pure farmers; it is just pie in the sky to pretend otherwise. In certain areas they will not be able to deliver huge environmental benefits either. For example, if you are a commoner, you have very little capacity—because you do not have the legal interest—to deliver things. Nevertheless, those people underpin what happens in their areas.

The IEEP, the Institute for European Environmental Policy, produced a very good report about public goods in the rural sector a few years ago. That identified rural vitality as being a public good that was worthy of support. Certainly we would be sympathetic to that approach: you find mechanisms for supporting people not because of what they do particularly but because of their role in underpinning wider rural life as a pump primer for other things.

**The Chairman:** Are you talking about training farmers? If, as you say, with the departure of the single farm payment and so on, farming is going to become more precarious—certain farmers will not be able to survive producing food, and some farmers will not be able to produce an environment, which is the other sort of marketable commodity they may have—should there be a body that helps them find some sort of diversified

income?

**Christopher Price:** I am not sure whether it is a body. A whole range of interventions are required. Part of it is teaching business skills: how to manage cash flow, how to navigate your way through various systems, such as grant funding for converting buildings. A whole range of things will be needed, not just one entity or one funding stream.

**Guy Smith:** Again, I would agree with that. I would probably add transport, given the state of our rural roads. I have never known it so bad. I cannot give you any comprehensive evidence to prove that fact; I can just give you my anecdotal response, travelling the length and breadth of the land.

As vice-president of the NFU and as someone who has raised three children, public transport does not give them a social life. Things like that affect the quality of life for people who live in rural areas and should not be forgotten. Our Government are charged with many things, but transport, moving around the place, is important.

Q52 **Baroness Parminter:** The NERC Act gave four core objectives to Natural England. How successful has it been in delivering those four objectives? What impact has the significant reduction in funding had on its ability to do that?

**Christopher Price:** I have two points to make at the start. Natural England has a fairly limited specific remit. Its general purpose is to provide or promote—I forget the word—various environmental goods. Its ability to deal with economic and social issues is only insofar as it helps promote the general purpose, so there is a limitation there already. A lot of the other legislation it works under is similarly caveated. The extent to which it can take non-environmental factors into account is quite closely constrained. That comes up time and time again.

When it was first created, it assumed quite a strong advocacy role. You could come to events in this building and over the road probably on a monthly basis and hear the head honchos of Natural England complaining about the Minister of the day. That was not a particularly constructive or useful role to have taken on, and it was a big improvement when things moved on and it became more embedded within the Defra family, as the phrase goes.

In recent years, it has got much more receptive to the needs of farmers and other rural land managers. It is taking a long time, but it takes a long time for these things to change, in the same way it took a long while for the Environment Agency to change and become more receptive when Lord Smith took over. It is happening in the little things: the change in the treatment of great crested newts is something that people from all sides have welcomed. We end up with people, if not pleased to have newts on their land, at least recognising that they are not a problem in the way that they were. Hopefully that agenda will go on in other ways.

In terms of funding cuts, yes, it clearly has had them. To date, we would not say that has had a huge knock-on effect on its ability to deliver its functions in most regards. It is pretty easy to get access to senior people and discuss things if you want to. As we have already heard, there have been major problems with the delivery of Countryside Stewardship in recent months, which has been pretty awful. To what extent that is the fault of the system and to what extent it is the fault of the amount of resource devoted to the delivery of the system is a bit hard to work out, but there are certainly concerns there.

**Guy Smith:** This is the issue I tend to get most involved with, with Natural England: the delivery of the Countryside Stewardship scheme. Let us remind ourselves that the UK has been a trailblazer in ag-environment schemes. 10 years ago, over 70% of farmers were actively involved in ag-environment schemes. It was one of our great successes. We are very keen that this cultural link carries on and that farmers recognise the importance of being proactive countryside managers and delivering landscape and biodiversity, utilising Countryside Stewardship-type schemes to do so.

Our concern is that it has now faltered. As we understand it, the ambition of Countryside Stewardship was to pick up half of the people who were coming out of the old ELS/HLS schemes we had. Some 26,000 farmers had come out of those schemes because they had ended their natural life of five to 10-year agreements. The idea was that 13,000 would go back into the Countryside Stewardship schemes on the higher or mid tier. Only half—between 6,000 and 7,000—have managed to do that.

The reasons for that are complex, but I am afraid it is largely due to poor delivery. Payments have not been made on time. Farmers have a lack of confidence in it. Packs go out with the wrong details of the farm, so the farmer gets fed up with the red tape overload. The rural land register simply does not reflect the actual ownership on the ground. You frequently get told you own a field that actually belongs to your neighbour, or your neighbour now owns a field that you thought belonged to you.

The reason for this is bad or dysfunctional IT, which must be addressed. We feel that Natural England is stretched as a delivery body. That needs to be addressed as well. This is really important for my members going forward, because they want to take up these ag-environment schemes, as they have done in the past, but for a number of reasons they are just not doing it.

At the end of the day, farmer uptake is the critical metric as to whether these schemes will succeed. That is what you must look at to understand whether it is a success. If it is not a success, there are question marks over Natural England in its performance so far, and it must continue to be assessed because of that.

Looking forward, if we expect, as some people have suggested we should do, that we deliver far more for the environment through agricultural policy, presumably Natural England will remain the key delivery arm.

Rather than running away with greater expectations of that agency, we need to look at its current performance first. We need to get that right before we start loading the cart.

- Q53 **Baroness Scott of Needham Market:** You have just touched on the point I was going to make. There seems to be a broad consensus as to the delivery of these public goods, of which landscape and biodiversity are an important part. One assumes that the policy framework will be developed by Defra, but I am also assuming—as it looks as though you are—that the delivery, the measurement and therefore the responsibility for clearing payment is going to be done by Natural England. I do not know. I wanted to ask you to comment on that.

**Christopher Price:** The first stage is to work out what we want from the new policy. Virtually everyone is talking about public payments for public goods, plus some support for productive and profitable farming alongside that. It is not just a matter of coming up with a new policy and fitting it in with the existing structures, though. I cannot believe we are not going to have a review of governance systems going forward as well. As to whether Natural England with its current role is the right body take that forward, quite frankly I would doubt it.

**Baroness Scott of Needham Market:** As it is currently constituted, is it able to deliver?

**Christopher Price:** It is certainly having problems with Countryside Stewardship at the moment. We have to query what the problems are. How much is it the fault of the design? There were problems in the design process. I am sure Guy would agree that the sector was not consulted nearly as much as it should have been or has been in the past when the system was being devised, which is part of the problem.

It is more important to work out what we want from post-Brexit agricultural land use policy and then decide the institutions that are required to deliver it, rather than starting at the other end and thinking, “How should we tweak the governance in the light of what may happen?”

- Q54 **Baroness Byford:** In your written evidence, Mr Smith, one particular bit says that Natural England has to compete with the Rural Payments Agency on delivering the basic payments scheme. In what way do you mean? How much data is shared? Is it possible to cut down the amount of different requests one seems to get from the different bits to complete these forms?

**Guy Smith:** As you know, Baroness Byford, there has to be a close working environment between Natural England and the RPA to deliver Countryside Stewardship, partly because the RPA has control of the RLR and partly because it is the payment mechanism. You get your money from the RPA, so there clearly is an element of dysfunctionality between those two agencies that must be healed, and rapidly.

Can I just say something about my concern? There is some political shorthand flying around in these Brexit-charged times that everything that was possibly wrong was the fault of the European Union and those damn

bureaucrats in Brussels. It is true: it was difficult to a certain extent to deliver some of these schemes because of overcomplexity drawn from the European Court of Auditors and this fear of disallowance that is strongly felt, particularly in Defra.

However, with new schemes using taxpayers' money in a post-Brexit world, the idea that there will be no rules and money will be thrown at farmers, who will just have to roughly produce a page of A4 to prove themselves, is nonsense. It is public money; it will continue to have to be audited. Taxpayers will expect proof that it delivers good value and the like.

We will continue to have these demands about it being accountable and audited. The idea that everything will be a lot simpler once we are free of these dastardly Europeans and their dreadful bureaucratic mechanisms is a little whimsical. It does not ground down into the detail that aspects of the RPA and Natural England have not worked because of bad management within Whitehall. The RPA computer said no in March 2015, because it did not work. No one in Brussels told Whitehall to buy that package and then not make it work properly. It was constructed purely within this square mile.

**Baroness Byford:** If I might come back on that, I hope I did not suggest in my question that I was putting the blame on Europe, because there is no suggestion of that. My question really was this: is it not possible in the future to have a simpler scheme where data will be shared? Some of the complexities and difficulties that have been experienced over these last recent years could surely be overcome. That was my real question.

**Guy Smith:** I am sorry. I was not trying to put words in your mouth and imply you were saying that. You know very well from many conversations we have had that I would not dare do that. It is being said at quite senior levels of government. There is an assumption that once we leave the European Union everything will get a lot simpler. I do not buy that. The Treasury will still put a lot of demands in place to make sure money is spent correctly.

However, there quite clearly are opportunities for simpler schemes. Natural England complains to me that Brussels makes it do what it calls "man-to-man marking", whereby everything it does has to be written down. Maybe some things will get simpler, and we should see that as an opportunity to make these schemes more farmer-friendly. I agree, but let us not overlook some fundamental problems that need fixing now, while we are still in the European Union.

Q55 **Lord Faulkner of Worcester:** I found that a very refreshing answer, if I may say so. I do not know whether my colleagues also did. It is still in the post-EU world that I need to ask you a question on environmental protection. It is fair to say that in recent times the environmental protection that has been taken into account in things like the NERC Act has been on the assumption that we will remain members of the EU. Now, as it appears possible that we shall cease to be members of the EU, what should go in the place of the EU-type legislation on environmental protection?

**Christopher Price:** In the first instance, yes, you are right: the EU has had an important role in encouraging us to do the right thing, but do not start from the assumption that the only reason we have done the right thing is because of the EU. The UK has been pretty good on a whole range of measures in taking the initiative, and indeed taking the initiative to Europe to enforce things. We have a pretty good track record on a lot of this, but we will lose the sanction of the Commission and the European Court of Justice.

In the CLA, we have spent a lot of time looking at how some of those structures could be replaced. First of all, we will need to have a comprehensive review of governance generally for the reasons Baroness Scott suggested. It may be that some new institutions are needed. We already have judicial review, which we have seen to be quite effective in terms of the air quality litigation recently.

There were some pretty despicable cuts to public funding for that sort of litigation recently, on which the Government were defeated in the courts last month, which was a relief. It was unfortunate that the Government thought it appropriate to cut funding for those things in those circumstances.

In looking at how these things are done in other jurisdictions, one possibility we have been looking at that seems particularly attractive is having enhanced ombudsman-type roles. I know we do not often look to Hungary as a model of good governance for lots of things, but in Hungary there is an ombudsman who is responsible to the Hungarian parliament and whose job is to protect environmental considerations.

He—it is a he—has quite wide powers to intervene, produce reports and, particularly, to injunct government to stop it proceeding down a route that he thinks is hostile to the natural environment. That has quite a lot to commend it and may be worth looking into.

**Lord Faulkner of Worcester:** Australia has one, too.

**Christopher Price:** Australia has a very similar approach, yes. Another approach that might be attractive is giving legal personality to certain features. New Zealand has given certain rivers—this includes the Whanganui river—legal personality and appointed people to be their guardians in the same way you appoint guardians to children who are vulnerable. The job of those people is to protect their interests. I see there is some attractiveness there. There are a variety of things to do alongside the straightforward creation of some new institution.

**Guy Smith:** In the enormity of the challenge that is leaving the European Union, through the withdrawal Bill we expect to see things such as the habitats directive and the water framework directive cut and pasted into British law, which will be the immediate post-2019 environment. It is quite clear there are some operational issues. If you lack the EU institutions that used to run those directives, you need British equivalents. That is a job in hand. Again, I would agree with Christopher.

There is a good deal of detail, sheer grinding hard work, to think through as to how our governance is going to work with this EU legislation brought into British law. From then on, we have the opportunity to make it more relevant and suitable to the British topography, our climate and our natural resources. Again, that may be seen as an opportunity rather than a threat.

Q56 **The Chairman:** If either of your two organisations had the necessary funding to take a judicial review, would you enter into that with equanimity?

**Guy Smith:** I do not want to sit here and threaten the British Government with legal review. That is unfriendly talk, but we have a very well-oiled machine, as you know, which can take all sorts of legal action if we feel it is in the interests of our members. Judicial review is one of the points in our armoury.

**Christopher Price:** This was what was so important about the recent litigation. The Aarhus convention says that you should have a cap on the amount of legal fees a losing party in environmental litigation has to pay if they lose. It is £5,000 for individuals and £10,000 for a corporate entity. The Government recently proposed removing that cap, which would have made it impossible for organisations like ours to litigate on a regular basis. Thankfully, they lost that case in court. It was a pretty unhelpful and pretty despicable thing to do at a time like this when there is so much concern about these issues.

**The Chairman:** I will ask you both the same question I asked Mr Bonner: ought Natural England to become more independent of government than it currently is?

**Christopher Price:** It is difficult to consider this incrementally. We need to work out what the new policy is like, and then what governance we need to make it work. Even at that stage, it is unlikely that we could have something that was as close to government as Natural England is. There needs to be something that can make a stand for environmental concerns. It has to give government a bit of a soft nudge if need be, or litigate if things get too bad.

**Guy Smith:** There was a political desire—you do not hear it so much now—that Natural England should be a champion of the natural environment. I am not sure that is appropriate. An accountable department should be a champion, a patron or a sponsor of the environment and of agriculture. A body like Natural England should concentrate on being a delivery arm, delivering the wills, policies, desire and vision of the elected politicians in charge of the department.

**The Earl of Caithness:** Can I follow that up? Is Natural England adequately funded for its present role?

**Guy Smith:** No.

**The Earl of Caithness:** As Secretary of State, what would you increase the budget to?



**Guy Smith:** I would make it more than it is now. I am sorry. As Tim Bonner suffered with mathematical challenges, I will do the same. I do not have a clear figure in my head. All I know is that we see it as a stretched organisation struggling to fulfil the remit it is given, and the remit it is given will increase going forward.

**Christopher Price:** As with so many parts of government, decide what you want it to do and then resource it. So often it seems those decisions are taken separately. It is what we see with the planning system the whole time. We have an incredibly baroque planning system with bells and whistles, but we cannot afford to administer it. It is similar with Natural England's responsibility.

In all this, I would not forget the role of NGOs and civil society, which have a significant part to play in keeping the pressure on from different perspectives. In a way, we are quite lucky in the rural sector, in that we have so many NGOs without any one having a position of dominance, which you find in certain other sectors. There is fairer bargaining between the different players in the space.

Q57 **Baroness Scott of Needham Market:** In a complete change of subject, we have had a lot of submissions in our evidence from groups who are concerned about the use of public rights of way by mechanical vehicles. I chaired the rights of way committee in Suffolk for many years, so this has been something I have lived with for the best part of 30 years.

From your perspectives as national bodies, could you say whether this is a widespread problem, and therefore there is a legislative solution to it, or a localised one and one of local decision-making and policy?

**Christopher Price:** When what became the NERC Act was going through, we probably spent as much time on that aspect of what it covered as anything else apart from the functions of Natural England. It was a huge thing. As you can imagine, many of our members are troubled by the irresponsible use of 4x4s, et cetera.

Part 6 of the Act went a long way in improving things. I think most people would say there was a sea change as a result, but it did not go quite far enough, particularly with MPVs on UCRs, where it was decided not to regulate that. In response, a lot of the more responsible local authorities have been making traffic regulation orders to try to deal with the problem, but they are expensive and local authorities do not have enough resources either.

Also, they can be contested, which means litigation, which only adds to the cost. We would suggest making an amendment to Section 67 of the Act to ensure that UCRs are treated in the same ways as other roads and that you cannot take MPVs up and down them.

**Guy Smith:** As we said in our evidence, we feel the provisions in the Act are there, but they could be strengthened to make them more effective. I would go back to the general issue of access to the countryside. This will always be a tension for the farming community, for whom the countryside

is their factory floor. It is not like buying a factory on an industrial estate and putting a big fence around it. You do not have ramblers walking through the middle of a quarry, but you have ramblers walking through the middle of your factory floor.

Farmers welcome responsible countryside users and in some instances they benefit from them through rural tourism. However, it is the irresponsible visitors to the countryside who can make the life of the farmer hell. There are no simple answers to that. It is partly cultural; it is partly education; it is partly about bringing in new laws and the like. It is a big issue.

**Baroness Scott of Needham Market:** Could I just do one further bit of probing on that? One of the problems is about incompatibility. It is not just about the vehicles and the farmers; it is about the fact that—particularly in heavy clay, as in the place I live—use by 4x4s means that horse riders or walkers cannot use the route. The motor lobby always used to say, “We are users of the countryside too. Why should we not be able to use these roads?” There is always a tension there. I wonder whether there is any more that could be done to provide informal access to motorised vehicles in the countryside without impinging on rights of way. You are the land managers.

**Christopher Price:** Your report is right, in that it is a bit unreasonable for us who live and work in the countryside to say we want society to support us by providing an income, and then say, “People cannot come into it”. But you do not want the volume of people coming into it to upset what we value it for in the first place. There is a balance to be achieved. It is going to be decided at a variety of levels. Yes, legislation has a role to play in this. Having that legislation enforced is also important, which takes you down to the local authority level straightaway. In certain areas, voluntary arrangements can work pretty well, assuming good will on both sides. Unfortunately, you can get an element of ideology on both sides, which serves to frustrate these things. Yes, you can go so far, but in the end it is legislation that is enforced.

**Guy Smith:** It would be very difficult to see a voluntary scheme working. I know farmers who offer off-roading.

**Baroness Scott of Needham Market:** That is what I meant.

**Guy Smith:** That is paid for. You can pretend to be Jeremy Clarkson for a day, and you pay for the privilege. It is controlled and both landowner and customer are happy with it. Once you have a non-transactional relationship that involves trust and understanding on behalf of the landowner and whoever is going to turn up with a 4x4, I have some doubts.

Q58 **The Chairman:** Thank you very much. I have one final question: what one recommendation would you like to see made in our final report?

**Guy Smith:** It is a good question to finish on. It would be the need for evidence-based policy-making: for proper studies and inquiries to be

undertaken so people and politicians understand the impacts of their policies on rural areas and agriculture.

Looking at broadband or the running of the Countryside Stewardship scheme, one thing we have learned is that it is very difficult to find out what is happening on the ground. I am very grateful that I have a very good team at NFU HQ, which can take professional survey work. They phone up our members. Once they have convinced them they are not selling PPI, they can get on to asking them how it feels on the ground. We have found that invaluable. I would go as far as to say that we are a prime finder of this sort of intelligence, but government should be doing this.

Government needs to find out what is happening on the ground. It is no good saying, "You have good broadband speed through to your local cabinet; therefore, you are okay". You have to go and ask the person sitting in the farm office, "Does it work? Is the technology you can have on your farm limited because you are just not getting the bandwidth the Government think you are getting?"

My key demand would be for evidence-based policy-making: understanding the needs of the rural agricultural community, backed up by comprehensive surveys done in robust methodological ways.

**The Chairman:** Would this include, say, a research-commissioning body inside Defra with its own budget? How would you manage that?

**Guy Smith:** That would be one way. I fully accept that these things are not cheap, but what is the point of devising a policy where you are not sure what the outcome is? I go back to this point: we live in a time where good decision-making, good governance and good policy can reap endless dividends for rural areas and agriculture. To make sure they have been sense-tested, that they are understood and that there are not any unforeseen consequences, you need to understand the lie of the land, where your policies will land.

**Christopher Price:** There are two elements to it. First of all, government needs to better recognise the full range of benefits the countryside can provide. It is not just food, although food production underpins most things that happen in the countryside, but also biodiversity, amenity, flood management, carbon storage and a wonderful landscape. All these things need to be properly incentivised and the obstacles to their delivery removed so far as that is appropriate.

Once the full range of services is recognised, set out a clear vision for how they are going to be delivered and promoted, so those of us who live and work in the countryside know where we stand in the long term. That will remove some of the uncertainty that is around at the moment.

**The Chairman:** Thank you both very much. It has been a very helpful evidence session.

## **Country Land & Business Association (CLA) – written evidence (NER0026)**

### **House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006**

The CLA (Country Land & Business Association) consists of more than 30,000 members who between them own or manage around half the rural land in England and Wales.

CLA members are active in all aspects of the rural economy, engaging in farming, forestry, tourism and a whole range of other activities. As a result, we were heavily involved in the production and passage of what became the Natural Environment and Rural Communities Act 2006 and have followed closely how its provisions have subsequently operated in practice.

We are very much a member led organisation and work closely with our members. We therefore have a good understanding of the perspective of the practical land manager. Moreover, we liaise frequently with all levels of Defra, members of the “Defra family” and other departments with a rural responsibility.

As such we believe we have a particularly well-informed insight on the matters raised.

### **Rural Advocacy and the Commission for Rural Communities**

- 1. Since the closure of the Commission for Rural Communities (CRC) and subsequent winding up of the Defra Rural Communities Policy Unit how – if at all – are the CRC’s original functions of advocate, adviser and watchdog being fulfilled?*

The CRC played an important role in advising government (Defra and other government departments) on the importance of the rural economy and communities. The State of the Countryside report it produced is still regarded as an essential source of data.

The CRC was only ever one of a number of bodies that advised government though. Before the CRC came into being a variety of external stakeholders, such as trade associations, membership organisations and NGOs did so. Since the closure of the CRC, its place has to a significant extent been filled by those same bodies.

What has changed, is the way in which Defra engages with its stakeholders. It does so much more effectively and in a much more co-ordinated way than was the case previously.

2. *Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead for such matters?*

Rural proofing has always been a challenge, irrespective of which government is in power. All attempts to put in place a coherent and workable policy of rural proofing have proved unsuccessful. Although the principles that underpin rural proofing have been accepted across government, the monitoring mechanisms put in place have failed to achieve significant results.

Not everything that happens in the countryside or which affects the rural economy falls within Defra's remit. Land use planning and connectivity, for example, are both key concerns for farmers and rural land managers, but Defra has no responsibility for either of them. Ensuring that those departments that do recognise the rural perspective and take it seriously can be a challenge. All too often Defra's ability to influence other departments depends on individual relations between ministers or officials than any formal structure. This is not satisfactory,

We see three reasons why other departments fail to engage. Firstly, as Defra exists to deal with rural issues, the other departments can be inclined to assume they do not need to. Secondly, those departments inevitably have their own priorities which they will want to pursue in preference to other departments concerns. Finally, in many cases, the overriding rural aspect of many issues is simply the additional cost resulting from sparsity and other departments are unwilling to incur the cost of providing equivalent levels of provision to those which they do in urban areas.

The situation is much the same with local government where there is a myriad of different bodies; local authorities, LEAs National Park Authorities, AONB boards and Internal Drainage Boards all with their own functions the inevitably conflict or overlap on occasion. This creates a form of institutional conflict that is not always conducive to efficient or effective policy making. Moreover, many of these bodies are too small, or too focused on a particular purpose, to fully recognise the complexity of a number of rural issues.

3. *What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests – of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?*

Under the current departmental structure, Defra must provide the lead role.

Notwithstanding how matters have been dealt with to date, Brexit provides government with an opportunity to fundamentally change the way in which rural policy is decided and delivered.

As noted, to date Defra's ability to influence other departments has been somewhat inconsistent. There are two reasons why this could and should change. Firstly, with the need to repatriate so many policies that fall within the Defra portfolio, the department's size and standing has grown significantly. It is hoped that this will strengthen its voice in other departments.

Secondly, the administrative structures that have been put in place to oversee Brexit, with DexEU and International Trade all having fairly pervasive roles, may well engender a greater sense of inter departmental working.

## **NATURAL ENGLAND**

4. *How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?*

Natural England lacks any clear obligation to have regard to economic or social, considerations; its general purpose is limited to environmental concerns. Although its purpose includes an obligation to contribute "in other ways to social and economic well-being through management of the natural environment" it is not required to have regard to the economic implications of the way in which it discharges its functions. This is not to say that economic considerations should prevail over environmental ones, just that they ought to be taken into account.

We were concerned at this when the Bill was first published at remain so.

Although various governments have expressed a desire for Natural England to adopt a much more business friendly approach, which in recent years it has, the point has not been addressed in legislation.

*5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?*

Following Brexit, the UK loses the oversight of and the need to account to, the EU institutions, particularly the Commission and the ECJ. This could be a significant loss. As was said by former government adviser to the EU select committee last year, “the threat of infraction drove [UK] environmental policy ...and the sums of money that we were going to be fined were absolutely at the heart of that process.”

There are, of course, UK institutions that can apply a degree of scrutiny, but it is difficult to see that they will be equally effective. Judicial review is only concerned with the process that led to the decision, not its merits. Parliament can hold government to account, but it has its obvious limitations.

The issue is further complicated by devolution and the need to maintain similar or equivalent standards across the UK.

It is therefore worth considering alternative governance models going forward. The US has the Environmental Protection Agency (EPA), which carries out a number of functions, including holding state governments to account, although its ability to hold the federal government to account is limited.

Australia and Hungary both have Ombudsmen which appear to have been effective in scrutinising and challenging executive decisions.

India deals with the issue by having constitutional obligations to protect the environment, which can be enforced through the courts, backed up by giving legal personality to significant environmental features such as the River Ganges.

Our initial thoughts are that judicial review, together with satisfactory access to justice provisions, particularly as regards costs, and an Ombudsman with powers to compel the production of evidence will be sufficient.

National Parks require specific consideration. The 1949 Act introduced two protected landscapes: Areas of Outstanding Natural Beauty (AONBs) and National Parks. National Parks were the wilder more remote areas with a significant amenity value and AONBs were the equally attractive, but more managed, landscapes.

National Parks should be the nation's most significant and iconic sites. However, in recent years it seems the distinction between them and AONBs has become blurred, particularly with a number of AONBs holding themselves out as being almost the equivalent of National Parks.

Moreover, the way in which the criteria for designation have been applied of late, has made designation much easier. Whilst this has resulted in more land being designated as National Parks, it has also resulted in the overall quality of the National Park network being reduced.

For example, with the recent Lakes to Dales extension, the ways in which the tests for designation were applied seemed to involve a significant watering down to ensure the extension went ahead. Firstly, what was deemed to constitute "compelling evidence", in the words of the statute, that the area of land has "become suitable", to use the wording of the statute, for National Park designation was somewhat surprising, appearing to consist of little more than a statement that the extension was desirable.

Secondly, the Natural England guidance on application of the "especially desirable" test gave Natural England a degree of discretion beyond what appears in the legislation; presumably to make designation more certain.

The probable result of this approach is that the overall National Park network becomes less special, and more like other rural areas, which would be unfortunate. Far better to retain the original approach and regard National Parks as the "jewels in the crown", that warrant particular promotion and protection.

*6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?*

This question is dealt with in the response to Question 11



## **Sustainability and biodiversity**

*7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?*

As in a number of other contexts, the refusal of the Government to provide guidance on how legislation is to be applied presents a number of challenges, not least uncertainty. The government's original and comprehensive guidance on the duty was withdrawn in 2014 and replaced by just a page of bullet points on a website.

This is not just an issue for those bodies subject to the duty, it is also one for land managers who need to be able to predict how the bodies will go about discharging their functions respond in a particular situation.

Moreover, complying with the duty involves a number of practical challenges. Firstly, the need for data; a body cannot have regard to biodiversity without knowing what biodiversity there is. Secondly it requires people with the ability to interpret and apply that data. Both of these come at a cost, which can be significant.

*8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?*

Public authorities certainly seem to be giving greater weight to biodiversity considerations. We do not see any need to modify the duty, just to explain and resource it.

*9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?*

Discussions with colleagues in Wales and Scotland suggest that the use of different language has little practical impact, if any.

### **The changing context since 2006**

*10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?*

This was dealt with in the response to Question 5.

*11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?*

In response to the problems caused by mechanically propelled vehicles, Part 6 of the Act significantly restricted their use, but not in all cases. One of those exceptions was in respect of unsealed unclassified county roads (UUCRs).

Since then, there has been continuing and growing use of UUCRs by motorised vehicles. Local authorities that try to regulate such use through traffic regulation orders (TROs) have found themselves subject to expensive and time-consuming litigation. This has had the effect of serving to discourage authorities from making such orders

There is a simple remedy. This is to amend section 67 of the Act to extinguish unrecorded motor vehicle rights along unsealed routes, (exceptions can be retained enabling private access to property).

This would enable the protection of those lanes for the use of those who seek quiet access to the countryside, as well as access to property, whilst relieving the burden of recreational motorised vehicular use from unsuitable routes.

*8 September 2017*

## **Countryside Alliance – oral evidence (QQ 37-47)**

Tuesday 17 October 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Baroness Byford; The Earl of Caithness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Parminter; Baroness Whitaker; Baroness Scott of Needham Market.

Evidence Session No. 6

Heard in Public

Questions 37 - 47

## Examination of witness

Tim Bonner.

Q37 **The Chairman:** Good morning. Welcome, Mr Bonner, chief executive of the Countryside Alliance, to this Select Committee on the Natural Environment and Rural Communities Act 2006. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website and a transcript of the meeting will be taken and published on the Committee website. You will have an opportunity to make corrections to that transcript where necessary.

For the record, do you want to introduce yourself? You could make an introductory statement if you like, or we can go straight into the questions.

**Tim Bonner:** I have been working for the Countryside Alliance since 2002. I was previously a farmer. I farmed in north Devon and I got a degree in countryside management, somewhere in the mists of time, from the now defunct Wye College, which was part of the University of London. My roles have been various, but I have been chief executive for a couple of years. I have been involved, across the range of our issues, for that whole time.

As for my opening remarks, we have an extraordinary asset in our countryside. It is a national treasure. “Iconic” is a word that is often used, but we must remember—and our role is to remind you and others—that it is somewhere where people work and it is their home as well as that iconic asset. Those who live and work in the countryside can be forgiven for feeling from time to time that it is treated like a theme park, perhaps not receiving the political support that it needs and deserves.

There are special challenges. We are not here to argue that it is fundamentally worse or better to live in the countryside, but it is different; there is no doubt about that at all. That means that the countryside often needs different solutions and policies from urban and suburban areas. This is something that we work on and urge all political parties to do, as we did in the recent election. That said, we are also aware that there is a huge complexity in defining the rural community, with changing demographics. Those who live in the countryside are now, in many areas, detached from core rural industries. It is a very difficult thing to define, but undoubtedly there are differences. We seek to ensure that policy addresses them.

We are also very aware that Brexit will be front and centre of the work of this Parliament. Perhaps more than many other areas, the decision to leave the EU will have profound effects on the countryside. At the same time, other issues such as affordable housing and broadband, which I know the Committee would like to discuss later, remain critically important. Those must not be forgotten as the Government negotiate their way out of Brexit and start to develop new policies.

We were formed just over 20 years ago. We have 100,000 members and supporters. Our role is to make those people’s voices heard. We hope to have a significant impact on rural policy and the political landscape as it develops.

Q38 **The Chairman:** Before I opened my mouth, I should have declared an interest as a member of the Countryside Alliance. Thank you for those introductory remarks. As you personally go back so far, what were your dealings with the Commission for Rural Communities? What do you think it did well and what perhaps less well?

**Tim Bonner:** We welcomed the creation of the CRC under the Bill back in 2006. It was created in 2007-08. The aims were clearly laudable, especially the aim to give rural communities an independent voice. At the time, however, we raised concerns about the commitment to represent, rather than work with, rural communities and questioned whether that was the way forward.

“Rural proofing” is a term that we will discuss later, but it was a phrase that came out of the early 2000s, in the period around foot and mouth and the creation of Defra, when there was a lot of discussion of rural policy. Rural proofing perhaps did not have either the focus or the teeth in that Bill. We are concerned that, in some areas, the CRC did not live up to expectations. It perhaps did not have the teeth to hold government to account, and there was no duty on any department to consult with it over the development of rural policy.

What did rural proofing mean in that context? At times it was used by government as an obstacle to ease discourse between Whitehall and the countryside, or to block discourse in some ways, rather than to have direct political communication. Where Defra in particular and other departments should have been taking a direct role in communication, it was almost pushed off: “Talk to the CRC”. There were issues to do with resources and delivery.

While the legislation perhaps did not focus on it enough in the first place, the CRC could have been more dynamic about how government policy was rural proofed across Whitehall and spoken out more on that issue. Granted, we have already accepted that that was difficult for it to do, given that it did not have direct powers.

The CRC became an authority, and extremely useful for organisations like ours, in the provision of the rural evidence base. The annual report, *The State of the Countryside*, was seen as authoritative and gave a basis on which organisations like ours could campaign. It produced other reports on issues from broadband to the uplands, which helped an agenda that was deeply felt in the countryside.

Since its abolition, there has been a loss of that research facility. Defra has produced the statistical digest, but it is a different beast. We do not feel that it has as much sway as *The State of the Countryside* did. In the context of rural policy, the Government have become more reliant on individual organisations and pressure groups producing their own reports, which is not a bad thing in itself but can mean that you get a skewed and single-issue take on certain issues. That is a theme that might develop through this discussion: if we are looking at environment, community and agriculture in separate boxes, we are never going to get any real sensible policy development, because the three are so massively interlinked. Since

the abolition of the CRC especially, we tend to look at those things in those terms.

Q39 **The Countess of Mar:** Good morning, Mr Bonner. Do you think the absence of the CRC has left a gap in the way the Government relate to rural areas? Where is the absence most keenly felt?

**Tim Bonner:** We do not think there should be that much of a gap, because it should be the role of government and politicians to engage directly with rural communities. At times, the CRC allowed government departments, particularly Defra, to avoid and to push off the difficult issues that they did not want to handle or deal directly with rural communities on. There should not be a gap. It is difficult to define what a rural community is, but it is not indefinable. There is a department tasked to deal with rural affairs. The communication between government and those communities should not be that difficult.

The area where the CRC could have delivered more was in bringing government at a wider level to understand the importance of the policies that departments other than Defra were developing on the rural proofing agenda. There is no one there to replicate that at the moment.

**Baroness Byford:** I declare an interest as a member of the Countryside Alliance. Having said that Defra has not managed to go across all departments as was anticipated, if it was not put in Defra in the first place, which department would you have seen it in? Do you have a view on that?

**Tim Bonner:** We have a view on what we would like in the future. It seems to us that the only place you can have a proper view of policy development across all departments is in the Cabinet Office. The fact that no one was ever tasked with ensuring that rural issues and the rural proofing thing were delivered is probably one reason why that has not occurred. The political power lies with the Secretary of State through the Cabinet sign-off process. Does he have a full view of what policy is being developed, and at an early stage? If rural proofing was successful—and it may be; it is difficult to know, because there is no reporting and the rest of it—policies would be either dropped or amended at a very early stage in the development process, so we would not really know about it. That would be a successful and proper rural proofing process from our perspective. The Cabinet Office is the only place where you have that full view, we feel.

**Lord Faulkner of Worcester:** It seems that your rural charter expresses concern about the state of various rural services. In which of those do you think rural communities are less well served or under greater threat than urban and suburban communities? I notice, for example, that you make no reference to public transport, either rural rail or rural bus services. Was that omission deliberate?

**Tim Bonner:** It was probably largely because our agenda is rather larger than our resources. Rural transport is an issue that we have campaigned on in the past. There is a general theme developing around the ability to access services and whether there are specific issues for those who live in rural communities, particularly remote rural communities, in accessing them.

I am sure we will talk more about broadband later, but the Government have a direct policy to bring as much service provision online as they can. For most of the United Kingdom with a decent level of broadband access, that is hugely sensible. It is cheaper, cleaner and more effective. If you live somewhere where broadband is intermittent at best, that is simply not feasible. We have heard government Ministers saying, "You can go to the library if you want internet access". That is not an answer. They are only giving that answer, in fairness to them, because they have not thought through the impact of the policies that they are developing on everyone, including those in the rural community.

Within that, you have everything from post office services and transport, as you mentioned, to schooling and the rest of it. The theme is this: all departments develop policies that are well meaning, in best interests and totally understandable. Is there a route by which proper consideration is being given to rural communities when those policies are being developed?

**Q40 The Earl of Caithness:** I am happy to declare my interest as a member of the Alliance. You mentioned in your introduction that there were problems with affordable rural housing, broadband and other such policies. Where do you think the Government got that wrong in the past? Do you think they have changed, particularly on affordable housing? Have they grasped that there is a problem here, and it is now a question of where you put it rather than accepting that there is a problem?

**Tim Bonner:** We should take those two questions separately, because there are differences. On affordable housing and some of the issues that we were discussing, the Government consult widely and talk to rural communities and practitioners. We are seeing an understanding develop that there is a problem. Having worked for the alliance for all these years, I have lost count of the number of reports that we have had on affordable rural housing, going from Matthew Taylor backwards. There has been very large number of them. Every time, as far as we can see, the issue is about delivery.

As plenty of research has shown, while government is on side and understands that there is a need, in the nitty-gritty of delivery at the grass roots we are still not where we should be. There is undoubtedly an advocacy role within the rural community. There is a great challenge to differentiate between unsustainable, as it would be seen, and sustainable development in smaller communities. Even among our membership, I am willing to say that there is a resistance, in some cases, to any development, for fear of communities being swamped and an unsustainable level of development.

We, as an organisation, believe that we have to advocate for that. That is something that the Government also need to do: be bold. If we want all the services that we have talked about, which for us is absolutely key—if we want the village school to be sustained, if we want viable transport services—we have to have a demand for that, and that demand comes from growing communities. In many areas, there is a demand for housing from people who were born and brought up in an area but who cannot afford to live there. By meeting that demand, you potentially resolve a lot of other issues.

**The Countess of Mar:** Is it not a prime example of the failure of the Government's rural proofing, especially in Defra, because of their requirement to have farmers fill in all their forms on the internet?

**Tim Bonner:** Yes, absolutely.

**The Countess of Mar:** The same applies to the DWP. People living in rural areas are required to fill in their applications online, and they probably do not have access to broadband. There seems to be a failure to understand the importance of these things to people in isolated pockets.

**Tim Bonner:** There is. I would support that point entirely. When the Minister is telling people to go to the library and the nearest library is 25 miles away, that is no answer. The broadband issue is slightly different. It is very complex and technical. The Government should have taken advice from all providers on the rollout to get a better picture of the technical problems of delivering to the last 3%, 4% or 5%. As a result, we have ended up with a scheme that has been delayed and has failed in parts.

Frustratingly, they have not even been able to tell people that they are not going to get decent broadband. If people can just be told that they are not going to get it through BDUK, they can find provision in other areas. We have all sorts of ideas about where that could come from. There is a massive frustration out there that you do not even know whether you are going to get it. We talked about this regularly with the last Minister, who used to quote numbers at me of 96% and 97%. I would say to him, "You understand that every time that number gets bigger, the percentage who do not have it are getting angrier". They are. It is an incredible frustration.

The most bad-tempered fringe meeting the Countryside Alliance has ever run at a political conference was at, I think, the Conservative Party conference last year or two years ago. We had the managing director of BT Openreach, as it was, in the meeting. It was quite a shock to a lot of the politicians present just how much anger there was about that issue.

Q41 **Baroness Whitaker:** There is clearly a very strong need for rural advocacy, but where should it, along with advice and monitoring, sit within government? You said that you welcomed the Commission for Rural Communities. Should we have another body like that?

**Tim Bonner:** We welcomed the CRC. We welcomed the rural advocate when it was created and the idea of a strong, independent voice that had the ear of the Prime Minister. At the time, the Prime Minister had taken direct control over the foot and mouth issue, and there was a whole agenda about listening to the countryside. Perhaps, as that faded, it made it more difficult for the rural advocate to have the sort of impact that was considered when the legislation was passed.

That independent advocacy role has been lost. We feel that it is very important for rural communities to have somebody to fight their corner in government. We have the rural ambassador.

**Baroness Whitaker:** You said "in government". Do you mean independent?



**Tim Bonner:** I mean independent but within the processes of government, which I will perhaps come on to in a moment. We have the rural ambassador at the moment, Lord Gardiner, as a Defra Minister. That has become a slightly different role, I would argue. It could be important, in that as a Defra Minister the rural ambassador has the ear of the Secretary of State. As I said earlier, it is the Secretary of State who has the political lever, at the end of the policy process, to say, "No, you cannot do this because it is going to have a partial impact on rural communities". That is the wrong end of the process, though. If the Secretary of State is having issues over Cabinet sign-off of a policy that has got to that point, rural proofing has failed because it should have been considered at the start of the policy process and that development.

The idea of having another separate body is not one that we would necessarily support at present. We see perhaps another role, as I said earlier. This role could sit in the Cabinet Office with a full view of policy development across the range of government and with the ability to influence that and point out to all departments that are developing policies, whether the DWP or otherwise, aspects of those policies that may have a differential impact of rural communities. It should also head off any necessity for Secretaries of State to intervene very late in the policy process. We would like to give rural communities that independent champion, sitting within the department and the place where policy is being developed, so they can have an impact. Whatever we say about the CRC, it was not in that place, and it could not have that view.

Q42 **The Earl of Arran:** You and I come from the same part of the world, north Devon, where, thank goodness, my wife is the farmer and not I. I am also a member of your organisation. Very simply, in your opinion do the Government have any idea or perception whatever of a coherent rural vision or strategy?

**Tim Bonner:** As I said earlier, we have concerns that policy is piecemeal and disjointed. For some time, we had Defra working on a 25-year environment plan and a 25-year food and farming plan. Where is the plan for rural communities? Who is going to deliver these? Is there going to be anyone left? It is of great concern to us that government thinks you can separate out environment policy, farming policy and policy that affects rural communities. You cannot. It is the same thing. We know from north Devon and many other parts of the country that it is a cultural landscape, to use that trendy phrase. It is one thing. You cannot impact on the environment, you cannot improve it and you cannot impact on the way we farm unless you understand the communities and the people who are going to deliver that. We were concerned about that.

As part of the Brexit process, there has to be an understanding that, along with the potential impacts on farming and the environment, there could be massive impacts on those communities. Perhaps that shock to the system has made people start to think more closely about the relationships between all those parts of the countryside. Brexit will be front and centre of the work of this Parliament. In the post-Brexit world, we are seeing Defra produce a more coherent 25-year plan by combining the environment plan

and the food and farming plan. We need to have the community aspect in there as well. Without it, who is going to deliver?

**The Earl of Arran:** It seems to me that, as so often, the Government are good at talking the talk and absolutely useless at walking the walk. No comment?

**Tim Bonner:** We all have our views.

Q43 **Baroness Byford:** Many of your members are farmers and have working relationships with Natural England. How successful do you think that has been, and where there have been disadvantages or breakdowns within that system?

**Tim Bonner:** Generally, we were positive and welcomed the creation of Natural England as an adviser to government—we said so at the time of the legislation—because it incorporated all dimensions of land management. It was starting to bring things together, whereas English Nature only looked at the environment aspects and failed to take into account the social and economic pressures of land management.

We believe that land-use policy works only if there is the balance, which we have just been discussing, between social, economic and environment priorities. You will have conflict between the protection of wildlife, the landscape and encouraging outdoor recreation, for instance. We all know that. They all have to be part of the discussion. The Act, in the creation of Natural England, offered greater protection for wildlife and improved habitat protection, but only through enforcement of the existing legislation to ensure better compliance. It could have taken the opportunity to work more closely and push for closer working with local land management communities in better habitats through practical integration on the ground, which should be the key to all these things.

Since the inception, we have been reassured that some of our fears about the Act and the introduction of Natural England were unfounded. NE has corrected some of the fundamental wrongs and fundamental problems with English Nature. Anecdotally, it is widely accepted that there are much better relationships on the ground between Natural England and land managers than there had previously been. There is also a greater balance between the economic and environmental issues, with more working together to achieve outcomes. There are a lot of positives there.

We have had some situations of late payment under the Countryside Stewardship scheme. The process of consultation and amendment of open general licences is of particular concern to us. There is still a taint of top-down direction, but these things are not insoluble. There is a lot to be positive about in the development of Natural England. It continues to move in the right direction in its relationship with land managers and those on the ground.

**Baroness Byford:** We have taken evidence from others who suggest that some of the environmental schemes are too complicated, and there is a fear that some people will not continue to participate. Is that fear being expressed by your organisation?

**Tim Bonner:** It is not Natural England’s decision. Its role is to implement, not to legislate. There is complexity, and post Brexit we have opportunities, which we must take, to look at exactly how all those schemes are implemented and set up. We would always urge simplicity, but understanding that there must also be proper protections to go with that.

From a grass-roots perspective, it is easy to point at Natural England and say, “This is all nonsense. It is too complicated”, and everything else. In the end, it is only down for delivery. I had a rather fraught conversation with the chairman a few weeks ago, because I was quite critical of the development of the coastal access policy from a long time ago. There were comparisons between the policy delivered in Wales, which was delivered very rapidly, and the policy introduced in England, which has understandably taken Natural England a long time to implement.

That is a classic example of a case where Natural England is simply delivering the legislation it was left with. The fact that it is complex and more difficult to deliver than comparable legislation in Wales is simply a product of our politics. It cannot be blamed for the time that has been taken to do that.

**The Earl of Caithness:** What should Natural England’s budget be?

**Tim Bonner:** I am many things; I am not much of a mathematician. I could say something really hopeless like “enough to do the job”. At that point, my knowledge of the accounting of government has reached an end.

In terms of Natural England’s leadership, there are some very talented and able people on the board. I would hope that their voices are heard in government when funding is being discussed, because there are some able people there who would be perfectly able to make a judgment that I cannot.

**Baroness Scott of Needham Market:** I want to reflect on the fact that there is a really broad overall consensus that future agricultural payments should be linked to public goods, such as landscape and biodiversity. Moving from that headline to how it is going to be implemented, I am inviting you to comment, but I would have thought that Natural England would be a big player in how such a scheme was managed and how compliance would be measured. Could you reflect on that, the size of the organisation and whether it can do the job as currently budgeted?

**Tim Bonner:** My colleagues to whom you are going to be talking are in a better position to discuss this, I can assure you. There are some interesting changes, both for Natural England and for Defra. Defra has been a delivery department. It has delivered CAP, et cetera, over the years. It will fundamentally change post Brexit in that it will be necessarily to develop policy as well. Defra’s budget has been cut by 17% in the last few years. There are real issues of resourcing. The Secretary of State assured me not a couple of weeks ago that the department had the resources to deliver, new blood was coming into the department and there was fundamental change there. I am sure that is true of Natural England as well.

On the micro-policy and delivery of whatever agricultural policy we have post 2021, my colleagues at the CLA and the NFU are better placed to deal with that. In general terms, the point is absolutely supported: as Natural England and Defra's roles develop and change post Brexit, careful consideration will need to be given to their budgets, to ensure they have the resources to deliver the additional roles they will have.

**The Chairman:** Are you suggesting that Natural England is becoming more of an arm of Defra, as opposed to a non-departmental public body? Should it have more independence?

**Tim Bonner:** Again, that is better directed to those more directly involved in agricultural policy. It is incumbent on government to ensure that the resources that the Natural England board requires to deliver the expanded role it will undoubtedly be asked to fulfil are given without feeling that there has to be a strict relationship between cost and how it delivers a role. I am wary of dipping into that for lack of knowledge, but, as you identify, the areas in which Natural England will have to have independence need to be protected.

Q44 **Baroness Scott of Needham Market:** We have touched on Brexit a few times. It is the key issue of our time. Thinking in terms of rural communities broadly, as opposed simply to agriculture, what are two key opportunities that Brexit will provide, and what are a couple of threats that you see?

**Tim Bonner:** I will start by looking at the threats. Our key concern on a landscape scale is about the sustainability of marginal grass farming, upland farming in particular, and the drive from some parts of the political spectrum for significant land use change in those very marginal areas. We know that it is not a straightforward process to subsidise the sort of agriculture that we see in many of our upland communities. It is not simply a matter of income forgone and the usual agri-environmental payment scheme, because in many farming communities incomes are already extremely low. Even significant changes in the way they are farmed would see very little income forgone.

In many of those areas, this is about social payment and whether we want to maintain communities that are sustained by a type of farming and the landscapes that go with them. It is absolutely interconnected; it can be no more interconnected anywhere else than in these areas. In many parts of the country, we have fundamentally changed. I now live in East Anglia, and there is barely a farmer in the parish because, despite being in the countryside, we are not a community that is directly related to farming. That is absolutely not true if you go to north Devon, where I farmed in the past.

In Cumbria, the recent award of UNESCO status to the Lake District is a classic example of how the communities and the practice of farming in that area have created a landscape that is quite extraordinary. We all accept that. How to protect that is a real fear for us. For all sorts of reasons, many of them very good, some of them not, some believe that we should have fundamental change in those areas, and that farming and active management are not necessary of themselves or have a negative environmental impact. There is a potential scenario where you have a

double whammy of real problems with subsidising those farms and a significant drive for alternative land use in the same area.

We are very concerned about that and about the wider trade issues for all sorts of industries that would be seen as niche. If I talked to DExEU about the shooting industry, they would probably blank over, but there are 70,000 people employed in the shooting industry in the UK. It is a £2 billion industry and is hugely important in many marginal areas of the countryside. Issues with the import of pheasant and partridge eggs into the UK or the export of shot game from the UK into the European market would cause massive problems in that industry and have a direct knock-on impact on jobs and the rural economy. In this massive discussion about future rural policy, the future of our country and its relationships, these areas, which will be critical to many rural communities, must not be forgotten. Our concern is that they are.

On the more positive side, we have the opportunity to design an agricultural policy, for the first time since nineteen seventy-whenever, that is fit for purpose in the UK and the UK only. That is an extraordinary opportunity and one that we must not waste. Across the board, there is an understanding. Whether I talk to the RSPB or to the NFU, everyone sees it as an opportunity. Some of them see it as an opportunity for slightly different things, but there is a huge opportunity here.

Ed Davey, a Liberal Democrat Minister in the last Government, was extremely rude about CAP, calling it an instrument of evil at the Liberal Democrat party conference. Has anyone ever argued that CAP was a good thing? It undoubtedly had all sorts of negative consequences. Let us be positive and look at the opportunity to develop a rural policy that is more effective.

**Baroness Scott of Needham Market:** On that question, drawing some of the threads together of what you said before, is there a danger that, if we do not get some of this machinery of government stuff right on where the advocacy sits and how the rural voice is heard, the new vision will end up being flawed because it is made within the existing structures without a broad enough rural voice? Is there a big timing question here?

**Tim Bonner:** Absolutely, yes. It is a critical timing issue, not just short term in the development of policy, but long term in the influence of rural communities in government in the UK. It is one thing going to Brussels with an agricultural and farming lobby beside the French and German farming unions, which are politically extremely powerful. It will be another to make a case in the future for rural communities and the farming community to the Treasury in the UK. As we know, a smaller proportion of our population is actively involved in agriculture than in many other European countries. We are more densely populated and, in simple mathematical terms, rural people and communities have less impact than in other areas in Europe. The post-Brexit advocacy role is significantly more important, because the decisions made in the Treasury in particular are going to have such a huge impact on rural communities.

**The Chairman:** Do you think the Government could answer Lady Scott's

question about having that vision? If I asked the Government, “What is the countryside for?”, do you think they could answer it or have a stab at it?

**Tim Bonner:** I would rather you asked them than me.

**The Chairman:** My impression is that they could not.

**Tim Bonner:** We have to accept—as our membership on the whole, or the progressive element of it, accepts—the public good argument that we cannot see the countryside simply as somewhere for people who live there to enjoy and somewhere to produce food or whatever products are coming out of it. There is a broad acceptance that there is a huge role to provide an environment in which people who do not live in the countryside can come and enjoy any number of separate activities. It is a critical part of the tourism industry and beyond that.

You would hear government Ministers articulating a similar view to me. That has to be delivered in a way that respects the communities that live and work in the countryside, with—importantly in this discussion today—a cross-government understanding of the impact of policy development in departments other than Defra. You would get the right answer from Defra and, if she was properly briefed, from the Prime Minister, but you would get a blank look from the Home Office.

We had a discussion with a civil servant who had moved to Defra relatively recently and had been working in another department for some time. We mentioned the words “rural proofing” and got a completely blank look. This is someone who had been working in government for a considerable amount of time. It still worries us.

The Home Office is consulting on firearms and knife crime legislation at the moment, which will have a partial impact on many of our members as rural people. At the development stage of that policy, there has been no consideration of the fact that, if I live in a glen in the far north of Scotland and I want to buy a knife for grollicking my deer, which is my job in life, if I have to go to the post office to collect it, it is a 50-mile round trip. They are little things, but in departments like the Home Office they will not cross their thoughts. Is there a way of putting someone in a position where, at an early stage in the development policy process, the impact of these policies on rural communities can be considered?

Q45 **The Earl of Arran:** When farming subsidies were stopped in New Zealand and normal market forces were allowed to take over, what happened?

**Tim Bonner:** You are dragging me back on to agriculture, which, despite being a farmer, I know very little about. I apologise, but that is better pitched at my colleagues. Our strong view would be that if we want to sustain the countryside that we have now, overall levels of support need to be sustained. There are questions about how you deliver that, to which you will get much better answers in your next session. We need to look at these things holistically. That is the one message that needs to be looked at. You cannot think that by deploying clever and trendy environmental policy, for instance, you are going to sustain communities that sustain

landscapes that provide massive public goods. We have to take that holistic view.

Q46 **Baroness Parminter:** Can I move you on to the use of public rights of way in the countryside by motor vehicles? How successful do you think the NERC Act was? Are further provisions required?

**Tim Bonner:** The feedback from our membership is that it has worked. Where necessary, the changes that were laid out in NERC have worked and inappropriate use of byways by motor vehicles has been addressed. From our experience over that period, that is one part of the legislation that we can say has been very effective.

Q47 **The Countess of Mar:** What one thing would you like to see the Committee include in the recommendations to the Government in its final report?

**Tim Bonner:** I have two, but I will link them closely. We have talked about this role within the Cabinet Office. We believe that is feasible. Alongside that, there should be an annual debate on the floor of the House to discuss the performance on rural proofing. If we are going to be serious, this phrase was invented 17 years ago. We have been talking about it and there have been all sorts of options for delivering it. Let us be frank: it has not been delivered.

One way of getting every department to address this would be to risk being exposed on the floor of the House and to have an annual debate, where we can look at the performance of the departments, where issues can be raised by MPs about different pieces of legislation that may or may not have been rural proofed and why, if they were not, proper consideration had not been given to the impact of legislation on rural people. The potential for embarrassment in those circumstances would probably have more impact than anything else we have sought to achieve over the last 17 years, as far as rural proofing is concerned.

**The Countess of Mar:** Do you think there is enough expertise in the House of Commons to bring all the flaws out?

**Tim Bonner:** There is an extraordinary range of rural representation in the House of Commons now. I am confident that there are many MPs who would be very keen to ask questions about the development of policy and the impact on their constituents.

**The Chairman:** Thank you very, very much for your long hour of exertions.

## **County Councils Network – supplementary written evidence (NER0086)**

### **Natural Capital**

CCN's member councils are keen to explore more effective ways of undertaking their duties, and several of our member councils have already undertaken a natural capital approach to their own areas.

This approach offers significant advantages in terms of the understanding and profile of environmental issues. Namely, a Natural Capital assessment provides economic impetus to align environmental and economic plans, particularly with other bodies. In particular, with LEPs focused on driving forward business growth, a natural capital approach helps to underline the value of the local environment within this context.

Dorset CC has undertaken research to understand the value of their natural capital. The authors used four main approaches to estimate the size of Dorset's 'environmental economy'. They looked at: environmental goods and services; sector flows; the green economy; and the capital asset base. In doing so this is probably the first detailed estimate of Dorset's Natural Capital and one of the first for the UK. The report is based on sound economic tools and as such provides timely proof of the real value of the environment to business and development.

The report indicates that the tangible value of the environment to Dorset is £0.9 – £2.5 billion pa. It supports 17,000 – 61,000 jobs. They also conclude that:

- Environmental assets are likely to become more valuable over time, in absolute and relative terms, in response to rising relative scarcity and increased amenity and use values;
- The environmental economy may tend to grow faster than the overall average in future;
- As pressures on Dorset's environmental assets increase, so the value per unit of those assets may increase;
- As technologies, demographics and processes change, the potential contribution of the environment to Dorset's economy will tend to grow, as the threats to its preservation rise.

Though a large value, £2.5 billion is still a conservative figure in terms of the true value of the environment to Dorset, because the DCC report seeks to quantify only the tangible assets and flows. As such it is more an estimate of the value of ecosystem services than the Natural Capital of Dorset.

Another example from our member councils is Surrey CCs Natural Capital Investment Strategy. Surrey recognised that the Natural Capital Approach is endorsed by Government. Seeing the method particular relevant to its own landscape (Surrey being the most wooded county in England), the county has



attempted to value public health benefits of trees and vegetation, using air pollution and flooding as metrics. In 2014 it was estimated that there are 527 excess deaths per year in Surrey due to excessive levels of toxic pollution.

Additionally, wetland creation is another area of focus for Surrey. The NCC estimate that upstreaming can have a benefit to cost ratio of between 3:1 and 9:1, as flooding is often a land issue rather than a drainage issue. Savings from such investments feel tangible to residents as the cost of repairs in the 2012 flooding's were estimated at £12million. Specific examples such as these suggest that Natural Capital helps to illustrate why investing in the environment is important today, helping to solve some issues of myopia.

Nonetheless, it is important to understand that a Natural Capital assessment must be integrated alongside other policy areas to have a full impact - it cannot be a standalone assessment. In addition, care must be taken to understand not only the capital value of natural assets, but also the value to the community they serve. This approach must be careful to take into account community feelings when designating or valuing assets or otherwise.

Further, we recognise that once the capitalisation of our natural assets ensues, we lose the ability to reverse the created narrative around understanding our environment as a series of financially measurable resources. Benchmarking can limit the capacity for revaluing in the future once resources become scarcer, or we realise their value to be greater than originally thought.

In terms of local authorities undertaking this work, we would again highlight the issue of resourcing.

County Councils have faced significant reductions in funding - a 93% decrease in Revenue Support Grant by 2021. In addition, cost pressures in critical social care services are increasing. Recent CCN research indicated that county and county unitary authorities in England face unfunded cost-pressures of £2.54bn by 2020/21.<sup>2</sup> The table below provides further detail on the breakdown of these costs, which excludes the cost of inflation (currently 2.9%), which will add additional pressures to service delivery and procurement costs

Cost Pressure	Average County	Total CCN
National Living Wage	£22m	£813m
NI Contributions	£3m	£93m
Adult Social Care	£26m	£949m
Children's Services	£9m	£316m
Highways	£4m	£138m
Pension liabilities'	£2m	£66m

Countryside Alliance – oral evidence (QQ 37-47)

Education (inc. SEN)	£5m	£167m
Total Cost Pressure - 2020/21	£69m	£2.54bn

NB: Columns may not sum due to rounding.

Regardless of approach, the question of resource must be addressed to ensure that the Environment receives sufficient protection.

*19 December 2017*

County Councils Network and District Councils Network – oral evidence (QQ 107-116)

## **County Councils Network and District Councils Network – oral evidence (QQ 107-116)**

Tuesday 7 November 2017

12.05 pm

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Baroness Byford; Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; Countess of Mar; Baroness Whitaker.

Evidence Session No. 13

Heard in Public

Questions 107 - 116

## Examination of witnesses

Mr Daryl Phillips and Councillor Ian Stewart.

Q107 **The Chairman:** Thank you both very much for coming to see us, all the way from Cumbria and the M3. It is very good of you to come in. You have in front of you a list of interests declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee's website. You will have the opportunity to make corrections to it where necessary. I am told that there might be a vote at some point during the session. If there is, I am afraid we will have to pause the session, but I hope we will not. Everyone is saying that there will be no vote.

Before I ask the first question, Lord Cavendish wanted to say something.

**Lord Cavendish of Furness:** In addition to my declared interests, my family is closely involved in Cumbria with negotiations with Natural England in respect of coastal access. Accordingly, and on the advice of the clerk, I am not taking part in this session, despite the fact that I would very much like to engage with my distinguished near-neighbour.

Q108 **The Chairman:** My first question to both of you—do not feel that you both have to answer every question; you can divvy them up—is: to what extent does government policy take proper account of the needs of rural areas? Is there sufficient co-ordination of rural policy across Whitehall departments and vertically between central and local government?

**Daryl Phillips:** My initial reaction is that it is rather disjointed. Part of the problem that I perceive and I pick up, particularly as a district council is a planning authority, is that there is no consistency with an objective. Rural policy is a difficult issue that people push about. It is broken up into compartments and various people deal with the compartments. I do not think that any of us grasp the living, working countryside concept. A lot of interest groups have views about how they see the countryside, but I am not sure the Government as a whole see it in the same way as the growth agenda.

**Councillor Ian Stewart:** I will be more succinct and say that no, departments do not understand. There are bits of government that perhaps do understand, but as a collective it does not. The main reason for that may be that civil servants do not understand the complexities of rural communities and rural living.

**The Chairman:** So what do we do about it?

**Councillor Ian Stewart:** You can all go to Alston and you will have a wonderful time. It might take you a little while to get there and to get back, but that is what rural communities are about—the isolation. The more of you good, distinguished folk who spread your wings, and take civil servants with you, the better.

Q109 **The Chairman:** To what extent have local authorities and LEPs taken over the responsibilities for representing the countryside from the Countryside Agency and then the RDAs? Have the essentials of rural policy and rural

delivery been lost?

**Councillor Ian Stewart:** I will start with the LEPs. My experience of LEPs—I work quite closely in another area with the LEP network—is that rural aspects are not high on their agenda, let us put it that way. I listened to the previous session. Growth is the driver of all the Government have, and growth is seen as the domain of places where there is critical mass—in other words, the cities—whereas many of us, particularly through the county council network, would turn round and say, “Well, actually, the greatest potential for growth is in the rural areas”. LEPs do not get that, with all due respect. Who is there to pursue policies for rural areas? I am not quite sure. I certainly know that local government has no money. At county council level, we have no money.

**The Chairman:** Mr Phillips, do you want to answer that question from the point of view of a slightly less remote area?

**Daryl Phillips:** It depends on what you see the countryside as. Clearly, the country needs to grow. We understand that. But the countryside is not just about growth, it is a place where people live; it is socioeconomic as well. One has to understand who is living in the countryside and its purpose. The LEPs do a good job—I am a supporter of LEPs in principle—but they are so strategic in looking just at the economic side of things. There is now no link back to who lives in the countryside and their well-being.

I am not saying that the past was perfect. I am not sure it was. In 2008, Matthew Taylor wrote a very good report for the then Labour Government about the living and working countryside. He was trying to pick up the fact that it is not just about looking pretty, it is not just about a little bit of rural industry in the corner; it is about people living in it and being squeezed out.

My area is slightly different from Cumbria. I am in the south-east, and we have completely different dynamics in the countryside. We have very little local employment. The countryside is becoming the place where the rich people can live and the poor people live in the town. The retirement age is actually causing a bigger problem. In five or 10 years’ time, we will struggle with support services for the ageing population in the countryside who have retired to it. They are not—to put it politely—the original indigenous people. They are people who have come out of London or can afford to live there. Policy is actually very weak when it comes to dealing with those issues. It is not necessarily about growth. Employment is important, but I am not sure that the people living in the south-east part of the country are actually the people who work in the countryside; they travel.

**The Chairman:** In terms of bodies, can the local authorities not take over the co-ordinating role of the various strands of rural policy, or is that too much to ask?

**Daryl Phillips:** I think you have to go higher than local authorities. Local authorities are very parochial. They are small in shape. County councils have a good role in strategic co-ordination, although they are more administrative boundaries for history’s sake. Combined authorities may

well be the way forward, because they look across boundaries. LEPs are too high up. They look at growth in its own context but strategically at quite large areas. I do not think that one size fits all. That is why I would not say that we should go back to having a single body covering the whole country. Localism requires you to look more carefully at different requirements in different areas, but we need to look at more than just district council level. It has to be much more strategic than that, but it has to be co-ordinated and it has to look at the real issues for those areas.

**Baroness Byford:** May I pick you up on the issue of LEPs and money being available? I am in Leicestershire, so I am between the two of you. If my memory serves me correctly, the LEPS were making it common knowledge in our local newspaper fairly recently that money was available for rural communities to develop business or whatever. It was not a huge amount of money, but it is there. Occasionally, local communities do not make use of some of the funds that are there to be used.

Secondly, so many of the new small and medium-sized enterprises are in fact set up in rural areas. I accept what you said, but it is not just a question of older people retiring; there are quite a few people living in those areas who are entrepreneurs and want to get on with it, and some of this growth money or LEPs money would make a huge difference. I do not know. That may be a different area.

**Councillor Ian Stewart:** LEPs money - now that is an interesting concept; the money that has gone to LEPs is either from central government or alternately money that is available via the LEPs, which is European money. There is the concept that the LEPs have some money and are funnels through which other money is channelled.

Leicestershire is interesting. At the end of the day, it is all about money and the disparity between how much government funds urban areas and how much it funds rural areas.

Last year, Leicestershire County Council produced a very interesting report—we will be very happy to make sure you have it—which shows the level of funding for county areas compared to urban areas. If I may, I will read from it. County Councils Network research found that county residents, including districts, received £292 less per resident than London councils and £166 less than metropolitan councils. Because of that, council tax bills in rural areas, in county areas, are considerably higher.

I will expand on that with data on public health and public health allocations, which I hope you will find of interest. Every year, I think in December, the public health allocations come out, and the range of is between £31 and £178 per head. That seems a very large range. In fact, of the 13 local authorities that receive more than £100 per head of population, eight are in London, and top of the list at £187 is the City of London, that well-known place of deprivation and lack of public health. For Westminster it is £128. The national average is £59 a head.

I contrast that with places that receive below £50 per head, of which there are 46. Bottom of the pile is Surrey at £31 a head; East Riding of Yorkshire—a large place—at £32; Wiltshire at £36 a head; Devon at £37 a

head; North Yorkshire at £37 a head; Cumbria at £38 a head. You can see where I am going. If you look at the comparator, you find very clearly that rural England is getting a much less good deal from central government.

**The Chairman:** Who ought to be making the case for rural areas in what I call the sparse argument, the health arguments, and the rural-proofing arguments generally? If there should be a body making that case, how do we make it independent, how do we make it effective, where do we put it in government? Do you have ideas on that? You said that you feel that we need some voice for the countryside—

**Councillor Ian Stewart:** Absolutely.

**The Chairman:** —and Mr Phillips said that he did not think that a national body was particularly necessary. So there is a divergence of opinion.

**Councillor Ian Stewart:** Counties and districts often disagree, even though we serve the same people.

**Daryl Phillips:** I am not sure that we totally disagree, actually.

**The Chairman:** Do you want to discuss that, then?

**Councillor Ian Stewart:** I think it needs to sit in the Cabinet Office, because it needs to be pan-government. I have no idea what it would be or what it would look like, but something needs to be done, because what we have at the moment is not working for the vast majority of people in rural areas.

**Daryl Phillips:** That is probably right. If you are going to put it at the national level, it has to be high-profile. I certainly would not want to encourage it being put back into Defra, because it is not about agriculture. We need to move away from the countryside being just about agriculture, and in the public perception, too. So it needs a higher profile. I would not stick it in economic development, because we also need the social part that comes with it. If there is going to be an agency, it has to cut across all government departments. I stress that one size does not fit all. Cumbria's issues have some commonality with the south-east, but it has distinct issues, and there is the danger of a one-brush policy across the whole lot, which I would be keen to avoid.

**Baroness Whitaker:** I quite understand your arguments for siting this body in the Cabinet Office, but the Cabinet Office has no programmes or implementation capacity. Do you not see that as a weakness?

**Councillor Ian Stewart:** It is an influencer; it has the opportunity to influence at the centre of government. What we are trying to say is that rural England, rural communities and the people who live there, deserve to have their voice heard at the centre of government. If you are looking for the centre of government, the eye will often land on the Cabinet Office. That is a half-answer. I am really sorry about that.

Q110 **Lord Faulkner of Worcester:** This is a question for Councillor Stewart and is about the English coast path, which has been held up in written evidence to us by organisations as widespread as the Open Spaces Society

and a couple of county councils as a very good example of how Natural England has helped to improve access for the public good. Is that a view that you take in Cumbria?

**Councillor Ian Stewart:** A qualified yes. While Lord Cavendish is on the north side of Morecambe Bay looking down on Heysham power station, I am on the southern shores of Morecambe Bay looking up to the hills of Cumbria, so we both have an interest in the route around Morecambe Bay. What has disappointed me is the fact that my bit of Morecambe Bay, which is right at the head of the bay, is in an estuary. Natural England has a duty to have regard to the coastal areas but only has powers with regard to the estuary area, and it has decided that the coastal path will not come to the head of the estuary because there is what it describes as a ferry between Arnside and Grange. That ferry is in fact a railway that runs infrequently, so the decision is really strange, unless you can imagine a ferry being a train. What has concerned me most is its lack of engagement with local communities about where the coastal path between Silecroft and Silverdale will run.

The communities that I represent have not been engaged with this. I was proactive in seeking a meeting with an officer of Natural England, but it had no intention of having a conversation with communities because it did not have the capacity. It has been stripped of people, so there is no capacity to undertake the engagement that it would really want.

**Lord Faulkner of Worcester:** Okay, that is helpful. Another of our witnesses has said that it was great that funding was provided to set up the coastal path, but there is no evidence as yet of long-term funding to maintain it. Do you share that view?

**Councillor Ian Stewart:** Absolutely. Who pays for the maintenance is a big problem. It is not a highway, and certainly from the perspective of Cumbria County Council, I do not have the money to be able to undertake the maintenance. In fact, we are still having difficulties following the storm of December 2015, known as Storm Desmond. It was estimated that some £15 million of devastation was caused to footpaths and bridges on rights of way, of which £5 million was within the Lake District National Park geography and £10 million was outwith the national park. Strangely, the then Prime Minister flew in by helicopter to Grasmere and decided that £1 million would be made available. I am sorry, but that is not enough. Recently we got another £4 million, but again there is a disparity in that £3 million of that has gone to the national park and £1 million to the county council. We are still struggling to recreate the bridges and paths from two years ago.

**Lord Faulkner of Worcester:** Mr Phillips may have a view on my second supplementary question. Do you have a sense that Natural England has focused so much on coastal paths that that has been at the expense of other work that it should have been doing?

**Councillor Ian Stewart:** I will just say a quick yes to that.

**Lord Faulkner of Worcester:** The view from the outside, perhaps, Mr Phillips.



**Daryl Phillips:** I have seen no diminution of its input into other issues that we come across.

**Councillor Ian Stewart:** I think it is a capacity problem, and we are back to the lack of resource for Natural England to be able to do what it wants to do and what might be expected of it.

Q111 **The Earl of Caithness:** Mr Phillips, you have covered a lot of areas. Have you noticed a change in the way that Natural England has performed its role as a planning consultee over the last 10 years?

**Daryl Phillips:** I have a lot of time for Natural England. It does quite a good job in certain key areas. I would say, though, that the organisation is only as good as the people in it. It is a statutory consultee in a number of areas on development proposals where we have to consult with it. We are now finding some inconsistency of advice and that as an interest group it is vociferous about its point of view being reflected in planning decisions. The difficulty lies in getting Natural England representatives to turn up at planning appeals to support its position. It is easy to raise an objection and be very strong in that, and the district council will agree because obviously it is the Government's adviser. However, we need experts to turn up and support refusals when they go through.

Natural England is starting to rely more and more on standing advice, which to me undermines the whole purpose of having a statutory consultee. Standing advice means a template letter that comes back with a little input into the nature of the individual application, but the rest of it consists of, "You can get advice from ... ", and then you are told where you can go to get further advice. My question is this: why did we consult you in the first place? What is the value of the input when I have to go and find it myself? Time is spent trying to get advice out of the body, and then time is spent by planning officers and developers running around trying to work out what it meant. If the standing advice is not crystal clear—of course, it can never be crystal clear, because it has to be interpreted—and you have someone who is trying to interpret advice about a protected species, it is inevitable that they will not always get it right. That creates conflict coming through. The difficulty is engaging with someone who can follow it consistently through at the right level. Consultee responses are timely, because a standard template is being used. It is not the speed of the response but its value that I question.

**The Earl of Caithness:** You said at the start that Natural England is good in certain key areas. Which areas is it good at? Is it good on biodiversity and landscape issues, or AONBs?

**Daryl Phillips:** We in Herts, along with a number of authorities across the south-east, have the Thames basin heaths special protection area. Clearly that has been a significant block on development in its own right. There are lots of nuances in how to approach and mitigate it. I have found the body to be helpful in trying to find a way forward to allow development to take place as a strategy. The Thames basin heaths SPA has a strategic board through which it has an input.

On landscape and protected species, Natural England drops away with its standing advice. You do not get much of a contribution towards those issues unless, to put it politely, it is bleeding obvious. The rest of it is, "Here you go. Find it for yourself".

On biodiversity, Natural England takes a step back and says that it has not actually done a biodiversity check. My authority is lucky that we have put resources into that and we share a biodiversity service with our neighbouring authority. We are going to expand that service by looking at offsetting opportunities and so on. We are doing that not because of Natural England's input but because we think it is the right thing to do. That is where you need to have Natural England's support coming through, and the districts need to be encouraged to take it on.

Money can be saved by working with neighbouring authorities and sharing services because they are quite expensive. My neighbouring authority does not have much biodiversity to worry about because it is urban, although it does have a green infrastructure. Their sharing of the resources with us means that we cover them off. We are thinking about growing this.

**The Earl of Caithness:** Do you agree, Councillor Stewart?

**Councillor Ian Stewart:** The problem with biodiversity is again a problem of resource. Cumbria County Council has reduced its capacity considerably. Is it sufficiently embedded in people's psyches that they are aware of these things? Probably not yet, and so we could probably do with a bit more oomph to increase it.

Q112 **Viscount Chandos:** How have spending cuts affected Natural England's ability to work with partners such as local authorities?

**Councillor Ian Stewart:** It will be interesting to see what its staffing is today as compared with, shall we say, when the body was commenced. I do not have the data, but it might be something that the Committee wants to investigate.

**Daryl Phillips:** From my perspective, this goes back to the standing advice position. Natural England badged it as an improved service, but it is not. It is actually a tick-box exercise of checking spreadsheets. Obviously you will not see it outside the organisation, but as Councillor Stewart mentioned earlier, it is a capacity issue. It is about trying to get people to come and engage with you. We all have to look carefully at how we use our resources and Natural England has to look at who can participate at what sort of meetings. That is where the difficulty lies: getting people to meetings where five or six years ago there would have been more options. Nowadays you are limited to who it has available. We understand that.

**Viscount Chandos:** Are you seeing extra pressure on the planning departments of local authorities as a result?

**Daryl Phillips:** Yes, because we are getting our own independent consultative advice on applicants' proposals. In the past you would have relied on Natural England's input to lead the discussion. Now we are probably missing out that part and just going straight out to consultation.

We are picking up the bill in a different way, or rather the applicant is picking up the bill through the planning application fee.

**The Countess of Mar:** Has the pool of knowledge you tap into with Natural England collapsed somewhat? We have had quite a lot of evidence that it does not know as much as it used to, particularly about the local areas that it is working in.

**Daryl Phillips:** You are probably right. I have no direct knowledge of how they handle it, but I think you are right. I suspect that it is not just a capacity issue but a funding issue. As we know, specialist knowledge goes to the highest payer. We know that quite a few developers, quite rightly, are now picking up specialist advice and the companies are doing rather well because that is where the people are going to go. It leaves local authorities with the same problems. It is a bit like having planning officers; it is the same argument. Sometimes you go where you think you will get the best financial return in your career, which is a legitimate objective. I do not think that Natural England is in any more difficulty than the rest of us.

**Councillor Ian Stewart:** Yes, it is not unique in that.

Q113 **Baroness Byford:** Returning to biodiversity and the phrase “having regard to”, Mr Stewart, you sat in on the previous session so you will have heard the suggestion that “must” should be included in that to give it greater direction than it has currently. If you have regard to something, you may have looked at it but may have taken no action as a result of it, and “must” might actually lead to action at the end of it. I would be grateful for your comments.

**Councillor Ian Stewart:** It is a real challenge. Would “must” improve the outcomes? Probably. Would that create greater challenges for local authorities? Definitely. Would I want a “must” that would create greater challenges for local government? I think I will just park that one, if I may.

**Daryl Phillips:** My answer would be that we are just playing with words. As local authorities, developers and people who live and work in the countryside, we need to be clear about what exactly biodiversity is. There is a general misunderstanding across communities about what it means. Sometimes it is nature conservation, sometimes it is soil quality. There are all sorts of issues that go into it. There is a big issue with education so that people understand it. Some will use it as a tool to stop what they do not want, others could use it as a tool to promote what they do want, but you can ignore bits of it if you are not clear about what it is all about.

There is much more that we could do on understanding biodiversity and how it is brought out on the ground, and then having positive proposals for how to deal with it. It should not be used as a tool to stop appropriate development, as some will try to do. Again, it is easy for it to slip through the net and just be ignored. I do not think that changing the word to “must” achieves the real objectives. I agree that playing with the wording would give it more force, but we ought to be pushing for it to be understood far better.

**Baroness Byford:** But it would make it a legal requirement if it were in law.

**Councillor Ian Stewart:** But in the implementation people will find ways to diminish that.

**Baroness Byford:** At the moment it is not happening anyway.

**Councillor Ian Stewart:** No.

**Daryl Phillips:** Not in certain areas.

**Baroness Byford:** There is an interesting point there. One problem that we heard about in our earlier evidence is that there are lots of people doing research and collecting data, but some of it is perhaps not as good as other data. Do you have any views on where you go for the grounding on which you base your judgments? Clearly, data is available, but it varies in different places.

**Daryl Phillips:** Having a central core for data and its quality control would be of great value, the difficulty being that so much data can conflict. You are never really sure how robust the collection of that data and its interpretation were. As soon as we go down the statutory route with biodiversity, we ought to be very clear about the background to it. That is where a central resource, or an authoritative resource, would be very useful, rather than people picking out the bits they want from the data or one not being sure that they did it in the proper way. You are right that data can vary from area to area. I would like to see a central resource for that, which gives a stamp of approval, so that is your starting point, rather than ending up with different interpretations. Both might be right; it just depends on how you take it.

**Baroness Byford:** You would have that as an independent body.

**Daryl Phillips:** Yes. I think that is key.

**Councillor Ian Stewart:** How would you pay for that? Where would the money come from?

**Baroness Byford:** I can rephrase the question if you wish me to.

**Daryl Phillips:** Because we have to use the data, we are already spending time collecting and analysing it. There is an opportunity to redirect some of that time, and it could be more cost-effective if it were put into a smaller arrangement where you could access it as a single point of contact. I do not think it will necessarily generate any additional cost; it might reduce your costs in trying to explore the data.

**Baroness Byford:** Yes, and sharing the data across areas, as you have mentioned, might also save costs.

Q114 **Baroness Whitaker:** I think Mr Phillips has partly answered my question by saying that the biodiversity duty is not terribly widely understood. I do not know whether Councillor Stewart shares his view. You do? How do both of you think that awareness and implementation of the duty could be

improved? Some recommendations would be helpful.

**Councillor Ian Stewart:** After you. I always defer to a joint chief executive.

**Daryl Phillips:** We deliberately undertake a programme of education by going into schools and starting at the youngest age possible. We try subtly to educate people about what they are looking at. Nature as a whole needs that. The biodiversity officer for the council does it for both districts and is busy at the weekends, deliberately trying at the bottom end to encourage people to understand what is going on. We also run programmes for councillors and developers to help them understand about diversity. Quite a few of the agents we deal with are small. They do not have the time to run their own training courses, which can be prohibitively expensive, so we also run training programmes for them. They can then share what we see. I have to stress that. We are trying to help them to start thinking about diversity at an earlier stage.

District councils, with county councils, can come up with shared experiences to help to educate people in what we are looking at and help understanding to grow. You do not need a top-down approach; it is more of a bottom-up one.

**Councillor Ian Stewart:** At the level below principal authorities are the parish councils. The more that is understood at the parish council level, the better it is. That is something for NERC to take on board.

**Baroness Whitaker:** Do you think the gaps are found among the elected officers or more with the permanent officials?

**Councillor Ian Stewart:** If you increase understanding among the elected members, it helps to encourage the officers to do what is needed.

**Daryl Phillips:** I agree. The problem is that if you are a planning officer, you are focused on planning. However, you have so many inputs coming in where you have to rely on other advice, and you have to try to assimilate that to make a recommendation. You really do need quite a push with planning departments to understand all these issues. The training is also for members, because they have to take the ultimate decisions, although I also support the idea of training at the parish council level because inputs come into the planning process from there. There has to be proper training all the way through so that people understand the issues. It is not about picking out one group and saying, "Off you go". It should be more complete. You are talking about multiple inputs into a process, and all those inputs ought to understand it.

Q115 **The Countess of Mar:** We have had a large number of submissions about the problems with Section 67(2) of the NERC Act, which concerns green lanes and motorised vehicles. Why does the approach to using traffic regulation orders to limit the use of green lanes by motor vehicles vary between different highway authorities and national park authorities? Are any reforms required to make the process of maintaining a TRO more effective?

**Councillor Ian Stewart:** I think it is probably to do with the lack of clarity, which gives the opportunity for local interpretation. If I may, I will dump this one on Mr Phillips for a minute while I get the response that was given to me by an officer of the county council, which contrasted what happens in the Lake District National Park with what happens in the Yorkshire Dales National Park, as well as at Cumbria council level. If you imagine the map, you will see that these three bodies are all very proximate.

**Daryl Phillips:** On traffic orders, and slightly passing the buck back again, of course the highway authority is the county council. Only if the county council has an agency with the district council do traffic orders get passed down, and even then there are certain restrictions. The difficulty is that the core legal situation under the Act is basic, and it allows for interpretation. People want to interpret it based on their local circumstances, so there is no consistency across the counties, which is as you would expect. It is not meant to be prescriptive, and there is an allowance for local interpretation. It really comes down to what you are trying to achieve and how. Some will look at it from a cost point of view, quite a few will look at it from an enforcement point of view, while others will consider the safety point of view. They are not all the same. It comes down to the attitude of mind of those who have the power: namely, what is their priority? I know that Hampshire is very much a safety-first county before it starts on traffic orders as a principle. Congestion is not its problem.

Rights of way are a nightmare to enforce and administer. Sometimes people shy away from difficult tasks, because with them you create a rod for your own back and there is no easy answer. Every county will be different in the emphasis that they put on the section. It will depend on what worries them.

**The Countess of Mar:** Many of the complainants have been horse riders and pedestrians. We have been shown horrendous pictures of lanes that have been ground up by 4x4s.

**Councillor Ian Stewart:** Absolutely. In the Lake District part of Cumbria, there is a voluntary arrangement whereby no more than four 4x4s will go in a convoy. We have voluntary arrangements in the Lake District. In the county council area, there is a code, which again is a voluntary arrangement. It is a different code. The recently expanded Yorkshire Dales National Park, which eats quite considerably into my county, has yet another code. It is all a little bit confusing, and if there is one thing that we absolutely need it is clarity and consistency, but that we do not have.

**The Chairman:** Should that come from central government?

**Councillor Ian Stewart:** Some sort of standard might be appropriate. You have talked about costs and enforcement. I calculate that the enforcement of a traffic regulation order is around £2,000, and one of the big costs in that is the need to advertise it. Newspaper advertising is expensive.

**The Earl of Caithness:** I want to go back to the subject touched on by Lady Byford and Lady Whitaker. As the custodians of local government, would you find it easier to do the job of protecting the environment and biodiversity if you opted to move to a natural capital approach rather than

the current approach?

**Councillor Ian Stewart:** I am very happy to come back with a written response on that.

Q116 **The Chairman:** I have one final all-encompassing question. What one recommendation would you like to see made in our final report?

**Councillor Ian Stewart:** I am fully aware of the implementation review by Lord Cameron that was published in January 2015, and some of its recommendations look about right. But, overall, what we need is a more joined-up approach to rural policy. My absolute plea is to have equal funding for county residents. At the moment, it is not fair.

**Daryl Phillips:** I think that rural policy is disparate and has lost its focus. There are too many interest groups looking at certain aspects but not in a joined-up way. We need to bring them back into a more structured and focused approach, because otherwise the rural areas will slip through a gap.

**The Chairman:** Thank you both very much.

## **CPRE – written evidence (NER0083)**

### **Submission of written evidence by the Campaign to Protect Rural England to the Select Committee inquiry**

1. The Campaign to Protect Rural England (CPRE) welcomes the opportunity to submit evidence. We campaign for a sustainable future for the English countryside, a vital but undervalued environmental, economic and social asset to the nation. CPRE aims to promote and enhance the character of the countryside; promote a more sustainable approach to land use; and defend the countryside from damaging development.
2. This submission is structured around the question: *Is there enough affordable housing in rural areas?* set out on the Committee website and summarises research published by CPRE in September 2017 as well as our other recent and relevant research and campaigning work.
3. Our research found that rural areas are facing a growing crisis in affordable housing, and that they are set for a serious shortfall in desperately needed homes over the next five years.
4. Examining 62 rural local planning authorities that have an up-to-date local plan, the research found that nearly half are failing to meet their affordable housing targets. If this trend continues and national policy does not change, more than 33,000 desperately needed affordable homes in rural areas will not be built over the next five years [1].
5. CPRE has also found that local planning authorities are on average planning for 40% less affordable housing than they actually need: just one fifth of examined local planning authorities have affordable housing targets that meet or exceed their identified affordable housing need. If you compare identified need with delivery, more than 86% of these rural local planning authorities are not meeting their need [2].
6. CPRE believes that local planning authorities are setting lower targets because they realise that the market and housing policy are simply not designed to deliver the required number of affordable homes. Local authorities do not have the funding to build homes themselves, and house builders are failing to provide the number needed for local people. Developers are no longer expected to provide affordable housing on sites of under 10 units, parcels of land particularly common in rural areas.
7. The subsequent gap between the reduced target and delivery can be attributed to a number of factors. The low build rates of affordable housing providers in rural areas has been cited as a problem [3]. Others have cited



the ability or desire of local planning authorities to force developers to build out their permissions [4].

8. There is already a shortage of affordable housing in rural areas: just one in 10 existing homes in rural areas fits the Government's definition of affordable, compared to one in five in urban areas. In July 2017 the Institute for Public Policy Research published research commissioned by Hastoe Housing Association that showed rural homelessness has risen by a third in five years [5].
9. CPRE analysis of rural housebuilding rates shows that there has been a steady decline of affordable housing provision over the last five years. Just 16.8% of houses built in rural areas in 2016 were classified as affordable. This is less than half the proportion in 2012 [6].
10. There are also further, imminent concerns with the type of affordable housing being supplied. CPRE's new research illustrates that the number of new social homes to rent in rural areas has declined more than 80% in five years [7]. These rents are set in relation to local earnings and local property values, and are considered genuinely affordable.
11. The consultancy Rural Housing Solutions has highlighted that the 'affordable rent' homes that have largely replaced social homes to rent may often not be genuinely affordable to many of those most in need [8]. Affordable rents can be up to 80% of local private rents, but in rural areas wages are already lower than average. Many households have also suffered from the cuts at the rent level at which housing benefit is paid. At the time that Government pushed up rents for those unable to buy, it also cut the funding lower income residents depend on to rent.
12. CPRE wants to see the Government doing more to meet housing needs in rural communities that cannot be satisfied by building for the open market. Continuing to focus on meeting market demand will see little change to affordable housing delivery, and to the communities in desperate need of more genuinely affordable housing.
13. CPRE have in the past argued that rural landowners could play more of a role in meeting affordable housing need [9] and the CLA have also set out how rural landowners could be better incentivised to provide sites for affordable housing in their areas [10]. There are various incentives, including potential tax changes, that would encourage more rural landowners to provide sites for affordable rent, which would then provide a rental income stream to those landowners concerned.
14. Most often, rural landowners provide sites for affordable housing through the rural exception site policy. It is important that this policy is properly protected, as the Government's housing white paper published earlier this

year – *Fixing our broken housing market* – stated it would do, though without mention of any specific measures. There is evidence to suggest that the extension of the Voluntary Right to Buy, to housing association tenants, is causing landowners to hold back land that they otherwise might provide for rural affordable housing on the basis that housing brought forward may not remain affordable in the longer term.

15.CPRE is calling for the Government to require that viability studies are made public; to enable local planning authorities to force developers to stick to affordable housing quotas as a condition of planning permission; to allow local planning authorities to require affordable homes on developments of all sizes, including under 10 units; and to help local authorities build their own homes again.

16.CPRE endorsed the Rural Housing 5-star Plan, launched earlier this year by the National Housing Federation [11]. This called for at least 10% of HCA investment to deliver new homes in rural areas. Funding for the provision of rural housing has been far short of what is necessary in recent years.

CPRE  
November 2017

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## Notes

[1] CPRE has looked in detail at the affordable housing needs, targets and delivery in rural authorities. The Office for National Statistics defines 145 local authorities as predominantly or significantly rural; 62 of these have adopted local plan since 2012 and are included in this analysis.

Local authorities plan for new housing through a two-stage process. The first stage is an objective assessment of need (OAN), which includes need for affordable housing as a subset. The second stage is to convert the OAN figure into a housing requirement or target, described in a policy within a final local plan.

The table below provides the overall estimates for affordable housing need, targets and delivery across all rural authorities.

	<b>Number of homes per year</b>	<b>Original data source</b>
<b>Affordable housing need</b>	46,100	Based on figures from Strategic Housing Market Assessments quoted within the local plan document. 37 local authorities have quoted such figures.
<b>Affordable housing target</b>	25,500	Extrapolated from affordable housing policies within the local plan
<b>Affordable housing delivery (completions)</b>	18,700	Based on an average annual delivery over past three years (DCLG)

Local authorities have therefore on average missed their target by 46 homes per year. If this trend were to continue for the next five years, across all rural local authorities, 33,350 houses that should be built will not be delivered.

[2] CPRE has analysed the percentage of affordable housing need, targets and delivery as a proportion of all planned and completed new housing following the analysis outlined above in footnote 1.

	<b>Proportions</b>	<b>Notes</b>
<b>Affordable housing need</b>	68%	The assessed need for affordable housing as a proportion of the final local plan housing requirement for all types of housing
<b>Affordable housing target</b>	29%	Target as a proportion of the final local plan housing requirement for all types of housing
<b>Affordable housing delivery (completions)</b>	26%	Affordable homes as a proportion of all new home completions - annual average over the last three years (2013/14 - 2015/16).

In 2015-16, just 11 of the 62 local authorities met or exceeded the affordable housing target in their local plan. This means that 82% of local authorities did not.

Over 86% of the local authorities are not meeting affordable housing need (31/36) over the last three years. Fifty percent met less than half their affordable housing need (18/36) over the last three years. [Only 37 local authorities quoted affordable housing need figures; a further local authority has been excluded as the affordable housing target encompasses a range of figures over time].

[3] 'Landowners want more positive planning to create affordable homes in UK rural areas', [Property Wire](#), 10 January 2017.

[4] ‘‘Unpopular but necessary’ North Horsham scheme approved’, [West Sussex County Times](#), 24 May 2017.

[5] ‘Rural homelessness ‘hidden crisis’ needs attention, says think tank’, [The Guardian](#), 10 July 2017.

[6] The proportion of affordable homes in total completions, per year, in the 145 local authorities considered predominantly rural by the ONS, CPRE analysis, September 2017:

	<b>2011-2012</b>	<b>2012-2013</b>	<b>2013-2014</b>	<b>2014-2015</b>	<b>2015-2016</b>
<b>Proportion of affordable housing</b>	36.9	32.7	29.0	32.1	16.8

[7] CPRE analysis of the number of social homes to rent that were built in rural areas, 2011 - 2016, as defined by the ONS, September 2017:

	<b>2011-2012</b>	<b>2012-2013</b>	<b>2013-2014</b>	<b>2014-2015</b>	<b>2015-2016</b>
<b>Number of social homes to rent built</b>	12,730	5,760	3,630	2,920	2,230

[8] Rural housing consultancy Rural Housing Solutions found that in settlements of less than 3,000 people between 2015 and 2016, 77% of new affordable homes were affordable rent.

[9] CPRE. (2016) *On Solid Ground*. Available at: <http://www.cpre.org.uk/resources/housing-and-planning/housing/item/4425-on-solid-ground>

[10] CLA. (2017) Static supply of rural affordable homes shows need for fresh idea. Available at: <https://www.cla.org.uk/latest/news/all-news/static-supply-rural-affordable-homes-shows-need-fresh-ideas>

[11] NHF. (2017) Rural housing 5-star plan. Available at: <http://www.housing.org.uk/topics/investing-in-communities/rural-housing/rural-housing-5-star-plan/>

15 November 2017

## **Cranborne Chase AONB – written evidence (NER0071)**

### **Select Committee on the Natural Environment and Rural Communities Act 2006**

1. The Cranborne Chase and West Wiltshire Downs AONB has been established under the 1949 National Parks and Access to the Countryside Act to conserve and enhance the outstanding natural beauty of this area which straddles three County, one Unitary and five District councils. It is clear from the Act, subsequent government sponsored reports, and the Countryside and Rights of Way Act 2000 that natural beauty includes wildlife, scientific, and cultural heritage. It is also recognised that in relation to their landscape characteristics and quality, National Parks and Areas of Outstanding Natural Beauty are equally important aspects of the nation's heritage assets and environmental capital. This [AONB's Management Plan](#) is a statutory document that is approved by the Secretary of State and is adopted by the constituent councils. It sets out the Local Authorities' Objectives and Policies for this nationally important area. The national Planning Practice Guidance [Natural Environment paragraph 004] confirms that the AONB and its Management Plan are material considerations in planning.
2. The National Planning Policy Framework states (paragraph 109) that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes which include AONBs. Furthermore it should be recognised that the 'presumption in favour of sustainable development' does not automatically apply within AONBs, as confirmed by paragraph 14 footnote 9, due to other policies relating to AONBs elsewhere within the Framework. It also states (paragraph 115) that great weight should be given to conserving landscape and scenic beauty in AONBs, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in these areas.
3. Section 85 of the Countryside and Rights of Way Act 2000 requires that members of public office, councillors and the like have 'a duty of regard' to the purposes of AONB designation. The Government is thereby clearly directed to have regard for the purposes of AONB designation when carrying out its functions that affect land in or near an AONB. Government, and Government Departments, therefore have to be able to demonstrate that they have considered the purposes of AONBs in their decision making on any proposed legislative changes.
4. Cranborne Chase is the 6<sup>th</sup> largest of the nation's Areas of Outstanding Natural Beauty and some 95% of the land in this AONB is under agricultural or woodland management. The combination of farming and forestry activities has contributed to the landscape character of this valued part of the nation. It is, nevertheless, vital that the needs of a competitive, resilient, and viable farming industry is balanced against the

need for sensitive environmental management in landscapes on national importance.

5. Clearly the conservation and enhancement of the special qualities and characteristics of the landscape are the priority in the nation's nationally protected landscapes. New development within AONBs, or affecting their setting, whether related to agriculture or otherwise, should not compromise this primary purpose.
6. Annex 1, attached, sets out the members of our Partnership.
7. This AONB is making two contributions to the Select Committee. Firstly we are commenting on biodiversity issues and that is related to your questions. Our second response relates to our experience of landscape and planning matters. That is set out as a statement of our experiences and a possible way of enhancing the current situation.
8. The AONB would, of course, be happy to elaborate on any of the points raised.

## **Biodiversity**

Responses to the questions in the consultation.

**1.** There is little awareness that NE had taken on the role of the CRC. This AONB does not feel the force of any oversight or influence of an 'ally' in rural policy development and implementation.

**2.** Rural-proofing is not evident. An example is the setting up of the Local Enterprise Partnerships. Even in deeply rural areas such as this one, the LEPs were allowed to go ahead with scant regard to the needs of rural communities and businesses. They were allowed to develop with minimal to the natural and social capital that is only found in the countryside. We struggled to get our voice heard in any of the discussions and consultations and there was no policy driver or lever that we could use to ensure that the rural voice was listened to.

**3.** For many years we have asked Departments to work across their boundaries so that government policies are coherently implemented in rural areas. We have challenged executive NDPBs to work more collaboratively together within the area. Even though the goal of 'joined up government' maybe a priority for Ministers, it has not appeared as a priority for Departmental civil servants or mid-level managers in NDPBs. Examples of this abound: Highways England takes little notice of Natural England and Environment Agency priorities in managing the trunk road estate; MoD appears to do the minimum to avoid

action under environmental regulation; and DCLG does not respond to DEFRA priorities that need to be addressed in spatial planning.

A local example in the AONB is Martin Down National Nature Reserve, managed by Natural England, and Vernditch Chase, owned and managed by Forestry Commission. The two properties are contiguous, both owned / managed by DEFRA NDPBs, both have long term management plans. Yet any suggestion that the management plans should respond to one another, or even mention the property next door, has been met with refusal. It would make more sense to manage both properties together as one, but that is probably about ten steps too far.

A lack of representation and co-ordination has been identified (in the collaborative work carried out by National Parks and AONBs in the Big Chalk programme) as a major problem that is causing damage to the water environment in particular and the natural capital of chalk landscapes generally. Current structures of government do not exist to do this, unless the role of the protected landscapes could be greatly increased to enable them to carry out this vital function.

The private sector and some elements of government are seeing the benefits of adopting a triple bottom-line approach, but this has not rolled out to DEFRA and its NDPBs, nor DCLG and the local authorities. If all local authorities were required to report on natural and social capital stocks and flows, as well as financial ones, then there would be fewer decisions with unintended and harmful impacts on the environment.

**4.** We find that NE staff are now so thin on the ground that they are nearly irrelevant to anything but facilitating the cumbersome processes of agri-environment schemes and other farm payments. We no longer have the regular contact with NE officers that could prevent poor outcomes developing or create new opportunities for conservation and enhancement. There is only capacity for a limited amount of responsive work from NE.

We do not find that NE exhibits a can-do attitude. Too often, we find that NE is creating inertia in moving reforms forward. River restoration and habitat creation and enhancement projects are held up or blocked by an overly zealous attitude to species protection. While we have no desire to see species protection weakened, we do want to move away from an attitude of “no newt / water vole shall die” to one where the habitat connectivity that supports a meta-population is considered before an individual animal.

It often seems as if NE is operating on a parallel track removed from the one the rest of us are on.

**5.** Brexit has not yet occurred. In the post-Brexit world, a total reform of DEFRA NDPBs should be considered. Adaptation of NDPBs is impossible if they are trying to ensure their survival as their primary concern.

**6.** NE should start with their own estate. The visitor numbers, quality of access and public awareness of the National Nature Reserves leaves a lot to be desired. Forestry Commission is slightly better but only does really well in certain honeypot locations. The reasons why these small sites should be owned by the state should be examined. Selling or leasing these sites might be unpopular with many people, but could be done if the site would be better used and protected.

**7.** The wording 'have regard' is so deliberately vague that it often creates the gap through which coach and horses are driven. For instance, in a River Basin Management Plan, Forest Design Plan or SSSI citation, it is enough to mention the fact of an AONB designation existing. The NDPBs are able to show that they 'have regard' without ever having to take any action for landscape or responsibility to deliver the AONB Management Plan to which they are signatories. This AONB has sought to improve this situation in relation to Local Plan policies by the inclusion of policy conditions along the lines of 'applicants will need to demonstrate how they have taken the objectives and policies of the AONB Management Plan into account'. This AONB recommends that more proactive requirement could be applied instead of the vague 'have regard'.

**10.** Reform of the NDPB structure.

### **Landscape and Planning Matters**

The experience and perceptions of Cranborne Chase Area of Outstanding Natural Beauty are as follow.

Establishing Natural England as the countryside body, combining wildlife, landscape, and the health of the countryside was a great in concept, but it has not turned out to be in practice!

Why is that?



- a) Almost immediately there was a significant staff downsizing, which has continued through a number of phases. This led quickly to a lack of local staff and the loss of much of the landscape expertise – so important for AONBs – inherited from the Countryside Agency.
- b) The centralising of NE consultation processes into a central hub with standard paragraphs issued by staff remote from sites and using desk based data only lacks the confidence that comes with the local, or specialist, staff in touch with the site or special interest.
- c) The retention of wildlife staff appears to be at the expense of landscape staff whose wider and deeper understanding of the functions and sensitivities of the countryside is particularly relevant to AONBs.
- d) The focus on protected species casts NE [and its staff] in the role of regulator, reliant on laws and statutes, rather than the source of expert advice and judgement. This creates a 'protect the special' mentality, which is contrary to the intellectual flow that conservation is about wise management and enhancement of all habitats and species at all levels.
- e) The lack of accredited landscape expertise, both centrally and locally, means NE are limited – in all senses – in their engagement with landscape matters.
- f) Increasingly NE have pulled away from engagement with local and regional countryside proposals. This focus on national scale projects only – except when protected species are involved – reinforces perceptions of NE as a wildlife, rather than countryside, organisation
- g) NE's planning hub is remote and impersonal; apparently responding to consultations entirely from desk based information. Again this fails to convince that NE has its 'feet on the ground' and is in touch with the countryside it is writing about
- h) NE 'pulls the rug' from under AONBs by offering 'no objections' to development proposals, even when then referring the reader to consult the relevant AONB. NE is perceived by developers, planning authorities, and Planning Inspectorate as the 'higher authority' and hence AONB comments are undervalued. This is especially unfortunate when AONBs [and their constituent LAs] employ experienced and well qualified landscape architects / landscape managers.
- i) Even when 'protocols' are established for NE to refer landscape matters in AONBs to the landscape specialists in those AONBs they are not consistently followed. Only today this AONB team identified a NE planning application response in this AONB for an agricultural building that only

mentioned wildlife, with no reference to the AONB location or matters of landscape character, and headed 'No objection'. This indicates that internal management processes are not as robust as they could be.

AONBs also perceive the lone home worker NE contact as lacking team interaction and support, and therefore having to rely increasingly on standard statements to respond to consultations.

There are two major activities where NE and AONBs interact in the regulatory sphere, as distinct from habitat or species management matters. These are contributing to the formulation of planning policies and responding to development management consultations. Our experience of the former relates to times when NE had more staff, but it was still a rarity to have professionally trained landscape staff contributing from NE on landscape matters. The reliance on a personal relationship between a NE regional officer and the AONB contributed to overcoming the fundamental shortages in the NE system. Those shortages are magnified in the development management situations where NE rarely comment on landscape issues even though responses are made on protected species [whether or not they exist!].

This AONB can see a potential solution!

- Separate the protected species aspects of NE responsibilities / work, possibly by outsourcing as the matters are fairly prescriptive. Draw together the countryside, reserves management, landscape, and planning aspects of NE work into the top level to achieve the NE's strap line that it puts on its web page.

Yours faithfully

Linda Nunn, Director

For and on behalf of the CCWWD AONB Partnership

Encs: Annex 1 List of Cranborne Chase AONB Partnership Organisations

## **Annex 1**

### **The Cranborne Chase**

#### **Area of Outstanding Natural Beauty Partnership is made up of the following Partner Organisations**

#### **Unitary, County, and District Council Membership** (1 Member and 1 Officer Representative each)

- Wiltshire Council
- Dorset County Council
- Hampshire County Council
- Somerset County Council
- East Dorset District Council
- North Dorset District Council
- New Forest District Council
- Mendip District Council
- South Somerset District Council

#### **Other Organisations**

- Natural England (2 Representatives)
- English Heritage (1 Representative)
- Campaign to Protect Rural England (1 Representative)
- Forestry Commission (1 Representative)

Cranborne Chase AONB – written evidence (NER0071)

- The Country Land and Business Association (1 representative)
- National Farmers Union (2 representative)
- Community Representatives from the Wiltshire and Dorset Associations of Town & Parish Councils (ATPCs Representatives) (2)

*11 September 2017*

## **Cycling UK – written evidence (NER0060)**

### **Introduction:**

1. Cycling UK, formally known as CTC, the national cycling charity, has 65,000 members, it is our stated aim to be the natural home for both road and off-road cyclists.
2. In formation of our response, we have elected to answer only questions which we regard as being directly relevant to Cycling UK's charitable objectives, namely:
  - To promote community participation in healthy recreation by promoting the amateur sport of cycling, cycle touring and associated amateur sports;
  - To preserve and protect the health and safety of the public by encouraging and facilitating cycling and the safety of cyclists;
  - To advance education by whatever means the trustees think fit, including the provision of cycling, training and educational activities related to cycling;
  - To promote the conservation and protection of the environment.
3. Cycling is currently the second most popular countryside activity, after walking. The benefits of promoting an active lifestyle are well proven and reach beyond the individual to benefits that can be felt by society as a whole. In 2016, Cycling UK carried out an extensive survey into the views and habits of off-road cyclists in England and Wales, in which the vast majority of respondents said that off-road cycling is "very important" (58%) or "fairly important" (32%) for their physical health, with an even higher number (66%) saying it is very important for their mental health and well-being. 61% said off-road cycling is their primary form of exercise.
4. A significant barrier to more people taking up cycling is fear of traffic. Surveys show us that this is a particular deterrent for women and children. A well connected rights of way network offers the potential for thousands of miles of safe, traffic free routes between rural communities. 67% of rights of way rides begin from the door.
5. At the moment, cyclists have access to only 22% of the Rights of Way network in England. Much of this network is fractured and inconsistent, with rights based on historic user evidence rather than current or future suitability for use by cyclists. In our survey, 74% of respondents felt that the existing public rights of way network was not suitable for modern cycle usage, while 85% said that they "often" or "sometimes" found it difficult to put together a legal route.
6. CTC lobbied in the development of NERC to protect the principle of long periods of recorded cycle use leading to the development of rights of way by prescription. This led to the adoption of Section 68, NERC which allows cycle user evidence to claim Restricted Byway rights. In practice, the implementation of this has been problematic, witnessing significant resistance to the creation of new routes. Allied to this is the longstanding issue of unrecorded rights of way, a topic that has seen much discussion with the looming 'cut off' deadline of 2026.

### **Recommendations:**

7. From our work we have identified three strategic recommendations for the committee to consider:

- **Natural England ought to be given a clear strategic role in the creation and setting of countryside access policies for all government departments and the creation of policy guidance for other non-governmental and quasi non-government bodies.**

**Allied to this, we believe it is important that Natural England is given responsibility for a full review of the efficacy of countryside access and rights of way legislation, in order to evaluate whether the existing legislation:**

**Remains fit for purpose, maximising the opportunities for countryside access balanced against nature conservation and land management interests.**

**Offers best value, specifically considering the potential savings in administration costs that would be offered by consolidated and simplified legislation such as that witnessed in devolved administrations.**

- **Legislation is introduced, based on the duty provided under Section 40 NERC 2006 (Duty to conserve biodiversity) creating a new 'sister' duty to improve and enhance opportunities for non-motorised recreational countryside access. (We suggest that this should be subject to an equivalent of the Sandford principle)**
- **A post-Brexit agricultural funding model is developed that ties in both;**
  - 10. non-motorised recreational access provision, and**
  - 11. environmental stewardship and biodiversity**

**Particularly in peri-urban areas, In order to ensure that wider public benefit is delivered in return for public money.**

8. We also make a number of other specific recommendations in the responses to the consultation questions below:

### **Question Responses:**

**Question 1. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

9. It will hardly come as a surprise to hear a call for more joined up government. It may be more interesting for you to see the ways that lack of joined up government manifests itself in practice.

10. The provision of cycle friendly facilities often falls under three different areas of government funding:

- Rural Tourism
- Countryside Access/Environment
- Transport

11. The corollary to this is, of course, that spending on one of these can impact on the others. All too often a singular approach is taken in funding decisions, resulting in best value not being achieved. For example, we have witnessed tens of thousands of pounds spent creating a cycle route alongside a main road, when a short distance away a parallel right of way could have been upgraded or improved (at a fraction of the cost) and provided a far nicer user experience. We have even witnessed the same where a nearby disused railway was overlooked. The importance of a 'safe cycle route' was seen from a transport point of view, but the additional value to be gained for health, wellbeing and countryside access from adopting this route into their plan as a multi-user 'green corridor' rather than creating a roadside cycle path simply didn't figure in the mindset of those planning the work.
12. Of particular interest to Cycling UK is the importance of 'first mile' multi-user routes that seek to connect communities with the wider countryside and rights of way network. The "Highway Authority" roles of local government for rights of way often have little or no strategic connection or collaboration with the "Highways Department" that thinks about roads and transport including utility cycling provision. We have witnessed bridleways and other access provision that can only be accessed from the nearest town by a stretch of precarious, fast road, this cannot be acceptable.
13. We feel that there is a consistent lack of joined up thinking resulting in poor connectivity within the rights of way network and that this acts as a deterrent to people accessing the countryside safely. More needs to be done if we are to effectively unlock the natural capital value in the rights of way network.
14. Opening routes to cyclists and horse riders has wider benefit in the fact that surfaces and furniture (gates etc.) are more accessible for all users, particularly those with disabilities.
15. Quality rights of way, rural access provision and the opening up of more of this network to cycles and horses offers to benefit multiple areas of government work. In Wales, there is a suggestion undergoing consultation at this very moment considering combining 'active travel plans' and 'rights of way improvement plans' into an integrated access plan. The Welsh Government state that:

*Under existing provisions authorities may choose to extend the scope of their plans to include access land and other access provision that is important in their area. We believe there is scope for developing more integrated plans that require a more robust overview of access opportunities across local authorities, for example, the management of parks and gardens and green corridors for wildlife and active travel.*
16. We think that such an approach is worthy of consideration in England. We also think that authorities should have due regard to these issues in the exercise of their highway duties. These issues have played a key part in the formation of our strategic recommendations above.

**Question 4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions**

**Question 5. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

17. We believe that Natural England has, in the main, performed its duties regarding conservation admirably, particularly regarding the inherent trade offs between conservation and other land management priorities. However, in regard to their duty to promote access to the countryside and open spaces and their role in encouraging open-air recreation, we can only comment that there has been a preoccupation with opportunities for access on foot, and that they need to begin to think about opportunities for, and promotion of, a much wider range of countryside activities in order to fulfil this remit properly.
18. Simply put, Natural England has not taken a strong enough lead in opening the countryside for alternative forms of non-motorised access such as cycling and horse riding. We make recommendations below about specific areas where improvements need to be made, and the steps that should be taken in order to achieve this.

**The roles of Government and other partners in recreational access provision:**

19. We have witnessed a clear lack of joined up Government in access policy. Best practice developed by one Government body does not filter through to others. For example, the Forestry commission have a longstanding and widely recognised leadership in the provision of mountain bike access on their land, they have changed the entire scene nationally by taking a strong lead on this. The FC have established clear, written, access policies and management guidelines regards dealing with mountain bike and cycle access. However, other public sector landowners remain unwilling to follow in their path. As an organisation we have tried our best to help disseminate best practice, however government departments seem to be beholden to their own internal politics and priorities.
20. We see no reason why the direction of countryside access policy cannot be aligned between different Government bodies, sometimes even within the same body, in order to promote countryside access and recreation. To detail some examples of this:
- We have areas of Heathland in Southern England with multiple public sector/quasi-public sector landowners, all of whose land is part of the **same** SSSI, all offering open access rights on foot but with completely different policies on higher rights access.



- Ministry of Defence JSP362 States that “The MOD is committed to taking a positive role in Britain’s wider socio-economic environment, and in the community. Where possible, MOD will seek to make our land available for public enjoyment, particularly our rural estate”. However, in reality we witness large areas that offer open access on foot when not in use for military training, but with a blanket restriction on access on cycle or horseback. Access remains denied, even to the hundreds of well surfaced vehicular tracks covering the area.
  - Forestry Commission access policy is inconsistent between regions, some areas entirely banning off road cycling despite permitting open access on foot and on horseback. We would, of course, understand restrictions on a site specific basis where necessary, however regional decisions sometimes appear to contradict their own published best practice. The New Forest, for example, permits cycle access to only a small percentage of their forest road network.
  - Local authorities and other bodies own and manage large areas of land, again with open access on foot, but no access on cycle or horseback, other areas have rights of access on foot & horseback but not by cycle. Examples include large areas of common land on the urban fringe that is held for “air and exercise” alongside huge tracts of the National Parks.
21. Extensive research from Scotland (Annex 2) suggests that there is no good reason to continue a distinction between cycle access and other use. Users generally get on well together and conflict is minimal. As stated on page 12 of the James Hutton Institute report:
- Management measures based on temporal zoning will be hard to ‘sell’ given that the practice of responsible access may change on a much more rapid timescale. Likewise, fixed spatial zones or designated areas (e.g., Special Protection Area or a Special Area of Conservation) are also unlikely to provide credible justification for blanket bans. Any efforts to restrict or curtail mountain biking in upland areas (whether seasonally or spatially) should aim to be even-handed in their consideration of the impacts of other recreational use relative to, and alongside, mountain biking.*
22. An additional difficulty is that, in reality, policy often does not reflect the de-facto situation on the ground. In most situations informal mountain bike access is common and tolerated even if this does not align with official policy, only coming to a head when there are isolated problems. This is confusing for cyclists, it is confusing for horse riders, and it is confusing for walkers. In our national off-road cycling survey of 2016 (Annex 3) we found that over half of off-road riders had difficulty putting together ‘legal’ routes due to the fractured nature of the rights of way and access network, this acts as a significant deterrent to beginners.
23. As an organisation which plays an active part in developing and encouraging participation in off-road cycling to achieve benefits in rural tourism, health and wellbeing, we remain unable to promote the **best** locations and routes for cyclists to access the countryside.
24. The overuse of restrictions and unnecessarily prohibitive byelaws results in a ‘cry wolf’ scenario, the areas where restrictions really do matter for

conservation or safety reasons become lost in the sea of restrictions and thus all of them get ignored. We feel that the default access policy to apply across these areas should offer the least restrictive option possible (with justified exceptions and restrictions where actually necessary).

25. We suggest that the above shows the importance of an organisation with a single strategic, lead role in developing and improving countryside access, particularly across public lands.

### **Securing and extending higher rights access to access land:**

26. It is our contention that all the arguments which justified increased access to the countryside on foot under CROW apply equally to cycle and horse users, If we are to promote recreational access to the countryside then it is time that general policy for access to land was aligned for all non-motorised use. We believe it is both achievable and desirable for access land to be open for cyclists and horse riders wherever possible, with restrictions only where necessary.

27. When CROW was enacted, extensive provisions were carefully written in, which gave Natural England powers to instigate access directions that would allow the extension of 'access land' (rights of access on foot) in order to permit access by other users (cyclists, horse riders, canoeists, etc.) with the agreement of the landowner.

28. Regrettably, these powers have remained virtually unused. Of the 850,000 Hectares of access land open in England under CROW regulations, almost none has been opened to access for cyclists or horse riders (see FOI request response detailed at Annex 1).

29. From conversations and negotiation on the issue, we believe that the reasons that this has not happened have been:

- The consent of the landowner is needed, and is not being given.
- The power does not extend to Section 15 land.
- A fear of upsetting the 'status-quo' in regard to conflict with other users or land management priorities.
- Lack of priority given to enhancing access to higher rights users (the question is simply not being asked);

30. Given the evidence that opportunities for voluntary dedication have not worked, we believe that it is now imperative that Natural England are given the powers to issue compulsory directions for access and Section 15 land, in order to permit higher rights access wherever appropriate.

31. We believe that there should be a presumption in favour of access land being opened for all non-motorised users wherever possible, particularly to existing tracks and paths, so long as there is no irreconcilable conflict with nature conservation interests.

32. We think there has been an institutional failing within Natural England to fully consider higher rights/multi user access as a priority. Most upsettingly, a four year review carried out of access to Natural England's own reserves, supposedly to consider opportunities for higher access rights, saw less than 20 kilometres of new, linear, permissive routes created. Our own familiarity

with a number of these sites, many of which are fully open to access on foot, leaves us incredulous as to the result. Some of these reserves were well served by surfaced vehicular access roads and other access tracks. There could be no justifiable reason for the lack of cycle and horse access to these routes when unrestricted rights of access on foot already existed.

33. A particular bugbear within the off-road cycling community has been Section 193 of the Law of Property Act 1925. This ensures that a large proportion of common land have an unrestricted right of access for 'air and exercise'. Regrettably, for many years, certain areas interpreted this right as only applying to access on foot. However the 1988 High Court judgement in *R v Secretary of State for the Environment ex parte Billson* clarified that this had never been the intent, and that in fact Parliament had intended to confer the "broadest possible rights of access for air and exercise" to those commons. Regrettably however, a discreet general clause, written at the time to prevent gypsy encampments, restricted the right to "draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon". Therefore, at least technically, all forms of cycling remain banned from these commons.
34. We ask you openly, as legislators, whether in areas of the countryside where walking, horse riding and other forms of recreational activity are positively encouraged, is it really tenable for mountain biking **not** to be regarded as an equally legitimate form of air and exercise?
35. We recognise that all outdoor activities impact upon the environment. Extensive research has shown repeatedly that the overall impact of walking, horse riding and cycling is broadly similar, All users impact on their environment, however nobody has suggested the repeal of CROW Act as being a realistic or proportionate answer to these problems. Instead they are tackled through proactive management, education and promotion of suggested routes. We fail to see why the same principles cannot be applied to off-road cycling.
36. As a consequence, we recommend that:
- **CROW Act 2000 is amended in order to allow Natural England, as the appropriate authority, to amend the list of Schedule 2 restrictions in order to permit the extension of CROW access rights to higher rights users wherever deemed appropriate.**
  - **CROW Act 2000 is amended to allow the same powers to extend to Section 15 Land as well as access land.**
  - **Paragraph (1)(c) and (4) of S193, the Law of Property Act 1925 is amended to permit bicycles to be used as a legitimate form of 'air and exercise' on selected areas of common land whereby this right already extends to walkers and horse riders**

### **Promoting green corridors and Rights of Way access on the urban fringe:**

37. We have watched with interest the involvement of Natural England with Suitable Areas of Natural Greenspace (SANG's), areas of land that are opened or enhanced for recreational access to offset the impact of housing

development near to sensitive areas, such as the Thames Basin and Heaths SPA. This policy also formed in order to fulfil the duty under Section 40 NERC that, in the application of policy, each public authority must have regard to the purpose of conserving biodiversity.

38. We suggest that, in order to maximise the benefits for health and wellbeing, the SANGS project should be expanded to secure quality green space and countryside recreation provision as mandatory planning offset nationally rather than just in selected areas or close to protected sites.
39. SANG's policy should be expected to consider and provide improved access opportunities for all non-motorised users, not just walkers. We would also express concern that in many cases, these areas are still not secured for access in the long term, such as through dedication as village green, registered common or as a right of way, this should be compulsory.
40. We believe that the success of the SANGS project clearly demonstrates that opportunities to improve countryside access can and should go hand in hand with those for improvement of biodiversity and nature conservation, particularly in peri-urban areas.
41. We have also witnessed similar positive countryside access stories from the Natural England led 'Paths For Communities' (P4C) trial project. A detailed report into the results of the P4C project showed clear increases in use and participation, with a recorded local benefit/cost ratio of 4.52:1. We suggest that a modified long term version of the P4C project could be an important core project for the application of post-brexit agro-environmental funding.
42. Natural England's Monitor of Engagement in the Natural Environment data shows that the average spend per journey from off-road cycling activity is significantly higher than that for many other user groups. It has been postulated that mountain bikers often travel light and are more likely to use local facilities rather than carry packed lunches etc. These factors make off-road cycling of particular value to the rural economy.
43. As cyclists travel further during their activity than other users, they are likely to visit a wider variety of isolated locations and points of interest. As such, provision for off-road cycle access needs to be managed on a landscape scale rather than a site specific basis.
44. We point to the results of our 2016 survey of the views and habits of off-road cyclists in England and Wales (Annex 3), which received more than 11,000 responses. We believe it to be noteworthy that in our survey results we discovered that 67% of off-road rides on rights of way began from the door, whereas more than 90% of rides at mountain bike 'trail centres' began with a car journey, often of more than an hour. This suggests to us that access to the rights of way network plays a vitally important factor in encouraging regular physical activity close to home, particularly amongst youth and other groups who do not have access to their own motorised transport.
45. In addition to this, an emphatic 74% of respondents felt that the existing public rights of way network is not suitable for modern cycle usage. 85% said they found it difficult to put together a legal route.

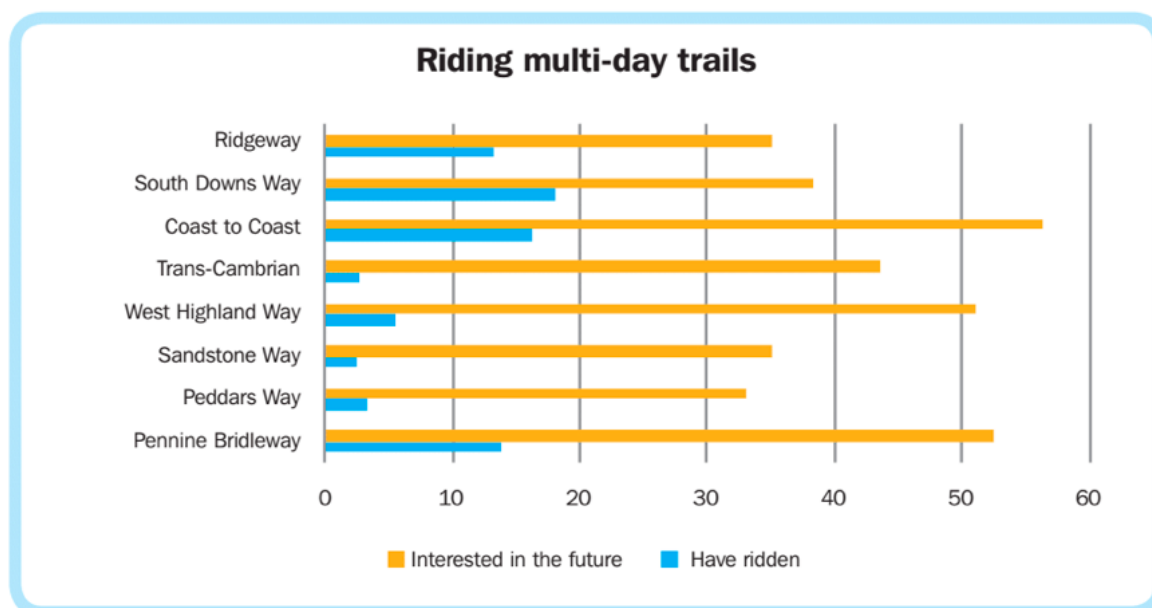
46. These factors together underline the important opportunity offered by improving, liberalising and promoting use of the rights of way network in order to promote participation and physical activity on a day to day basis. There exists the potential to encourage recreational activity across a much wider area, and with a far wider demographic profile than at present, through improved access to natural green space

47. Consequently, we recommend:

- **The provision of Suitable areas of Natural Greenspace is extended to a national level as mandatory planning offset, in order to both enhance biodiversity and ensure quality recreational access provision for all.**
- **A long term funding programme is developed, based on the Paths for Communities trial, to create, enhance and improve countryside access, with specific emphasis on delivery of the ROWIP and opportunities for peri-urban multi-user access and green corridors**

### **Delivering improved multi-user access to National Trails:**

48. Pointing again to the results of our off-road cycling survey, we see us that there is clear latent demand for quality, long distance, waymarked cycling trails.



49. Of the fifteen National Trails in England & Wales, only two are fully open to cycle and horse users. Others have extensive sections of bridleway punctuated with short sections of footpath. We believe that it is unacceptable that for decades no progress has been made to improve this situation. Legal powers to link together these routes and formalise higher rights access already, in theory at least, exist. However the power balance in the relationship between Highways Authorities and National Trails seems somewhat tempestuous, the everlasting battle for resources seems to blind people to the possibilities that are open to them, opportunities for improved access get pushed into the 'too difficult' box. History tells us that without

clear expectations and an organisational desire to extend access to as many users as possible, 'powers' are somewhat irrelevant.

50. This reinforces our view that there needs to be a clear duty on all partners to improve and enhance opportunities for non-motorised recreational countryside access wherever possible, as per our strategic recommendation **B**.

### **The Management and Recording of Unsealed, Unclassified County Roads:**

51. The debate regards MPV access to rights of way has been going on for many years, NERC extinguished motorised rights to many routes, but not to routes recorded on the list of streets, commonly known as UUCR's. However it has become increasingly clear that in order to maximise opportunities to access to the countryside, the current settlement for UUCR's is inadequate. UUCR's are not all shown on Ordnance Survey maps, users cannot find them and they are unsure of the rights of access they have to these routes (in many cases, the rights are heavily disputed, with some Highways Authorities claiming there is only a guaranteed right of access on foot, and that all other rights need to be proven)

52. It is our opinion that UUCR's should be adopted into the Rights of Way system, either as Byway or Restricted Byway, according to their suitability for motorised access. This could be performed as a single mass reassessment procedure, rather than via case by case DMMO application based on evidence of historic use. We believe it is right and proper that the any changes are made giving due consideration to the suitability and sustainability of continued motorised access, we would not support a solution that sought a blanket ban on motorised access.

53. We therefore recommend that:

- **Legislation is enacted absorbing unsealed, unclassified roads into the Rights of Way network as either Byways or Restricted Byways based on their suitability for continued mechanically propelled vehicular use**

### **The Role of Natural England in Negotiation, Facilitation and Funding of Access Provision:**

54. There is an important role for Natural England to play in speaking to landowners and public bodies to disseminate best practice. Examples where we have witnessed the value of their involvement is in bringing together users to manage conflict between access and protected species around Ilkley Moor in Yorkshire. Resource is needed in order to allow NE staff to act as an experienced negotiator and facilitator in order to solve problems like this and to help identify opportunities for improved access provision.

55. We believe that Natural England should work in partnership with the Rural Payments Agency, as they did with the P4C project, to direct funding into access provision as per proposals **C**. and **H**.

**Question 10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

56. Obviously, conclusions on the implications of Brexit are speculative, however we suspect that some broad assumptions can be made that:

1. The Human Rights Act and any successor legislation will result in the UK remaining bound to the principles of the ECHR
2. The UK will abandon the Common Agricultural Policy
3. Existing protections for designated sites will not be weakened by withdrawal from the EU environmental protection treaties

57. **Point a)** has relevance to countryside access policy in that ECHR assures that everyone has the right to peaceful enjoyment of his possessions, and that no one shall be deprived of his possessions except in the public interest. This clearly affects rights of way and access policy in so much as enforced changes in recreational access could be seen to impinge upon the landowners article 1, protocol 1 rights. However, it is our suggestion that in the vast majority of cases the changes that would be witnessed by any of our access suggestions would have minimal impact since:

- They are incremental changes, opening up existing access to a wider variety of users, rather than creation of entirely new access rights,
- There are clear public benefits to be gained from countryside access for both rural tourism and health and wellbeing, therefore any interference is justified by the wider goals and benefits,
- In a number of cases, agreements for increased access will come about as conditionality in return for agricultural funding or other development such as planning offset,
- Compensation is available through Section 28 of the 1980 Highways Act where the creation of new rights of way affects the value of property\*

\*It is our belief that, at the moment, this acts as a significant deterrent on the creation or extension of new rights of way using statutory creation powers. We suggest that this needs to be formalised into a more structured or capped payment, as at the moment Highways Authorities are reluctant to take on unpredictable financial liabilities for compensation.

58. **Point b)** Opens a huge opportunity to restructure funding for farmers and other landowners. We believe that we are in broad unity with a number of other countryside access groups such as the BHS and Ramblers in our belief that The United Kingdom's departure from the EU provides an opportunity to model funding schemes for agriculture to ensure that public money achieves maximum public benefit and promotes the environment, public health and wellbeing along with supporting the rural economy.

59. We suggest that any post Brexit agricultural funding model should include opportunities for expanded access, preferably through both the improvement of existing routes and the creation of new permanent rights of way and CROW access land. It is widely accepted that access to the countryside

supports the growth of rural economies and enhances the health and wellbeing of local communities. Importantly, responsible access also helps to connect users with a greater understanding of the natural environment and those who own and manage the land.

60. It is therefore our suggestion that in any future funding model, special funding priority ought to be given to improve both access opportunities and environmental stewardship/biodiversity in peri-urban areas, especially those neighbouring areas of deprivation. These communities may well stand to receive the greatest health and wellbeing benefit from countryside access, and find it far harder to access and afford other forms of informal recreational provision.

61. This consequently directs the structure of post-Brexit funding model contained in our strategic recommendation **C**, above.

### **Conclusions:**

**It is the opinion of Cycling UK that huge opportunities lie ahead for improvements in access and recreation provision, and that a number of achievable and discreet alterations in existing policy and legislation would go a long way to encouraging people to access the countryside in a responsible manner.**

**It is also our opinion that Natural England ought to play a key role in aligning government policy on access and rights of way. Not only in order to deliver best value for the taxpayer. but in order to deliver wider improvements through the health, wellbeing and economic benefits of countryside recreation.**

**We believe that opportunities to improve countryside access go hand in hand with those to improve biodiversity and nature conservation, particularly in peri-urban areas.**



## **Summary of Cycling UK recommendations:**

### **Strategic:**

- A. Natural England ought to be given a clear strategic role in the creation and setting of countryside access policies for all government departments and the creation of policy guidance for other non-governmental and quasi non-government bodies.

Allied to this, We believe it is important that Natural England is given responsibility for a full review of the efficacy of countryside access and rights of way legislation, in order to evaluate whether the existing legislation:

- Remains fit for purpose, maximising the opportunities for countryside access balanced against nature conservation and land management interests.
  - Offers best value, specifically considering the potential savings in administration costs that would be offered by consolidated and simplified legislation such as that developed in devolved administrations.
- B. Legislation is introduced, based on the duty provided under Section 40 NERC 2006 (Duty to conserve biodiversity) creating a new duty to improve and enhance opportunities for non-motorised recreational countryside access. (subject, of course, to the Sandford principle)
- C. A post-Brexit agricultural funding model is developed that ties in both;
- non-motorised recreational access provision, and
  - environmental stewardship and biodiversity

Particularly in peri-urban areas, In order to ensure that wider public benefit is delivered in return for public money.

### **Specific:**

- D. CROW Act 2000 is amended in order to allow Natural England, as the appropriate authority, to amend the list of Schedule 2 restrictions in order to permit the extension of CROW access rights to higher rights users wherever deemed appropriate.
- E. CROW Act 2000 is amended to allow the same powers to extend to Section 15 Land
- F. Paragraph (1)(c) and (4) of S193, the Law of Property Act 1925 is amended to permit bicycles to be used as a legitimate form of 'air and exercise' on selected areas of common land whereby this right already extends to walkers and horse riders
- G. The provision of Suitable areas of Natural Greenspace is extended to a national level as mandatory planning offset, in order to both enhance biodiversity and ensure quality recreational access provision for all.

- H. A long term funding programme is developed, based on the Paths for Communities trial, to create, enhance and improve countryside access, with specific emphasis on delivery of the ROWIP and opportunities for peri-urban multi-user access and green corridors
- I. Legislation is enacted absorbing unsealed, unclassified roads into the Rights of Way network as Byway or Restricted Byway based on their suitability for continued mechanically propelled vehicular use

**Annexes:**

**Annex 1: FOI regards CROW access dedications**

[https://www.whatdotheyknow.com/request/s16\\_dedications\\_sch\\_2\\_extensions#incoming-1026983](https://www.whatdotheyknow.com/request/s16_dedications_sch_2_extensions#incoming-1026983)

**Annex 2: James Hutton Institute report on mountain bike access**

[http://www.satintest.uk/Documents/64-MTB-Brief\\_MASTER\\_ONLINE.pdf](http://www.satintest.uk/Documents/64-MTB-Brief_MASTER_ONLINE.pdf)

**Annex 3: CyclingUK Rides of Way survey report**

<https://www.dropbox.com/sh/wqhd3wgzs9o01d8/AAD-oLhsCKI43w17Ru93QI-Ua/RidesOfWayCyclingUKOffRoadReport.pdf?dl=0>

*11 September 2017*

## **Cycling UK – supplementary written evidence (NER0090)**

Having submitted written evidence to the committee, Cycling UK has followed the oral evidence sessions with interest. We note in particular one question that was asked of the representatives of the Ramblers Association:

*Q152 Viscount Chandos: What has been the impact of government funding reductions and the continuing funding uncertainty on England's national trails network? How does this uncertainty affect Natural England's ability to fulfil its objective of "promoting access to the countryside and open spaces and encouraging open-air recreation"?*

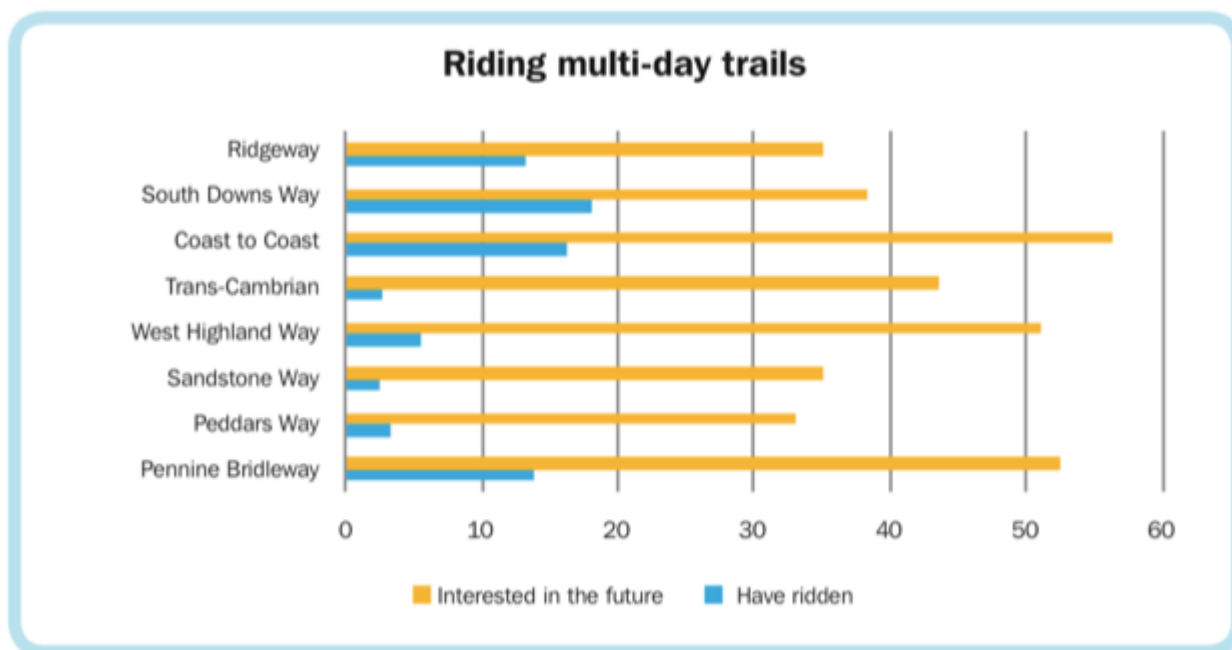
We wish to offer a response to this question, which complements that provided by the Ramblers. We hope it will be useful to the Committee.

National trails were formally created as "long-distance routes" under the National Parks and Access to the Countryside Act 1949. They were envisaged as routes on which the public should be enabled to make extensive journeys on foot or on horseback. This was later amended by the Countryside Act 1968 to extend to bicycles.

Regrettably though, this worthy aim appears not to have been fulfilled. To date, only two of our national trails – namely the South Downs Way and Pennine Bridleway – are fully open to bicycle and equestrian use. This is despite clear demand from the public for such access. Of the 11,482 respondents to Cycling UK's 2016 'Rides of Way' survey of off-road cyclists' views and activities<sup>64</sup>, nearly 20% had ridden the South Downs Way, while many more expressed interest in similar long distance rural routes.

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<sup>64</sup> See [www.cyclinguk.org/press-release/2017-02-15/first-road-cycling-report-gives-unique-insight-uk-scene](http://www.cyclinguk.org/press-release/2017-02-15/first-road-cycling-report-gives-unique-insight-uk-scene) and [www.bit.ly/cyclinguk-ridesofway](http://www.bit.ly/cyclinguk-ridesofway)



Cycling UK has been working closely with Natural England and national trails staff to improve higher rights access on several of the trails. These dialogues have identified various options for providing parallel routes and possible upgrades to address missing links. An example is the Ridgeway, whose western half is fully open to equestrian and cycle use, yet its eastern half remains punctuated by short sections of footpath.

Although these discussions have been ongoing for many years, with many promises made, concrete progress has regrettably been limited. Although officially open, the Pennine Bridleway remains uncompleted, with a six mile gap near Glossop and a complete lack of progress on completing the planned northern extension. Based on these outcomes, one could be forgiven for thinking that Natural England had given up on the aspiration for improved equestrian and cycle access to the national trails.

We believe that a dedicated effort needs to be put into improved and enhanced access to national trails for cycle and equestrian users. For too long issues that could have been solved many years ago have remained on the back burner. It is unclear how much of this is due to budget constraints, and how much is down to lack of priority and commitment to the issue. However from an advocacy and campaigning point of view, it is frustrating to see that so much effort has been expended on the development of the English coastal path (with no general policy of securing higher rights access), while projects such as the Pennine Bridleway remain unfinished.

Cycling UK – supplementary written evidence (NER0090)

We believe this supports the following recommendation made in our original written evidence:

- B. Legislation is introduced, based on the duty provided under Section 40 NERC 2006 (Duty to conserve biodiversity) creating a new 'sister' duty to improve and enhance opportunities for non-motorised recreational countryside access. (We suggest that this should be subject to an equivalent of the Sandford principle).*

Roger Geffen

Policy Director, Cycling UK

*5 January 2018*

Department for Environment, Food and Rural Affairs and Natural England – oral evidence (QQ 1-11)

## **Department for Environment, Food and Rural Affairs and Natural England – oral evidence (QQ 1-11)**

Tuesday 18 July 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (Chairman); Earl of Arran; Baroness Byford; Earl of Caithness; Lord Faulkner of Worcester; Lord Foster of Bishop Auckland; Lord Harrison; Countess of Mar; Baroness Parminter; Baroness Scott of Needham Market.

Evidence Session No. 1

Heard in Public

Questions 1 - 11

### Examination of witnesses

Alan Law and Shirley Trundle.

**Q1 The Chairman:** Good morning. We welcome Shirley Trundle CBE, director of natural environment policy at Defra, and Alan Law, chief officer for strategy and reform at Natural England. I should make it clear that this is our first evidence session. It is held in public and it is being broadcast. You have in front of you a list of interests that have been declared by members of the Committee. As I said, the meeting is being broadcast live via the Parliamentary website. A transcript of the meeting will be taken and published on the Committee's website. You will have the opportunity to make corrections to that transcript where necessary—I hope only minor amendments.

The other thing I should tell you is that because this is our first evidence session we all have to declare any interests that we might have, which is a slightly boring process. Before any questions are asked everyone has to declare their interests. As I am asking the first question I will declare mine as a farmer and landowner. I am an ex-chairman of the Countryside Agency and Rural Advocate. I am also a member of the NFU, the CLA, the RSPB, the CPRE, the National Trust and the Countryside Alliance. I am a trustee at Rothamsted. I chair the board of the Centre for Ecology & Hydrology and the strategic advisory board of the Government's global food security programme. After that mouthful, we can make a start.

My first question will deal with the rural side of issues before we move on to the environment. Following the abolition of the Commission for Rural Communities, which was created by the Act, and the Rural Communities Policy Unit, which is now gone from Defra, how is rural communities policy co-ordinated in Defra? Where in Defra does it sit? Who conducts research? Who commissions research? Who develops policy on the ongoing needs of rural communities? In the absence of the Commission for Rural Communities, who provides the rural-proofing voice for rural communities?

**Shirley Trundle:** Thank you for inviting us to come before you today. Your list of interests shows the depth and range of expertise that I know is around this table, so it will be extremely helpful to us to hear your conclusions at the end of the inquiry. I regard it as very valuable.

Turning to your question, Defra has an overarching strategy that covers not just the core policy department, but all of the organisations that are part of the Defra group. That has a number of strategic objectives. There are four delivery objectives, one of which relates specifically to the rural responsibilities of the department. That objective is a rural economy that works for everyone, contributing to national productivity, prosperity and well-being. That is something that everybody in the Defra group has signed up to and that guides the activities of everybody across the piece.

At ministerial level, the Secretary of State has overall responsibility and takes the lead. Then we have Lord Gardiner as the Rural Affairs Minister. He also acts as the rural ambassador. Thérèse Coffey leads for us in the Commons. That is the top-level, strategic part.

Within the core department there is a rural policy team, which is part of my directorate and reports to me. The role of that policy team is to support Lord Gardiner in his work and to provide advice, guidance and access to expertise on rural issues.

**The Chairman:** How many people are in this rural policy team? How big is it?

**Shirley Trundle:** The rural policy team fully staffed is about 24 people. We are rather below that as of today because the department has been doing quite a bit of recruitment in reflection of the pressures created in particular around EU exit. As well as the rural policy team we have a second rural team that works on the rural development programme for England. That forms part of our big programme on the future of farming and the countryside. That programme of work is very much focused on running the existing programmes funded through the CAP but is also thinking about the transition as we move to EU exit.

Those are the structures. The rural policy team has a big network of contacts across government, so it works with other departments that are developing policy to bring the rural perspective into those discussions. A large part of the way it does that is drawing on the data and evidence that we have access to. We have done a lot of work to develop our ability to use and analyse statistical information right across government. One of the ways in which we can work with other departments very effectively is sometimes to bring a different lens to their data to cut it in different ways and help them to understand the potential impact of their policies on rural areas. Then we can talk to them about how they might be able to have more of a rural perspective on the development of those policies.

**The Chairman:** Do you commission your own research as well as relying on other people's?

**Shirley Trundle:** We certainly do our own analysis of the data. We do not as a department commission very large amounts of research these days. There has been quite a shift in the way government approaches research and certainly the way Defra approaches research, which is much more about working in partnership with people outside the organisation. For example, Sir Paul Nurse's review of the research councils recommended that government departments need to give a much clearer steer on what the big policy questions are, which could then help to direct the efforts of the research councils and other independent organisations and academia. We have published a statement of the main policy questions in the rural area. We do a lot of scanning of evidence coming from academia and so on and the various interested bodies that produce reports and evidence on rural needs.

Q2 **Lord Harrison:** I bring my talents to the table that you so eloquently talked about earlier as I have no reportable declarations. On "Farming Today", tourism was declared to be a more important industry in the countryside than farming. When did you last talk to DCMS about it?



**Shirley Trundle:** We talk to DCMS very frequently, and we are well aware that tourism is a significant part of the rural economy. One of the interesting things about the rural economy, which you can see from the data, is that the mix of activities is not widely different from the mix of economic activity elsewhere in the country. It is true, obviously, that agriculture and forestry tend to be only in rural areas, but other economic activity is well represented. We work with lots of other departments. I could not tell you off the top of my head the exact date of the last time we spoke to DCMS, but I know that Lord Gardiner was very engaged with Ministers there—as a result, in fact, of another relatively recent parliamentary inquiry into tourism in rural areas.

**Baroness Parminter:** First, I declare that I am the Liberal Democrat spokesperson on Defra matters and a member of the National Trust and the Wildlife Trusts.

You mentioned the 24 people in the team. I think we would find it very helpful if there was an organogram with job descriptions. These people might be working on other projects, and it is fundamental for us that we are clear who exactly is doing the work on rural proofing and rural policy development.

**Shirley Trundle:** We would be very happy to supply an organogram. However, increasingly in Defra we are working in very flexible ways, so although an organogram might show you who is working on what at a specific point in time, it would not necessarily represent the pattern over time. For example, preparation for this inquiry was led by my rural team, but we have pulled together a virtual team of people and drawn people from land use, wildlife and so on. That is how we operate in Defra these days. It is not always just a fixed particular set of people who are there all the time and who deal with only one set of issues.

**The Chairman:** It would be good if we could have the organogram, even so. On the rural-proofing question, I did not really get a concept of how that might be done and your work with other departments.

**Shirley Trundle:** We work with other departments. We have a particular focus on areas where we know that rural communities have particular needs and concerns, and on areas where we know that policy development is active in government. We know, for example, that digital connectivity, broadband and mobile signals are critical issues for rural communities. Lord Gardiner sits on the relevant ministerial group that is overseeing the development and delivery of policy in that area. We support him in his membership of that task force and therefore work very closely with our counterparts in DCMS, providing evidence, having discussions with them, challenging the policy development and generally bringing the rural perspective into that debate.

That is just one example. We have also done it recently in relation to the development of childcare. Again, there is a ministerial task force, and Defra is represented on that. We have worked very closely with the relevant officials in the Department for Education, and as a result they have

developed the funding formula with a base level in it to recognise the challenges of delivering in more dispersed areas, and in some cases extra funding to reflect sparsity.

That is how we do it: in a very targeted way, focusing on where we think the biggest opportunities are to make a difference.

**Q3** **Baroness Scott of Needham Market:** First, I declare my interests: I am the deputy chair of the Harwich Haven Authority, which is a trust port operating in Suffolk and Essex, and I am a member of the Suffolk Wildlife Trust and the RSPB.

I want to stay on the question of the relationships with other departments. Fashions change, and we go backwards and forwards on whether mainstreaming is the way to do it or whether we need bespoke arrangements. You see the same discussion in equalities. So, first, why do we see this as a binary choice? Why do we have to do one or the other, particularly in your work? Let us take as an example the Bus Services Bill that went through last year. When the original guidance came out it contained two lines on rural buses. I am afraid that does not speak to me of a department that is really listening to the rural voice. I think it was a missed opportunity to think about the impact that the policy might have on rural services and to think much more proactively about how we can use these new powers and structures to improve the bus services in rural areas. It felt to me that from a rural perspective that was totally missed.

**Shirley Trundle:** I am sorry you were disappointed about that particular bit of policy. You are absolutely right that it is not a binary choice between a targeted approach and mainstreaming. In addition to engaging on the specific issues, the department has been working on rural proofing. We had a very helpful report from you, Lord Chairman, which made a number of recommendations, and we have been taking work forward in the light of that, for example improving our digital hub so that data is more accessible and readily available not just to members of the public but to people in other government departments.

We held a workshop with other departments to raise awareness and to begin to educate them on how they can do this. It is not normally a question of them not wanting to do it; it is often a question perhaps of not being particularly familiar with what they need to do. We are developing a training package that we intend to roll out across government, and we have increasingly been building rural elements into the standard approaches. One example is the Treasury's guidance on investment appraisal. We have been working with them on how you build thinking about rural areas into that guidance, which is one of the bibles that guide policy development in government.

**The Chairman:** Can I ask you about the training workshops, which are key to getting other departments in? When did you hold your last training workshop? I thought they were off the agenda now.

**Shirley Trundle:** We have already had one workshop—I am sorry, but I cannot tell you the precise date off hand—and we are developing a broader range of training.

**The Chairman:** So they will happen. Have you held any this year?

**Shirley Trundle:** I cannot be precise about the dates. I will happily send you a note about the more detailed delivery plans.

**The Chairman:** I would be grateful. Thank you.

**Baroness Byford:** My family has farming interests in Suffolk. I am president of the Royal Agricultural Society of England, and I am a member, like others, of the CLA, the NFU, the Countryside Alliance and the National Trust. Those are my main interests.

First, I do not wish to sound offensive, so please do not be offended by my question, but when the Commission for Rural Communities was wound down there had been talk as to whether the work that you do at Defra on behalf of the rural areas would be better placed in the Cabinet Office, because that covers everything, and some of us were a little concerned that perhaps government could tick it off as having been done because it was being done by Defra. I do not know whether you have a view on that. Secondly, are there things that were not in the original Bill that, because of the demise of the commission, would help you to strengthen the work that you do? It is a two-part question.

**Shirley Trundle:** On the first part of the question, you could have endless debates about where you put activities in government. There are always pros and cons to different approaches. We have worked very closely with the Cabinet Office. It can be very helpful to us because it has had a big role in the development of single departmental plans, which has given it very good sight of what is going on across government. It has been helpful to us in embedding rural elements into other departments' plans. However, we feel that because of where we sit in government we probably have better links out into interested groups and more regular contact with rural stakeholders than people in the Cabinet Office would naturally have. That enables us to bring a more grounded perspective to discussions across government.

**Baroness Byford:** I am grateful for that, and I am well aware of the very close work that you do with all the other groups, but my question concerned the Cabinet Office having overall direct responsibility for everything and whether it would have been helpful had it been there. I am not decrying the work you do, because I am well aware of the amount of work that goes on.

Can I move you to my second question? Is there anything that is not in the Act now that would have been helpful to you looking forward?

**Shirley Trundle:** I cannot think of anything in particular. In a sense, legislation gives you a legal backstop, but often the most effective ways to make a difference rely on other levers. A lot of it is about the leadership

that government can show. We are getting very strong leadership from our Ministers. It is about the convening power of Governments and the ability to bring people together. Of course, we have important levers in the rural development programme, which gives resource that can be spent. There is a whole range of different ways in which government can influence. I feel that we have a pretty good range of tools at the moment.

**The Earl of Arran:** I declare interests in the National Trust and the CLA. I am married to a farmer in Devon—no finer part of the country. One thing you said worries me. You mentioned there was less research, which is critical. Is this due to budget cutbacks? Are you spending as much money on research as you used to?

**Shirley Trundle:** The department as a whole has been shifting. Defra spends less money than it did a few years ago, in common with many other departments. We have had to reduce the amount we spend on research in line with that. It is not that rural issues have been singled out in particular; it is just a consequence of a refocusing of effort. There is more of a sense that a lot of the responsibility for fundamental research can be secured by getting a better, more strategic focus from other organisations.

**The Earl of Arran:** Is the department suffering from a lack of research?

**Shirley Trundle:** I am not aware of anything that has been problematic in the near past, no.

**Baroness Scott of Needham Market:** You observed that you had set up a virtual team to work on this inquiry, which is gratifying for us. Thinking about Parliament more generally, if for example a Bill was going through on social exclusion, would somebody from your department look at that and at what is happening in Parliament as well as in government, or would that be done only by the people in the sponsoring department? I am trying to get at how, when Members of the Lords and the Commons raise issues about rurality and rural impact, those issues are taken on board and dealt with.

**Shirley Trundle:** We always try if we can to engage with other departments right up stream during policy formulation, because you are much more likely to get an effective response and a better-designed policy if you are there at the beginning. Yes, we do monitor what is going on more widely. Whether it is through the press, contacts with special interests groups or monitoring what is going on in Parliament, we will pick up concerns about other departments' policies. Indeed, they will often come to us for advice if they find that they are being criticised. We would seek to engage if we saw a problem arising.

**Alan Law:** As a delivery body, we have a role to government, although our sponsorship route lies through Defra. We engage directly with other departments on housing, infrastructure et cetera and with the relevant policy division in Defra.

Q4 **Lord Faulkner of Worcester:** My relevant interests are all rail related. I

am president of the Cotswold Line Promotion Group and the Heritage Railway Association, and I chair the Great Western Railway advisory board.

Staying with you, Mr Law, do you think that the 2006 Act gives Natural England sufficient powers, including enforcement powers, to carry out your mandate? What is your view of the comments made by environmental bodies such as the RSPB and the Wildlife Trusts that the cuts in your grant in aid have rendered you much less effective and almost powerless to deal with issues such as planning?

**Alan Law:** Those are questions four and six, I think. First, thank you for the opportunity to present to this Committee. It is a good opportunity for us. You will appreciate that our board has thus far not had an opportunity to consider a formal position. I know that my chairman will be keen to emphasise that the board will want to make a submission when the formal evidence-gathering process commences.

My background is 25 years with Natural England, so I have been with it throughout the period post NERC and the predecessor bodies. We were set up when the very bold vision was set out in NERC for bringing wildlife and landscape together and putting people at the heart of conserving them. That was at a time of considerable economic prosperity, which subsequently changed relatively quickly. We spent our early years finding our feet. We tended to miss the ambition set out in NERC on integrated delivery and working at a landscape scale and instead pursued a narrow set of independent key performance indicators on a traditional agenda of biodiversity and agri-environment delivery. Subsequently, we came into a phase where we looked to reduce costs and the focus was very much on efficiencies.

In the last three years we have tried to reset how we work and go back to the principles set out in NERC at the outset. We are now organised around seeking to deliver at a landscape scale, locally set up and operating across the breadth of levers that we have. The Committee should appreciate that we operate in part through the provision of statutory and non-statutory advice. We have a significant tool at our disposal, which is the Pillar 2 RDPE, the delivery of agri-environment schemes. We also have the regulation lever. The predominant services that we provide are achieved through advice and the incentive lever of the RDPE. Our role is very much to identify where there are opportunities to restore and enhance the environment, and to engage with business, local communities and landowners to achieve those aims, rather than identifying where there has been a problem and seeking to apply regulation to remedy it.

Forgive me for a slightly broad introduction. So, yes, we have the broad range of powers that equip us to deliver the task set up for us. There are areas where one might look for greater latitude, such as in the use of conservation covenants. We recognise that if you roll the value of land acquisition into the costs of delivering environmental enhancement, those costs are very high. They presuppose that you are better off delivering conservation works in a manner that is removed from the land management community, whereas actually the use of covenants avoids

incurring the much greater capital cost associated with land acquisition and is much more about working with the land management community than trying to impose something on it.

**Lord Faulkner of Worcester:** So you are not frustrated by the reduction in the enforcement powers.

**Alan Law:** Which enforcement powers would you say have been reduced?

**Lord Faulkner of Worcester:** I am probing to see whether you feel that they have been reduced, particularly on planning issues.

**Alan Law:** We worked very closely with DCLG on developing the National Planning Policy Framework, which we sought to ensure had satisfactory provisions for the natural environment and landscapes. Clearly there can be variation in the way the policy is applied and the decisions that are taken, but broadly speaking—again, citing 25 years in the sector—we now see far less conflict with environmental assets arising through the planning system than we would have done 25 years ago.

Would you like me to come on to the second question about resources?

**The Chairman:** That may come up later, so perhaps we will leave that for now.

**Baroness Parminter:** May I probe you a bit further on the planning issue in particular? Since the NERC Act came into force in 2006, do you have a record of how many planning applications you have been asked to consult on, and how many you have initiated a response to, and is that public?

**Alan Law:** We do. The headline statistics are certainly public. In fact, we report on them quarterly every year to DCLG. We deal with broadly 20,000 per annum. The largest proportion of those tend to be “no comment” responses, because they are simply sent to us as part of a standard basket of consultations to statutory bodies. We do an initial shift to determine that there is no impact on the natural environment that we need to comment on. We look to provide bespoke responses to around 25% of that volume. I can provide the record and the stats if the Committee would like them.

**The Chairman:** Presumably you also comment on landscape issues.

**Alan Law:** Absolutely. We receive planning applications for developments that could affect protected landscapes, protected sites, protected species. We get that full range.

Q5 **The Countess of Mar:** My husband owns 110 acres of land in Worcestershire that, except for 10 acres of woodland, is now let. We worked it all ourselves for 40 years and decided to retire. We are now are making a profit at last—

**Alan Law:** Congratulations.

**The Countess of Mar:** —and we get a small EU subsidy for the land. I do not benefit directly, but I benefited indirectly from it.

It has been said that one of Natural England's greatest strengths is the knowledge and capacity of its local staff on the ground. How is Natural England working to maintain this in the national context of budget reductions?

**Alan Law:** Would you indulge me slightly? I will answer your question, but I will challenge it very slightly. I have spent the majority of my working life as one of those advisers on the ground, so I have a lot of sympathy with the statement. My perspective is that Natural England is at its best when it operates through a combination of knowledgeable local advisers who are supported by people with national expertise and an understanding of the breadth of government policy. What distinguishes us from other bodies is that we can put what is important locally into a national context rather than merely having knowledge of what is local. I accept the premise of the question, and that is very much how we work.

Over the last 11 years, we have contracted as an organisation. Our budget has gone down from £230 million to less than £100 million. We have sought to protect our front-line services as far as we can in various ways. We have reduced our overhead costs by taking out two-thirds of our offices, so our estate is much reduced. We do not have a head office, for example; we operate in a dispersed network. We have operated quite stringently with regard to corporate services—our back-office functions. First, we have reduced IT, HR, procurement and finance, and all those services are now provided by the core department—none of them are provided in house. We have also progressively shifted staff from the centre into our area teams, such that between 2015 and 2017 we have had a 10% increase in staff at the front end rather than at the back end.

So we have done what we can. We have quite a low staff turnover rate. It is perhaps 5%, which reflects the fact that we are still very able to attract high-quality skills. People want to work for us, and the great majority of people who do tend to stay.

**The Countess of Mar:** That is good. In the past, we benefited from the free advice that was given to us in the days of MAFF and the early days of Defra, and we have noticed that there has been a decline. It is now more difficult to find the right people to contact for advice. I was thinking earlier, when Shirley was talking, about contact with small farmers. You have contact with the NFU and the CLA. Do you have contact with the Family Farmers' Association or the Tenant Farmers Association, for example?

**Alan Law:** Yes we do.

**The Countess of Mar:** Do they know how to get in touch with you if they have a problem that they need to have solved?

**Alan Law:** First, forgive us, but like many parts of the public sector we have been through various reorganisations since our birth. I like to think we settled on a stable arrangement for the last four years, which is very much based on area and building local connections. But we also have national experts who provide the relationship leads with organisations such

as the Tenant Farmers Association. Those kinds of connections are there, and where there are difficulties connecting with the right people those account management links can, hopefully, resolve those.

**The Chairman:** On that point about connectivity with farmers, do you use the county wildlife trusts as a way in to the agricultural world?

**Alan Law:** We work increasingly in partnership, which is a function of our size, and our conservation strategy is predicated on the idea that whatever your budget size there is no point aiming for anything less than trying to fulfil your statutory purpose. As we have changed over the years, we have recognised that to have the impact that we need to have in order to fulfil our agenda, we need to work with and through other organisations much more than just being self-reliant.

In the same way in which we might work with farmers on multi-area agreements, rather than simply one-to-one agreements, we work with wildlife trusts and the RSPB on local landscape-scale projects and income-generation projects et cetera. For example, we have now started to work with the NGO sector and the Heritage Lottery Fund to try to provide join-up, to provide added value, with that sector by drawing down money from the lottery. The lottery has recognised that it is not putting as much money into the natural environment as it would wish to, and it sees us as a natural conduit to working on cross-organisational bids. The first of those was a bid called Back from the Brink, which seeks to fund conservation works across a range of rare species that all have biodiversity action plans associated with them.

The other area is how we work with the private sector. Until five years ago, Natural England did not have the facility to charge, so we secured a facility to offer a range of discretionary advice services. I emphasise the point about discretion, because this is not about transferring GIA costs to the private sector; this is about offering new services that it is at the discretion of the private sector to purchase. The benefit for the private sector is that it gets our advice early, before it has come to the point of firming up some of its investment plans. The benefit for us is that by providing that advice early on a full-cost recovery basis we can save ourselves subsequent statutory advice time, both at the statutory advice period and in terms of reducing the number of cases where there is a conflict between planning and the environment.

**The Countess of Mar:** Would you agree that the benefit of that advice is that it is independent?

**Alan Law:** Absolutely. The value to the customer or business is that they get that independence from us. The value to us is that it makes us much more insightful about the requirements of industry and makes our staff much more commercially aware of how we work with industry.

**Lord Foster of Bishop Auckland:** I have no interest to declare, except that I used to chair the north-east area of the Heritage Lottery Fund. It was a great pleasure to work very closely with your organisation and



several others on these environmental schemes. Have you any way of quantifying the amount of money nationally that is coming in and through these schemes?

**Alan Law:** The sum is around £400 million per annum. At a peak the figure was, I think, £470 million-odd. That was a time when environmental stewardship covered more than 70% of the utilisable agricultural area.

**Baroness Byford:** We return to question six. You wanted to say something before I asked any questions.

**Alan Law:** The question is about the balance between the environment and the economy. For me it is a great myth that the environment and the economy have to be at odds with one another. Sadly, it is all too widely believed. My experience at an operational end has always been that where you have sufficient early warning of development activity and you are operating at a large enough scale, in the overwhelming majority of cases, by which I mean the high 90 per cents, you can find a resolution that is good for the environment and for the developer, the economy and society. I highlight that I was regional development director for London and the south-east for many years. In that region, you have the highest level of economic activity and of population density. You also have the highest level of biological diversity, the largest area of protected landscapes, the greatest area of semi-natural woodland and a dynamic coast. These things are reconcilable provided that they are brought together at the right scale.

I should flag up the conservation strategy that we published last year. It seeks to move away from a regime whereby we operate at a very small scale and seek to prescribe solutions. Historically, this is where some of our predecessor bodies, such as my own, which was English Nature, would have been. We would have sought to identify a solution on a particular site and then inform the landowner about what must be done. Understandably, I think, we learned over the years that that was not necessarily the best way of bringing hearts and minds with us, or securing engagement with management, or indeed identifying a range of opportunities that might exist on that land.

We seek to change the way we engage, to look at the attributes of a healthy, resilient landscape—back to the purpose of NERC and of things such as the European habitats directive—and to engage with business, local authorities and communities about how you configure those attributes in a place, thereby using place-making in its proper context. I firmly believe that by engaging more at the front end in trying to identify what a healthy, resilient environment looks like in a place rather than simply relying on picking up where damage is likely to occur at the other end of the pipe and seeking to regulate around that, we are much closer to the purpose envisaged by the legislation.

Q6 **Baroness Byford:** Thank you for that briefing. That is helpful. Can I take you to the nub of it? As we know, the countryside and our environment are made up of business, farming, tourism and little businesses starting up that are all totally reliant on broadband. We have not touched on

broadband, but it is key. Indeed, Lord Gardiner is well aware of it.

I turn then to the area of farming, which is where a lot of the environment we are talking about is based. I think the majority of farmers are very keen to take part in the various schemes. I declare an interest here because I do so, and we get a single farm payment for it. On that bit of it, do you think that after Brexit the chance of changing how those payments are made could have an effect on the profitability of farming businesses, because you will not be able to get one without the other? That is one question.

Secondly—I do not mind who answers this—some colleagues are saying that there are schemes whose time will run out before the changeover. What is happening in the interim? Also on that, some of the schemes and the paperwork and compliance within them have become so complicated that some are considering not continuing with them. If that happens it will be to the detriment of the environment, which would be a shame.

**Shirley Trundle:** I will pick up the general question and then ask Alan to talk about some of the current schemes. Obviously EU exit opens up both uncertainty and opportunities. The Government have been very clear that initially, through the process of the legislation that has just been published, we want to give people as much certainty and continuity as we go through EU exit. We have guarantees in place for the level of funding for farmers. This is about not just the environmental payments, but the totality. There will be a guarantee about the level of funding going forward. The legislation will initially roll over the current rules of the schemes so that people will know that they are not going to fall off a cliff edge at the point when we leave the EU. That is really important, and we are doing an enormous amount of work to make sure we will have the underpinning securely in place to allow us to continue to run schemes.

Beyond that, there are possibilities for all kinds of reform. In the Queen's Speech it was announced that the Government will have an agriculture Bill. That will give the opportunity to set the framework for how the Government intend to support farming and the environment in the longer run. It is not my place to speculate on future policy, but the Government will certainly want to put out their proposals and consult on them. It is no secret that the Environment Secretary has been out there talking to people and saying that he sees that delivering environmental improvements will be a key priority for future arrangements. I know he is also very clearly aware that we will not have good environmental land management unless we have people on the land managing it, and they need to make a living out of doing that. That is something that we are acutely aware of, and we aim to design future arrangements that deliver benefits for the wider public and society at large as a result of the public investment but also ensure that farmers and others can make a living from the land.

**The Chairman:** Mr Law, do you want to comment?

**Alan Law:** Yes, I have a few quick comments. When the previous environmental stewardship scheme was introduced in 2005 it would be fair to say that there were considerable teething troubles. It was notably

plagued by difficulties with the IT. We have experienced similar challenges with the introduction of the new scheme. However, I would point, I hope encouragingly, to the success that environmental stewardship proved to be in subsequent years after its difficult inception, and to the volume of uptake and the high confidence across the industry.

We are certainly trying to ensure that there is a transition between schemes that expire from environmental stewardship, particularly where they have high environmental value associated with them, and the new countryside stewardship scheme. We have a period of two years, or just a bit less, in which we may improve the functioning of the existing scheme, for example by seeking to make available more broadly some of the options that are currently available in only the highest tier. Subject to decisions on when and how any new arrangement might be brought in, we also potentially have the opportunity to reduce some of the complexity associated with the scheme once we are no longer subject to the relevant regulations.

Moving beyond that into what the future might look like, there is a lot of room to feel excited about the possibilities of greater alignment of funding streams between departments, and the potential aggregation of vertical funding regimes coming from departments and more locally-derived contributions. One would like to imagine a time when the scheme arrangements, whatever they are, are tailorable to local circumstances, needs and opportunities.

**Baroness Scott of Needham Market:** There are a number of organisations operating in this space of policy advice and regulation—Natural England, the Environment Agency, the MMO and so on. One often hears a lot of grumbles about duplication. Some of that is inevitable—you always get that—but how much work do you do together as organisations on a strategic level to make sure that you are genuinely working together and not asking the same questions twice? This becomes even more important if we move to an explicit link with funding.

**Alan Law:** At an area team level, we are now operating as a Defra family with common area boundaries and joint planning of the services we provide within those areas. That is with the Environment Agency and the Forestry Commission, and we also collaborate with the MMO. We have pretty good relationships on the ground between our operational teams and our national policy folk. We join up on high-risk cases that involve common engagement, because the last thing we would want is one arm of Defra saying one thing and another saying another. I like to think that over the last few years we have spotted and managed those risks in a really good way before they have impacted on the customer.

There is often the assumption that a one-stop shop is beneficial to the customer. That is not my experience, which is that if you are a developer you want to talk to the person who has expertise about the question you are asking, rather than go to a generalist who has to filter you and pass you on to three different other people. That just creates an overhead. While we share a large volume of casework that we deal with—the Environment

Agency has an even larger volume of casework—we have only a 15% overlap. So the volume of cases on which we are both commenting is relatively small, and we have good systems in place to manage that—and similarly with the MMO.

**The Countess of Mar:** You say that you no longer tell people how to manage their land. When I come to London from home, half of my journey is on the motorway and half by train. I notice that the highways department and the railways have a huge amount of ragwort, which is a notifiable weed, growing on their land. Additionally, I noticed quite a number of fields that are totally derelict and could be put to good use; they are in reasonable farming country. Do you have any powers over those, either public or private or both?

**Alan Law:** We have pretty limited powers on injurious weeds. There are some powers. I am afraid that I could not give you chapter and verse right now on them in relation to ragwort, but I can provide those to the Committee if that would be useful.

The issue of land that is not necessarily put to good or productive use of any description takes us back to the ambition to work at a more strategic scale. My wish is that we will one day find ourselves able to deal with strategic plans that may have a statutory footing at a local authority scale and that we can describe in those plans all the attributes that are needed for a healthy, resilient natural environment—and, without prescribing exactly where they should be done, identify where the opportunities are. Natural England operates much more as a convener in those places, using our knowledge and connections with local stakeholders to identify opportunities for win-wins, because you can have bodies with a regulatory role that identify where things have gone wrong, but there is a lot of power in having a role that identifies where there are examples of best practice, where success is, and promoting and extending it.

**Lord Harrison:** Alan, you said you were getting excited by the opportunity for aligning funds post Brexit. Can you give us a clear example and tell us why domestically you could not have done that already?

**Alan Law:** I would struggle to say why we could not have done that already, although if you were to top up rural development programme funds through alternative funding sources, that might get complicated in terms of the regulations.

**Lord Harrison:** On that point, you are quite right that we could have done it ourselves. It is not something that we have to do post Brexit.

**Alan Law:** Under Pillar 2 it could, but I am talking about money from other sources, potentially private sector money—

**Lord Harrison:** Give me an example.

**Alan Law:** In my mind, we would have a strategic plan that identified environmental infrastructure in a place. You can deliver environmental infrastructure through the contributions from agri-environment,

contributions that come from planning gain, or funds that come from DCLG. You might wish to combine those resources and deploy them through a scheme that is equivalent to agri-environment. You might wish to broaden out the eligibility of that scheme beyond agricultural land. You might wish to provide greater targeting emphasis on certain habitats in the south-east than you might in the north-west. The facility to do that—whether it would be policy is another matter—will be greater when some of the current regulatory regimes are removed.

**Q7 The Earl of Caithness:** Declaring my interests, I am a vice-patron of a charitable trust that owns land in Scotland. I am a member of the Countryside Alliance. A non-declarable interest is that 30 years ago I was Minister for the Countryside.

A nice easy question to start with: if you had not had the budget cuts or had had a greater budget, what would you in Natural England have done that you have not done now?

**Alan Law:** We would probably have operated on a higher level of bespoke advice. That would be my short answer. We would also—and I am in no way arguing that the budget cuts have been desirable—have been less forced to look radically and creatively at how best we might exercise our functions to deliver for the natural environment. Apologies if this sounds like a history lesson, but the conservation movement evolved through the 1960s, 1970s and 1980s through a sequence of identifying evidence of environmental impact, seeking to understand cause and effect, seeking to build legislative powers to protect in particular the rare and the vulnerable, and designating and putting in place planning provisions. That strategy is all predicated on protecting the rare for some time in the future when the rare could then recolonise the wider landscape and countryside. We ended up with 7% or so of the land under that high level of protection.

In the past 25 years, while we are effective at species recovery and protecting the rare—in effect gardening on special sites—we have seen a wholesale loss of the much more widespread and common, and the degradation of the fabric of the countryside. We have been challenged to look at that and question whether the balance between the rare and widespread that we have been working to is right. If we put our efforts at the landscape scale, very much in line with the vision set out in NERC and with the challenge set out under the Lawton review, we do not merely conserve the rare for some indeterminate period when something will happen in the wider countryside, but we try to do the two together. As a conservationist, that is something that we have to do.

**The Earl of Caithness:** What have you done to implement the Sir John Lawton review that was so welcome in 2010? What evidence do you have that you have been implementing it?

**Alan Law:** I referred earlier to our joint area plans that our operation teams have put in place with the Environment Agency and the Forestry Commission. Each area plan has a set of focus areas, which are high-value or high-potential areas. Other organisations have identified areas, such as

living landscapes. These are the areas that we are seeking to build resilience around, very much in line with the Lawton review recommendations of bigger, better and more joined-up. The focus has been on the bigger and the more joined-up. Similarly, and I recognise the challenges that my colleague described earlier with regard to the new countryside stewardship scheme, the premise of that scheme was to enable targeting of both the very special through the higher-tier scheme and larger landscapes through multi-agreement applications.

**The Earl of Caithness:** Can you provide the Committee with details of where that has been implemented on the ground?

**Alan Law:** Yes.

**The Earl of Caithness:** Do you agree with Sir John that to implement his report fully you need a minimum budget of £600 million a year?

**Lord Harrison:** Just say yes.

**Alan Law:** There is a choice—

**The Earl of Caithness:** The answer is a yes or a no.

**Alan Law:** It is unarguable that the natural environment needs more, because the evidence demonstrates that the natural environment is declining in biodiversity and landscape. The extent to which that must be delivered through a state body versus a range of mechanisms with a state body having a significant convening role is a policy choice. As an operational director my obligation is to say that whichever the policy choice is we have to come up with a strategy that enables us to achieve the ambition set out in the legislation to achieve the purpose of our organisation. That is what we are doing.

**The Earl of Caithness:** Two more quick questions. First, is biodiversity in England still declining?

**Alan Law:** Yes, but the picture is complicated. I refer you to the *State of Nature 2016* report, which shows a mixture of declines and increases, the majority under decline. As I described previously, the declines tend to be more serious in so far as they are more numerous species. We are losing the common. I grew up able to find frogs, grey partridge, barn owls et cetera in the country—I am a member of the Suffolk community. Those are diminished. We have been able to show that where you put targeted conservation effort into rare species, such as the bittern, the curlew and the large blue, you can effectively conserve them.

**The Earl of Caithness:** Finally, following up Lady Byford's question, it surprised an awful lot of us that you are not doing a 25-year plan of rural policy. Why did Defra duck that one?

**Shirley Trundle:** I am not aware that there was a particular commitment to that. The Government have committed to a 25-year plan for the environment. Our Secretary of State will prosecute that with great vigour.

**The Earl of Caithness:** You have two 25-year plans, not a cohesive plan.

**Shirley Trundle:** It is really for my Secretary of State to set out his stall, but I think he would see the environment in very broad terms as an encompassing approach to everything that Defra is responsible for and beyond

Q8 **The Earl of Arran:** Back to Brexit, which we have already touched on. I am afraid Brexit is a recipe for anxiety and uncertainty to a large extent, but how might—and I underline the word “might”—our exit from the EU make a difference to the way the Act is implemented and enforced, particularly in relation to Defra and Natural England? In other words, what might the big changes be that will affect rural communities?

**Shirley Trundle:** Quite a lot of provisions in the Act are purely domestic and will not be directly affected, but some of them are linked to EU initiatives. Natural England and the Forestry Commission, for example, administer the rural development programme and their stewardship schemes using powers under the NERC Act. That is, as we have already described, an area where there will be opportunities to look at making a transition from the current approach to new approaches to supporting environmental outcomes from the farmed environment and new ways of supporting tree farming. We can certainly expect to see changes in that area but in a phased way over time and in a way that allows people to adapt and to make the transition.

**The Earl of Arran:** Is it too early—I imagine it is—to be drawing up an agricultural Bill?

**Shirley Trundle:** Obviously there is a good deal of initial thinking going on. We have been having a lot of discussions with our new Secretary of State about the various elements that might need to go into an agriculture Bill. Indeed, I am missing a meeting with him at this moment to be here with you; he is talking to officials about future arrangements for delivering environmental outcomes from land. That is a very active programme of work, and I would expect the Government to come out with proposals for consultation in not too many months’ time, because clearly we will need to do that before we get to the point of introducing a Bill.

**The Earl of Arran:** And might those proposals include GMOs?

**Shirley Trundle:** I do not want to speculate on that.

**The Earl of Arran:** They should, but thank you.

**The Earl of Caithness:** Once outside the EU, will you recommend to the Secretary of State that he bans imports of soil, with all the diseases and nasty bugs that are in them that are causing so much trouble?

**Shirley Trundle:** Again, I would not want to speculate on particular bits of policy advice. One of things I know is that the Secretary of State is very interested generally in the health of our soil. He has been very clear with us that that is one of the outcomes that he wants to deliver from the new

arrangements. As we design what comes after the current stewardship schemes, he will want to include measures that will promote healthier soils.

**Lord Harrison:** I agreed with your earlier answer that the profile of the countryside is much the same as in other parts of Britain, but would you be kind enough to forward to our Chair a note of the meeting that Lord Gardiner had with the DCMS so that we can verify for ourselves that tourism is clearly on that agenda?

Returning to your earlier answer that you are in the process of recruiting to bring up to 24 the number of people available in your team, is there an opportunity cost, in that you might have sought other experts to be doing other important jobs that challenge in the countryside but which you now have to devote to Brexit?

**Shirley Trundle:** Defra as a whole is going through a huge period of change as a result of EU exit, because out of all the policy departments across Whitehall we are more affected than any other, so we have done a lot of work to reprioritise what we are doing to make sure that, wherever we can, we focus resources on the immediate needs related to EU exit.

**Lord Harrison:** I understand that you are doing that, but are you being deflected from other vital questions that could be answered? Were we to have remained you would surely have been challenged in so many areas that you would have liked to get to grips with.

**Shirley Trundle:** There are always umpteen things that you could work on, and choices have to be made.

**Lord Harrison:** But you could have made some choices. That is the point I am making.

**Shirley Trundle:** Well, Ministers could have made some choices. We very much work to their priorities.

**Lord Harrison:** Let me give you an example. You mentioned productivity in your opening speech. Give me an example of where you have involved yourselves with improving productivity—where there is a yawning gap in the United Kingdom—in the countryside.

**Shirley Trundle:** We talked a little earlier about connectivity, which is critical to productivity. The work that we have been doing with DCMS to bring to its attention the needs of rural areas, and the Government's commitment to a universal service obligation and rolling out 5G, including pilot schemes in some rural areas, is one example of where we have focused very much on raising productivity.

**Baroness Parminter:** Following on from Earl Arran's question, when we leave the European Union the accountability and governance structures that have underpinned all our legislation will disappear. What are your thoughts on how UK legislation and the institutions, particularly Natural England, will need to replace those structures? The repeal Bill will not tackle that at all.



**Shirley Trundle:** I assume you are talking primarily about environmental governance.

**Baroness Parminter:** Yes, the ECJ's function and the Commission's role in keeping information.

**Shirley Trundle:** The Government's view is that we have a very effective system of law and courts in the UK. One of the points of leaving the EU is that that will enable us to take back control and to have our own courts controlling decisions about what happens in the UK.

**Baroness Parminter:** So you agree with the Minister that judicial review is not the only recourse in this matter?

**Shirley Trundle:** I am a civil servant. I am here to implement Ministers' policies, so yes.

**The Countess of Mar:** Something that we have not mentioned all morning is food. Food production is the primary purpose of our countryside, surely. Do you give food production the priority that it should have in all your discussions?

**Shirley Trundle:** The interesting thing about land is that it has multiple purposes. That is a great opportunity, but it is also where some of the challenges arise, because we need to try to optimise the benefits that we get from land. Clearly food and timber are very important primary products that come from our land.

**The Countess of Mar:** They are going to be even more important after Brexit.

**Shirley Trundle:** We absolutely want to maintain the production of food, and we want to make sure that the food we are producing is of the greatest value added. Our Secretary of State very much has a vision about the place that UK food can have in the world as food that is produced in an environmentally sustainable way to high standards of animal welfare. He very much sees us as having that reputation for very high-quality food.

**The Chairman:** We move on to the biodiversity duty.

Q9 **Lord Foster of Bishop Auckland:** What difference has the duty on public bodies to "have regard to biodiversity" made to conservation of biodiversity on the ground? How has Defra promoted the implementation of the duty? Has it measured its impact?

**Shirley Trundle:** Back in 2010 we did a formal review of the biodiversity duty in Section 40 of the Act. That review concluded that quite a lot of organisations were taking action and doing activities that supported that. We surveyed in particular quite a lot of local authorities. At that point over half of them said that they were doing things that were raising the profile and visibility of biodiversity. It is always quite hard to isolate the effects of a specific legal duty from all the other influences that play on people. I mentioned earlier that government departments have a whole range of

different ways in which they can try to promote the outcomes they are seeking to deliver.

A particularly timely example is how we work on pollinators, because it is Bees' Needs Week. The duty certainly supports that activity, but we have had Ministers showing leadership. We have been convening and facilitating the coming together of interested groups. We use social media campaigns to widen the reach. That has enabled us to promote changes. We have seen local authorities change the way they manage their verges. We have seen supermarkets promote pollinator-friendly plants for people to buy. We have seen a lot of individual citizens get involved in monitoring pollinators and engaging with the issues. All that promotes biodiversity, but it does not rely just on the legal duty that sits behind it.

**Q10** **Baroness Parminter:** What has been learned from the impact on the ground in Scotland and Wales of the different models that they have adopted to deliver similar rural and environmental goals?

**Shirley Trundle:** Our 2010 review explicitly compared the position in Scotland with that in Wales<sup>65</sup>, and the reviewers concluded at that point that there was no material difference between the experience in the two countries. We obviously monitor biodiversity and publish information about what is happening, and we look at what is happening across the UK as a whole as well as across England, but I do not think that we detect any particular differences.

**Alan Law:** I would echo the general theme. There is variation in the extent to which different public bodies have responded to the duty. Some that we have worked with have clearly taken it very seriously and have sought to try to implement it across the breadth of the piece. Others have taken it less seriously, perhaps. The duty does not appear to have particularly strong teeth when it comes to planning provision. Certainly the test cases that have been brought have suggested that it would not form a strong basis for planning decisions, and it seems to be the same in England and Scotland, despite the wording being ostensibly more robust in Scotland; it is untested as yet in Wales.

**Baroness Parminter:** Will you monitor that, given the 2016 Act in Wales?

**Alan Law:** We will certainly do that.

**Q11** **Baroness Byford:** How successful do you feel you have been since 2006 in preserving natural capital, ecosystems and landscapes? I add to that the whole question of climate change, soil quality, and the resources, or lack of them, of water in the circumstances.

**Shirley Trundle:** That is a very broad range. The answer is that there have been great successes, but there is still more to do in some areas. Alan has already referred to some of the declines in the more common

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<sup>65</sup> Note by witness: Although the transcript refers specifically to a comparison between Scotland and Wales, it should be noted that the same duties applied to both England and Wales at the time of the review. This does not change the conclusion regarding effectiveness.

parts of biodiversity. Equally, we could point to successes in improvements in water quality. The picture is varied across the piece, but it is very clear that the Government feel that there is a lot more to do, not least because of the manifesto commitment to be the first generation to leave the natural environment in a better state than the one we found it in, and the commitment to develop a 25-year environment plan. It is very much the case that there is more to do. The plan will need to cover all the elements that you have spoken about, and it will need to cover air quality and what is happening in the marine environment, so it will need to be very broad-ranging.

**The Earl of Arran:** I have a different question. Are you talking to your European counterparts about withdrawal?

**Shirley Trundle:** I am not personally having discussions with them about withdrawal, but the department has a whole set of programmes of work focused on managing the transition in relation to agriculture and food and to environmental regulation—a whole range of programmes.

**The Earl of Arran:** That means talking to Europe, does it?

**Shirley Trundle:** We have people who are talking to Europe and people who are talking to the other nations in the UK. We have a whole range of engagement.

**Alan Law:** Since NERC was introduced, we have had a huge number of things that we are enormously proud of that relate to your question. We have moved the condition of SSSIs in unfavourable condition from 50% to 95% in recovering condition, and in the last few years we have also progressively increased the proportion that is in a favourable condition. Within that, we have 100,000 hectares of priority habitat and biodiversity habitat, which have been created through our schemes since 2010. We have designated new national parks and new sites of special scientific interest. We have 8,000 hectares that our board will look at later this week. We have designated new marine conservation zones and new special protection areas. We have introduced coastal access to large stretches of the coast. There is a huge amount that we are really proud of. I have only scratched the surface here.

The challenge for the future is to draw those themes together in places and to bring them into what will add up to a resilient landscape. As I said before, that is an exciting challenge for the future.

**The Chairman:** Thank you both very much. No doubt our other witnesses over the next year will support you—or not, as the case may be—in everything that you have just said. To repeat, there are various things that you were going to give the Committee. I have made a note of some of them. One was an organogram of the rural policy team. Another was a note on the training workshops with other departments, both current and recent. Another was a note on the powers with regard to ragwort. I did not write down the one that Alan Law promised Lord Caithness.

**The Earl of Caithness:** It was a note of evidence of the implementation of Sir John Lawton's *Making Space for Nature* recommendations: what has happened on the ground in implementing that.

**The Chairman:** And Lord Harrison wanted a note on the meeting with the DCMS about tourism, et al.

**The Countess of Mar:** May we also have a note on notifiable weeds?

**The Chairman:** Notifiable noxious weeds, exactly. You will both get a list alongside a transcript of the session.

## Department for Environment, Food and Rural Affairs – oral evidence (QQ 197-208)

Tuesday 16 January 2018

12.30 pm

### [Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 23

Heard in Public

Questions 197 - 208

### Examination of witnesses

Rt Hon Michael Gove MP and Lord Gardiner of Kimble.

Q12 **The Chairman:** Thank you very much for coming to see us. I am sure it will be incredibly helpful to our work.

You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website. You will have the opportunity to make corrections to that transcript, where necessary. I am sure you know all of that.

I will ask the first question. Defra is a three-legged department: environment, food and rural affairs. How much of Defra's capacity and resources are targeted at rural affairs, compared with the other two elements? Before you answer that precise question, may I put to you some of the written and oral evidence that we have received? The picture we have picked up as we have gone along—obviously, this goes way back and is nothing to do with you, your Government or your term of office—is that Defra inherited the Countryside Agency, which had a budget of over £100 million. It soon got rid of that and went to the Commission for Rural Communities, which had a budget of less than £10 million, gradually reduced to less than £1 million. It then devolved that to the rural communities policy unit, which it got rid of.

The other aspect concerns the Rural Development Programme for England. Whereas other member states have used this for village renewal, market towns and a wider rural development programme, Defra has allocated to rural development only the very minimum that it was allowed by the

Commission. Most of that was on-farm development, which is only a tiny proportion of the rural community. It was no surprise to us that when the Commission for Social Mobility reported it said that some of the worst deprivation occurs in rural areas—not only remote rural areas, but places such as Wiltshire, Gloucestershire and others. Will you respond to all the views that have been put to us?

**Michael Gove MP:** Absolutely. Thank you very much for asking us both to come along. I owe an enormous amount to Lord Gardiner. The work he has done in this area, long preceding my arrival in the department, has been exemplary. I have benefited from his tutelage.

You are absolutely right: it is at least a three-legged department. When we think about the environment, 71% of this country is farmed land. When we think about food—whether it is food production, which is the central part of what farmers do, or aquaculture or fisheries—those business activities take place overwhelmingly in rural areas. When we think about the organisations that have a regulatory or employment role in rural areas—the Forestry Commission, Natural England, national parks and others—all of them fall naturally within the ambit of the department. Given all the interactions we have, in all the areas for which we are responsible, the natural place for rural affairs to sit is with this department. If you are having a conversation about the future of the common agricultural policy and how we might change that to use public money for public goods, rather than deploy cash in the way in which we currently do, you are obviously thinking about the health, resilience and vitality of rural areas, rural communities and the rural economy.

Money is not the only evidence that you care, of course, but we spend £542 million of administration and programme spending in our overall budget specifically on supporting rural areas—rural affairs spending in the broadest sense.

You are right: quite a lot of that is focused on helping to maintain the competitiveness of agri-food businesses and helping them to diversify. The NFU, the CLA and others are not the only people who speak for the countryside, but they will tell you that without a strong, vibrant and productive food-producing sector the countryside suffers.

More broadly, you make a very good point, which has been made by Alan Milburn and the Social Mobility Commission, about some of the problems that afflict rural areas. It is impossible to generalise, because some rural areas are exceptions to those rules. There are some rural areas where schools are good and where social mobility is less of an issue. In the areas that have been identified, from Wiltshire through to west Berkshire and west Somerset, there are sometimes unique problems, with a history of poor performance by schools and local government. Sometimes there is difficulty attracting high-quality teachers. Sometimes the sources of employment, outside the public sector and one or two single industries, are relatively low income. Therefore, you have an entrenched problem, which has built up over years, of low income and low aspiration.

One of the things I was interested in during my time at the Department for Education was what we could do to encourage higher ambition in those

areas. One of the things we can do—it remains an interest of mine—is ensure that some of the very best teachers and multi-academy trusts take an interest in parts of the country where school performance has been lower and employment opportunities have been weaker.

**The Chairman:** You mention the land-based sectors. I believe that they represent less than 3% of rural employment. The biggest employer in the countryside by far is the manufacturing sector. I worry about Defra's focus on the land-based sectors.

**Michael Gove MP:** I quite understand. BEIS has helped us to refocus the department on agri-food overall: the journey from farm to fork. You are absolutely right: it is not simply land-based employment; it is also everything from food processing and packaging to the abattoirs that are integral to the success of a local food economy.

When we think about what contributes to making a rural community vital, there is increasingly a constellation of factors. Farms that are producing high-quality food whose provenance is admired are often the farms that will sell to local producers—their own farm shop, a local butcher or local pubs and restaurants. High-quality food production and high-quality hospitality often go along with encouraging tourism. Of course, the best-run farms often provide or operate in a backdrop that reinforces the importance of tourism. They go together in helping to ensure that rural communities are vital.

There is one thing that I did not mention and that, inevitably, anyone who listens to folk who live in the countryside will know about. The single most important thing that government can do is crack on with the delivery of superfast broadband to rural areas. Nineteen out of 20 premises in the country have access to superfast broadband, but the 5% that do not are overwhelmingly in rural areas. We will never get both the economic growth and some of the changes in agriculture that we want without that. Lord Gardiner and I are increasingly focusing our attention on that.

**Lord Cavendish of Furness:** Do you envisage that more devolution and improved local government will be a major driver for the improvement of the countryside in general?

**Michael Gove MP:** I think it varies. Only yesterday, I was talking to some representatives from the north-east of England. They said that the Tees Valley mayor, who represents both a number of urban areas and large rural areas, has really been a breath of fresh air in making people think about how, in a part of the north-east of England that has sometimes been overlooked and neglected by the centre, devolution can help to stimulate real change. I know less about the new Cambridgeshire mayor and the work he has been doing, but a couple of Cambridgeshire MPs reported to me that they felt that, with the right personnel, you could galvanise activity in a way that had not hitherto existed.

**Baroness Scott of Needham Market:** I am one of the digitally deprived 1%—I am glad you feel my pain.

I want to ask specifically about the resource available to both of you for

rural policy-making. We have an organogram and a list of posts. I understand that there are 21 posts in the rural policy team. Will you confirm that they are pretty much all filled and that you are running with a full team? In the discussions and the thinking you are having to do about what your department looks like and how it is resourced when you have repatriated various powers, do you think that the rural policy team is likely to get larger or smaller?

**Michael Gove MP:** Overall, we have 64 staff in rural teams. There are 25 in the rural policy team now, including six analysts. We have five in planning and housing, and there are 34 in the RDPE team. We are constantly reviewing how we allocate resources within the department. Sometimes it is not simply about quantity but about quality. For example, the Natural Capital Committee, which does fantastic work and has had a galvanising effect on how we look at the countryside and rural areas, is very lightly staffed, but it has amazingly high-quality people, under Dieter Helm's leadership. We met only yesterday to discuss in particular how, as we change agricultural policy and funding, we can make sure that rural policy-making and the deployment of the very best personnel are embedded in that. I will hand over to John, because he has been leading this team for longer than I have. He may want to say one or two words about some of the very good work that has been going on.

**Lord Gardiner of Kimble:** I would definitely say that we have an excellent team of officials, but it goes beyond that. This plays into the interconnection. I am sure that we will go on to this in subsequent questions, but I have never felt that it is about three silos spinning in their own orbits. It absolutely is not; the interconnection is profound. Therefore, I feel that, in the whole of the department and the agencies, what one believes are the rural areas and the rural communities are so interconnected that, if you take out one piece of the jigsaw puzzle, you have an incomplete picture. Not only are there the 64 staff, with the specialism and the research I know we will go on to, but the whole thrust of the department is that we are advancing. As we advance the environment, we are advancing the interests of rural communities and people who come to visit. I think that they are interconnected. I am conscious of the resource that I have, but I am also very much aware that this is about the whole department and its agencies working for what I would call the benefit of all.

Q13 **Countess of Mar:** First, I must apologise for having to leave early. I have a date that I cannot miss; I have been waiting 10 years for it.

**Michael Gove MP:** That is so intriguing. We want to know what the date is about.

**Countess of Mar:** It is with NICE and is about ME, which I have been dealing with for a long time.

A series of witnesses have suggested to us that rural-proofing of policy often happens too late in the policy-making process, so that policies are formed and consolidated before anyone skilled in rural-proofing even sees them. I think immediately of the right to buy, of houses left in perpetuity in a village and of how you are losing the young people in villages, which



are becoming just places for retirement. Is Defra aware of this issue? If so, what has it done to try to counteract it? How does Defra engage with other departments in rural-proofing, particularly since the removal of the rural communities policy unit?

**Michael Gove MP:** I will hand over to Lord Gardiner.

**Lord Gardiner of Kimble:** First, I should declare an interest. Before my life in Defra, I may have been slightly on the other side of these things as regards the determination to have, and the need for, rural-proofing. Indeed, I worked with the Lord Chairman on these matters. I am fully seized of the importance of rural-proofing and of the fact that it needs to be at the start of these matters, rather than at any other stage. That is why, again with the assistance of the Lord Chairman, the rural-proofing guidance, which I know the Committee has seen, and the subsequent comments thereon have been immensely valuable in enabling me and officials, working with all government departments, to ensure that rural-proofing is entrenched in the beginning of this.

With regard to policy-making and the impact on rural communities, there is not only the rural-proofing guide but the Green Book—the Treasury guide. The BEIS Better Regulation Framework manual includes rural-proofing. I am sure that there are examples where, because of the human condition, there is not the perfect form, but I can look at a range of areas where, in my view, rural-proofing has worked and importance has been placed on rural communities. Five of the 12 early adopters selected to pilot the 30 hours free childcare programme are in rural areas. Rurality is one of the three common cost drivers for local government funding. Rural areas in the north-west, midlands and south-west are included in the DfE’s technical education work placements programme. Ministers have had the ability to be on ministerial taskforces. For instance, I have been on the digital one, about which we will hear more shortly, I am sure.

The impact of getting the rural voice across is evident in housing, in particular. That has come out in many areas, such as our own 25-year environment plan and the revolving land bank, which emphasise the place of rural housing in national housing policy and the importance of sensitive development in the countryside to enable communities to prosper, so that we get not dormitory villages but the multigenerational communities that will enable communities to flourish, survive and prosper.

There is a very strong drive to ensure that proofing starts at the beginning, that we work through it and that we end up with the right policies. Yes, most policies are mainstream. We want to have economic prosperity for everyone, wherever they live. We are working with departments, which will obviously bring forward policies on education, health, transport and Treasury matters. Our task, as the champion of rural-proofing, is to ensure that we work collaboratively with them, so that when departments come forward with policies that affect the countryside and rural communities the specific differences and distinctions, such as sparsity, are reflected in what national policy brings forward.

**Countess of Mar:** There seems to be a major problem for people in rural

communities, who are already disadvantaged under DWP policy and health policy. In both cases, and under care in the community, no account seems to be taken of the fact that it takes someone who is caring for another person a long time to drive to their place. They then have to leave within about five minutes, because they have to drive to the next one. That does not seem to have been foreseen when the policies were set out.

**Lord Gardiner of Kimble:** Again, it slightly cuts into some other things. One of the things I have been doing as rural ambassador is seeking to bring together stakeholders, interested parties and individuals. One of the meetings that I held late last year was particularly on well-being and vulnerability. All too often in the countryside, whether it is in Wiltshire, Northumberland or Cornwall, the hidden vulnerability and poverty that exists is not understood well enough. I want to get into the deep vein of that, with other departments, to see how much better we can do in getting to people, often in the countryside, with whom we do not yet have a strong enough connection. There is room for improvement there.

Q14 **Baroness Whitaker:** I want very much to follow on from that. Secretary of State, you have touched on the case for all rural responsibilities to be in Defra. Lord Gardiner has very much reinforced that. However, in your very estimable 25-year plan, I did not see any mention of rural-proofing or any rural community aspects—economy, social mobility or poverty—other than health and well-being. Some witnesses have suggested that responsibility for rural-proofing, or rural policy more generally, should sit elsewhere in government, such as MHCLG or the Cabinet Office. What do you think would be the advantages and disadvantages of such a move? Why—and, more particularly, how—does rural-proofing fit best with the environment and agriculture in Defra?

**Michael Gove MP:** At the top of the list of organisations with which we talk regularly are those that are most intimately involved in the quality of life for people living in rural areas. Of course, there might be benefits in having rural policy sit in MHCLG or the Cabinet Office, although I do not know what they would be. I suspect that the organisations Lord Gardiner and I spend a lot of time talking to and the people with whom we engage most actively and energetically would not be at the top of those departments' lists of people to see. That is one critical day-to-day factor that means that Defra is better placed to deal with all rural issues.

The second thing I would say about rural-proofing is that, in a way, we should have rural-proofed our own document. One of the criticisms that have been put to me about the 25-year environment plan is that we say slightly too much about restoring habitats in rural areas and not enough about what needs to be done in urban areas to improve the environment there as well. A lot depends on the perspective of individuals. Quite rightly, the environment is an issue that excites passion, so people want us to do and say more about the beneficial changes that we are bringing about.

The final thing I would say about rural-proofing overall is that, wherever that responsibility sits in government, some of the most effective rural-proofers are Members of Parliament in both Houses. It is very rarely the case that any policy emerges from a government department perfect.

Whether it is legislation or a statement of policy direction, everything from a genial nudge in the right direction to a pointed question or political campaigning by people who represent and understand rural areas ensures that we get policy right.

**Baroness Whitaker:** I think you said that other government departments do not prioritise the thriving of rural communities in the way in which Defra does. If that is what you meant—or even if it is not—how would you make them do it? From what we have heard, it is not really happening at the moment.

**Michael Gove MP:** I would say two things. First, every organisation that has a care for what happens in rural areas is an organisation we are more likely to talk to than other government departments at any given point. If it is the NFU, the CLA, the RSPB, those responsible for our national parks or those responsible for ensuring that in rural areas there is appropriate employment in a variety of sectors, they are likely to be people we are talking to. Therefore, we are in a position to say to other government departments, “Please take account of this”, and sometimes, “Policy needs to change”.

I mentioned earlier that policy is very rarely perfect when it emerges from any government department. When policy emerges there are often oversights, mistakes or errors that need to be corrected, not just with respect to rural areas but with respect to other communities and interests as well. Earlier today I was discussing with a Member of Parliament who is a Minister, but who represents a rural area, and with a Minister from the DWP one of the challenges that people from rural areas have, thanks to changes in bus transport, in getting to jobcentres to fulfil the requirements to show that they are ready for work. We have been able to communicate that awareness of the impact on rural areas of decisions that have been taken by the Department for Transport because we have close working with DWP and other government departments. Government is a process of continuous improvement. Sometimes we all drop the ball. Therefore, sometimes we have to remind others of the need to pick it up, alter or change. In Defra, we have a team of Ministers who live and breathe these issues every day and are not shy about communicating their importance to other government departments.

**Lord Gardiner of Kimble:** The Secretary of State has mentioned a number of organisations, but I would like to emphasise the importance of more social matters in my brief. I am having meetings on well-being and vulnerability with the Rural Coalition, the Rural Services Network, the Association of Convenience Stores and the chief executive of the Post Office. In my view, that is where you get the infrastructure of rural life. Personally, I think that there is an interconnection between food, farming and agriculture, as a backbone, and rural communities and the social services, such as health and education, with good, improving schools, that they require to have a good and prosperous life. I believe that Defra has a locus in all those things, because they need to be mainstreamed. In other words, we want the Department for Education to want good and outstanding schools across the country.

In my view, my ability is to go and see the Minister. For instance, I have brokered a meeting between Matt Hancock and the rural bishops, because the Church infrastructure has been immensely helpful in getting digital to many far-flung parts. WiSpire, in the diocese of Norwich, has been a great example of using Church infrastructure to help villages to get connected. Perhaps we should do that in Suffolk, Lady Scott.

These are examples of the facilitation that I have, as the rural ambassador. The number of meetings that I have with Ministers to beat the rural drum is quite considerable. That is the importance of being in a department and having the ability to see Ministers across Whitehall, with the rural-proofing guidance, which was agreed with the Cabinet Office and has had the imprimatur of everyone engaged in it, to start policy at the very beginning. Although there are examples where it could have been better, there are many examples in each of the departments we work with—all the home departments—where there has been a much better understanding of rural issues, within the context of the mainstream, because of rural-proofing.

**Baroness Whitaker:** In your view, the powerful tentacles of the Cabinet Office or the deep local contacts of MHCLG would not be advantageous in respect of better rural-proofing. You are saying that it should be with Defra.

**Lord Gardiner of Kimble:** I have thought about this both before I came to Defra, in another life, and now. I see the countryside and rural communities in a holistic sense, rather than as lots of silos spinning off. All of them are so interconnected, so I see merit in a department that looks after the environment, 70% of the landmass, in which rural communities are based, is farmed, and the needs of rural communities, where there are so many small businesses. For instance, rural-proofing is coming out in the industrial strategy. Food and drink comes as one of the first sectors, because it is a massively important economic engine. Of course, the very beginnings of it are the produce that people on the land produce, which turns into small businesses, which help employment and so forth. We have higher employment figures, and lower unemployment, than in urban areas. Through the industrial strategy, we want to encourage small and medium-sized businesses to grow. That is the sort of thing for which the industrial strategy, with its rural-proofing element, is very valuable.

**Baroness Scott of Needham Market:** We have had a lot of evidence in which people have asserted that rural-proofing is inadequate or does not happen. Given the persuasive arguments you have just made, why do you think that there is such a disconnect between the people whom we would regard as your stakeholders and what you have told us?

**Lord Gardiner of Kimble:** The three meetings that I had in the latter part of last year were intriguing. They involved well-respected stakeholders we work with. I could give the Committee a number of examples where we believe that working with other departments has borne fruit. I think that stakeholders were not aware of the fact that that is ingrained in what we are now doing, because of the rural-proofing guidance, the determination of the rural policy team in Defra and the acceptance of Ministers and officials in other departments that this is about national policy with a rural component.

I agree: a number of the stakeholders were rather surprised, as they thought, perhaps, that rural-proofing was words and not action. I would like to portray to the Committee not just my determination but the determination of the ministerial team—because we dovetail, obviously—to ensure that rural communities have the indices that are needed to help them to prosper. Being a countryman, I think that it is very important for the nation that it understands that the prosperity of rural communities is very important to it, too.

**Q15 Lord Cavendish of Furness:** May I go on to something new? Either or both of you may answer this. One of the many aspects of the work of the Commission for Rural Communities that used to be done and is much missed by stakeholders is the in-depth, detailed and wide-ranging research that it carried out into rural society and economies. How is that work replicated currently? How involved is Defra in ensuring that such research is being conducted?

**Lord Gardiner of Kimble:** Research is very important. Again, this is interesting, because it may be that there is not an understanding, or sufficient understanding. The meetings I have held with a wide range of stakeholders have highlighted the importance both of research that comes from the grass roots and of academic research. We have therefore commissioned research. We participate in rural policy research networks. In fact, we are going to set up a group of UK academics on rural policy to provide advice on the situation post Brexit and to do specific EU exit work, which will be hugely valuable. I have a list of a range of research projects since 2013 that have been immensely valuable, including projects on renewable energy, the economic and social return of RDPE, rural tourism and local food and drink, and drivers of service costs in rural areas, as well as a contribution to the Cabinet Office's research into digital inclusion. There are all sorts of ways in which Defra is participating, either directly or indirectly.

One really important thing is that quarterly we produce a rather substantial document, which I am sure the Committee has seen, the *Statistical Digest of Rural England*. I have brought a copy with me. A rather more modest document, perhaps not costing so many trees, is the *Rural Economic Bulletin*, which has 5,000 hits per month. It is profoundly important that we have that statistical information and that we employ statisticians to help us, not only for ourselves but so that we can work with other departments. Obviously, there is more work to do. Of course, any government department has had to manage the national economic conditions—there are no great pots of gold—but I think that Defra is investing in research.

I would particularly like to mention two current projects: a project on the dynamics of the economy in rural areas and an evaluation of the rural and environmental dimension of the European Regional Development Fund and the European Social Fund. If we move on to the importance of the shared prosperity fund, clearly we will want to consult stakeholders very strongly about successors to the schemes that we have been using to foster the rural economy and rural communities, to ensure that they are also rural-proofed.

**Lord Cavendish of Furness:** May I press you a little further on that question? The research work you are talking about sounds a bit generalised to me. Witness after witness has told us about the importance of minutely detailed data. The CRC had a reputation for very in-depth research. I would like your reassurance that that is replicated.

**Lord Gardiner of Kimble:** Let me put it this way. The *Statistical Digest* is very comprehensive and takes us into areas that are detailed. Clearly, if there was a specific issue on which we, as the rural policy department, needed more research, we would want to commission it. There will be areas where other departments will commission research into detailed issues to do with healthcare and a range of different attributes. I see the widest range of stakeholders. I have to say that no one is shy in coming forward with opinion, which is very healthy. If there were areas of particular concern and there was a paucity of knowledge and understanding, beyond all the groups we see and work with and the academics we also want to work with, I would want, in discussion with the Secretary of State, to look at those very strongly.

**Earl of Arran:** Research is critical, as we all know. In all honesty, to what extent is research suffering from a lack of funds? Would you wish to do more than you are currently doing?

**Lord Gardiner of Kimble:** As I said to Lord Cavendish, if areas were identified that we thought really needed research, I would make a strong representation to the Secretary of State, but one of the really valuable things that we have at our disposal is this. In the series of meetings that I had last year, 35 organisations were represented. The valuable side of their contribution is understanding some of the detailed and in-depth concerns about vulnerability, for example, and how best we can learn from the best examples. How are some communities getting digital connection because of local leadership and inspiration, but others are not?

I am not against academics at all—I think that academics are vital—but when we are seeking solutions to the grass-roots problems that are affecting certain communities in certain parts of the country, learning from the example of the practitioner can be immensely valuable as well. Certainly, we work and want research, but there is also the research of working within the department with the stakeholders who are going to help us, through rural-proofing, to get things better.

Q16 **Viscount Chandos:** Another of the valued aspects of the CRC was its independence, which helped it to maintain strong relationships with a whole range of rural stakeholders. In the absence of the CRC, how does Defra replicate the strength of those relationships across all stakeholders?

**Michael Gove MP:** I will say a little; I am sure that John will then say more. One can never do enough. I and all the Ministers in the department have made it their business to speak to as wide a range of voices as possible. I mentioned some of the organisations in being, from the CPRE to the CLA, that have a big role to play and whose advice we take seriously.

The other thing to recognise, of course, is that even the best representative organisations do not speak for everyone within their particular sector or

area of concern. Part of it is being out and about and being open to hearing from those at the front line. It is valuable to listen to the NFU when discussing the future of our bovine TB strategy, but there is no substitute for going down to Devon and talking to a farmer who has been directly affected. It is wonderful to speak to the Environment Agency about some of the flood prevention schemes that it has undertaken, but there is no substitute for visiting those who have been affected in the past, seeing what changes have been made and whether people feel both reassured and that their concerns have been heard in the heart of government. The vitally important thing for us is to make ourselves available, but also to try to make policy in the most transparent way. One of the things that I know John has done brilliantly as rural ambassador is ensure that, when we talk about some of the changes that we want to make, we put things forward by way of a proposition that we wish to test, rather than an edict to which others must submit.

**Lord Gardiner of Kimble:** There is not a stone that I would want to leave unturned as regards dialogue and learning from the widest possible range of people who enable rural communities and the countryside to tick. That is immensely valuable. The Secretary of State has mentioned visits. One example is the Warwickshire Rural Community Council fostering a housing scheme in a village. It is just the sort of rural housing scheme we would all be proud of, with sensitive building material and the right demographics. A community-owned pub is another example of the work of fostering communities, as is a village hall. In fact, next week is village halls week. I am going to visit village halls, because what we desire is that there is always a hub in the village. I accept that it may not be possible to have everything, but if we can keep hubs in the village that is tremendously important.

This is not an abdication of responsibility, but I think that volunteers and the voluntary spirit in rural communities have always been in the spirit of those communities, whether we have had prosperous times or rather straitened times. I have found it immensely valuable, whether it is volunteers dealing with invasive species, volunteers in social care or volunteers driving the village bus. I have connections with all levels of local government, from parish councils to county councils: the whole range of the LGA. The issue is how we who are beating the drum for rural ensure that communities have the best possible opportunities. When it comes to the relationships, again, the whole ministerial team is engaged. We may predominantly see different elements of this wide range, but all of us see them as elements of the complete picture.

The Post Office is a very good example. We always think that things are going backwards, but in fact they are going forwards. Paula Vennells, the CEO of the Post Office, is an absolute zealot in seeking to ensure that the post office network is entrenched in rural communities. Part of that is the very successful way in which, with public, taxpayers' money, we have entrenched co-location. A good example was when we understood that the post office in my little local town of Eye was going to be closed. The proverbial black armbands were being worn, but it was discovered that it was going to be co-located in the newspaper shop. Of course, it is open

more hours and the queues are shorter, because the flow of traffic is much less congested. Actually, it has been a success story for the community.

There are all sorts of ways in which this dialogue can happen. For instance, I have meetings with every single one of the mobile network operators to say, "Come on. You have to think more about rural. You have to think about sharing masts. This is your social responsibility". I know that they are running commercial operations, but I think that private enterprise has public responsibilities as well. I hope that some of that will bear fruit. It is very important that the rural ambassador does not miss any opportunity to beat the rural drum. That is what I seek to do.

**Baroness Scott of Needham Market:** I was going to ask about rural economic development, but I think you covered that in your previous answer.

Q17 **Lord Faulkner of Worcester:** I would like to ask about the relationship between Natural England and the department. A number of really powerful witnesses expressed concern that Natural England is in some way conflicted, as it acts as a delivery agent for the department and, at the same time, as a regulator. Do you think that there is any tension or conflict of interest between Natural England's position as a delivery body and its ability to provide things such as independent research and advice?

**Michael Gove MP:** No, I do not think so. I can understand why the concern might arise, but, in my experience, Natural England and its leadership team have had no trouble operating independently, at the same time as seeking to improve delivery. On the one hand, there is an issue, which was well advertised long before I joined Defra, about the delivery of countryside stewardship payments, in which Natural England has a central role. One of the things that I, along with George Eustice and John, did was talk to the leadership of Natural England about improving the accessibility of these schemes. They went at it with a will. It is also the case that when, at certain points during the development of the 25-year environment plan, the argument might have gone in a particular direction, robust challenge from Natural England ensured that we maintained the commitments that you see in that plan. Not just in the advice that it gives to us, but in the role that it plays as a statutory consultee, Natural England has a record of occasionally being thrwn, to use a Scots word, in its determination to ensure that the conclusions that it has drawn from its research are respected.

**The Chairman:** One of the bits of evidence that draws us to the conclusion that the question seemed to insinuate is that Natural England does not have its own PR department. Defra insisted that Natural England uses Defra's PR department.

**Michael Gove MP:** Yes.

**The Chairman:** That does not strike me as being a very independent situation.

**Michael Gove MP:** The chairman of Natural England needs no PR department to get his view across—his voice is heard loud and clear. One



of the things we have had to do is try to make sure that, across the Defra family, individual silos of activity that form the corporate services functions—PR, accounts and personnel—can be brought together. Ultimately, Natural England’s board is robust and independent. Its chairman is both of those in spades.

**Q18 Lord Cavendish of Furness:** Evidence to the Committee has suggested that funding cuts have negatively affected Natural England’s ability to collaborate with stakeholders, its performance as a statutory consultee in planning and its capacity to address all five of the elements of its general duty. Notwithstanding Andrew Sells’s powerful personality, and having myself been on a number of public bodies, I have the impression that those whom the Government wish to destroy they first muck around. They also cut their funding rather heavily. I have always felt that big changes were afoot with Natural England. Can you clarify the position?

**Michael Gove MP:** There are no big changes afoot for Natural England. Some concerns were expressed by some people, but we hope that our commitment to establish a new environmental watchdog will satisfy some of the very legitimate concerns that have been raised about how environmental governance will proceed outside the European Union. The suggestion is that that will mean that somehow Natural England’s role will be eclipsed or it will have its wings clipped. Not at all: I foresee Natural England continuing to play a significant role in the future in all the areas for which it is responsible.

Like every part of government, including Defra itself, Natural England has had to cope with the challenge that comes simply from having fewer pounds to spend. The leadership shown by Natural England in accommodating those requests for budget cuts, but continuing to deliver a high quality of service, has been very good. There have been bumps in the road, but overall it has been impressive. In the last year for which we have figures, 2016-17, Natural England, as a statutory consultee, had to respond to 12,852 planning applications. It responded to 97% of them on time. As we all know, it is dealing with some quite complex issues there. While not everything in Natural England is perfect, that performance indicator is a sign that, notwithstanding some of the budget cuts, it continues to perform well.

**Lord Cavendish of Furness:** Does that successful percentage include the redirection of that planning to a general paper, on which we have heard evidence? Do the trends square with Natural England’s duties under the NERC Act, which we are looking at, or, indeed, its stated intentions under *Conservation 21*? How are they affected? How are Natural England’s objectives set out by Defra? Under increasing funding pressures, how are its aims prioritised?

**Michael Gove MP:** Natural England played a huge part in the development of the 25-year environment plan. The targets for the recovery of habitats and the particular proposals to give effect to Sir John Lawton’s recommendations in *Making Space for Nature* show that the ambitions outlined earlier in its lifetime for Natural England to play a role in improving

our landscapes and natural environment remain on course. If anything, they are more ambitious than ever.

You quite rightly draw attention to the fact that there has been a falling-off in the number of staff overall, but Natural England still employs more than 2,200 people. When it comes to questions such as the management of blanket bog, which is a particular concern, I have been in negotiations with Natural England to ensure it has the skilled advisers necessary to make sure that landowners can do the right thing in a way that is consistent with the increasing demands being placed on them. Of course, one of the things I am very anxious to do is to make sure that the ambitions we have set, and Natural England's capacity to meet them, are constantly reviewed. I have said to Andrew and his team that he must simply ask for the personnel and support across government that they need to achieve the goals we have set for them.

**Lord Cavendish of Furness:** I must press the planning issue; Lord Gardiner might want to answer this. You referred to the huge success rate for responding to applications on time. The evidence that we have had suggests to us that it is a standard reply, which says, "Refer to our book". Is that the case?

**Michael Gove MP:** So, rather than let a bespoke adviser handle it, they just say, "Here we are"?

**Lord Cavendish of Furness:** Yes.

**Michael Gove MP:** I can understand that. Part of the challenge is, how can we streamline the process in a way that safeguards the environment? How can we ensure that you do not have a significant development stopped because there is a single crested newt, or because the requirements to take account of the possible presence of bats have been worked through in exhaustive detail? Woking is one local authority that has helped to pioneer an approach that ensures that there is net environmental gain, but in a more streamlined way, so that everyone's time is saved. The developer's time is saved, so that it can get on with providing housing, and Natural England's time is saved, so that it can concentrate on making sure that environmental enhancement is at its heart—but I will hand over to John.

**Lord Gardiner of Kimble:** I have nothing to add. The importance is in prioritisation. There are certain areas, such as the newts and bats, where Natural England needs a more practical and streamlined approach to the impediments to development, and sensitive development, so that there is better understanding of the way forward. Obviously, we want to enhance and protect the environment and habitats, but we also need to see it through the prism of enabling sensitive development.

**The Chairman:** Lady Byford, do you have a supplementary?

**Baroness Byford:** Lord Cavendish has nearly followed up with the question that I wanted to ask. Responding to 90% of applications within the time is very good, but at local level some planning authorities are struggling to have enough people with skills. The evidence that we heard

reflected the fact that Natural England was not able to give them the help and advice that might have been given in earlier times. I do not know whether that has been raised with you. There is no question on the response or the time, but, as my friend has just said, there is no comment on too many of them, when a little more help would have been useful. I am talking not about the nitty-gritty of newts or barn owls, but in general terms.

**Michael Gove MP:** I absolutely take the point. I will say several things, although I will keep it relatively brief. There is a challenge for local authorities when it comes to planning. Almost by definition, the developer can offer a skilled planner a slightly comfier berth than they might enjoy in local government, so the balance lies slightly more in the developer's advantage than in the local authority's. The planning function, and making sure that local authorities have access to high-quality planning staff, is important.

Natural England has a role to play, of course. In my own experience as a constituency Member of Parliament, Natural England's performance has improved over time. I have a particular challenge in my area, because my constituency, Surrey Heath, has heathland. The Thames basin heaths are a special protection area. That requires development that occurs nearby to have regard to the habitats directive, which requires developers to find suitable alternative natural green space. That process, which has been quite bureaucratic in the past, is now simpler. I would not necessarily say that it is better in every regard, but I think that in some cases Natural England's performance has become smoother, because past difficulties have been ironed out. That may be experienced by some as less bespoke and slightly more off the peg.

**Earl of Caithness:** Secretary of State, it is extremely beneficial to our report that you were able to come today. Thank you for changing the date in your diary, particularly because you have done the Oxford speech and your 25-year plan.

In your 25-year plan, you mention net gain for planning. Do you think that, if you can implement it properly, net gain will be of benefit to Natural England in enabling it to assess planning applications? On planning, is Natural England involved in vetting what the Mayor of London has proposed on development in suburban areas and gardens, which affects the biodiversity and green lungs in urban areas?

**Michael Gove MP:** First, the principle of net gain associated with development, both for housing and for infrastructure, which the Prime Minister reinforced in her speech last week, is a very powerful one. We all know that we have ambitious targets to provide additional housing that we need to meet. Indeed, there are big infrastructure projects that are critical to the future economic health of the country, but we need to ensure that when they proceed, with the loss of ancient woodland or the sacrifice of other amenity or biodiversity sites, the developer makes a contribution that can help to restore or improve habitats, or to provide new habitats elsewhere. That is absolutely critical. Natural England will have a really

important role to play in doing that. I am grateful to you for highlighting its importance.

I will have to come back to you on the Mayor of London's plans, which are an area of concern. As you quite rightly point out, one of the striking things is that domestic gardens are some of the richest sources of biodiversity in the country. When thinking about how we meet housing need, we must be clear that it must not come at the cost of biodiversity loss. I will return to this topic, and to the point you make, by asking for further particulars on the role that Natural England and others might play in making sure that the Mayor of London's plans do not lead to biodiversity loss.

**Q19 Earl of Caithness:** Thank you for that, Secretary of State. In your 25-year plan, you say that making a healthier environment requires really solid foundations. Following on from what Lord Cavendish said, we are trying to get a grip on how you see Natural England in the future. You said that there will be no major changes, but surely the role of Natural England will change hugely when the basic farm payment system goes and you have to make an environmental payment of public money for public goods.

**Michael Gove MP:** Yes.

**Earl of Caithness:** Is the foundation of Natural England solid enough for what you propose, or will you have to change that and its role?

**Michael Gove MP:** You are absolutely right. Both Natural England and the RPA will have additional responsibilities as a result of our changing the way in which farmers, landowners and land managers receive payments and support. At this stage, we are consulting. One of the things about the Oxford speech is that I laid out some precepts that I thought should guide policy. As I mentioned earlier, my approach, modelled on Lord Gardiner's, is to lay out precepts, suggestions or the direction of travel and then to consult, rather than to say, "These are edicts, and this must be so".

I believe that the principal public good to which public money should be devoted is environmental enhancement. I also think that public access, properly designed, is another real good, because the broader the understanding of rural life, food production and agriculture is among all our citizens, the more effectively rural-proofing will take place at national level in the political conversation. You are right to say that Natural England and the RPA will have a role to play. Even now, I am playing a part in the recruitment of new non-executive directors to Natural England to make sure that we have the strong leadership team required. As I mentioned earlier, I have said to Andrew that, as policy develops, he must let me know if he believes that he needs additional resource or support to deliver what is being asked of him and his team.

**Earl of Caithness:** So Natural England, with the RPA, will be your main agent for delivering the new payments.

**Michael Gove MP:** Yes. At the moment, that is how it is conceived.

**Earl of Caithness:** In that role and, more particularly, its role of preserving biodiversity, would you consider changing the countryside

stewardship scheme and the farm agreements that you propose to allow Natural England to permit predator and pest control, as happens in Scotland as part of the countryside schemes?

**Michael Gove MP:** I will have to reflect on that. No pun intended, but I would not want to set any hares running at this stage. As members of the Committee will be much more aware even than I am, one of the things about predator and pest control is that there can be fixed camps in this debate that it is sometimes wise not to antagonise. Let me give consideration to that. There is a lot that happens in Scotland that I admire, and some things that I do not.

**Lord Gardiner of Kimble:** As we are talking about predators, I hope that there is a consensus that the work that is being done on how we manage the grey squirrel better is an example of Defra working with the Squirrel Accord and the widest possible range of people who understand the damage that the grey does to our flora and fauna, as well as the dramatic impact it has on the native red squirrel. If Lord Caithness's question could extend to that sort of work, I think that it is very important that we have research, in effect, into how best we might manage an invasive species such as the grey, which causes such damage.

**Earl of Caithness:** It will not go to your trees unless you control your grey squirrels.

**Michael Gove MP:** Yes.

**Lord Gardiner of Kimble:** Correct. That is why we see it as important work. To pick up the Secretary of State's point, this has the endorsement of a broad range of interests that have maturely come together to understand that if we do not manage the grey squirrel we will not have the treescape that we enjoy now. Future generations will never see it.

**The Chairman:** We will move on from squirrels.

Q20 **Baroness Byford:** I thank both of you for giving your time today. I think we will come up with a very important report, which I hope will be helpful to you, too, in the future.

I know that you are going to consult on the new environmental body, but may I ask one or two direct questions with regard to that? What powers or duties do you envisage it having? Who will fund it, and to whom will it report? Those are three fairly straightforward, basic questions.

**Michael Gove MP:** It will be funded by Defra. At this stage, it is up for debate, but my hunch is that one of the best models is the Parliamentary Commissioner for the Environment in New Zealand. While Defra would fund the operation, the body would be responsible to Parliament, in the way Ofqual, for example, ultimately is. It would have functions similar to those of the Parliamentary Commissioner for the Environment in New Zealand or the Committee on Climate Change, which Lord Deben chairs, in that it would be able to point out when, in the formulation or implementation of policy, government was not living up to the environmental principles and ambitions that we had set ourselves and that Parliament had agreed.

**Baroness Byford:** May I go back to the question we were talking about previously, which is on the future role of the three departments? As we have taken evidence, people have suggested that some of the work that Natural England does overlaps with what the Environment Agency does, and that it might be a good idea to look again at the various responsibilities, particularly with respect to water. The same applies to the Rural Payments Agency. If the system is going to be simplified—with modern technology, that should be possible, for goodness' sake—you have to ask, do we really need the structures that we have now, or could we come up with better solutions?

**Michael Gove MP:** A compelling case for future change has been made by Professor Dieter Helm.

**Baroness Byford:** I am talking about the future.

**Michael Gove MP:** He makes an impeccable intellectual case for having an environmental protection agency—a revamped Environment Agency—and for some of the delivery functions with respect to water and flood prevention being taken on by water companies and others. There is only so much that even the best government departments can do at one time. This is a responsibility for Ministers who will come after John and me to address. We want it, but we have a lot on our plates at the moment. It means that that sort of restructuring is for a future day, rather than for the near horizon.

**Baroness Byford:** You mentioned the many things that we have coming through. I understand that we have an agriculture Bill, a fisheries Bill and several other things to come.

**Michael Gove MP:** Yes.

**Baroness Byford:** Would you like to share with the Committee any other thoughts that you have on the nitty-gritty of things that are to come before us within the next year, perhaps?

**The Chairman:** Presumably, this new body, if it is to survive your excellent reign at Defra, will have to be statutorily constituted.

**Michael Gove MP:** Absolutely.

**The Chairman:** So there will be another environmental protection Bill, if you like. There is quite a lot of legislation on your plate at the moment.

**Michael Gove MP:** Yes, there is.

**The Chairman:** With the EU Withdrawal Bill about to come to our House, will you expand a little on the timing of all this and how it is going to work?

**Michael Gove MP:** Yes. Everything is subject to cross-government agreement. I have to respect the wishes of business managers, so what I say is without prejudice to decisions that may be taken by others. We hope to publish a consultation paper on the future of fisheries next month. We hope that that will outline how we propose to move on from the common fisheries policy. We propose to publish a fisheries Bill thereafter. That Bill

may start in your Lordships' House. We hope around the time the fisheries Bill is published to publish a Command Paper on the future of agriculture. We hope that an agriculture Bill will be introduced towards the end of spring or in early summer.

Those are the two major pieces of legislation that we have in this parliamentary session. There will be smaller, but still significant, pieces of legislation, God willing, on animal sentience and sentencing, and on ivory, to make sure that we have the right measures to prevent the trade in ivory that threatens African elephants.

Although I do not want to bind the hands of my colleagues in government, the logic is that, exactly as Lord Cameron points out, there will need to be environmental legislation to make sure that the new environmental protection body that we envisage is set up on an appropriate footing. There are some other things that we have said in the 25-year environment plan and elsewhere that mean that at some point in this Parliament—we would all prefer it to be sooner, rather than later—we will need a piece of environmental legislation.

It is not strictly within the Committee's remit, but one thing that I was going to say with respect to the fisheries legislation is that I want to ensure that there is the maximum engagement beforehand. Lord Gardiner, George Eustice and I will therefore make arrangements to ensure that, on a party-by-party and a cross-Chamber basis, Members of Parliament who have an interest in this and want to ask questions have an opportunity to do so in as much depth and detail as possible.

**Q21 Earl of Caithness:** May I turn to the subject of biodiversity? It is Natural England's role to maintain and improve our biodiversity. In that respect, we can all agree that it has failed, because our biodiversity has gone down. How do you expect Natural England to be able to turn that around? Given that, when it has to report to you, it does so mostly under EU legislation, how will that be done in the future?

**Michael Gove MP:** I would not lay responsibility for the decline in biodiversity wholly on Natural England's shoulders. There are different measures of biodiversity, naturally. One of the best-known and most widely used measures is the farmland bird index, which shows that, in areas where higher-level stewardship schemes have been in place, there has been a significant increase and that several species have rebounded in numbers. Therefore, properly done, countryside stewardship schemes and environmental land management schemes can lead to a biodiversity gain. Natural England has played a part in that.

Part of the challenge has been that some of the incentives in agriculture have worked against the promotion of biodiversity and that some other organisations have not necessarily had the maintenance of biodiversity as their top priority. I hope that that will change with the publication of the 25-year environment plan and with the engagement that we hope to have with farmers, landowners, managers, water companies and others.

Even though we are moving beyond the common fisheries policy, in some areas, with the establishment of marine protection areas and with some

reform to the CFP, we have seen increased biodiversity in marine species. There are hopeful signs. Just before Christmas, I was very privileged to attend a reception, at which Sir David Attenborough spoke, for the Darwin Initiative, an initiative that we fund and that contributes to biodiversity gain overseas. Sir David made the point that, all his adult life, he had felt that nature was in retreat, but now he felt that the penny had dropped, that the public and Governments appreciated the importance of change, and that at last the tide was turning. That was no reflection on this Government, but a reflection on the leadership that is being shown by the British public. I felt that that was a very encouraging sign.

**Earl of Caithness:** What about reporting to you under the EU?

**Michael Gove MP:** In the final part of the 25-year environment plan, we ask explicitly how we can develop better and more transparent metrics for demonstrating biodiversity gains. I refer not just to the health of individual species, the farmland bird index and the wild bird index, but to other indices.

Following on from Lord Arran's point, I hope that both Natural England and the new environmental body that we envisage will either commission research or seek to improve the way in which we measure biodiversity, so that we can set a gold standard in that regard. There are other jurisdictions from which we can learn. Both Austria and New Zealand have produced publicly accessible indices of biodiversity gain and loss that have helped to improve the public conversation and held Governments to account. I would like to see us be even more transparent in having the right sorts of metrics that can aid public debate and make sure that Ministers do their job.

**The Chairman:** Lord Cavendish, you had a point on the previous question, but I moved on too swiftly.

**Lord Cavendish of Furness:** This is a slight personal hobby-horse of mine. In order to have your great reforms and the changes that we need, you have to carry the public with you. We are hugely encouraged by Andrew Sells saying that there is going to be a much more collaborative approach in Natural England. I hold to the view, I am afraid, that civic society gets less and less civil. That needs to change. At the moment, it is an obstacle to progress. With these changes, I feel that there is a role for your Ministers, and you personally, to change the mood music of government a little, which is overdue. Could you comment on that?

**The Chairman:** You can answer that in less than half an hour, I should think.

**Michael Gove MP:** Yes. I have an enormous amount of sympathy with the point you make. There are ways in which the public conversation has become a bit more raucous. That having been said, without wanting to be guilty of too lazy a set of stereotypes, I find that, even though there are very strong, and sometimes divided, views in rural areas or with respect to the future of the countryside, the tone of the debate is much more civilised.



To take a case in point, when it comes to hunting or shooting, there are passionately held views on either side of the debate, but when you spend time in rural communities talking to people about those issues you find that there is sometimes a civilised agreement to differ, and sometimes a passionate and engaged, but always a civilised, debate. That will have been reflected in the various groups that have appeared before you. They will have made their points, which are sometimes critical of government, in a very measured and proportionate way. I am very lucky. If I needed role models in how to civilise discourse, in Lord Gardiner, George Eustice and Dr Coffey I have three very good role models in how to elevate the level of conversation.

Q22 **Earl of Arran:** I come back briefly to the 25-year environment plan, which is both bold and ambitious, but 25 years is a hell of a long time.

**Michael Gove MP:** Yes.

**Earl of Arran:** How do you see it fitting into rapidly changing legal and policy changes? I would like to imagine that it will be subject to regular review and that, as circumstances change, they will be reflected in the plan, and the plan changed accordingly.

**Michael Gove MP:** Absolutely. The principle of a 25-year environment plan first emerged from the work of the Natural Capital Committee and Professor Dieter Helm. The purpose is to show that, even as Governments change and, sometimes, policies and priorities evolve, there is nevertheless a long-term commitment to environmental enhancement that will not be diluted because of changes in the composition of Governments or economic tides and waves. It is there to hold all Governments, Ministers and delivery bodies to high ambitions.

You are right. It is clear that it is a living document—indeed, the Natural Capital Committee said that—and that it must adjust to particular challenges. To take a case in point, air quality is an issue that, rightly, has risen up the public's list of concerns. Air quality has improved overall in recent years, but there are some parts of the country where the situation still requires radical action. There are also some things that we need to do with respect both to things such as wood and coal burning and to ammonia in the countryside, where action needs to be taken urgently.

I hope that in 10 or 15 years' time, as a result of technological and policy changes, air quality will be much less of an issue than it is now, but I suspect that other environmental concerns and dangers will have taken its place in the hierarchy of worries. The 25-year plan and the approach that we take need to evolve to meet those changes.

**Earl of Arran:** We must remember the London smog, how circumstances have changed since then and what can be done.

**Michael Gove MP:** Yes. Please forgive me for saying this, but it was a Conservative Government that introduced the Clean Air Act. The very first piece of environmental legislation with regard to water quality was also introduced by a Conservative Government, under Disraeli. As the Prime Minister quite rightly pointed out last week, all political parties have a

strong tradition of regard for the environment. It is not the possession of any one party or Administration.

**Lord Faulkner of Worcester:** Climate controls maintain that continuum, although that was implemented by a different Government.

**Michael Gove MP:** It was. It was a very good piece of legislation. Even though I voted against it, I think that it was a mistake on my part. The other thing that I would say is that I do not think that any of us can look back at the history of environmental improvement without paying tribute to the Attlee Administration for the creation of national parks. That was a recognition that there needed to be improved public access after some of the struggles over access in the 1930s. Although, as we discussed, we all have to keep planning under review, the Town and Country Planning Act was also an Attlee Administration achievement.

**Baroness Whitaker:** Looking to the future, I very much appreciate your encouragement of the natural capital way of looking at things. We have heard criticisms that it does not deal properly with externalities—with winners and losers—and that it does not have a method of valuing what is priceless. How can it be expanded?

**Michael Gove MP:** During the discussion about the 25-year environment plan, I said that natural capital was an incredibly useful tool and that we were world-leading in its development, but that it must not become a Procrustean bed—that all policies must not be either stretched or cut to fit into that framework. It is an incredibly useful framework, but there will be exceptions to it. You can point to two.

The environment plan acknowledges right at the beginning that there is an intrinsic value to nature, to creation and to life. While natural capital is a way of reminding us of its value in policy-making, that goes beyond any valuation in pounds, shillings and pence and beyond any accounting. You literally cannot put a price on beauty.

Secondly, your previous point about needing to find other ways of reflecting some environmental principles in policy-making is very well made. One of the reasons I believe we need a new regulator is that, as well as having a natural capital approach embedded in government, we need to pay attention to things such as the “polluter pays” principle and to make sure that they are embedded in the way in which environmental policy is delivered.

**Baroness Whitaker:** Do you not think that its methodology could be expanded, in the way in which traditional economics has been expanded to put a value on life, by working out methods of calculating what people would pay to have certain things done? It seems a shame not to make it wider. It would be so useful.

**Michael Gove MP:** I very much agree with you. I am not an economist, but one of the really interesting things in economics recently is the way in which economists have been saying that, while economic growth and GDP are important, it is also important to look at and to value other things. In her book *Doughnut Economics*, Kate Raworth makes the point that we need

to think about taking account of and factoring in goods and values other than economic growth if we are to think about broader well-being. That is a useful challenge to the classical approach to economics. While it is a useful challenge, to which we should give some thought, we also need to recognise that the aim should be to make growth sustainable, not to move away from a model that has economic growth as part of how we drive progress.

**Q23 The Chairman:** Finally, I would like to turn to Section 40 of the NERC Act, which proposes that all public authorities, particularly local authorities, should “have regard to” biodiversity. During our evidence-taking, it has come to our attention that almost none of the public authorities, and very few of the local authorities, pay much attention to that. We will probably propose that they should have a duty to report—possibly to your new body, which would seem to be the logical place for it—on what they are doing and how they are implementing this duty.

Do you have any thoughts on the best way of doing it? In Scotland and Wales, they have enhanced the wording a little, to give the duty a bit more bite, but we felt that that was probably not the only answer. We felt that people ought to have a duty to report and, therefore, to think about what they have done and are doing in this respect.

**Michael Gove MP:** I want to be able to pull every lever, or to have every lever pulled, that can promote biodiversity and environmental enhancement. The only thing I would say—it is not a disagreement—is that sometimes I have seen in some areas of government that a requirement to report or to meet a particular duty that has been placed on a public body has led to box-ticking and paper generation, rather than to the right change in behaviour. That may be the best means of achieving it, but I remain open-minded. The point has been well made by others that as well as working with the grain of people’s own instincts—and the instincts of most people, particularly those who are involved in rural life, are to enhance the environment—we need to think about all the incentives. One of the questions in my mind would be: what are the right incentives to make sure that local authorities, public bodies and others have regard to this duty? I am open-minded about how that might be done. John, do you want to say any more?

**Lord Gardiner of Kimble:** No. I think that it has been covered.

**The Chairman:** I would like to thank you both very much for giving up your lunch hour. It has been a very helpful evidence session.

**Michael Gove MP:** Thank you.

## **Department for Environment, Food and Rural Affairs – written evidence (NER0025)**

Dear Lord Cameron,

Supplementary information to the NERC Act Committee

May I thank you again for the opportunity to give evidence to your Committee on 18 July. I am writing to provide the further information requested by the Committee.

### **1. An organogram / job descriptions of the Defra Rural Policy Team (Q2)**

I attach an organogram for the Rural Policy Team in Defra and an explanatory note on the work of the Rural Policy team which I hope the Committee finds helpful. Rural housing is one of the responsibilities of another team reporting to me that considers wider land use issues. As I mentioned, there is also a separate team responsible for managing the Rural Development Programme in England.

The Rural Policy Team supports Lord Gardiner in his role of Rural Affairs Minister and Rural Ambassador. The team does not operate in a silo, and works not only with many teams in Defra to ensure rurality is at the heart of the department, but also across Whitehall to deliver this. It maintains close links with other government departments in order to help them shape their policies so they take account of the needs, challenges and opportunities facing rural areas.

The team also acts as a centre of expertise for the provision, analysis and mapping of rural statistical evidence, promotes the use of the rural-urban classification, and works with other government departments to improve the understanding of rural issues through statistical evidence. This includes the development and maintenance of a rural evidence hub on gov.uk.

### **2. A note on training workshops with other departments (Q3).**

As I noted in my oral evidence, in conjunction with the Cabinet Office, we organised a workshop on 2 April to explain the recently revised guidance on rural proofing to a wide range of departments, including the Department for Communities and Local Government, the Department for Culture, Media and Sports, the Department for Education, the Department for Health and the Department for Transport. Since then, we have run a workshop on the guidance at HM Customs and Excise.

In addition to this, the statisticians within the Rural Policy Team have planned a targeted programme of engagement and training to extend the availability and use of rural statistical analysis. This will cover the most relevant departments in turn and will start with the Department of Transport.

**3. A note detailing the meeting between Lord Gardiner of Kimble and DCMS regarding tourism (Q8)**

Lord Gardiner has had several meetings with Ministers in DCMS on issues falling within their responsibility. He last discussed tourism with Tracey Crouch MP, the minister responsible for tourism, by telephone in August 2016. The discussion covered the inquiry into rural tourism being conducted by the EFRA Committee in the House of Commons, the focus being agreement between the two Ministers that DCMS would lead the government's response with Defra support, which was in keeping with the principles of rural proofing. The government submitted written evidence which set out its position on rural tourism in answer to the questions posed by that Committee. This can be found at the following link: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/rural-tourism/written/40488.html> . It includes references to rural proofing. Lord Gardiner and Tracey Crouch had planned to meet before they jointly gave oral evidence to the EFRA Committee but the inquiry was cut short because of the General Election.

**4. Information from Natural England**

I attach three documents produced by Natural England to address the other areas where the Committee requested supplementary information. These are:

- Statistics on Natural England's response to planning applications and consultations (Q4)
- A note on powers concerning notifiable/injurious weeds, especially ragwort (Q6)
- A note on the implementation of Sir John Lawton's 'Making Space for Nature' (Q7)

Yours sincerely

Shirley Trundle CBE  
Director  
Natural Environment

**LORDS SELECT COMMITTEE ON POST LEGISLATIVE SCRUTINY OF NERC  
(2006)**

**ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE AT THE  
ORAL EVIDENCE SESSION HELD ON 18<sup>TH</sup> JULY 2017**

**QUESTION: Amount of planning application cases we have processed in recent years (across the piece, sites and species)?**

Natural England is a statutory consultee for the planning system in England.

Natural England responded to 12,852 planning application consultations from Local Planning Authorities in 2016/17, with 97% of these responded to within the agreed timeframe.

In the past three financial years we have reported the following figures on the numbers of formal planning consultations submitted to us by a local planning authority (LPA) to DCLG. The report we submit (which includes a slightly more detailed breakdown) is published on GOV.UK at

<https://www.gov.uk/government/publications/natural-englands-response-times-to-planning-consultations-in-england>

**Table 1**

<b>Metric</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
<b>Planning application consultations from Local Planning Authorities (LPAs) with substantive response</b>	<b>12,882</b>	<b>12,842</b>	<b>12,852</b>

The Committee should note that 'substantive responses' include detailed advice, outright objections (very few), 'no-comment' and 'no further comment' responses. Since autumn 2013 we have employed our standing advice for protected species and most of our responses would refer to this standing advice. The figures above do not include consultations from LPAs which involve the discharge of planning conditions.

Natural England's standing advice for protected species, which is published on GOV.UK, helps LPAs understand how protected species on or near a proposed development site might be affected by the development, and therefore whether there is a need to formally consult us on a planning application.

'Non-substantive responses' include informal emails or telephone calls which might include a request for further information, which we would expect to be re-consulted with (and which might then require a substantive response), plus other general ad-hoc requests.

It may interest the committee to understand that, although the figures above appear relatively static, we have introduced improvements designed to manage down the number of consultations we receive during this period, which might otherwise have seen a rise in numbers.

As well as our standing advice, we have introduced our Impact Risk Zones tool, a GI based spatial mapping tool, which can assist LPAs in assessing the likely impacts of a development on nature conservation sites, and therefore whether they need to consult Natural England. Figures to the end of May 2017 show 177 LPAs have downloaded the IRZs dataset. A less detailed version is also available to the public on MAGIC.

**Table 2**

<b>Metric</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
<b>Terrestrial and Marine planning all items (including strategic plans, pre-app) including items from developers, consultants and other consulting bodies.</b>	<b>Approx. 26,000</b>	<b>Approx. 25,000</b>	<b>Approx. 24,000</b>

In terms of the overall numbers of consultations we receive from all quarters (ie from developers, consultants and other consulting bodies), the total number is more difficult to quantify, as they may include requests for advice on proposals which subsequently become formal consultations via LPAs and are counted in the figures at **Table 1**.

The figures at **Table 2** include requests for advice before a proposal is formally submitted to an LPA for consideration (pre-application advice) and advice on strategic plans (in support of local authority local plan development).

**LORDS SELECT COMMITTEE ON POST LEGISLATIVE SCRUTINY OF NERC (2006)**

**ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE AT THE ORAL EVIDENCE SESSION HELD ON 18<sup>TH</sup> JULY 2017**

**QUESTION: Powers and progress on injurious weeds (e.g. Common Ragwort)**

Natural England (NE) has a number of roles including arranging site visits, assessing priorities of the complaints relating to Common Ragwort (ragwort) and other injurious weeds<sup>66</sup> and managing a helpline, which is the initial contact point for any concerns.

The primary aim of Defra's policy on injurious weeds is to protect livestock and agricultural activities. NE give priority to complaints where:

- weeds are threatening land used for:
  - keeping or grazing horses and other livestock, **or**
  - farmland used to produce conserved forage, **or**
  - other agricultural activities, **and;**
- the complainant has made reasonable efforts to contact the landowner or occupier where the weeds are growing and the owner/occupier has failed to take action to control the spread of the weeds.

Therefore, low risk complaints or complaints regarding non-agricultural land are not taken forward.

When NE receive a complaint which merits investigation, it is followed up with a letter to the land owner *I* occupier asking them to take remedial action. When appropriate action is not taken, Natural England arrange for land to be visited to ascertain if injurious weeds are present. The first visit is conducted by inspectors from the Rural Payments Agency (RPA) who have powers to issue an enforcement notice. They examine the land, record the volume of injurious weeds found and assess the threat to neighbouring land used for agriculture and/or used for keeping of animals. If the inspector deems that a risk exists they issue the land owner with an enforcement notice with a time frame for them to take appropriate action. This notice requires the landowner to control their injurious weeds within a specific timeframe.

If the required actions are not completed by the owner/occupier within the prescribed period, a Natural England Adviser may undertake a further visit to the land. In certain circumstances where further action is judged to be required the adviser may issue a legally enforceable clearance notice. This is, in effect, the last request made to the land owner and categorically states their requirements under the provisions of the **Weeds Act 1959**. These clearance notices are rare as the vast majority of land owners fully appreciate and understand their obligations regarding ragwort, accept their responsibilities and plan and act accordingly to tackle any injurious weeds infestations well before they get to this stage. Unfortunately, it is the small minority that do require our intervention and the reminders of their responsibilities under the Weeds Act 1959.

Defra has overall policy responsibility for the legislative framework of the Weeds Act 1959. A strong working relationship exists with Defra and Natural England to ensure that advice on the more difficult cases can be readily sought and any subsequent decisions can be discussed and fully considered. Defra and Natural England also work in partnership to ensure that the policy and operational procedures to address injurious weeds remain effective, e.g. meeting yearly to review the level of complaints received; and reviewing/updating the Combined

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<sup>66</sup> Curled and Broadleaved Dock; Spear Thistle and Creeping or Field Thistle.



Instructions and Guidance for the Operations of the Weeds Act 1959 as appropriate.

Defra and Natural England worked with a number of bodies to raise awareness of ragwort. For example, Defra worked in partnership with the British Horse Society (BHS) to raise awareness and develop improved guidance for equine owners. This guidance was launched as an online toolkit on the BHS website in 2014 – please see the following link: <http://www.bhs.org.uk/welfare-and-care/ragwort-toolkit-country-selection>.

Defra also funded BHS research aimed developing a better understanding about ragwort and the impact on horse health. This research was also discussed with other stakeholders at a ragwort summit which included environmental organisations, Defra and agencies, including Natural England and public or infrastructure owning bodies e.g. Network Rail

Many local authorities also have plans in place to work with local communities and on the land they control to offer guidance in addressing issues relating to injurious weeds as outlined in the Weed Act 1959. Examples of support here include reminding local authorities about their responsibilities on ragwort and other injurious weeds listed in the Weeds Act 1959 by clarifying guidance on the Code of Practice on How to Prevent the Spread of Ragwort for the Association of Local Government Ecologists (ALGE), through a blog post on the Local Authority Knowledge Hub (<https://khub.net>); and by working with the Health and Safety Executive to amend herbicide labels to clarify the risks of dead or dying ragwort plants to farm animals – please see the following link: <http://www.hse.gov.uk/pesticides/news/information-update-0516.htm>. In 2013, the Rt Hon Richard Benyon MP also wrote to all public bodies to remind them of their responsibilities towards controlling injurious weeds.

Natural England are working with both Network Rail and Highways England, encouraging them to work with their neighbours in regards to their estates, including tackling injurious weeds and invasive species. The Committee may be interested to note that Natural England is involved in work to control the spread of these weeds through work under the Water Framework Directive on the River Axe in East Devon. Here a three year project with partners has been delivered, investing £100k to employ a Project Manager to coordinate the project to both manage and eradicate invasive non-native plants such as Himalayan Balsam, Japanese Knotweed and Giant Hogweed in that area.

Through its 'Green Transport Corridors' project Natural England has been working in partnership with Network Rail and Highways England on two Nature Improvement Areas (NIAs), the Humberhead Levels NIA and Morecambe Bay NIA with the Yorkshire and Cumbria Wildlife Trusts to explore new approaches to the management of the soft estate in order to:

- increase the resilience of the transport network and enhance its ability to adapt to the effects of climate change,
- reduce operational risks for the transport network operators

- deliver new or enhanced green infrastructure and associated ecosystem services
- enhance ecological connectivity and reduce fragmentation
- deliver landscape-scale benefits
- enhance landscape-character and value
- enhance indirect experience of biodiversity and contact with the natural environment for people and communities
- contribute to local green growth.

As part of the wider management of the road and rail 'soft estate' the two pilot projects have incorporated measures to address invasive non-native plants and injurious weeds, such as Ragwort, Japanese Knotweed and Himalayan Balsam. This includes the removal and ongoing control of these species in liaison and co-operation with adjacent landowners, using weed treatment alongside other measures to enhance sward such as wildflower seeding, and use of cutting regimes to manage ongoing risk. The wider benefits of maintaining green infrastructure alongside road and rail estate are set out in the published digest by the Linear Infrastructure Network, which sets out how maintaining green infrastructure can enhance asset resilience and performance, as well as delivering an improved return on investment.

The Committee might like to note that this work sits within the wider partnership work that Natural England have proactively taken forward in partnership with Highways England and Network Rail on green infrastructure, eco-systems services and 'no net loss' in biodiversity. This is detailed further in the 'Connectivity' section of the supplementary note provided to the Committee by Natural England on progress against Lawton recommendations.

**LORDS SELECT COMMITTEE ON POST LEGISLATIVE SCRUTINY OF NERC  
(2006)**

**ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE AT THE  
ORAL EVIDENCE SESSION HELD ON 18<sup>TH</sup> JULY 2017**

**QUESTION: Feedback on progress made against the overarching  
recommendations of the Lawton Report?**

The Committee requested feedback on progress that had been made against the overarching recommendations of the Lawton report. The report stated that the following three areas should be addressed in establishing a strong and connected natural environment:

- That we better protect and manage our designated wildlife sites;
- That we establish new Ecological Restoration Zones;
- That we better protect our non-designated wildlife sites;

Lawton also noted that society's need to maintain water-quality, manage inland flooding, deal with coastal erosion and enhance carbon storage, if thought about creatively, could help deliver a more effective ecological network.

The Committee will recognise that most of Natural England's core operations contribute towards achieving outcomes that support the overarching aims suggested by the Lawton Report. Some of our key achievements towards that include:

**Designation of nationally important sites for biodiversity:**

- Natural England has supported the designation of 27 new marine Conservation Zones that cover 8000 square km of offshore and 2000 square km of inshore waters. Since the introduction of the Marine & Coastal Access Act in 2009 there are now currently 38 designated MCZs within 12nm of the English coast (3 of these cross the 12nm boundary), and 50 MCZs in UK waters altogether. The designated MCZs cover 3316 km<sup>2</sup> or 6% of the marine area out to 12nm.
- 60 different types of habitats, species and geological features are currently protected in the English inshore MCZs.
- Natural England has provided pre-consultation advice to Defra on 63 inshore or cross (12nm) boundary MCZs as part of the third and final tranche of MCZ designations.
- Natural England (and its predecessors) has now notified 4,126 SSSIs with a cumulative area of 1,092,700ha. In the last year, a total of 8,195 ha of SSSI has been newly notified, the highest total since Natural England vesting.
- Since vesting in October 2006, Natural England has notified (including re-notifications and de-notifications) 50 SSSI cases resulting in a net increase of over 14,000 ha in the SSSI series. 26 wholly new SSSIs have been notified.

**Biodiversity 2020 programme:**

- Natural England has worked in partnership to drive delivery of 2020 outcomes fundamental to achieving Lawton's ambition and to secure more, bigger, better and joined up habitat. In enhancing and improving our most

important sites for wildlife and biodiversity the target of ensuring that 95% of SSSIs are in favourable or recovering condition has been achieved (achieving an increase from 57% in just 8 years).

- 1,296,936 ha of priority habitats within and outside SSSIs – 64% of the total – have been restored or maintained through appropriate management and are now in favourable or recovering condition.
- Just over 100,000 hectares of priority habitat have been created to meet Biodiversity 2020 and no-net loss targets.
- Nature Improvement Areas delivered 13,664ha of maintenance and improvement activity on existing priority habitat (the equivalent to about a quarter of the size of the New Forest National Park); restoration and creation of 4,625ha of new priority habitat, and management of 225km of linear and boundary habitats such as rivers and hedgerows over the three years of the programme delivering multiple benefits such as: improved habitat connectivity; development of recreational corridors; creation of open spaces; and the enhancement of ecosystem services. Since the closure of the funded programme in 2015, NIAs have maintained direction and input to increase understanding, and inform evolving landscape and catchment scale delivery approaches.
- Natural England has secured support from Protected Areas including National Parks and AONBs (containing some of the most critical areas of importance for biodiversity and ecosystem services); who are in the process of engaging in the use of an eco- system approach self -assessment tool that has been designed and developed to support the development of local management plans that deliver outcomes in an integrated way at the scales required to maximise ecosystem service benefits for people and biodiversity. The eco system approach self- assessment tool is also being promoted with other organisations across sectors and represents an effective means to get organisations and their partnerships in a position to drive Lawton’s ambition effectively.
- Currently Natural England is reviewing data available to compile a clearer picture of progress for bespoke restoration activity achieved on key areas of habitat critical to climate change mitigation and adaptation, including; woodland, wetland and coastal habitats.
- Recognising the increased fragmentation and isolation of key habitats that has led to declines in the provision of some ecosystem services, and losses to species populations; combined with the efforts to achieve more, bigger, better and joined up habitat through Biodiversity 2020 Natural England has worked closely, with the support of species NGOs to bring together data on species and complete work to identify the most critical actions for England’s most threatened species.
- Natural England’s Species Recovery Programme projects are underway to help support some of those actions, and combined with other NGO projects to date; these have helped to re-establish or increase populations of threatened species like Bitterns, Large Blue Butterflies, Warbiter Crickets, Short-haired Bumblebees and Stinking Hawksbeard.
- Working with NGOs including Amphibian and Reptile Trust, Bat Conservation Trust, Buglife, Bumblebee Conservation Trust, Butterfly Conservation, Plantlife and RSPB; Natural England submitted a successful application to Heritage Lottery Fund (HLF) in March this year that has secured £4.6 million to save 20 species on the brink of extinction and benefit a further 200 additional species.

### **Catchment Sensitive Farming (CSF):**

- Diffuse pollution from agriculture has been reduced through catchment sensitive farming working with 16,133 farm holdings covering 2.3 million hectares.
- The project has been running since 2006 and has delivered advice to around 19,300 farm holdings covering approximately 2.6 million hectares of land, CSF is now supporting delivery of grants and land management agreements through Countryside Stewardship.
- The Capital Grant Scheme contributed to approximately £89m of environmental improvement, a total at least match-funded by the recipient farmers. Overall 203,054 individual mitigation measures have been advised to farmers.
- 85% of farmers involved in CSF say they now give water pollution management a higher priority.
- CSF has contributed to a 50% reduction in pesticides in our rivers.
- In 2016/17 CSFOs engaged with 3,346 farmers in high priority areas leading to a potential of 2,054 CS agreements being received.
- CSF has been working in 24 bathing water catchments which have agricultural inputs. CSFOs have engaged with around 800 farms resulting in 430,000 measures being recommended, focusing on manure and fertiliser management, infrastructure and soil management.

### **Designations and access:**

- Some 24.3% of land in England is now covered by National Park (NP) and Areas of Outstanding Natural Beauty (AONB) designations.
- The South Downs National Park has been created and the Yorkshire Dales and Lake District National Parks have been extended.
- There are 224 National Nature Reserves (NNRs) in England covering over 94,000 ha (0.72% of the terrestrial area of England).
- Natural England manages 143 of the NNRs on its own or jointly with others, and the remainder are managed by Partners (e.g. National Trust, RSPB, Wildlife Trusts and Forestry Commission etc.).
- Natural England designates, and manages over 60% of, National Nature Reserves. NNRs are a voluntary `accolade` and outperform any other nature conservation designation with:
  - 53.5 % in Favourable condition
  - Contains most `Section 41` protected species (our most rare)
  - Over 800 research programmes
  - 1,800 active volunteers (on Natural England's NNRs) and friends of groups, valued at £3.6m worth of annual work completed.
- Our NNRs attract 4 million visitors annually, with 17 million across the wider network and have 700 km of rights of way and 18,577 ha of Access Land.
- Natural England has produced a joint strategy for the network working in greater partnership NNR-managing organisations to secure environmental gains. For example, the Ribble NNR in Lancashire is being extended by 1,180 hectares of important bird habitat by working with RSPB and EA, without any additional costs to NE.
- When completed, at 2,700 miles long, the England Coast Path will be the longest coastal walking route in the world.

- At year-end we had submitted 1,048 kilometres to the Secretary of State for approval and had 534 kilometres ready. A further 244 kilometres has been carried forward into 2017/18. (KPI)
- Currently we're working on 1,885 miles of the 2,700 mile English coast of which:
  - 500 miles has been submitted to government for approval, of which:
  - 379 miles have been approved, of which:
  - 314 miles are open.
- Some 313 million visits were made to the English coast between March 2014 and February 2015 and seeing a 138% increase in visits using paths and trails.
- 159 National Character Areas (NCAs) have been completed and published.

### **Connectivity**

The Committee also touched upon the issue of 'connectivity'. Natural England has been working proactively with both Highways England and Network Rail to help them deliver their ambitions for biodiversity net gain. As a result;

- Highways England are committed to delivering No Net Loss in biodiversity during Roads Investment Period 2 and Biodiversity Net Gain by 2040
- Network Rail's Infrastructure Projects have set the target of "a measurable net positive contribution towards biodiversity in the UK" and are piloting approaches with the aim to make Net Gain 'business-as-usual' by March 2019

Other measures include:

- Natural England led the establishment of the **Linear Infrastructure Network**. LINet has brought together the expertise of organisations and businesses with the purpose of better understanding the opportunities to be gained from well-maintained green infrastructure, versus the liabilities created by poorly-maintained green infrastructure. It has recently published a [digest](#) explaining in statistical terms how incorporating green infrastructure into linear infrastructure can enhance asset resilience and performance, as well as delivering an improved return on investment.
- Natural England is a member of **Highways England's Design Panel** which was established under the HE license and is seeking to embed a design-led approach with the ambition of raising the bar on integrated place-responsive design. It is helping Highways England design an inclusive, resilient and sustainable road network through a visionary approach to enhancing an area at a landscape scale that reflects in its design the beauty of the natural and built environment through which it passes.
- We are also working to explore innovative ways that the estate can be managed to reduce whole life costs, such as through the harvesting of biomass for bio-energy, and enabling greater access to the networks through closer working with adjacent landowners and rural payment schemes.

### **Conservation Strategy:**

Natural England has also launched a new Conservation Strategy, **Conservation**

**21 (C21)**<sup>67</sup>. In essence, it is primarily focussed on delivering the kind of outcomes the Lawton report prescribes. In developing the strategy the following five areas were identified where we felt a significant step change in the way we work, namely:

- **Environmental Outcomes:** An environment that supports resilient ecosystems, functioning ecological networks and high levels of natural capital, delivering multiple benefits for people and nature.
- **The Ecosystem Approach:** Adopting the ecosystem approach - building on good practice to encourage and embed the ecosystem approach, delivering long term environmental improvements that take account of multiple interests and benefits.
- **Valuing the Environment:** Ensuring that the value of the environment is properly understood, receiving adequate investment and recognised in decisions, so that it continues to provide the range of benefits people require.
- **Behavioural Change:** To motivate, incentivise, and build society's support for and commitment to improving the natural environment.
- **Longer Term benefits:** Implementing mechanisms for achieving long(er) term benefits from investment in the environment.

The strategy brings together our own and others' experiences of what works and the latest science and evidence, with innovative approaches, new partnerships and different ways of thinking about nature and the benefits it provides. The three guiding principles within the strategy are to:

- Promote a shift of focus, to a larger scale, to **create resilient landscapes and seas**, moving beyond sites to think about ecological networks, landscapes and ecosystems, and to become more integrated in our delivery.
- Putting **people at the heart of the environment** and helping people recognise the relevance of the natural environment to their day to day lives and the choices they make, inspiring them to be more imaginative and ambitious for the natural world around them. We will work to co-create shared plans for places - reflecting a combination of larger scale working, engaging early and strategically to help people come together to co-create solutions that deliver multiple outcomes, and supporting local ownership and governance.
- To embrace the concept of **natural capital** as a powerful new way to help us all better understand what we get from the natural world, and to move away from 'renting' outcomes to securing long term and sustainable environmental investment. We will work with others to develop the appropriate national policy framework, monitoring approaches and delivery tools to put the concept of natural capital into practice.

Our ambition is for a healthy, resilient natural environment, benefitting people and the economy. We know we cannot achieve our ambition alone. We need to **change our ways of working** to focus on creating and delivering against the big opportunities, thinking longer term, and continuing to embed the outcomes approach. We will work with a wider range of organisations and sectors,

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/562046/conservation-21.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562046/conservation-21.pdf)

engaging at the outset, and be clearer when we need to role model, lead, facilitate or advise, and when we can step back.

A copy of the Conservation Strategy document is attached for the Committee's information and reference.

**Area Team Plans:**

Natural England's Area Teams have identified over 100 focus areas where we plan to target our efforts. Focus areas are places where we see opportunities to do more this year. In practice this means trying to prioritise those areas that will enable us to deliver the most long term outcomes and where we will work hardest to establish shared objectives with our partners. This is a deliberate decision to make sure we push new boundaries with partners to deliver environmental benefits, rather than just focusing on numerical targets.

A copy of our Area Team Plans are enclosed which show all the focus areas and the work we are doing across these plans on a landscape scale. Our local teams have captured their plans in a suite of 14 posters called 'It's In Our Nature' which give a real flavour of what we want to achieve across the country this year. We have also developed an overview to show how our plans reflect the direction of travel in our Conservation Strategy and the Defra 25-year plan and also attach that for your reference.

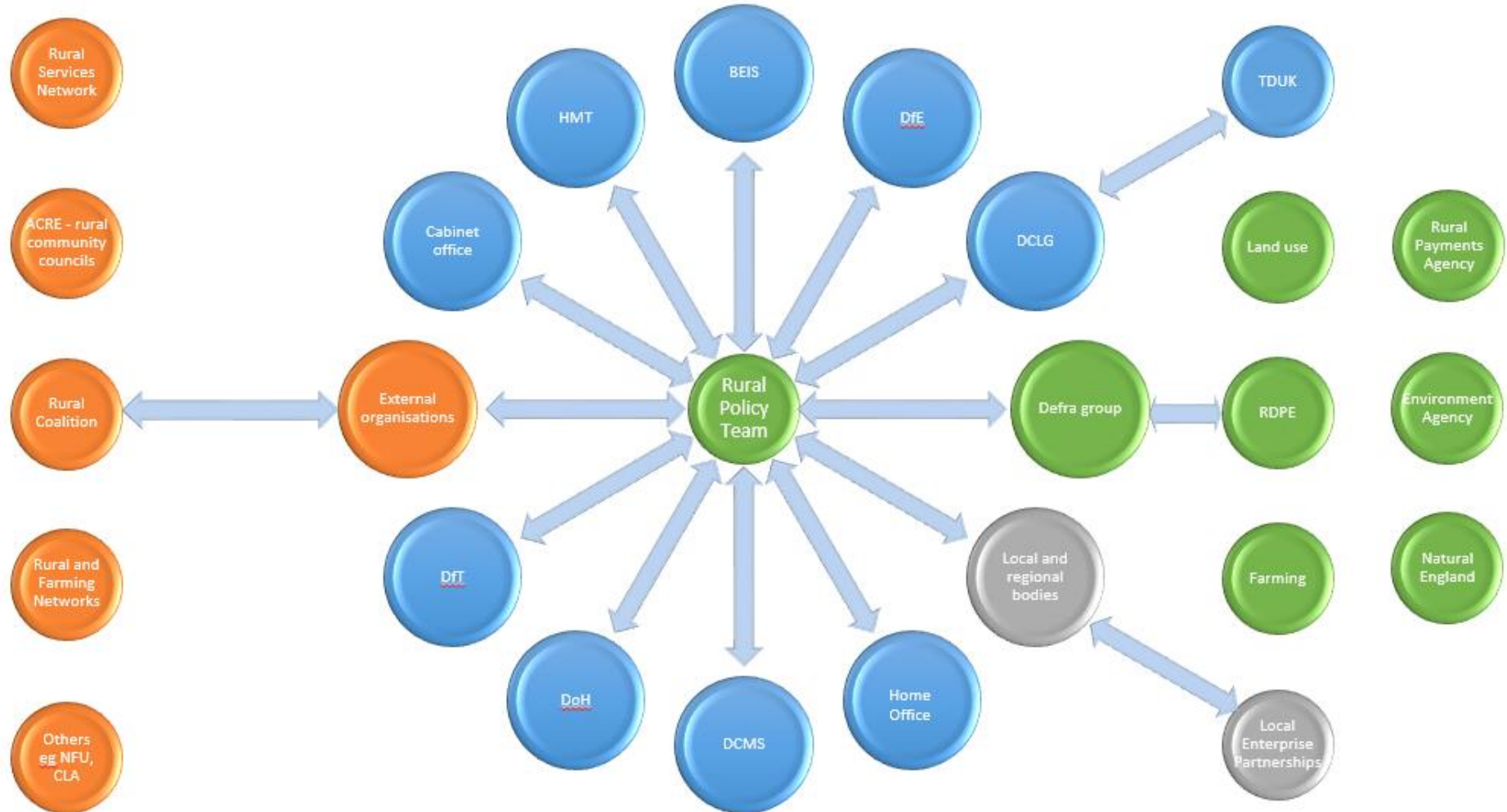
*7 September 2018*



**Sarah Severn. Deputy Director, Rural Policy Team.**

Team assistant	Grade 6 – Deputy Head, Rural Policy Team				
<p><u>Rural Evidence – Economics</u></p> <ul style="list-style-type: none"> <li>advice and analysis on the non-farming parts of rural economies, including developing evidence on the dynamics of - and potential for improved - economic activity in rural areas.</li> </ul> <p>1 Grade 7 1 Assistant economist</p>	<p><u>Rural Evidence – Statistics</u></p> <ul style="list-style-type: none"> <li>provision, analysis and mapping of rural statistical evidence</li> <li>maintenance and development of rural evidence hub on gov.uk.</li> <li>workshops with other departments</li> </ul> <p>1 Grade 7 1 Senior executive officer 1 Higher executive officer 1 Assistant statistician</p>	<p><u>Rural Life Opportunities</u></p> <ul style="list-style-type: none"> <li>work with government departments in key areas, such as education, skills, post office, health, transport and energy.</li> <li>sponsorship of the ACRE network.</li> <li>rural proofing guidance.</li> </ul> <p>1 Grade 7 3 Senior executive officers 1 Higher executive officer</p>	<p><u>Rural Economies and Productivity</u></p> <ul style="list-style-type: none"> <li>work with government departments in key areas, such as broadband, mobile, tourism and local government financing.</li> <li>industrial strategy.</li> </ul> <p>1 Grade 7 2 Senior executive officers 3 Higher executive officers</p>	<p><u>Funding and Programmes</u></p> <ul style="list-style-type: none"> <li>analysis and advice on the approach to future rural development.</li> <li>strategic oversight of RDPE support schemes for economic growth</li> </ul> <p>1 Grade 7 1 Higher executive officer</p>	<p><u>Stakeholders</u></p> <ul style="list-style-type: none"> <li>relations with main rural stakeholder organisations</li> <li>ministerial visits programme and meetings</li> </ul> <p>1 Senior executive officer 1 Executive officer</p>

### The Rural Policy team and its role in the wider context



## Department for Environment, Food and Rural Affairs – supplementary written evidence (NER0079)

### House of Lords Select Committee on NERC Act 2006: Evidence from Defra

Submitted by:	The Department for Environment Food and Rural Affairs
Date	11 September 2017

Rural advocacy (Questions 1 to 3)

#### Promoting the interests of rural communities and businesses at the heart of government

1. The government is committed to sustainable growth in rural areas, so that people who live in the countryside have the same opportunities as those who live in our towns and cities<sup>68</sup>. Much of what government does has an impact in rural areas, with responsibilities for social and economic policies, including business growth, education, health, transport and digital connectivity, to name a few, falling to different departments.
2. Defra's role is to champion 'rural proofing' and support departments across government, so that policies take account of specific challenges and opportunities for rural business and communities, and that those who live, work and travel in rural areas are not disadvantaged.
3. "A rural economy that works for everyone contributing to national productivity, prosperity and wellbeing" is one of four priorities set out in the Defra Strategy to 2020<sup>69</sup>. It includes specific objectives:
  - Increased productivity and prosperity in rural areas with a countryside that works for everyone
  - Rural areas are fully connected to the wider economy
  - A highly skilled rural workforce
  - Strong conditions for rural business growth
  - Living and working in rural areas made easier
  - Greater local control of decisions affecting rural areas
  - Improved life opportunities for those in rural areas
4. In April 2017, reflecting the high priority Defra Ministers attach to rural issues, the need to work closely across government and with external organisations, and the additional scope arising from EU Exit, two teams - Rural Policy and Rural Development Programme - were created, each led by a senior civil servant at Deputy Director level. This provides Defra Ministers with clear oversight of policy shaping and delivery, and accountability to Parliament.

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<sup>68</sup> Conservative manifesto stated: "We will bring sustainable growth to the rural economy and boost our rural areas, so that people who live in the countryside have the same opportunities as those who live in our towns and cities".

<sup>2</sup> <https://www.gov.uk/government/publications/defras-strategy-to-2020-creating-a-great-place-for-living>

5. The Secretary of State has overall responsibility for the delivery of Defra's strategy and Lord Gardiner is the Minister for Rural Affairs. Lord Gardiner is also the government's Rural Ambassador, a role created in response to Lord Cameron's Review on Rural Proofing<sup>70</sup>. As such, he works with ministerial colleagues across government, both bilaterally and through participation in Implementation Task Forces such as those focused on housing and digital infrastructure, to ensure rural issues are reflected as core policy considerations.
6. Ministers and officials use research evidence as well as insight from direct engagement with people and organisations to help ensure that rural interests are reflected in policy-making. Ministers and officials engage regularly with a wide range of organisations representing rural interests, for example, the National Farmers Union, the Countryside Alliance, the Rural Coalition, the Country Land and Business Association (CLA), Local Government Association, Action for Communities in Rural England (ACRE) and local economic partnerships. These bodies help Defra understand rural challenges, opportunities and what works at a local level. This provides essential perspectives, advice and views on the development and delivery of policies.
7. Defra also provides funding to support ACRE and its network of 38 Rural Community Councils. The Councils lead, support and enable community initiatives from running community transport schemes and oil-buying clubs, to assessing housing needs and supporting older people to stay in their homes. Each pound of grant from Defra helps bring in nearly five pounds of funding from other sources.
8. Defra funds rural development through the Rural Development Programme for England<sup>71</sup> (RDPE) 2014-2020, part of the European Union's Common Agricultural Policy. The RDPE provides funding (£3.5bn for 2014 to 2020) to farmers, land managers, growers, foresters, business owners and rural communities for projects to improve the environment, increase the productivity of farming and forestry and grow rural economies.

#### Embedding 'rural-proofing' across government

9. Defra has taken significant action to embed rural proofing. In March 2017, Defra published analytical guidance on rural proofing and co-hosted with Cabinet Office a cross-Whitehall workshop for policy makers. The refreshed guidance sets out a clear four stage process which includes: i) identifying the impact of policy options; ii) assessing the scale of the impact; iii) tailoring the policy to address rural needs; and iv) evaluation, and incorporates a practical case study on the Department of Education's 30 hours childcare initiative.
10. In addition, the Green Book (H M Treasury's guidance for appraising policy proposals) requires policy makers to assess whether proposals are likely to have a different impact in rural areas from elsewhere.

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<sup>3</sup> <https://www.gov.uk/government/news/delivering-for-rural-communities>

<sup>4</sup> There are separate rural development programmes for Scotland, Wales and Northern Ireland.

11. Defra takes a multi-disciplinary approach to evidence. There is a dedicated team of statisticians, economists and social research staff within the Rural Policy team. Their work includes the provision, analysis and mapping of rural statistical evidence and the maintenance and development of the rural statistics pages on gov.uk. Defra has developed and disseminated a 'step-by-step guide to applying the rural-urban classification'<sup>72</sup>. Defra will continue to work closely with government departments and others to expand the evidence available, to improve the understanding of rural issues through statistics, economic and social research.

#### Current Priorities

12. Rural areas and the needs of communities and businesses remain a high priority. Since the abolition of the Commission for Rural Communities and the Rural Communities Policy Unit, Defra has continued to take action to protect the interests of rural areas. For example, in August 2015, it published the Rural Productivity Plan, a coordinated set of actions across government to boost productivity of rural businesses. It has also worked closely with the Department for Culture, Media and Sport to improve broadband and mobile coverage, including the introduction of a universal service obligation and the provision of funding from the RDPE.

13. Defra's Rural Policy team does not operate in a silo. The work of many other teams in the Defra group helps ensure rurality is at the heart of the department. Creating a healthy natural environment and building natural capital also make a contribution to rural economies, particularly in remote areas with fewer alternative employment options, such as the potential of the coast path to remote coastal communities. The farming sector shapes rural areas, preserving the heritage and landscape, which helps support tourism and recreation, well-being and other cultural benefits.

14. The government has said it will continue to commit the same cash total in funds for farm support until the end of the parliament. It will devise a new agri-environment system, to be introduced in the following parliament. The government has also said it will use the structural fund money that comes back to the UK following EU Exit to create a United Kingdom Shared Prosperity Fund. The interests of rural communities and businesses will be addressed in any future plans and rural stakeholders will be involved in discussions on what might replace current arrangements.

#### Sustainability and Biodiversity (Questions 7 to 9)

15. The government is committed to protecting and improving the environment, committing to be the first generation to leave the environment in a better condition than it found it. The government's plan to do this will be set out in the 25 Year Environment Plan.

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<sup>5</sup> <https://www.gov.uk/government/statistics/guide-to-applying-the-2011-rural-urban-classification-to-data>

Understanding and awareness of duty to 'have regard' to biodiversity and any further work required to raise awareness of duty

16. The duty is widely understood across the sector, as evidenced by the range of actions undertaken by public bodies in response to its provisions.
17. In 2010 government published an independent review of the duty which demonstrated high levels of awareness and a whole range of actions in response to the duty amongst public body respondents<sup>73</sup>. The review was commissioned to test awareness and extent of action taken by public bodies in England, Scotland and Wales. It concluded that of over 90 local authorities who responded to an on-line survey, 66% were aware of the duty and 57% reported a beneficial impact on biodiversity through the delivery of their functions.
18. Of over 180 'other' public bodies (i.e. other than Local Authorities), the response was more variable. Awareness was very high amongst Government bodies, and by National Parks and Areas of Outstanding Natural Beauty authorities (up to 100%). However fewer than half of the other public bodies that responded reported taking action as a result of the duty. To some extent this result is likely to have been impacted by the fact that many 'other public body' respondents had biodiversity conservation as a key objective for their organisation, and so action they took was not seen as 'in response to the duty'. The results reflect the views of respondents and are not necessarily representative of all public bodies, although response rates for local authorities were higher than for other public bodies.
19. The review also found that many public bodies could not be definitive about the extent to which their actions were a direct and specific response to the duty as this was just one of many drivers influencing action for biodiversity (other actions included planning guidance and local partnership working on biodiversity). This is, in Defra's view, an important point, especially in the light of subsequent policy initiatives to increase awareness of and action for biodiversity.
20. Whilst it is likely that further work may be required to raise awareness of the importance and value of accounting for biodiversity or for other forms of natural capital more widely in decision making, government would not assert that the duty, or awareness of it, is necessarily a key mechanism for achieving this end.
21. The review suggested that levels of awareness of the duty were reasonably high amongst respondents in 2010 and that there were a broad range of positive actions initiated, partly in response to the duty. These actions reflect the range of suggested examples covered in guidance issued by the government in 2014<sup>74</sup>.

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<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=17445>

<sup>7</sup> <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>

22. The duty makes specific reference to the United Nations Convention on Biological Diversity<sup>75</sup> and was clearly seen at the time as a means of implementing commitments required by the Convention including commitments on biodiversity 'mainstreaming'; action to ensure others take account of biodiversity in decision making, particularly in sectors where biodiversity is not a primary goal.
23. Since the duty was introduced in 2006, government has published a more detailed strategy for England's Wildlife and Ecosystem Services, Biodiversity 2020<sup>76</sup>. This contained a number of new targeted actions on biodiversity mainstreaming across a range of sectors – agriculture, planning, forestry and marine management.
24. Subsequent publication of the UK National Ecosystem Assessment<sup>77</sup> and the work of the Natural Capital Committee<sup>78</sup> has improved our understanding of the economic, social and health benefits derived from our species and ecosystems. These benefits are increasingly seen as key drivers for greater protection of biodiversity.
25. Partly in response to Biodiversity 2020, but also reflecting Ministerial priorities for biodiversity and biosecurity, as well as the development of the natural capital approach, the department has introduced a range of other mainstreaming measures to protect biodiversity.
26. For example, we have continuously improved our agri-environment schemes, introduced new protections in the marine environment, taken action to reduce risks from invasive species and supported the development of the new Planning Policy Framework.
27. We have also promoted voluntary approaches to conserving insect pollinators and protecting biodiversity from invasive non-native species. Working with the Wildlife Trusts, we have launched a 'Bees Needs' website<sup>79</sup> which sets out **five simple actions** that farmers, gardeners and managers of urban or amenity spaces can take to help pollinators and make sure their populations are sustained. We coordinate an annual 'Bees Needs week' to help raise awareness of bees and other pollinators amongst the public, private sector and the general public. We also promote an annual invasive non-native species awareness week and encourage voluntary action to prevent the spread of these species, through the 'Check, Clean, Dry' and 'Be Plant Wise' campaigns<sup>80,81</sup>.

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<sup>8</sup> <https://www.cbd.int/convention/text/>

<sup>9</sup> <https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>

<sup>77</sup> <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

<sup>78</sup> <https://www.gov.uk/government/groups/natural-capital-committee>

<sup>79</sup> <http://www.wildlifetrusts.org/bees-needs>

<sup>80</sup> <http://www.nonnativespecies.org/checkcleandry/index.cfm>

<sup>81</sup> <http://www.nonnativespecies.org/beplantwise/>

28. Further examples of measures Defra has introduced are listed in Annex A. These measures sit alongside a range of statutory provisions for protected sites and species that provide a key safeguard for England's most threatened species and habitats.
29. The department views the duty as a first step in implementing mainstreaming commitments. The 2006 duty was not intended to be prescriptive. The guidance gives examples of how public authorities might fulfil the duties, for example by developing plans and strategies, managing their land or undertaking procurement. Any future mainstreaming or awareness raising for biodiversity is likely to build on the success of existing approaches for valuing natural capital which government will set out in the 25 Year Environment Plan.

#### Practical impact of the 2006 duty and any modifications required

30. Defra has not quantified the overall impact of the duty on biodiversity and it would be extremely difficult to do so given that the duty is one of several drivers for action. The evidence from the review and the availability of additional examples cited here suggests a broadly positive effect across the outcomes set out in the guidance by a wide range of organisations. These include changes to estate management, action on training and awareness and integration into wider plans and strategies.
31. The 2010 review gives a number of examples of the practical impact reported by local authorities and other public bodies. See Annex A for details.
32. A number of specific examples of action are set out in Annex A. These include the production of a Ministry of Justice (MoJ) Biodiversity Strategy which references the biodiversity duty (as well as Biodiversity 2020) and includes a requirement for all MoJ contractors to have a biodiversity policy themselves and fulfil the biodiversity duty on the MoJ estate.
33. Whilst future policy ambitions, for example under the 25 Year Environment Plan, may require further action on mainstreaming biodiversity or wider consideration of natural capital in public sector decision making, there is a range of measures available to take forward these ambitions, and the department does not see any immediate requirement to modify the duty itself.
34. As policy develops and moves forward, the department will continue to focus on strengthening the economic, social and health case for taking account of biodiversity, as well as providing the tools and information that allow others to take account of this value.

#### Comparison with Scottish duty and enhanced Welsh duty

35. The 2010 review of the duty found no evidence that the enhanced duty in Scotland to 'further biodiversity' had a differential impact. Defra does not have any evidence of the changes to the duty introduced in Wales in 2016. Whilst it is plausible that additional provisions, such as a reporting requirement, might strengthen the duty, Defra would want to take a broad



perspective and assess any such changes against alternative mechanisms for securing biodiversity gain.

#### Natural England (Questions 4 to 6)

36.A Triennial Review<sup>82</sup> in 2013 concluded that the Environment Agency and Natural England (NE) should be retained as separate public bodies. This was accompanied by a Full Assessment<sup>83</sup> of their compliance with the principles of good corporate governance. In response to the review, a Joint Action Plan<sup>84</sup> was implemented and a Progress Report<sup>85</sup> was published in 2014.

37.NE is required by law to lay its Annual Report and Accounts annually in the Houses of Parliament. The National Audit Office audits NE's accounts and the Annual Report is cleared by Ministers. The Annual Report and Accounts for 2016/17<sup>86</sup> contain a statement by the Chief Executive on NE's performance over the year along with key achievements and issues.

38.The Framework Document for Natural England, which sets out roles and responsibilities between Defra and NE and accountabilities in line with HMT guidance, was updated and published at the end of August 2017<sup>87</sup>.

39.Ministerial Performance Reviews between the Secretary of State and the Chair and Chief Executive of Natural England are held bi-annually. These are a formal means for the Secretary of State to review NE's performance, its delivery of agreed objectives for Defra, and any forthcoming issues. The latest review was held on 13 March 2017.

40.The Secretary of State also reviews the Chair's performance against agreed objectives annually. The Chair was re-appointed to serve a second term in January 2017 and his performance was appraised in July 2017.

41.Natural England provide valuable expert and independent advice to Ministers on how to protect better and enhance England's nature and landscape. They are committed to establishing and delivering long term solutions to environmental improvements, which has been demonstrated in their

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<sup>82</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209382/triennial-rev-ea-ne.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209382/triennial-rev-ea-ne.pdf)

<sup>83</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209383/principles-corporate-governance-ea-ne.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209383/principles-corporate-governance-ea-ne.pdf)

<sup>84</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/298551/LIT\\_9000\\_43f901.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298551/LIT_9000_43f901.pdf)

<sup>85</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/373599/LIT\\_10048.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/373599/LIT_10048.pdf)

<sup>86</sup> <https://www.gov.uk/government/publications/natural-england-annual-report-and-accounts-2016-to-2017>

<sup>87</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/641891/natural-england-framework-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/641891/natural-england-framework-document.pdf)

commitment and contribution towards the development of the government's 25 Year Environment Plan.

The changing context since 2006 (Questions 10 & 11)

42. Defra and NE have assessed the impact of EU Exit for the role and responsibilities of NE in performing its duties in protecting nature and environmental standards. No changes are currently required to fulfil obligations.

43. Government will ensure that NE continue to play a critical role post-EU Exit.

## Annex A

### Examples of mainstreaming measures introduced by Defra

- a. New agri-environment schemes options designed to restore or create wildlife habitats listed in section 41 of the Natural Environment and Rural Communities Act;
- b. New requirements under the National Planning Policy Framework<sup>88</sup>;
- c. A Marine and Coastal Access Act 2009<sup>89</sup> to enable the sustainable management and use of marine resources;
- d. Economic tools and data to support decision making that impacts on biodiversity, for example through Treasury Green Book supplementary guidance<sup>90</sup> on valuing the environment and the development of National, Natural Capital Accounts<sup>91</sup>;
- e. The 2015 GB Non-Native Species Strategy<sup>92</sup> and the 2014 National Pollinator Strategy<sup>93</sup> to extend action in key areas that impact on or are impacted by biodiversity change.

### Examples of practical impacts reported by local authorities and other public bodies as part of the 2010 Review

- a. Production and implementation of corporate plans or strategies for biodiversity, or inclusion within wider corporate or area-base plans and strategies
- b. Changes to land or estate management
- c. Management of public spaces
- d. Initiation of biodiversity projects
- e. Survey and assessment
- f. Production of guidance
- g. Changes to building design or operation (local authorities only)
- h. Action to conserve biodiversity within new development (local authorities only)

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<sup>88</sup> <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

<sup>89</sup> <http://www.legislation.gov.uk/ukpga/2009/23/contents>

<sup>90</sup> <https://www.gov.uk/government/collections/the-green-book-supplementary-guidance>

<sup>91</sup>

<https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/methodologies/naturalcapital>

<sup>92</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/455526/gb-non-native-species-strategy-pb14324.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455526/gb-non-native-species-strategy-pb14324.pdf)

<sup>93</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/409431/pb14221-national-pollinators-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409431/pb14221-national-pollinators-strategy.pdf)

**Table 1 Examples of public body delivery of biodiversity action through the duty or other drivers.**

<b>Delivery Mechanism</b>	<b>Delivery Body</b>	<b>Narrative</b>	<b>Document Link</b>
LA Biodiversity Action Plans/Local Plans	Havant Borough Council	Reference to biodiversity duty: ensure national objectives are translated into local action. Example policies:  1 Ensure favourable management of borough council land:  2 Incorporate biodiversity as a key element of all relevant plans and strategies	<a href="#">Havant BC Biodiversity Action Plan</a>
Government Body Biodiversity Strategies	Ministry of Justice Biodiversity Strategy	Reference to biodiversity duty and Biodiversity 2020. All MOJ contractors must have a biodiversity policy and must fulfil the biodiversity duty.	Available on request
	Highways England: Plan to protect and increase biodiversity	Reference to Biodiversity 2020. Plan aims to deliver biodiversity enhancements, and achieve net biodiversity gain wherever possible whilst implementing network improvements.	<a href="#">Highways England Biodiversity Strategy</a>
	Network Rail - Infrastructure Projects Net Biodiversity Gain	Reference to Biodiversity duty Using Defra biodiversity metric, applying the biodiversity hierarchy, with goal to enhance biodiversity and achieve measurable net gains for infrastructure projects.	<a href="#">Network Rail Biodiversity Policy</a>
Parks and open spaces	Hastings Country Park - Hastings Borough Council	Does not reference duty, refers to Changes in management practices has resulted in significant enhancement of a range of habitats and species,	<a href="#">Hastings Country Park</a>

		prioritising biodiversity and public enjoyment	
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*13 September 2017*

## **Department for Environment, Food and Rural Affairs – supplementary written evidence (NER0084)**

Dear Ewen,

I am writing to correct evidence supplied to your Committee on the implementation of the Natural Environment and Rural Communities Act. On 10th October, Defra's supplementary written evidence was published on the Committee's website (NER0079). At paragraph 17, we said, according to the 2010 external review of section 40 of the Act:

*'It concluded that of over 90 local authorities who responded to an on-line survey, 66% were aware of the duty and 57% reported a beneficial impact on biodiversity through the delivery of their functions'.*

It appears that in our editing some text has gone astray. The text should refer to page 13 of the review<sup>94</sup> and read as follows:

*'It concluded that of over 90 local authorities who responded to an on-line survey, all were aware of the duty and 57% reported a beneficial impact on biodiversity through the delivery of their functions'.*

66% refers to the proportion of Local Authorities who felt the duty had raised the profile and visibility of biodiversity (page 19 of the review).

The correction does not change the remaining text in paragraph 17; the key point being that awareness is high, and there are a range of activities that have been instigated by the duty. It is important however that our quoted facts and figures are correct.

I look forward to the session on 16 January.

Yours ever,

John

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<sup>94</sup><http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=17445>

**Department for Environment Food and Rural Affairs - supplementary written evidence (NER0094)**

Dear Lord Cameron,

May I thank you again for the opportunity to give evidence to your Committee on Tuesday 16 January.

During the session I undertook to come back Lord Caithness regarding his question whether Natural England were involved in vetting the Mayor of London's development proposals in suburban areas and gardens.

I am happy to confirm that Natural England will be reviewing the draft London Plan and submitting a response during the present consultation period. This will include examining the implications of updated housing targets for biodiversity as outlined in the draft London Environment Strategy. Their response will, through the London Plan, help to shape future Local Plan policy for the London Boroughs to operate and deliver as the relevant planning authorities.

In responding to the Plan, Natural England will be working with the Greater London Authority on their ambitions for adopting a biodiversity net gain that supports the Government's 25 Year Environment Plan. This work will build upon Natural England's earlier input to the draft London Transport Strategy and the draft London Environment strategy.

With every good wish,

Michael Gove

## **Doncaster Metropolitan Borough Council – written evidence (NER0046)**

**Information submitted by Melissa Massarella, Principal Officer (Biodiversity) on behalf of Doncaster Metropolitan Borough Council.**

### **Natural England**

#### **Question 4.**

**How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

4.1. The Council is not sufficiently knowledgeable to comment on how well Natural England fulfils its current, wide-ranging mandate and how well its functions fit together. Based on our own experience we suggest that those landscape-scale partnerships that Natural England has consistently been involved with (often receiving support from dedicated Natural England staff) have been the most successful in sustaining long-term delivery, effective partnership working and maintaining strategic focus. Some of this support appears to have waned following the end of the Nature Improvement Area funding and this has been to the detriment of some local partnerships and projects, so it is positive to see the principles of partnership working supported in the 'Conservation 21' Strategy.

4.2. The Conservation 21 Strategy states that Natural England will work at a level and scale to help enable and inspire positive change and delivery. The Council agrees that the appropriate 'pitching' of Natural England resources in relation to levels and scales of working with partners is fundamental, but that this should also reflect the different character and make-up of geographical areas. Whilst we acknowledge that working towards a 'macro plan' is important, the delivery of local and/or specific objectives, for example with regard to how Natural England can connect with communities on wildlife crime matters, can help to deliver broader strategic ambitions relating to public engagement. Flexibility in how Natural England might operate in the most locally-relevant manner for geographical areas and communities would be welcomed.

4.3. For Natural England staff to work effectively across their wide-ranging functions they will need to operate in partnership with others, and importantly



with Local Authority biodiversity and ecology officers and their wider professional and local networks. DMBC shares Natural England's ambition to work collaboratively; deliver landscape-scale working; co-create solutions and make the environment relevant and accessible to people's lives. As a pilot authority in Defra's Biodiversity Offsetting pilot, we are a forward thinking Authority and will positively engage with partners in testing and improving working practices. We do however have concerns about the under-resourcing of Natural England functions, for example whilst the Council supports the principles driving and underpinning proposed changes to Great Crested Newt licensing, we have concerns about the capacity of Natural England to implement this process effectively and also concerns about the additional resource implications for Local Authorities. Whilst we will support and engage in this process, Natural England's partnership and reliance on effective local government specialists should be recognised and similarly their needs understood and sustained.

## **Sustainability and biodiversity**

### **Question 7.**

**Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

7.1. The wording of the biodiversity duty within the NERC Act 2006 could be regarded as ambiguous. Further work would be welcomed in promoting, if not strengthening, its application across public authority services.

### **Question 8.**

**What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

8.1. It is not possible to quantify the practical and measurable impact of the duty, as there are no reporting requirements for public authorities. The Act predates the Lawton report and so is potentially not as relevant as it could be in reflecting knowledge on the value of ecosystems.

### **Question 9.**

**How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

9.1. These comments are not based on a working knowledge or experience of the Scottish or Welsh duties, however the words ‘further’ and ‘enhanced’ imply a clear direction of travel for biodiversity conservation, whilst the English Duty to ‘have regard’ does not deliver or demonstrate a measurable impact on biodiversity outcomes, making the duty less effective in practice. A broad and complex range of important social, economic and environmental factors need to be considered in public authority service delivery and decision making. Whilst public authorities can demonstrate that they have regard to biodiversity by acting lawfully and being transparent and accountable in considering and mitigating impacts, there are no requirements to achieve biodiversity net gain. If the reporting requirements –both the Scottish and Welsh duties require public bodies to report on the actions they have taken to meet the biodiversity duty-were adopted in England, this may help to deliver the step-change required to embed this duty across all public functions and demonstrate a measurable, positive impact.

**The changing context since 2006**

**Question 10.**

**Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

10.1. It is difficult to ascertain whether the Act will be sufficient to ensure appropriate protection for nature conservation in the future without understanding what environmental legislation will be in place following Brexit and how this integrates with European legislation. The opportunity to develop (nationally) ambitious and integrated visions and associated strategies (i.e. the 25 year Plan) for biodiversity should be pursued to ensure that legislative structures adequately support the protection of the natural environment.

*11 September 2017*

## **Dorset Local Nature Partnership – written evidence (NER0059)**

1. I am writing in response to the *House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006 Call for Evidence* on behalf of the Dorset Local Nature Partnership (DLNP).
2. The DLNP was established in 2012 as one of the 47 Defra approved Local Nature Partnership's with a role to:
  - Provide leadership for those working to protect and enhance the environment in Dorset
  - Advocate the good management of Dorset's natural environment for its own sake and the many benefits it offers
  - Articulate the importance of Dorset's natural environment to economic and social wellbeing
  - Ensure that the natural environment is taken into account in policy and decision-making
3. DLNP has six strategic priorities:
  - i. Natural capital – investing in Dorset's natural assets
  - ii. Natural value – adding value to the local economy
  - iii. Natural health – developing Dorset's 'natural health service'
  - iv. Natural resilience – improving environmental and community resilience
  - v. Natural understanding – improving understanding of, and engagement in, Dorset's environment
  - vi. Natural influence – integrating natural value in policy and decision-making, locally and beyond

### Rural advocacy and the Commission for Rural Communities

4. Since the closure of the Commission for Rural Communities there has been some loss of focus on rural issues. For example Local Enterprise Partnerships are largely focused on urban growth which has been a concern for the Dorset Rural Enterprise Group, a sub group of the Dorset Local Enterprise Partnership. The issue has been raised and noted by the South West LEPs who collectively organised a 'Rural Productivity Commission' which is due to report shortly.

## Natural England

5. It is recognised that Natural England, along with all public sectors organisations, has had considerable reduction to their budget.
6. One significant issue with this is the ending of the Memoranda of Agreements (MoA) with Local Environmental Record Centres (LERCs). The Dorset Environmental Records Centre (DERC) is a charity which collects, collates and manages information on Dorset's natural environment. DERC supports and works with a range of experts to ensure information collected is robust, and makes information accessible to a range of audiences including decision-makers, developers, researchers, community groups and the public. They provide the crucial local support and record verification for the many local wildlife recorders, who entrust and share their data. This support for local recorders, and validation of their records, would not be possible without DERC.
7. Natural England's ending of the MoAs with LERCs in favour of open data investment, leaves a question over how it can fulfil its legal responsibilities under the NERC biodiversity duty<sup>95</sup> and the Wildlife and Countryside Act 1981; and the validity of the evidence on which it bases its decision making. The Environment Agency has recognised that this local data remains vital in delivering its duties and has continued to support its agreements with DERC. The vast majority of data managed by DERC is, once validated, added to open source platforms like the NBN Atlas, but some datasets, for example, Local Wildlife Sites<sup>96</sup> (known in Dorset as Sites of Nature Conservation Interest or SNCIs) are held, managed and updated locally by the SNCI partnership and DERC, with the data not accessible through the NBN (because the majority of sites are privately owned). This information is vital for local decisions, both on planning matters and on agri-environment schemes, and yet it is currently not used by Natural England.
8. It should be noted that in Dorset we have experienced and dedicated Natural England staff working on planning, which we understand is not the case in many other areas. We suggest that Dorset provides a model of best practice for this area of Natural England's work. One example of good practice in Dorset is the St Leonards Hospital Site Development, a sensitive site that with support from stakeholders including Natural England, Dorset Wildlife Trust, has led to biodiversity gain. The work has been highlighted nationally by The Wildlife Trusts as an example of good practice. A case study on the St Leonards Hospital Site Development is available at: [www.dorsetlnp.org.uk/hres/Case-Study-St-Leonards.pdf](http://www.dorsetlnp.org.uk/hres/Case-Study-St-Leonards.pdf).
9. Government needs expert, independent advice on the natural environment and clarity is needed about what advice Natural England can give. If Natural England are not permitted to issue advice on policy or guidelines on its implementation, this leaves a vacuum which Defra are not in our experience adequately filling.

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<sup>95</sup> Natural Environment and Rural Communities Act 2006

<sup>96</sup> TWT (2016) [Local Wildlife Sites](#)

10. Linked to this point, planning committees, inspectors and judges look to Natural England's advice to help them decide cases, and the absence of a Natural England view is seen as lack of biodiversity importance, despite any NGO or community representations. Therefore it is crucial that Natural England have sufficient resources to be able to engage with important decisions that affect our local biodiversity.
11. Natural England locally also provide support for farmers and landowners to enter into agri-environment schemes. Our experience has been that local staff have been as supportive as they can be given the circumstances that the schemes and their management and administration have presented.
12. In 2014 Local Nature Partnerships were asked to help Natural England in facilitating local targeting for what became the Countryside Stewardship Scheme. As champions for the natural environment, LNPs are ideally placed to provide the local expertise required to ensure that such schemes are able to make a significant contribution to achieving national and local targets. However there were significant problems encountered in the process, so much so that Dorset LNP, alongside many others, wrote<sup>97</sup> to Defra to highlight the concerns around the data used and its interpretation by Natural England. Our experience was that the local Natural England team working on this exercise were so constrained by the national requirements, that they were unable to apply any flexibility, and that what 'consultation' there was with Dorset stakeholders on targeting was only around the periphery of the detail, with no meaningful local steer possible.

### Sustainability and biodiversity

13. Local authorities have suffered from huge budget cuts in recent years, resulting in several Dorset local authorities without ecological expertise in house. As a result, the 'due regard' requirement is not strategically integrated through local authorities' remit and business.
14. The biodiversity duty is most generally understood and acted on within countryside services (where these still exist) and/or planning departments. There is often very limited awareness in other departments which have important impacts on biodiversity including property, transport and education.
15. Within Dorset there are good links with health and wellbeing. This includes the Health and Wellbeing Boards – one for Dorset and another for Bournemouth and Poole – and the Dorset (including Bournemouth and Poole)

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<sup>97</sup> Letter from Suzanne Goodfellow (Chair, Natural Devon), to Lord De Mauley, Defra, 7<sup>th</sup> August 2014.

Sustainability and Transformation Plan (STP). The Dorset STP is one of the few (if not only) STP which includes a specific priority on healthy places (which includes green infrastructure with both enhancements for wildlife and access to nature for recreation).

16. All of Dorset's local authorities do have Service Level Agreements with Dorset Environmental Record Centres (DERC) giving them access to the data they need to 'have regard' during decision making.

17. The NERC duty is seen primarily as a Defra objective, and within that as a Natural England objective. Examples where other parts of Defra and other Government departments have not been consistent with the duty include:

- a. The Forestry Commission still sometimes give grant aid to tree planting on sites which already have high biodiversity value, such as unimproved grassland, thus causing the destruction of these habitats. For example in 2011 (after the NERC Duty applied), they awarded *England Woodland Grant Scheme* funding which included tree planting that resulted in the loss of 1.1ha of unimproved grassland in two Local Wildlife Sites (SNCIs) in Dorset. The landowner might have chosen to plant trees without a grant, but public money should not have been awarded that sanctioned this loss of habitat.
- b. The Department for Business, Energy and Industrial Strategy (and formerly Department for Business, Innovation & Skills) allocates substantial public funding to Local Enterprise Partnerships but the priority is for growth with little or no mention within guidance to have any regard to biodiversity. There is no funding allocated to Local Nature Partnerships.
- c. The National Wildlife Crime Unit, part funded by the Home Office currently only has committed funding until 2020. Within Dorset there is support for this work from Dorset Police with a dedicated Rural Crime Team which includes wildlife crime. Longer term funding needs to be committed to the National Wildlife Crime Unit to demonstrate the value and support local work.

18. The NERC Duty must be recognised as important by all Government departments and integrated with all policies. The 25 Year Environment Plan being produced by Defra could be an opportunity to integrate the duty into decision making for all Government departments.

#### The changing context since 2006

19. There is no doubt that Brexit represents a watershed moment for the UK's agriculture, environment and wildlife. There are real risks of losing the beneficial aspects of the current legislative and grant funding framework (including European grants not least through the Common Agricultural Policy)

but also major opportunities to establish an agri-environment policy which improves on the best of the current system whilst learning lessons from the pitfalls that have been encountered. A long term approach is required which recognises the value of the natural environment to the wider economy and health and wellbeing. For example:

- Wildflower areas supporting pollination – the value of honey bees is reported to be worth £200million a year<sup>98</sup>.
- Natural flood management schemes such as tree planting and floodplain meadows and alternative farming practices reduce the flow of water reducing flooding downstream supporting both businesses and residents.
- Physical activity in natural environments, or 'green exercise', is estimated to provide health benefits of £2.2 billion a year<sup>99</sup>

20. It is essential that EU laws are transposed into UK law and that environmental protections are enhanced rather than weakened. A YouGov poll in August 2016<sup>100</sup> for Friends of the Earth demonstrated high levels of support for maintaining or improving current levels of environmental protection: overall, 83% of people said Britain should pass new laws providing better (46%) or the same (37%) protection for wild areas and wildlife as current EU laws, with only 4% wanting lower protection.

21. In 2012 The Natural Environment White Paper *The natural choice: securing the value of nature* set out the formation of Local Nature Partnerships 'to enable local areas to work in a joined up and strategic way to help manage the natural environment to produce multiple benefits for people, the economy and the environment'. These partnerships were endorsed by Defra but limited support from the department has been forthcoming. The LNP network gives Defra geographically based partnerships with a wide range of expertise and experience to help the department to deliver its priorities and yet it does not appear to make best use of them.

22. In response to an Environmental Audit Committee review of LNPs in 2016<sup>101</sup>, Defra stated<sup>102</sup> that the recommendations would be addressed through the 25 Year Plan for the Environment, which is yet to be published.

23. Dorset LNP is a strong partnership and is working with both the Dorset Local Enterprise Partnership and the Health and Wellbeing Boards for the area and is making good progress in influencing decision making by demonstrating the value of natural capital to the economy and nature based health and wellbeing but greater support from Defra and other departments would support further work in Dorset and enhanced work in other parts of the country where LNPs are less successful.

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<sup>98</sup> [www.nao.org.uk/wp-content/uploads/2009/03/0809288es.pdf](http://www.nao.org.uk/wp-content/uploads/2009/03/0809288es.pdf)

<sup>99</sup> [www.exeter.ac.uk/news/featurednews/title\\_543531\\_en.html](http://www.exeter.ac.uk/news/featurednews/title_543531_en.html)

<sup>100</sup> [www.foe.co.uk/sites/default/files/downloads/yougov-survey-brexite-environment-august-2016-101683.pdf](http://www.foe.co.uk/sites/default/files/downloads/yougov-survey-brexite-environment-august-2016-101683.pdf)

<sup>101</sup> <https://publications.parliament.uk/pa/cm201415/cmselect/cmenvaud/858/85802.htm>

<sup>102</sup> <https://publications.parliament.uk/pa/cm201516/cmselect/cmenvaud/377/37704.htm>

If you have any queries about this submission of evidence please contact the Dorset LNP Manager at the details above.

Yours faithfully

Simon Cripps  
Chair – Dorset Local Nature Partnership

*11 September 2017*



## **East Riding of Yorkshire & Kingston Upon Hull Joint Access Forum – written evidence (NER0031)**

This evidence is submitted on behalf of Mr John Nicholson, Vice-Chair of the East Riding of Yorkshire & Kingston upon Hull Joint Local Access Forum, with specific regard to Question 6.

**Question 6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England - and other partners – been in promoting better access?**

### **Response to the Call for Evidence, submitted on 8 September 2017:**

#### **1. Summary of Key Issues relating to Countryside Access**

- Natural England is delivering some good access work (including the England Coast Path) although the organisation is smaller than when first established and their allocation of resources indicate that access is a lesser priority compared to other business areas. Natural England's support for access work other than key projects has reduced over the last few years as the agency has reduced in size, which is disappointing.
- Natural England's research has estimated that the number of annual visits to the natural environment increased by approx 8% between 2009 and 2016. There are numerous access providers in England helping people to engage with and enjoy the countryside, but there is a need for a more co-ordinated, strategic approach nationally, and a more prominent national access 'champion'. The new national Cycling and Walking Investment Strategy is welcomed but the role of Defra/Natural England and the rural/countryside dimension is not clear at this stage. Defra's 25-Year Environmental Plan is awaited.
- New delivery models for England's National Trails are now in place. Future central funding for the maintenance of National Trails (via Natural England) is currently uncertain beyond the 2017-18 financial year, which could adversely affect the quality and usage of all national trails including the England Coast Path. This is a significant concern.
- The national 'Big Pathwatch' project (2016) indicated that 40% of the current rights of way network needed improvements, some urgently. Significant local/regional variation was noted. This project was led by the voluntary sector (Ramblers).

- The extent of recent highways authority budgetary cuts on access/rights of way work nationally does not appear to be extensively understood at this stage. The countryside offers excellent opportunities for healthy outdoor recreation but there is a genuine risk that reduced investment on the access/rights of way network could have a negative impact moving forwards, potentially affecting rural tourism as well as leading to declining facilities for the health & exercise of local communities.
- An extensive 'Walking for Health' programme and other healthy exercise projects are being delivered across the country, but there appears to be a need to extend healthy exercise initiatives further still given the rising cost of physical inactivity to the NHS.
- The growing body of evidence regarding the physical and mental health benefits of accessing the countryside would seem to make a strong case for access and outdoor recreation becoming a higher priority within Defra/Natural England, rather than a reducing priority as presently seems to be the case.
- Good permissive access routes in the countryside have been lost in recent years as a result of environmental stewardship schemes expiring (and the omission of permissive access from the current stewardship programme). BREXIT presents an opportunity for public benefits through countryside access to be reinstated into national agri-environmental policy.
- The recording of unrecorded historic rights of way is an important ongoing issue and some recreational groups have expressed concerns about the planned cut-off deadline of 2026.
- Local Access Forums are independent statutory advisory forums with local expertise on rights of way and access issues. The effectiveness of individual forums may vary but overall they have an ongoing value and it is assumed that forums will continue.
- Cycling and walking are key countryside activities but effective access and engagement policy must of course also cater for a wide range of other users (eg. horse riders, disabled visitors etc.) to ensure an inclusive approach to accessing the countryside. There are many good examples of current provision but local authority budgetary restrictions and a seemingly declining profile for countryside access work nationally are causes of concern looking forwards that need to be addressed.

2. **Additional information to support the above Summary of Key Issues**

## **2.1 Natural England – expenditure and resourcing on access work:**

According to Natural England’s past annual reports, their total net annual expenditure in 2016-17 was £ 138.5 million, compared with £ 223.2 million in 2006-7. Net expenditure in 2016-17 was therefore approximately 62% of the net expenditure from ten years earlier.

According to the current Natural England Corporate Plan (2014 – 2019), Access and Engagement work only represents approximately 4% of Natural England’s total resource allocation, subject to some upward adjustment due to cross-cutting access work in other business areas. Natural England currently has only one access-related Key Performance Indicator (out of 18 in total) listed in their 2016-17 annual report, relating to the progression of the Coast Path.

## **2.2 England Coast Path and other National Trails**

Delivery of the England Coast Path is a key priority for Natural England and once completed the Coast Path becomes part of the National Trail network.

The Coast Path has largely been welcomed as a positive development and it seems appropriate that Natural England continue to prioritise the completion of this project. The Ramblers consider the Coast Path to be an inspirational, landmark project which will boost tourism and rural economies. Gathering evidence to demonstrate the social and economic benefits/opportunities resulting from the Coast Path (and the public investment) would appear to be a worthwhile role for National England.

According to the National Trails website, the sixteen current national trails in England and Wales generate an estimated 83 million visitors per year, and these routes are described by The Ramblers as the ‘crown jewels’ of walking in this country. However, The Ramblers previously launched a National Trails Appeal campaign in 2012 over concerns that Government proposals would lead to a fall in the quality of the trails.

Natural England subsequently introduced a new management model for National Trails and set standards for new local trail partnerships to work towards (as set out in the 2013 paper, ‘The New Deal’). Natural England does not take an active lead in promoting National Trails but importantly it provides central financial support for their maintenance.

The new trail partnership model appears to have been introduced without detrimental impact on the quality of the national trails so far, but uncertainty over the amount of continued central (Natural England) maintenance funding beyond 2017-18 has led to substantial concern over the longer-term management and maintenance of national trails,

which has yet to be resolved. Organisations such as Local Access Forums have voiced concerns and requested that the current funding formula is maintained. The amount of maintenance funding for national trails going forwards will also directly impact on the quality of the England Coast Path, and ultimately on the success and legacy of the Coast Path project.

### **2.3 The Wider Countryside Access & Rights of Way Network**

The national rights of way network provides approximately 140,000 miles of footpaths, bridleways and byways. Local highways authorities are ultimately responsible for maintaining rights of way and ensuring they are kept open for use.

Natural England undertakes ongoing research to understand how and why people visit the countryside, and to better understand the profile of visitors ('Monitor of Engagement with the Natural Environment [MENE] Project'. 7 annual MENE reports have been produced to date.

These are worthwhile reports and have indicated that 3.1 billion trips to the natural environment were taken annually in 2015-16 - an 8% increase from 2.86 billion in 2009-10 - which is an average of around 70 visits per adult per year. The percentage of 'frequent' visitors to the natural environment has increased slightly over this seven year period, although the percentage of people who do not engage with the natural environment has remained fairly static.

Natural England's current priorities do not include a wider assessment of the condition and quality of public rights of way (and other access facilities) across the country. Such information might typically be collected locally by highway authorities to monitor progress towards statutory Rights of Way Improvement Plans, but a national volunteer research project (The Big Pathwatch) led by The Ramblers in 2016 provided a useful baseline assessment of the condition of the national access network. The findings of this work indicated that two fifths (40%) of the country's footpaths, bridleway and byways needed improvement, some of them urgently. The report concluded that the rights of way network is not broken, but problems are challenging, localised and need addressing. It is assumed that many highways authority budgets for access and rights of way will have been impacted due to necessary financial savings in recent years, some more than others, but detailed information relating to local expenditure on public access work does not appear to be readily available on a national scale.

The Ramblers' Big Pathwatch report made some interesting recommendations and, given the importance of promoting healthy lifestyles, it would be valuable repeating a similar condition survey in a few years' time to assess further changes to the rights of way network. Strengthening the role of Defra/Natural

England to oversee the condition and accessibility of the wider public rights of way network nationally (potentially also having an overview of expenditure on rights of way and ‘championing’ best practice), to ensure that local funding sustained and/or improved the quality and use of the network, could be a positive option to strengthen future provision for managing access to the countryside.

One of the key access work areas set out in Natural England’s corporate plan is progressing the recommendations of the Stakeholder Working Group on Unrecorded Rights of Way. However, this is likely to be an area requiring further strategic attention from Defra/Natural England moving forwards, and some Local Access Forums and recreational interest groups are particularly concerned about the forthcoming national deadline for recording unrecorded historic rights of way (2026).

The NERC Act 2006 included provision to extinguish motorised vehicular rights on historic routes and it is believed that this helped to provide additional clarity for highways authorities.

However, excessive or illegal use by motorised vehicles on rural routes (typically ‘green lanes’) continues to be a challenging and ongoing area for some highways authorities across the country. Recent changes to the way that certain routes have been recorded on Ordnance Survey maps have also led to unnecessary confusion over the access status of a small minority of rural routes nationally.

## **2.4 Links to Public Health & Healthy Lifestyles**

A growing body of evidence indicates that physical inactivity has an increasingly high cost to the country in terms of the medical treatment for different illnesses linked to inactivity (eg. Public Health England report ‘Every Body Active, Every Day’). Natural England and other organisations have published various informative research findings to evidence the physical and mental health benefits of engaging with the countryside and there are good examples of many healthy exercise projects being delivered across the country.

The Walking for Health Scheme, originally funded through The Countryside Agency back in 2000, is now co-ordinated nationally by MacMillan Cancer Support and The Ramblers, with local partners reportedly delivering 1800 free walks across the country each week. GPs are also referring patients onto Walking for Health Schemes. Other countryside activities nationally are also helping to promote the important health vision of ‘More people, more active, more often’.

However, there is both a need and significant potential to build on the successful work to date, further strengthening partnership working between public health and countryside access professionals, and effectively engaging with other

professionals (eg. planners, highways officers, policymakers) to better incorporate provision for healthy exercise into wider policy and local decision-making. Natural England could certainly have an important role to play in this at the national level.

## **2.5 Future Policy for Accessing the Countryside**

In June 2017, the Welsh Government published a consultation document 'Taking forward Wales' Sustainable Management of Natural Resources' which included several strategic proposals relating to public access and engagement in Wales.

A similar strategy document to set out the long-term future direction for England would be extremely beneficial, and Defra's proposed 25-Year Environmental Plan is still awaited. The position post-BREXIT is of course presently unclear, but new agricultural and environmental policy will be required which presents an opportunity to put public access and engaging with the countryside at the heart of those policies, more than at present, providing health benefits as well as social and economic outcomes.

Financial support for new permissive access agreements (ie. incentives to landowners for providing public access on their land) was removed as a stewardship option in UK agri-environmental policy approximately seven years ago. As existing 10-year stewardship agreements are coming to an end, some very good permissive access routes are being lost around the country as payments to landowners cease and those routes are no longer open to the public, which is disappointing. BREXIT presents an opportunity for access to be reinstated into national agri-environmental policy, either in the form of permissive access or through permanent access provision which could build on the positive outcomes of a one-off 'Paths for Communities' programme (delivered by Natural England between 2012-14).

The Department for Transport launched the Government's Cycling and Walking Investment Strategy earlier in 2017, and it is too early to assess progress at this stage. There is only a modest reference to the countryside and rural access within the strategy, but it is hoped that the delivery of the strategy will be sufficiently 'rurally-proofed' to ensure fair investment in rural areas. The role of Defra and Natural England's Access Teams alongside DfT in taking the strategy forward is not clear at this stage. Technical guidance issued by DfT to local authorities to develop Local Cycling and Walking Investment Plans surprisingly makes no reference to Local Access Forums in the suggested governance structures, even though LAFs are statutory advisory forums with memberships typically containing knowledgeable walkers and cyclists. Cycling and walking are both very popular and important countryside activities, but it is worth emphasising that effective access and engagement policy should of course cater

for a wide range of other users (eg. horse riders, disabled visitors etc.) to ensure an inclusive approach to accessing the countryside.

## **2.6 Local Access Forums (LAFs)**

Local Access Forums are independent advisory forums on access and public rights of way that were created under the CROW Act 2000. There are approximately 80 LAFs in the country, administered locally but supported by Natural England.

It is acknowledged that the effectiveness of individual LAFs vary across the country, but the recent Welsh Government consultation document on the natural environment (June 2017) recognised that LAFs overall continue to be an important resource helping to improve access opportunities in the countryside, and no significant change to their future role or statutory status is proposed in Wales. It is assumed that Local Access Forums will similarly continue in England, and good co-ordination and strategic steer from Defra/Natural England are important for their success. The current Defra guidance documentation for LAFs is comprehensive but has not been refreshed for several years.

Individual LAFs are funded locally with strong input and commitment from volunteers, but Natural England also support the work of all LAFs in England, organising an annual conference and co-ordinating an online information resource for LAF members. However, Natural England has notably scaled back support for LAF activities over the past few years, and funding for all regional LAF co-ordinator posts was discontinued which has impacted on the effectiveness and collective voice of LAFs. Natural England usually requires individual LAFs to submit annual reviews which are compiled by Natural England into a national access report for Defra; however, it is not clear whether such reviews will be required for 2016-17 as the normal annual timescale has already passed, and there is a risk that a valuable channel of communication on access issues could be lost.

It should be noted that there is a potential overlap between the statutory advisory role of Local Access Forums and with Local Nature Partnerships (which were created subsequently as a result of the NERC Act 2006 and have a wider environmental remit), so it important that LAFs and LNPs liaise closely with each other to ensure an effective joined up local approach. END

*8 September 2017*

## **Environment Agency – oral evidence (QQ 177-184)**

Tuesday 5 December 2017

11.05 am

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Lord Faulkner of Worcester; The Countess of Mar; Baroness Whitaker.

Evidence Session No. 21

Heard in Public

Questions 177 - 184



## Examination of witness

Dr Tony Grayling.

Q177 **The Chairman:** Good morning, Dr Grayling. Thank you very much for coming to see us. It is very kind of you to spare the time. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website and you will have the opportunity to make corrections to that transcript where necessary. Would you like to introduce yourself and your role in the Environment Agency?

**Dr Tony Grayling:** Good morning. It is a pleasure to be here. My name is Tony Grayling. I am the director of sustainable business and development for the Environment Agency.

**The Chairman:** Thank you very much. Could you start by describing where responsibilities for the Environment Agency and Natural England overlap, also telling us more about the interactions between your two organisations on various individual operations, both at a lower level and at higher levels, please?

**Dr Tony Grayling:** Of course. In fact, the amount of overlap between the work of the Environment Agency and Natural England is relatively limited to a few areas. As part of an exercise for the organisation, we looked at a set of about 50 activities that the Environment Agency undertakes in the course of carrying out its duties and only about half a dozen of those overlap with activities that are also undertaken by Natural England. Even within those, our roles are, generally speaking, complementary rather than conflicting.

There are some areas of overlap. For example, we are both statutory advisers in the spatial planning system, both organisations are involved in monitoring the environment—for example, the marine environment—and both are involved in local engagement. In areas where there is common ground and overlap we work particularly closely together. For example, if you take spatial planning, we have a way of working which is badged as single voice, whereby we try to represent to the customer a single integrated voice on behalf of Defra. That includes other Defra bodies beyond the Environment Agency and Natural England.

We have increasingly sought to collaborate. I suspect we will come on to discuss this more, but we now have common area boundaries. We organise our work in 14 operational areas across England, and those are common between the Environment Agency, Forestry Services and Natural England. We have developed area integrated plans, which are joint plans between those three organisations as to how they will carry out their work locally. Likewise, at national level we collaborate. There is the joint operations leadership team, whereby the leaders of our operational businesses come together at national level to discuss areas of collaboration and common interest.

Q178 **Lord Cavendish of Furness:** There is no need to repeat some of that in response to my question but, specifically, how have the recommendations from the 2013 triennial review changed the way that Natural England and the Environment Agency deliver their work?

**Dr Tony Grayling:** Yes, there has been a consequence of the findings of the triennial review and the action plan that arose from it. Those have been further strengthened by the initiatives that followed the spending review in 2015 where Defra and its constituent bodies had to manage quite significant reductions in our grant in aid funding. We have a situation where we share offices, where we can, where our back office services are shared. As I described, we organised our operational districts in England so that there are now 14 common areas between Natural England and the Environment Agency. We have developed local area integrated plans between Natural England, forestry services and the Environment Agency for all 14 areas. There is, likewise, similar collaboration at a national level. There have been quite significant changes.

**Lord Cavendish of Furness:** If you are looking to give further protection and an effective service to protect the environment, can you think of any more collaboration you would be looking at?

**Dr Tony Grayling:** We are constantly looking at ways in which we can collaborate further. An example would be our area integrated plans, but they are not as fully developed as they might be. They have been formed from joining together the existing local plans for each of the organisations. Now we have got that far you can take it a step further, perhaps, to develop more integrated environmental plans for each of the 14 areas which do not involve only those three organisations but other bodies within the Defra group, and also other partners, including local authorities, wildlife trusts, and so forth. There are always ways in which we are looking to collaborate further, both from the point of view of achieving efficiencies and cost savings and of synergies and delivering more for the environment.

Q179 **The Countess of Mar:** The Committee has received a lot of evidence that suggests that Natural England's capacity has decreased since 2010, largely due to funding cuts. Has this affected the way the Environment Agency and Natural England work together? Have you noticed a decline in Natural England's capacity? If so, has this led to greater demands being placed on the Environment Agency?

**Dr Tony Grayling:** Yes, it has had a consequence. Our grant in aid funding has been similarly reduced in the same period as Natural England's. That means, as I have described, we have tried to achieve efficiencies that protect the front line by working together, by combining our administrative back office services. Instead of replicating those in each of the organisations, we have a single set of back office services. It has meant that Natural England and we have had to find other ways of doing things more collaboratively and in a more focused way because, naturally, when you have less resource you have to focus on the highest priorities and the biggest environmental risks, and both organisations have sought to do that. We continue to work very effectively together. Indeed, it has become

more and more in our mutual interests to ensure that we do, to ensure that we avoid duplication and work as closely together towards common aims as we can. We do that. An example of that would be that both organisations want to seek environmental outcomes through the land use planning system. Particularly at the more strategic level—the level of, let us say, spatial plans, local plans—we join up to influence those plans.

**Q180 Lord Faulkner of Worcester:** I would like to ask you about the Environment Agency's duty to promote the use of inland waterways and canals and, more generally, access to the countryside. We have heard some witnesses saying that your resources have been cut in this area and you do not have anybody working at a local level to do that. Could you comment on that? Could I ask how you are collaborating with Natural England to achieve access to the countryside?

**Dr Tony Grayling:** Yes, I will seek to answer those questions. The main way in which the Environment Agency promotes enjoyment of the countryside, including particularly its rivers and lakes, is through the promotion of angling. We have a quite active programme in that regard and we work in partnership with the Angling Trust to do that. Beyond that, to be honest, I think we have scaled back our activity in terms of promoting recreational use of the waterways, and that has been a direct consequence of reduction in grant in aid funding. We have partly stepped back so that the Canal & River Trust can step forward, because Defra also provides funding to the Canal & River Trust, which has a big interest in this.

In relation to working with Natural England, the most significant way we are currently doing that is by supporting their work on developing a coastal path around England. As I have described, we have very much had to focus our limited resources on one or two things rather than the general promotion of recreation.

**Lord Faulkner of Worcester:** Are there areas where the objectives of your two bodies diverge? Does Natural England have a set of objectives in this area which is different from the Environment Agency's?

**Dr Tony Grayling:** As I understand it, Natural England has a broader remit to promote enjoyment of and recreation in the rural and natural environment than the Environment Agency. I would say those roles are entirely complementary. I do not think they contradict each other.

**Lord Cavendish of Furness:** You mentioned angling, and I am familiar with your contribution to that. You will be aware of the conflict on rivers—I declare an interest—between paddlers, canoeists and angling. There is room for us all. I wonder if you felt there might be a role for your organisation trying to act as honest broker in resolving this. It has quite a big environmental impact.

**Dr Tony Grayling:** In so far as we are a navigation authority on some waters, of course we have to find the right balance for those areas. I do not think, in general, it is our responsibility to be that broker. Indeed, I think you will probably be aware that there have been ongoing discussions

between ourselves and the Canal & River Trust about transferring our navigation responsibilities to that organisation, which may come to fruition at some time in the future.

Q181 **Baroness Whitaker:** First, I declare a new interest as chair of the Newhaven Coastal Communities Team. My question is about biodiversity. Can you tell us what the Environment Agency does to fulfil the NERC Act duty to “have regard” to biodiversity? What does the EA do to support other public authorities subject to the duty?

**Dr Tony Grayling:** First, we consider it a very important duty. Part of the fundamental purpose of the Environment Agency is to protect or enhance the environment so as to contribute to sustainable development. Protecting and enhancing biodiversity is extremely important.

**Baroness Whitaker:** Why do you think it is important?

**Dr Tony Grayling:** For some very fundamental reasons that human welfare is dependent on biodiversity and the natural environment for life itself and the quality of our lives. We need to maintain and improve functioning natural ecosystems if we are going to carry on having a good quality of life or an improved quality of life. For me, it is a very fundamental aspect of sustainable development, which is the core purpose of the Environment Agency.

The way in which the Environment Agency discharges that responsibility is done at different levels. We make sure that enhancement and protection of biodiversity is built into our policies and programmes. You would see that through the river basin plans that we develop for each river basin in England, because we are the competent authority for the implementation of the water framework directive. Those plans are very much about bringing rivers, lakes and other bodies of water up to a good status. You can also look at our flood and coastal risk management work through which we seek to achieve environmental outcomes as well as flood protection outcomes. For example, over the last six years or so we have either improved or created about 10,000 hectares of habitat across England in association with our flood and coastal risk management work. You can achieve multiple objectives, for example, by creating natural flood storage areas. You enhance flood protection, improve biodiversity and indeed create opportunities for enjoyment of the environment and recreation.

If you go down a level, some of our responsibilities are to permit various industrial and other activities. We are very mindful of the duty to have regard to improving biodiversity when we do that. Indeed, there is a specific section in our decision document on permits and licences which says how we have taken that duty into account.

To go on to the other part of your question about how we work with others, as I mentioned, we are a statutory adviser in the land use planning system. In giving our advice to local authorities and developers in relation to the built environment, we make sure that we give advice that helps to protect or enhance biodiversity, complementary to Natural England’s

responsibilities. We have a particular responsibility for aquatic biodiversity in that regard. We also work in partnership with other organisations, including non-governmental organisations, wildlife trusts, and so on, on physical on-the-ground projects to protect and improve the natural environment and the biodiversity it holds.

**Baroness Whitaker:** We have had evidence that data retention is of particular importance in this area. Is there anything particular that the Environment Agency does in that regard to help other local authorities?

**Dr Tony Grayling:** Absolutely. We collect and publish a wide range of monitoring data about the state of the water environment, in particular. We use that information to inform our own work and statutory duties, including permitting and licensing, but that data is also available to others to help them make the right decisions as well.

**The Chairman:** Do you have to report on your duty to value the biodiversity? If so, to whom?

**Dr Tony Grayling:** No. At the moment, there is no specific requirement for us to report on that duty, other than in the sense that, in general terms, we are, of course, held to account by the Secretary of State for Environment, Food and Rural Affairs. He will ask us about our work in relation to the natural environment and biodiversity in holding us to account. There is no specific duty for us to compile a report on the discharge of that particular duty.

**The Earl of Caithness:** Following that up, should there not be?

**Dr Tony Grayling:** There is a case for that. You would need to make sure that it was not too bureaucratic in the way that it has to be discharged, but, yes, there could be some value in specifically reporting on how that is discharged.

**The Earl of Caithness:** I want to follow up on Baroness Whitaker's question when you said you were giving advice. You are in the very difficult position of being an adviser and an enforcer. Should not those roles be split?

**Dr Tony Grayling:** I think those roles go together quite well. Inevitably, we have to develop the technical expertise to be able to inform our statutory permitting role and ensuring compliance and enforcement of the conditions we place within permits and licences. It would be a bit of a waste if we did not use that expertise to give good advice, both to those people who are seeking permits and licences from us and more widely. Of course, one of the chief responsibilities of the Environment Agency is to be one of the primary sources of advice to government on the development of environmental policy. We take that responsibility seriously. I do not think there is a conflict of interest in that. Where there is a potential conflict of interest is on the occasions where, as an operator, the Environment Agency is required to be licensed by itself, if you like. For example, if we are dealing with flood risk management assets, often those require permits that we

are also responsible for. You have to keep clear Chinese walls, if you like, between those activities to ensure that there is no bias in permitting decisions in those situations.

**Q182 The Earl of Caithness:** Moving on to my main question, data is hugely important for protecting the natural environment and helping our biodiversity. Do you think that local environmental records centres are doing a good job? Why have you continued your agreement with them?

**Dr Tony Grayling:** The short answer is yes, we think they are doing a good job. We invest something like £400,000 a year in gaining access to the data that local environmental records centres provide. We use that data, which is wider and more comprehensive, alongside the data I was describing earlier that we get from our own environmental monitoring. In fact, all our permitting staff have access to both those sets of information through our geographical information systems, and that very much informs our work including our statutory roles in permitting and licensing. We consider we get good value out of that and we need both sets of data—both the data we collect and the data that others collect.

**The Earl of Caithness:** Some of the evidence that we have received shows that the Government are not getting the right data. Do you think that is a fair criticism?

**Dr Tony Grayling:** There is always room for improvement. You continuously need to stand back and check whether the right monitoring is being undertaken by whoever, in the first place, to get the data we need. At the moment, one of the exercises the Environment Agency is undertaking is what we are calling the strategic review of monitoring. That is both from a perspective of efficiency—trying to make sure that our monitoring is more efficient—and ensuring that it meets our current and future needs. Over time, understanding of the environment evolves and environmental priorities evolve with that, and you need to make sure that your data and the monitoring that provides it are fit for purpose, in that sense. I cannot give you specific examples but I am sure there is room for ongoing improvement.

**Q183 The Earl of Arran:** Moving on to planning, several witnesses have told us that resource constraints, better known as cuts, mean that Natural England is no longer able to provide bespoke advice on planning consultations, with greater reliance being placed on standardised guidance. In your opinion, has this had any noticeable effect on the input you are required to provide on local plans and planning applications?

**Dr Tony Grayling:** It is a very good question. The Environment Agency, as I was describing earlier, is in a very similar position in that our grant in aid is also being reduced. That includes grant in aid for our statutory advisory role in the spatial planning system. The way in which it has affected both organisations is that we have had to take a more sharply focused approach that is risk based. Both organisations continue to provide bespoke advice for developments that we consider a higher risk to the

environment, but, yes, in the case of lower-risk developments, we both provide standard or standardised advice to meet that need.

We have had to change the approach that we have in a number of different ways. Both organisations now seek to charge for what may be described as a premium service, so going beyond the minimum statutory responsibility. We have to offer a service to developers where they can get a higher level of bespoke advice from us. Both organisations have also sought to try to go further upstream in the planning system. The greatest impact can be had if you influence land use planning at a strategic level. If you can influence the spatial plan, the local plan, so that it specifies that you will have the right sorts of developments in the right places, you do not have to deal with problems on individual planning applications because they are the wrong developments in the wrong place. Both organisations focus on the bigger and more strategic housing and economic developments where the risks are higher and the potential benefits of getting it right are also bigger. You cannot deny that there has been an effect of funding reductions, but we have done our best to mitigate that and, as far as we can, overcome it. I should say that we collaborate at, particularly, influencing planning at the strategic level on major developments.

**The Countess of Mar:** I think almost immediately of housing developments built on flood plains. That is not the direct question but it is background. We have heard repeatedly that Natural England do not have enough people on the ground who know the local community and the lie of the land. Does the same happen with you? Do you have enough foot soldiers as opposed to generals?

**Dr Tony Grayling:** One of the great strengths of the Environment Agency is that we have foot soldiers who genuinely know their local patch. We are not an organisation of boffins like me who sit in head office. Yes, we still have a strength in that regard. We are also fortunate in that quite a lot of our work is charge funded. Our permitting and licensing work is funded because the people who apply for permits and licences have to give us a fee to secure their application and, if they get the licence, they have to pay what are called subsistence fees on an annual basis. We get quite a lot of income from that. We still have quite a large presence at local areas on the ground.

**The Countess of Mar:** How do people get away with building on flood plains?

**Dr Tony Grayling:** Of course, that is beyond the terms of this inquiry. The planning guidance says, "No inappropriate development on flood plain". We would say there is not much inappropriate new development on the flood plain. In the overwhelming majority of cases, our advice, as a statutory adviser on the planning system, is reflected in the planning decisions made by local authorities. I am not saying there is no problem, because sometimes, for other reasons, in a very small minority of cases, the council may consider that there are overriding factors. Even then, we would seek to give advice that, at least, mitigates—by the way in which the buildings

are designed—the flood risk. Of course, we have a lot of properties historically at risk of flooding, and that is getting worse over time because of our changing climate, as a consequence of human activities causing global emissions of greenhouse gases.

**The Countess of Mar:** I am sorry, that was a bit of a diversion.

Q184 **Baroness Byford:** I am very glad that Lady Mar raised that issue. Can I move back to planning and planning advice? Clearly, the evidence we have received from a lot of people who have come to give evidence to us is that at local level the people within the planning office are not supported, perhaps, in the way that they hope to be. Often when plans come in, the comment from, I suspect, you—but you will clarify that—and certainly Natural England has been “no comment” rather than a direct comment, which then leads to lots of other things happening as a result. Does that affect your agency?

**Dr Tony Grayling:** Our approach is risk based. Sometimes, if we consider the risk is very low, we may not comment. If we consider it is low but a fairly standard issue we will refer the local authority to our set of standard advice that applies in those circumstances. If we consider that the development proposed, potentially, has a high risk to the environment, we will provide bespoke advice on that planning application. That is very similar to our colleagues in Natural England.

**Baroness Byford:** Earlier you referred to the need to have regard to biodiversity, and the same would apply with that.

**Dr Tony Grayling:** Yes, that is correct.

**Baroness Byford:** That, presumably, you give advice on, or do you not? That is Natural England.

**Dr Tony Grayling:** In some circumstances, we would give advice. Particularly where we think that a development that affects a main river could have significant effects on aquatic biodiversity, we will give bespoke advice. In a lot of circumstances on biodiversity we would give standard or standing advice and our role would be complementary to the advice from Natural England, which would be more focused on terrestrial biodiversity.

**Baroness Byford:** I do not know if you would agree, but the difficulty is that, although local authorities have to “have regard to”, there is no power within that. Do you think there should be greater power to try to encourage them to do what they should be doing with regard to biodiversity?

**Dr Tony Grayling:** It is a duty on all public bodies. Local authorities have to be able to demonstrate that they have discharged that duty as well, and that includes the planning decisions they make. If they are not able to show they have taken that duty into account, the decisions could be challenged. As we were discussing in relation to a requirement to report on the discharge of that duty, the Environment Agency and, I think, Natural England are interested in whether it could be further strengthened. We are interested in the concept of net gain, which is an increasingly prevalent



idea for the land use planning system and in the context of the development of the Government's 25-year environment plan. We would like to see circumstances where, generally speaking, there was a duty on developers to have a positive impact on the environment, including its biodiversity.

**Baroness Byford:** I have two more quick questions. Earlier you referred to spatial plans. With the regional set-up having gone, how do you feel that your agency is managing to have a direct input on plans? Presumably, it will have to go to the very local level now as compared to previous years when you were able to go much more regionally and have a much wider view.

**Dr Tony Grayling:** We have put quite a lot of effort into influencing local plans. There are, of course, as you suggest, more of them than there were in terms of regional spatial strategies. In terms of prioritising the work, it is the right level to influence, first, because it prevents problems further downstream. We still put a lot of effort into that and, as our funding has reduced, we have made sure that that activity has been protected. You may have asked a supplementary that has now slipped my mind.

**Baroness Byford:** No, that is fine on that. It was how you overcome the fact that there used to be regional planning, whereas now there is not that format and things such as landscape or other things get lost.

**Dr Tony Grayling:** Some issues go beyond an individual local authority boundary. One thing that is very important to us is the duty that local authorities have to work together on issues that cross their boundaries. We would certainly look at issues on that greater spatial scale—for example, the river catchment scale, because that is the scale at which the water environment works. Our colleagues in Natural England would say the same about landscapes. We are very mindful of the recommendations that the Lawton report made about the connectivity of the environment to make sure it is healthy and resilient. Part of our role is to encourage local authorities to work together when developing their spatial plans, as they are required to do.

**Baroness Byford:** Thank you. My last one is slightly wider of the question. I know you have laid down the things you have to do, but you also manage some of the countryside. How and when do you decide that that is an agency matter as compared to the land manager or the farm-owning person of that land? Have you seen a change in that relationship in recent years?

**Dr Tony Grayling:** As a landowner, the Environment Agency owns something like 24,000 hectares of land around the country, which is not insignificant. That land is primarily associated with flood and coastal risk management. With a few exceptions, on the whole, we are not more generally land managers. We need to practise what we preach. One of the things we now do is produce natural capital accounts for our organisation. We have made an assessment of the services that those 24,000 hectares of land provide to people and the economy and where possible—because

you cannot in all cases—we have quantified those services. We now publish that as part of our annual report, in a non-statutory way, and seek to ensure that overall the natural capital value of the assets we manage is going up rather than going down. I do not know if that helps

**Baroness Byford:** That is very helpful. It is trying, in my own mind, to balance the reduction you have in the amount of money that has been allocated.

**Dr Tony Grayling:** We are not quite in the same position as Natural England, which owns much larger areas of land through its national nature reserves.

**Baroness Byford:** Thank you very much.

**The Countess of Mar:** We have heard a lot of evidence that Natural England has lost its scientists, its landscape specialists. Do you have the same problem? Is there any sharing between you of these specialisms, especially when it comes to biodiversity management?

**Dr Tony Grayling:** Technical expertise is an absolutely fundamental part of the Environment Agency's work. We seek to protect it in circumstances where our grant in aid funding has been reduced. We also seek to ensure that there is resilience. Sometimes you can end up in a situation where particular specialisms end up in a few individuals who, sooner or later, will reach retirement age. You have to make sure they train the next set. Technical expertise is absolutely fundamental. That ranges from expertise in fish biology and engineering expertise to building and maintaining flood defences. We have placed and succeeded in placing a high priority on that.

**The Countess of Mar:** Do you share at all with Natural England?

**Dr Tony Grayling:** On the whole, our responsibilities are complementary rather than overlapping. Our particular areas of expertise and specialism would not overlap much with those of Natural England, but we share expertise at the more general level. For example, both organisations are going through a learning experience on how to apply a natural capital approach. That is the notion that you understand the services that the natural environment provides to people and use that understanding to underpin the decisions you take. That is not easy. We definitely share expertise in that regard. In terms of deep specialisms, on the whole, we have different ones from those of Natural England.

**The Earl of Arran:** I know this is not on the agenda, but how much are you going to mind leaving Europe and becoming master of your own destiny?

**Dr Tony Grayling:** One of my responsibilities is to lead the Environment Agency's work on EU exit. There is no doubt that a very large majority of the work we do is currently governed by EU regulations, directives and policy measures. Obviously, we want to see things, if anything, getting better as a consequence of leaving the EU. For us, it is not defending the status quo—as we know, the withdrawal Bill will ensure that, at least,

immediately after we have exited the EU we will pretty well have the status quo in terms of environmental law and standards—but improving on that. We could go on for a long time, but if, for example, you take the common agricultural policy, we think it is possible to have something that is better.

**The Earl of Arran:** I am getting the feeling you are thinking more pluses than minuses.

**Dr Tony Grayling:** There are risks and opportunities and our job is to mitigate the risks and maximise the opportunities. That is how I would approach it.

**The Chairman:** Thank you very much, Dr Grayling, for coming to see us.

**Dr Tony Grayling:** You are very welcome. Thank you.

## **Field Studies Council – written evidence (NER0003)**

### **Background**

The Field Studies Council (FSC) is a pioneering education charity committed to bringing environmental understanding to all. FSC provides opportunities for people of all ages and abilities to discover, explore and be inspired by the natural environment. We currently welcome 160,000 visitors every year for courses at our UK network of 20 Field Centres.

With over 70 years of experience, FSC is the UK's leading provider of biodiversity and ecology training courses for adult learners, with career development for professionals involved in ecology, natural history and landscape related disciplines. This includes highly specialist courses in biological identification and recording.

FSC welcomes this opportunity to provide evidence to the committee. The paragraph numbers relate to the specific questions in the call for evidence.

### **Rural advocacy and the Commission for Rural Communities**

**Q1** i) The closure of the CRC and the winding up of the DEFRA Rural Communities Policy Unit risks reducing the opportunities for the concerns of rural communities to be fully considered. Whilst DEFRA have funded a number of rural advocacy organisations and networks, having a dedicated unit within government sent a strong signal that rural issues were of central concern. For example, as a rural business, FSC has struggled with the lack of broadband provision at our centres which has impacted on our teaching and scientific research activities. This essential issue would have benefited from a strong, knowledgeable and united voice from within a government department. With reductions in DEFRA staff and the winding up of the dedicated unit there is a risk that their impact is diluted or that they get pulled into other areas of work.

ii) The *Natural Environment and Rural Communities Act 2006* (NERC) implemented DEFRA's 2004 Rural Strategy which stated that DEFRA would "work with schools and outdoor education providers to promote a greater understanding and appreciation of the countryside". The Act also sets out the General Purpose of Natural England which includes "securing the provision and improvement of facilities for the study, understanding and enjoyments of the natural environment" (Chapter 1, Section 2, 2c). FSC has found that it is first hand experiences of the natural world that not only spark an interest but also builds understanding of its importance. Whilst the recent curriculum reforms aim to provide a broad education with fieldwork forming an essential part of some subjects, our research has shown that despite the evidence of the multiple benefits of learning outside the classroom, children still miss out on outdoor learning opportunities. Therefore FSC feels that there is still a need for

an advocacy role within DEFRA to highlight the need for environmentally literate citizens, rather than the issue resting solely with the Department for Education.

### **Natural England**

**Q5** i) FSC welcome the expertise and knowledge of Natural England staff especially with the addition of the recent Field Unit which provides a boost in much needed biodiversity skills. In the past Natural England promoted, supported and even part funded FSC training courses for volunteers and those in conservation management eg grassland identification and habitat surveying, and joint courses with specialist groups eg dragonflies and birds.

ii) Natural England has not designated sites recently which is a matter of concern as new sites continue to be found. Natural England need to boost the monitoring of protected sites across the UK as some are in adverse condition. A target from the EU under the Habitats Directive Natura 2000 programme was set to improve the percentage of SSSI sites that are listed as being in good condition. Resources are needed for this work to be completed and maintained.

iii) In recent years funding for volunteering initiatives has been cut. FSC would welcome the prioritisation of the support for volunteers in species identification skills. A recent successful example is the initiative to train Natural England staff and volunteers on an annual soil organism course thus supporting this group of enthusiasts who are so important in providing a wide range UK biodiversity data that is then used by government.

**Q6** FSC, with its aim to bring environmental understanding to all, welcomes the work that Natural England has done to promote access to the countryside, including for under-represented groups.

### **Sustainability and biodiversity**

**Q7** In delivering specialist biodiversity courses and in our networking conferences, FSC has found that experts in their field (for example professional ecologists) express concerns about the variation of the interpretation of the clause to 'have regard'. This indicates that it is not understood by those organisations to which it applies.

**Q8** 'Have regard' is vague and therefore open to wide ranging interpretation. One modification that could improve this would be for there to be a weighting or prioritisation system, especially with regard to declining populations of schedule 43 species. Since 2006, the role that enhanced biodiversity plays in a wider context has become better understood from providing natural solutions to flood management to improving health and wellbeing. Biodiversity's growing importance across a range of public policy areas demonstrates a need for it to have a higher status. It underpins many policy issues and is not just one facet that should be taken into account.

**Q9** The English duty to 'have regard' for biodiversity is weaker than the Scottish and Welsh duty to further or enhance biodiversity respectively. There needs to be a commitment to improve biodiversity to halt the continued decline of some

species and habitats. The UK Biodiversity Indicators 2017 published by DEFRA demonstrate the point as they show that 11 of the 42 indicators have declined in the long term and 12 show decline in the short term.

### **The changing context since 2006**

**Q10** i) The European Habitats Directive and other international agreements have set the context for biodiversity conservation and has been welcomed as being realistic, rigorous and evidence based. This has been applauded by the Natural Environment Research Council, DEFRA and the Joint Nature Conservation Committee, and is taught in universities as best practice. FSC upholds this evidence based approach in its own educational programmes and works with partners to promote the understanding of the monitoring needed to assess the conditions of habitat and landscapes.

ii) We would welcome a similar model for an effective post-Brexit conservation assessment tool. However, there will be further opportunities to specifically safeguard and enhance England's biodiversity and by extension the broader landscapes and diverse habitats (ancient woodlands, wetlands and flood plain meadow for example) that characterise the countryside. By taking a holistic approach to biodiversity and the role that it has in wide ranging policy areas from health and wellbeing and tourism to successful crop pollination and flood management, we can manage and improve our natural capital for future generations.

*22 August 2017*

## Forestry Commission England – written evidence (NER0049)

This evidence is submitted on behalf of the Forestry Commissioners to help inform the Committee’s discussions. It needs to be read in conjunction with the evidence submitted by Defra and Natural England.

Only the questions of direct relevance to the Forestry Commission activities have been addressed.

### INTRODUCTION

1. The Forestry Commission (FC) is the non-ministerial Government department responsible for advising on and implementing forestry policy in England. It is accountable to the Secretary of State for Environment, Food and Rural Affairs.
2. In England the Forestry Commission manages the public forest estate, administers grants for expanding and managing forests, and regulates tree felling and Environmental Impact Assessment for forestry activities. It also provides advice to Ministers, undertakes and commissions research, sets standards for good forestry practice and is responsible for protecting Britain’s forests and woodlands from pests and disease. The Commission draws advice in England from nine Forestry and Woodlands Advisory Committees<sup>103</sup>.
3. Forest Enterprise England (FEE) is an agency of the FC and manages the public forest estate, over 250,000 hectares in England. Forest Services (FS) are responsible for putting in place the conditions that enable the forestry sector as a whole to protect, improve and expand England’s woodland.

### QUESTIONS FROM THE COMMITTEE

Question 6: Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?

4. FEE has dedicated in perpetuity the right of access on foot to 90% of the freehold area of the **public forest estate** under the **Countryside and Rights of Way Act 2000** (CRoW).<sup>104</sup> In addition FEE provides recreational access and activities across the public forest estate, and in 2016-2017 members of the public made 226 million visits members to the public forest estate<sup>105</sup>. As of 31 March 2017 41% of the total population of

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<sup>103</sup> <http://www.forestry.gov.uk/england-rac>

<sup>104</sup> <https://www.forestry.gov.uk/forestry/infd-7rufp5>

<sup>105</sup>

[https://www.forestry.gov.uk/pdf/naturalcapitalaccount2017.pdf/\\$FILE/naturalcapitalaccount2017.pdf](https://www.forestry.gov.uk/pdf/naturalcapitalaccount2017.pdf/$FILE/naturalcapitalaccount2017.pdf)

England lives within a 15 minute drive of accessible parts of the public forest estate.<sup>106</sup>

5. FEE also supports a number of other initiatives to encourage and promote access to and recreational use of woodland, facilitating or delivering learning initiatives to around 350,000 people a year. FEE manages 4,027 hectares of community woodland to provide accessible green space around towns and cities across England<sup>107</sup>.
6. The FC is the **relevant authority** for dedicated woodland under CRoW. The total area of dedicated woodland in England is 137,000 hectares<sup>108</sup>. As part of CRoW, if an owner wishes to restrict access in dedicated woodland they may require permission from the FC who will consider whether the restriction is necessary, (e.g. for tree harvesting operations and public safety) and if so over what area and what period. Natural England currently manages such applications on behalf of the FC.
7. The FC also supports public access through the grants it manages. The England Woodland Grant Scheme provided additional contribution for woodland creation or improvement allowing public access for a duration of up to 30 years, and the Woodland Carbon Fund offers additional funding to projects that allow permissive access across the new woodlands created for 30 years.<sup>109</sup>
8. The provisions for managing and enabling access remain appropriate. Government's commitment to the public forest estate, and its management by the FC, deliver an excellent level of access. It supports an increasing interest from the public in woodland recreation, including in urban and peri-urban woodland. There remains a need to balance access goals with other objectives, accepting that public access will not always be compatible with different landowners' objectives.
9. The FC supported the development of Woods for People, led by the Woodland Trust, a UK-wide provisional inventory of accessible woodland. This data has been used by Woodland Trust to produce the Space for People<sup>110</sup> analysis, which proposes a 'woodland access standard' and assesses existing access provision. The 2016 analysis shows that in England 18% of people have access to a woodland of 2ha or more within 500m of where they live, and 68% of to a woodland of 20ha or more within 4km of where they live.

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<sup>106</sup> [https://www.forestry.gov.uk/pdf/FC-England-Indicators-Report-2017.pdf/\\$FILE/FC-England-Indicators-Report-2017.pdf](https://www.forestry.gov.uk/pdf/FC-England-Indicators-Report-2017.pdf/$FILE/FC-England-Indicators-Report-2017.pdf)

<sup>107</sup> [https://www.forestry.gov.uk/pdf/60334HC183FEE\\_Web.pdf/\\$FILE/60334HC183FEE\\_Web.pdf](https://www.forestry.gov.uk/pdf/60334HC183FEE_Web.pdf/$FILE/60334HC183FEE_Web.pdf)

<sup>108</sup> <https://www.forestry.gov.uk/forestry/inf-d-74adpg>

<sup>109</sup> <https://www.forestry.gov.uk/england-wcf>

<sup>110</sup> <http://www.woodlandtrust.org.uk/mediafile/100818946/pp-wt-010617-space-for-people-2017.pdf?cb=d84b1c771cd6494f8b3bd8a8668cf237>



Question 7: Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

10. The **duty to 'have regard' to biodiversity** is well understood by the FC, and pre-dates the NERC Act 2006 as the Wildlife and Countryside (Amendment) Act 1985 earlier gave the FC a 'balancing duty' between 'the development of afforestation, the management of forests and the production and supply of timber, and the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest'<sup>111</sup>. The 'duty to conserve biodiversity' in the NERC Act 2006 defines 'conserving biodiversity' as including 'restoring or enhancing a population or habitat'<sup>112</sup>.
11. In practice, the FC 'has regard' to biodiversity through the advice it provides to woodland owners and managers, through the regulations it is responsible for administering, through the grants it manages, and through the management of the public forest estate.
12. The FC develops and promotes **best practice guidance** to promote sustainable forest management. The FC has developed, and manages on behalf of the forestry sector, the UK Forestry Standard<sup>113</sup> (UKFS), applying to UK woodlands. With national forestry policies and strategies, the UKFS supports the delivery of international agreements on sustainable forest management in England. The UKFS states that 'the conservation, enhancement and restoration of semi-natural habitats and priority species is a clear aim in the UK Forestry Standard'. The UKFS Guidelines on Biodiversity help further this aim by integrating the conservation and management of biodiversity into sustainable forest management practices.
13. The FC also has regard to biodiversity through administering **the regulations where it is the competent authority**.
14. Under the Forestry Act 1967 (as amended) the FC is responsible for **issuing licences for tree felling**<sup>114</sup> (approximately 2,250 licences per year in England). Applications are assessed against the requirements of the UKFS, and applicants are reminded prior to approval of their duty to consider biodiversity when planning their forestry operations and, in particular, to consider protected woodland species, for which the FC and Natural England provide joint operational guidance<sup>115</sup>.
15. Where proposals for tree felling involve replanting conditions, the FC has a duty to consult with statutory bodies on sensitive sites (where relevant), as well as to notify the public via a public register of the content of those proposals.

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<sup>111</sup> [http://www.legislation.gov.uk/ukpga/1985/31/pdfs/ukpga\\_19850031\\_en.pdf](http://www.legislation.gov.uk/ukpga/1985/31/pdfs/ukpga_19850031_en.pdf)

<sup>112</sup> [http://www.legislation.gov.uk/ukpga/2006/16/pdfs/ukpga\\_20060016\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/16/pdfs/ukpga_20060016_en.pdf)

<sup>113</sup> [http://www.forestry.gov.uk/pdf/FCFC001.pdf/\\$FILE/FCFC001.pdf](http://www.forestry.gov.uk/pdf/FCFC001.pdf/$FILE/FCFC001.pdf)

<sup>114</sup> <https://www.forestry.gov.uk/england-fellinglicences>

<sup>115</sup> <https://www.forestry.gov.uk/forestry/INFD-92QE5W>

16. The FC also investigates instances of **unauthorised felling**, and where evidence confirms a breach of the Forestry Act, a restocking notice is issued to attempt to restore woodland habitat condition. In a small number of cases further enforcement action for failure to comply with the restocking notice is required.
17. **Woodland management plans** are assessed and approved for **compliance with the UKFS** by the FC. UKFS compliant plans are a requirement to apply for Countryside Stewardship funding, and provide evidence of sustainable sourcing for eligibility to the Renewable Heat Incentive<sup>116, 117</sup>.
18. The FC is also the relevant authority for **forestry projects** under the **Environmental Impact Assessment** regulations. Recent changes to the regulations have strengthened the requirements for applicants to gather, and take account of, environmental evidence when developing proposals. The FC has updated its guidance and advice<sup>118</sup>, and clearly signposts sources of information<sup>119</sup> on biodiversity, landscape, historic environment, and water and soils to help proposers to understand, and mitigate from the outset, the likely environmental impact of projects.
19. The FC supports **regulation** where there are forestry interests but **where the FC is not the competent authority** –for example for regulations affecting habitats and wildlife including European Protected Species, <sup>Priority Habitats</sup> and Priority Species . The FC works closely with Defra, Natural England and other agencies and experts to provide information<sup>115</sup> to land managers.
20. The FC is delivering the Countryside Stewardship<sup>120</sup> **grant scheme** jointly with Natural England and the Rural Payments Agency. The scheme supports woodland operations contributing to improved biodiversity, water quality, as well as mitigating flood the risk, in line with the Biodiversity 2020<sup>121</sup> objectives. Applications are scored against priority targets to maximise environmental benefit.
21. The FEE commitment to managing the **public forest estate** for nature and the environment pre-dates the NERC Act 2006, and our sustainable management is recognised by FSC (since 1999) and PEFC (since 2010) certifications.

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<sup>116</sup> <https://biomass-suppliers-list.service.gov.uk/about>

<sup>117</sup> <https://biomass-suppliers-list.service.gov.uk/Content/Documents/BSL%20Land%20Criteria%20Guidance%20-%20V1.1.pdf>

<sup>118</sup> <https://www.forestry.gov.uk/forestry/BEEH-AMDDDB3>

<sup>119</sup> [https://www.forestry.gov.uk/pdf/EIA\\_Enquiry\\_Form\\_Supplementary\\_Guidance\\_v1.0.pdf/\\$FILE/EIA\\_Enquiry\\_Form\\_Supplementary\\_Guidance\\_v1.0.pdf](https://www.forestry.gov.uk/pdf/EIA_Enquiry_Form_Supplementary_Guidance_v1.0.pdf/$FILE/EIA_Enquiry_Form_Supplementary_Guidance_v1.0.pdf)

<sup>120</sup> <https://www.gov.uk/government/collections/countryside-stewardship-get-paid-for-environmental-land-management>

<sup>121</sup> <https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>

22. Of the 67,796 hectares of Sites of Special Scientific Interest (SSSIs), Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) under FEE stewardship, 99.5% remains in favourable or favourable recovering condition, with 37% in favourable condition. There is steady improvement in the 7,432 hectares of Ancient Semi Natural Woodland (ASNW) not designated as SSSI, with at least 45% anticipated to be in a favourable condition by 2020, and the condition of the 22,348 hectares of Open Habitat not designated as SSSIs is steadily improving<sup>122</sup>.
23. 3,800 hectares of additional open habitat will be created by 2020<sup>122</sup> on the public forest estate, and FEE continues to pursue a policy of restoration across the 39,337 hectares of Plantations on Ancient Woodland Sites (PAWS) on the Estate.
24. FEE also engages with partners across the country to deliver species conservation projects. Main developments in 2016/17 included restoring water voles to the streams and brooks of Kielder Forest, development of a project to reintroduce the pine marten to the Forest of Dean, conservation projects for rare and declining plants and Lepidoptera notably in the Brecks and Savernake Forest, and restoration of the white faced darter dragonfly to the ponds of Delamere Forest<sup>122</sup>.
25. FEE published its Natural Capital Accounts for 2016-2017<sup>123</sup>, which assess the total net natural capital asset value of England's public forests as £22.5 billion. The ongoing development of a natural capital approach will continue to raise awareness and further embed biodiversity values into decision making in FEE and beyond.

Question 8: What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

26. The direct impact on the FC of the duty in the NERC Act 2006 has been limited, as the duties of the FC were already embedded in statute and in practice, although it has underpinned wider public awareness. The duty does not in our view require modification, as it is consistent with the continued evolution of practice and implementation in response to experience and scientific evidence.

Ian Gambles, Director England, on behalf of Forestry Commission England

*11 September 2017*

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<sup>122</sup> [https://www.forestry.gov.uk/pdf/60334HC183FEE\\_Web.pdf/\\$FILE/60334HC183FEE\\_Web.pdf](https://www.forestry.gov.uk/pdf/60334HC183FEE_Web.pdf/$FILE/60334HC183FEE_Web.pdf)

<sup>123</sup> [https://www.forestry.gov.uk/pdf/naturalcapitalaccount2017.pdf/\\$FILE/naturalcapitalaccount2017.pdf](https://www.forestry.gov.uk/pdf/naturalcapitalaccount2017.pdf/$FILE/naturalcapitalaccount2017.pdf)

## **The Geological Society – written evidence (NER0075)**

### **SUBMISSION TO HOUSE OF LORDS SELECT COMMITTEE ON THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006**

1. The Geological Society (GSL) is the UK's learned and professional body for geoscience, with over 12,000 Fellows (members) worldwide. The Fellowship encompasses those working in industry, academia, regulatory agencies and government with a broad range of perspectives on policy-relevant science, and the Society is a leading communicator of this science to government bodies, those in education, and other non-technical audiences.
2. We have not attempted to answer all of the questions outlined in the inquiry but instead have responded on points as they relate to the functions of Natural England and environmental management.

#### **Natural England**

#### **How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

3. Natural England's role is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. This includes responsibility for conserving the diverse geological aspects of England's landscapes and geological outcrops. This is set out in the 'general purpose' statement of Natural England's constitution according to the NERC Act 2006 which includes the following detail:
  - a. Promoting nature conservation and protecting biodiversity;
  - b. Conserving and enhancing the landscape,
  - c. Securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment,
  - d. Promoting access to the countryside and open spaces and encouraging open-air recreation, and
  - e. Contributing in other ways to social and economic well-being through management of the natural environment.

Geology and the subsurface are significant components of the responsibilities outlined in the Act. According to the wording in the Act, 'nature conservation' means the conservation of flora, fauna or geological or physiographical features. In that context we wish to raise a number of

points regarding the importance and value of Natural England in its role of promoting geoheritage and geoconservation as part of nature conservation.

4. Natural England has a vital role as the statutory body responsible for nature conservation in England; including the conservation of geological and physiographical features. The Geological Society has sought in recent years to raise awareness of the UK's geoheritage and the importance of geoconservation through our Geoconservation Committee whose aim is to help conserve the diverse geology and rich geological and geomorphological heritage of the United Kingdom. England has extremely diverse geology that underpins and shapes our landscapes, ecosystems, habitats, provision of natural resources and land use. These in turn support a wide variety of ecosystem services and environmental processes.
5. An important part of managing and conserving the environment and supporting local communities is the process of designating and protecting geological sites. Protected sites raise awareness of local geological features and hence form part of the understanding of landscape conservation. Local sites across the UK such as Local Geological Sites in England and Local Geodiversity Sites in Scotland are protected by a variable set of notifications and protection orders. These designations are administered by the different devolved statutory bodies. Natural England has an important role to play in working with other organisations such as Scottish Natural Heritage, Natural Resources Wales and Geoconservation UK to promote good practice and consistency across the devolved nations. Protection and regulation of these sites is a devolved matter but given the complex landscape of conservation and protection measures it would be useful to have clearer guidance on the differences between designations to provide transparency and to develop a more joined-up system. Currently, the system is not fit for purpose and the lack of clarity around different designations generates confusion and misunderstanding for site users. The progress towards having consistent and effective networks of designated sites is very patchy across the country and there is a common need for recognition, protection and sharing of local geodiversity sites.
6. Natural England is the statutory body responsible for the designation of Sites of Special Scientific Interest (SSSIs). In order to be considered for designation as a geological SSSI, a site must first undergo rigorous assessment through a process called the Geological Conservation Review (GCR). Should a site be assessed being of national importance it is added to the GCR and should then be considered for notification as a 'Site of Special Scientific Interest' (SSSI). The sites selected through the GCR

form the basis of statutory geological and geomorphological site conservation in Britain. Designation as SSSIs is a critical step in providing adequate protection for these nationally important sites.

7. In England there are approximately 1200 SSSIs with a geological or geomorphological interest but there are also approximately 150 GCR sites that are yet to be designated and additional sites that are being considered for GCR nomination or that require boundary changes. In recent years, progress in designation of geological or geomorphological SSSIs has been very slow and this has resulted in a backlog of sites that do not benefit from the protection that SSSI status affords. The resources now available to Natural England to designate and protect geological SSSIs are now simply inadequate to effectively deliver the programme.
8. Designation of GCR sites as SSSIs is an essential requirement for the sustainable management of the environment. It creates protected spaces to be used by people for leisure, education and training at all levels, particularly in the Earth sciences, as well as providing a basis for generating economic benefits and for future conservation of scientifically important sites. GCR and SSSI sites are continually used in carrying out geoscience research, for teaching purposes at both secondary and university level and many are also used for industry training purposes when carrying out professional training in the minerals, water and oil and gas industries. These sites also contribute to the tourist draw of England as part of the landscapes and natural beauty of the UK. A joined up and effective approach to designating and protecting geological sites is an essential component of protecting and exhibiting rural landscapes for visitors and locals alike. It is the designation of SSSIs that provides the legal protection required to support the UNESCO Jurassic Coast World Heritage Site and the two UNESCO Global Geoparks in England which between them generate significant social and economic benefits through geotourism.
9. Many of the sites identified in the GCR but not yet designated as SSSIs face threats from a number of activities such as coastal protection, quarry infilling, development that obscures or removes features, and threats from site misuse by visitors who may remove material from the site or carry out damaging practices such as unsustainable rock coring and hammering. Designation as SSSIs is required to allow these sites the statutory protection they require to ensure conservation and the management needed to achieve favourable condition, as is the case with biological sites.
10. Natural England has recently relaunched the National Nature Reserve (NNR) programme and this is a great opportunity to further the work of

protecting sites and implementing a holistic approach to nature conservation. NNRs exist in most cases due at least in part to the unique geodiversity of the area in question and indeed some are specifically declared for geodiversity. There is great opportunity for new NNRs to reflect geodiversity. This is an area that needs continued resourcing for both evaluation of new sites and maintenance of existing reserves.

11. In order to meet the high level aims set out in Natural England's constitution, there needs to be a greater emphasis on maintaining an active programme of designation of GCR sites as SSSIs. Ongoing subsequent maintenance of these sites and the activities and functions they support also requires a greater allocation of resources and funds within Natural England. This is vital to clear the backlog of undesignated sites and boost the protection, maintenance and site evaluation programme.

**Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

12. The resource and expertise required to designate, manage and identify protected sites such as SSSIs and NNRs needs to be maintained in any post-Brexit settlement for environmental funding and regulation. In particular, future agri-environment schemes should include provision for management of geological and geomorphological features, as they do for biodiversity features.

**Sustainability and biodiversity**

**Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

13. Effective and sustainable management of the environment and the natural capital of England requires a holistic approach to understanding environmental processes and their interconnectedness across the biosphere, atmosphere, hydrosphere and geosphere. It is important that the contribution of geology and the subsurface is not omitted when developing environmental conservation and management regulation. The act explicitly details the protection of biodiversity as the responsibility of Natural England. Though not explicitly mentioned, geodiversity plays an essential role in sculpting patterns of biodiversity. The geology found in a given ecosystem is involved in important buffering functions that impact on the geochemistry of the water, soil and therefore plants and animals found in a given environment. Geodiversity also has its own intrinsic

value, and the highly variable and world-leading geology in the UK needs appropriate protection and conservation. It is critical that this component is well understood in the appropriate statutory and regulatory bodies. This requires organisations to have the appropriate in-house geological skills and knowledge to secure the consideration of the important role that geology plays in environmental systems so they are managed and regulated effectively.

*11 September 2017*



## **Jacky German – written evidence (NER0062)**

Dear Committee,

I would like to comment on Q.11: "Are there any further parts of the Act which are currently in force that need to be reconsidered as a result of developments since 2006?"

Section 67, which curtailed vehicular use of Restricted Byways and other unsurfaced roads, I feel strongly should be reconsidered as a result of the development of obstructions to access since 2006.

Before then, when I rode these routes they were generally wide and open, kept that way by motorcycle and vehicle use. Since then, overgrowth has been unchecked, restricting width, headroom and visibility of surface, preventing access by walkers and particularly horse riders and cyclists. Many RB's are now impossible for all users.

Please reconsider section 67 and bring back these important links in the countryside access network.

Yours sincerely,

Jacky German

**Mr Peter Giles – written evidence (NER0019)**

Dear House of Lords Committee.....

please help stop the break up of the green belt and the clamouring of building companies to buy up rural land for housing developments which do not help needy rural folk but which line the pockets of share-holders.

Thank you

Peter Giles

*6 September 2017*

## **Gloucestershire Local Access Forum – written evidence (NER0021)**

### CALL FOR EVIDENCE

The Gloucestershire Local Access Forum members have been circulated with the 'call for evidence' document. The views of Forum Members have been collated;

### **Natural England**

Question 4 The support provided by Natural England to Local Access Forums, both nationally and for individual Forums and has reduced significantly. Particularly the opportunity for regional LAFs to meet to share ideas, good practice and develop initiatives has diminished.

Question 6 The role of Local Access Forums in providing advice about making improvements to public access the arrangements continues to be appropriate. This input benefits from the ongoing support of Natural England.

### **The changing context since 2006**

Question 11 There needs to be greater flexibility and common sense involved in managing access, with particular reference to altering and diverting rights of way.

Richard Holmes

Gloucestershire Local Access Forum member

*7 September 2017*

## **Greater Lincolnshire Nature Partnership – written evidence (NER0044)**

1. The Greater Lincolnshire Nature Partnership (GLNP) is a Local Nature Partnership (LNP), a Defra accredited body. The GLNP is one of 48 LNPs across England, each one is unique in structure and function but all seek to bring about improvements in their local natural environment.
2. Working together achieves more. Partners choose to join the GLNP because they see benefits in doing so. The GLNP achieves more for nature because we work to high standards, look for opportunities and seek to add value to existing initiatives. Most importantly we use sound information and build on it to inform strategy; delivering for the Partners. The GLNP currently has 49 organisational Partners including local and national organisations, charities, public authorities and businesses, including Natural England. The GLNP operates as a not-for-profit partnership. For more information on what we do see [www.glnp.org.uk](http://www.glnp.org.uk)
3. **Rural advocacy and the Commission for Rural Communities**
4. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?
5. No comments
6. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?
7. No comments
8. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?
9. No comments

## 10. Natural England

11. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?
12. The GLNP is unable to comment on the entire remit of the question; however we are able to offer insight from working with various department and individuals within Natural England across Greater Lincolnshire over the last 10 years.
13. Over the last 10 years the ability of Natural England to fulfill its mandate has declined. In our opinion, this has been due to successive rounds of funding cuts that have both reduced available funding for grants, but most significantly reduced the staff resources available to undertake its core work.
  - a. As such it is the GLNP's impression that it may have the appropriate powers to fulfill its mandate but it does not have nearly enough resources.
  - b. Around seven years ago Natural England had both budget and staff time to commit to projects that achieved their mandate and worked in wider partnerships to create greater value for money and impact for biodiversity. At the current time this funding no longer exists. It is significant that Natural England has not attended the GLNP quarterly Steering Group meetings for over two years. This is not an isolated depiction but an example of a wider trend.
14. In another example, Natural England now only responds on spatial planning matters if SSSIs are likely to be impacted by a development, due to resource constraints.
  - a. This neglects a wide range of other important sites for biodiversity – particularly as SSSI designations are representative, not comprehensive.
  - b. Local Sites are designed to be a comprehensive suite of sites protected through planning policy. As Natural England no longer makes reference to these sites their importance and protection in the eyes of other organisations is weakened. This is something that the GLNP has seen slowly occur.
  - c. The Government is committed to a landscape-scale and natural capital approach in order to achieve its biodiversity commitments in Biodiversity 2020 and under Nagoya. This cannot be achieved with a focus on one suite of designated sites alone – something that is clearly recognised in these documents.
15. Related to this example is Natural England's lack of access to up to date evidence for the natural environment. Since cancelling their Service Level Agreement with the Lincolnshire Environmental Records Centre (part of GLNP) at the end of 2015-16 staff no longer have access to species or Local Site data without charge.

- a. Given the budget cuts local Natural England staff cannot afford data requests, and even if they could, the GLNP have been informed that there was a central decision not to request data from any Local Environmental Record Centre. Thereby tying the hands of local staff in achieving their duties.
  - b. The Lincolnshire Environmental Record Centre has received more requests for data from Natural England, the MMO and Defra since the cancellation of the Service Level Agreement. All of these requests expected the data to be provided free of charge and also considered the data to be important in new and ongoing research/work on the natural environment, some of it at a national level.
  - c. For clarification, data charges are made on a not-for-profit basis for collation and management of the data. Without this charge there would be no staff in post to undertake this role and the data would either not exist or would not be up to date.
16. To highlight another issue it is concerning that Countryside Stewardship uptake in Lincolnshire seems to be dictated by staff resources rather than by available funding or even the government ambitions for a better natural environment.
17. To explain, in 2016, out of 37 Higher Level Scheme expiries, just two were supported into Higher Tier agreements and only 15 went on to request Mid Tier packs. In 2017 the GLNP understands that there are 37 Higher Level Scheme expiries and Natural England was intending to encourage nine of these to apply for Higher Tier with a potential further three to be approached. The remainder were to receive a letter inviting them to request Mid Tier packs and it is not yet known what the uptake from that will be.
- a. Local Natural England representatives have said that 12 Higher Tier agreements will be a struggle for them to process due to staff resources, and this is not allowing for any potential new applicants
  - b. In addition there will be a loss of local confidence in Natural England and the scheme from the expiring Higher Level Schemes who are offered no support into Mid Tier
  - c. The result is a significant loss of public investment into environmental enhancement on farmland for at least the previous 10 years if not longer.
18. As a conclusion, the GLNP view is that the reach and effectiveness of Natural England is severely curtailed through a lack of resources.
19. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?
20. Continuing from the previous question, the GLNP view is that the main factor influencing the effectiveness of Natural England is a lack of resources.

21. It is also pertinent to state the GLNP believes that the current role of Natural England as the watchdog for the natural environment and as an impartial advisor to government with solely the interest of the environment at heart is still needed.

- a. Pressures to weaken this remit should be resisted as it will only undermine the effectiveness of the organisation further.
- b. Natural England should be able to give advice to Government when it believes it is in the interest of conserving the natural environment and where action could further the Government's objectives under Biodiversity 2020 and Nagoya.

22. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?

23. No comments

#### **24. Sustainability and biodiversity**

25. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

26. The GLNP experience is that the duty is not well understood by those bodies to whom it applies and a great deal of further work is required to raise awareness of the duty.

27. The GLNP works with a range of public bodies, primarily local authorities and internal drainage boards. On frequent occasions senior (and junior) staff, in relevant departments, have been unaware of the duty, requiring the GLNP to explain it to them.

- a. This is despite good working relationships with these organisations, and frequently their desire to do more for the natural environment.

28. Work is always ongoing with GLNP Partners to raise awareness of the duty, due to inevitable staff changes in public bodies. This awareness raising is a difficult task as it seems we are often the first to mention the duty to relevant individuals.

- a. Is there a gap in formal or professional training where this duty should be being covered?
- b. The lack of recent government guidance on the duty – and that it is left to the third sector to explain it – gives the impression that it is not as important as other areas.
- c. There is no clear path for fulfilling the duty, if further examples or process pathways could be given this would give public bodies more security that they were doing the right thing.

29. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?
30. The GLNP's view is that the largest area of practical impact of the duty has been to give third sector organisations a greater lever with which to engage with public bodies.
31. This of course is not necessary where there is already a good working relationship. However, in cases where a relationship needs to be built between new staff members or with a new GLNP Partner, the duty has offered a way for the GLNP to demonstrate relevance and usefulness.
32. The duty has also proved useful in more formal situations such as local plan and individual planning responses. There is now a key way to demonstrate that the public body must have considered the natural environment and, if it is not clear to us this has happened, then the duty can be cited to bring about change.
- a. Actual benefit to biodiversity is difficult to measure as a metric of this, but again these formal responses through the planning process frequently lead to greater engagement with the authorities concerned and GLNP believes that better decisions are made through such engagement.
  - b. It must be noted, however, that this engagement relies upon the staff in the third sector to have the capacity to raise the issue of the duty and work with local authorities. This is not always the case, particularly as many in the third sector have taken on additional work as the reach of the statutory sector has reduced.
33. The GLNP also believes that there is a subsidiary area of impact for the duty. This is use by well-informed individuals within public bodies enabling them to stand up for biodiversity in the course of their roles.
- a. Such examples may be to ensure that local authority documents are considering the Section 41 species or ensuring that related organisations are considering biodiversity in their operations e.g. housing associations
  - b. The GLNP's experience is that these examples are limited to public bodies that already have ecological expertise in house. As in house ecological expertise is very limited in Greater Lincolnshire the benefits are not as widely felt as they should be.
34. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?
35. No comments



**36. The changing context since 2006**

37. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?

38. Continuing from the previous question, structures established by the Act are insufficient to ensure appropriate protection for nature and environmental standards at the current time, given the lack of awareness of the Duty and what is needed to enact it.

- a. The GLNP does not necessarily believe that the Act itself is insufficient, rather it is about the necessary measures and political will to enact and enforce it.

39. GLNP believes that, if further pressures are brought to bear on the natural environment as a result of Brexit or any other political or economic forces, then changes in some format – either to the act itself or in how it is enforced – will be required in order to ensure that the public bodies do ‘have regard’ for biodiversity and that the Government’s commitments and aspirations for the natural environment have a chance of being achieved.

40. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

41. No comments

*12 September 2017*

Green Lanes Environmental Action Movement and Green Lanes Protection Group  
– oral evidence (QQ 137-142)

## **Green Lanes Environmental Action Movement and Green Lanes Protection Group – oral evidence (QQ 137-142)**

Tuesday 21 November 2017

11.05 am

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Lord Bradshaw; Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 16

Heard in Public

Questions 137 – 142

## Examination of witnesses

Dr Michael Bartholomew and Dr Diana Mallinson.

Q137 **The Chairman:** Good morning and thank you very much, Dr Bartholomew and Dr Mallinson, for coming down to see us. We are very grateful to have you here. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website and you will have the opportunity to make corrections to that transcript, where necessary, in due course. Would you introduce yourselves for the record and then we will go into questions?

**Dr Diana Mallinson:** I am honorary secretary of the Green Lanes Environmental Action Movement, GLEAM, which was founded in 1995 to campaign for changes to the law of England and Wales to stop off-road drivers damaging or destroying green lanes and for the rights of walkers, horse-riders, cyclists, carriage-drivers and the disabled to use green lanes without danger or inconvenience.

**Dr Michael Bartholomew:** I am chairman of the Green Lanes Protection Group, which was founded by GLEAM later on because we wanted to coordinate and bring together the large number of local green lane groups up and down the country, some very small, some quite significant, which were concerned about the wreckage of their green lanes by motor vehicles. We have 25 associated members and we represent their views.

Q138 **The Chairman:** Thank you very much. Perhaps I can ask the first question. What has been the effect of Part 6 of the NERC Act 2006 on England's green lanes since it came into force?

**Dr Diana Mallinson:** One of the elements in Part 6 was Section 72, which gave national park authorities the power to make traffic regulation orders. Two of the national parks have used that: the Yorkshire Dales National Park to start with and, subsequently, the Peak District National Park. The main impact of Part 6 of the NERC Act was to stop byways open to all traffic, which are public rights of way that are legally open to motor vehicles, being added to the definitive map and thereby definitely becoming legally open to motor vehicles.

It worked very well for routes that were already on the definitive map as footpaths, bridleways or restricted byways and was very effective, but the big gap was in the routes that are on highway authorities' lists of streets, which are routes that are publicly maintainable but their public rights are not defined. There are, in fact, more of those than there are of byways open to all traffic; there are 3,200 miles in England compared to 2,700 miles of byways open to all traffic. This was the main gap. These routes on the lists of streets are ancient highways and were created by horse and cart use, which was the principle on which Part 6 of NERC was based: that historic horse and cart rights should not lead to rights for modern motor vehicles but to rights for horse-drawn vehicles, i.e. should become restricted byways. We are looking for a way in which those routes on the

lists of streets can be protected in the same way as other green lanes were protected by the NERC Act.

**The Chairman:** You have not really answered my question about the effect of the NERC Act on your particular issues and problems.

**Dr Diana Mallinson:** The effect has been to save and protect a large number of routes on the definitive map and routes that were not recorded at all as public rights of way.

**Dr Bartholomew:** Before NERC, there was a very low threshold for vehicle users to claim a route and turn it into a vehicular route, and the number of routes that would become vehicular was virtually unstoppable. The NERC Act put a stop to that and stopped the expansion, but now it needs to start to reduce those that are there.

Q139 **The Countess of Mar:** What was the purpose of the exemption by which green lanes already on a county's list of streets retained a vehicular right of access, and what have been the effects of this in practice?

**Dr Diana Mallinson:** When it devised this exemption, Defra said that it feared that if routes on the lists of streets were not exempted there would be unforeseen consequences on the ordinary roads network. It was also afraid that there would be effects on people's rights of access to their property. That was the purpose, as Defra explained it. At the time, GLEAM and GLPG supported that, because we thought that stopping the expansion that Dr Bartholomew has referred to was more important than dealing with the lists of streets' routes. I did not realise how many routes there were on the lists of streets which were going to be left out of the NERC Act.

**The Countess of Mar:** We have heard from you that local authorities are responsible for maintaining the roads on the lists of streets, yet we have seen some horrendous pictures of churned-up green lanes. What is your feeling about this? Have you approached local authorities with regards to maintenance, and what has their response been? It is difficult enough getting potholes in main roads fixed, is it not?

**Dr Diana Mallinson:** That is one of the issues: that there are lots of other pressures on their budgets.

**Baroness Scott of Needham Market:** We are navigating our way through the various legislative milestones, starting with the CROW Act and then the NERC Act. In your opinions, can the current issues be resolved by some relatively straightforward individual legislative changes, or is there a case for looking at the whole thing again? One of the things we have here is unintended consequences from both the CROW Act and the NERC Act, so do we need to think about it all again?

**Dr Michael Bartholomew:** I do not think you need to start from scratch, but a small piece of legislation that extinguishes vehicular rights on those 3,000 miles on the lists of streets would be simple and very effective, and would, I think, complete the work that Parliament intended to do with green lanes. It is a loophole in the Act, which has been ruthlessly exploited

by vehicle-users, which could be closed with a very small piece of legislation.

**Baroness Byford:** I have a supplementary question on that, and I should declare that, when the Act was going through, obviously I worked with colleagues here giving evidence. In section 5 of your written evidence, you imply that BOATs are being added to the definitive map after the cut-off date of 1 January 2026, and you go on to say, “However, we understand Defra does not intend to bring this provision into force”. My question is: what have you done about that, or have you taken any action with regard to that particular piece of evidence you gave us?

**Dr Diana Mallinson:** I ought to say that since I wrote that it has become unclear what Defra will do. There is a provision in the CROW Act that allows BOATs to be added after 2026, but it is not clear whether it will bring that in. If it does not bring it in, for authorities that are currently processing claims or adding routes on the lists of streets as BOATs all that work will be wasted by 2026. They will do that work, 2026 will come along, they will have to stop and those routes will not go on the definitive map in any way. They will end up in a limbo where we will know what rights they have because the authorities will have done the determinations, but we will not be able to add them to the definitive map.

**Baroness Byford:** Do you know how many local authorities have made progress and how many are waiting to see the outcome of that decision?

**Dr Diana Mallinson:** The only two authorities that are actively either processing applications or adding routes to the definitive map under their duty to keep it under review are Derbyshire County Council and Northumberland County Council.

Q140 **Baroness Whitaker:** A number of witnesses have told us that the different local authorities and national park authorities have had very different attitudes towards the use of traffic regulation orders. Why do you think that might be?

**Dr Michael Bartholomew:** There are four reasons. One is that they are very expensive for hard-pressed local authorities to bring about, because it requires so much legal paraphernalia, public consultations and so forth. Secondly, they are too litigious and lead to High Court actions by vehicle users who will pick holes in traffic regulation orders. If there is a colon that should be a semi-colon, they will litigate, and local authorities are very chary, understandably, of being taken to the High Court and having costs awarded against them. Thirdly, local authorities have very poor guidance from Defra on how to apply TROs. The advice they have is out of date, incomplete, and in some cases wrong, and if I were a highway officer looking for guidance I would be bereft.

Fourthly, and this goes back to something the Countess of Mar said, highway authorities, which are the agencies that look after routes on the lists of streets, have a tremendous job in keeping the black-top asphalt roads in good order. They are full of potholes. For them, green lanes are a

marginal concern which they can put aside, especially when they find that to repair a couple of miles of a green lane will be horrendously expensive. Those are the reasons why TROs have been an ineffectual instrument in the management of green lanes.

**Baroness Whitaker:** That might affect all local authorities, but we have heard that there are differing considerations. Do either of you want to add any more on why some go hard and some do not?

**Dr Michael Bartholomew:** The ones that are effective tend to be national park authorities, which under the NERC Act were given TRO-making powers. The Yorkshire Dales National Park Authority, which is the one I know best, was very quick off the mark, knew its green lanes intimately and decided that it would impose traffic regulation orders on them. If you move out of the national park into North Yorkshire County Council as a whole, its ability, let alone its inclination, to address the green lanes it is in charge of is very limited.

**Lord Cavendish of Furness:** What do you think is the background to the users being so litigious? It is very expensive being a litigant.

**Dr Michael Bartholomew:** It is, but they are so litigious because they see an end to their activities. The NERC Act severely curtailed their activities by stopping the expansion of the routes available to them and they see the ones left as ones which they must defend every inch of, so they will go to court, and they are quite well supplied with funds.

Q141 **The Earl of Arran:** Has Natural England or any other government body provided adequate guidance or support for authorities considering the use of TROs?

**Dr Michael Bartholomew:** No, it has not. The advice that authorities get is overlapping, out of date, contradictory and, as I said earlier, in some cases wrong. The best example I can give you is the handbook which every highway officer should have available to him or her for the management of green lanes. It was published in 2005, is completely out of date, and the examples are obsolete. It is nearly 70 pages long and just three and a half are given over to the application of traffic regulation orders, so authorities need better, up-to-date and more comprehensive guidance.

**The Chairman:** Who should produce this guidance?

**Dr Michael Bartholomew:** Parliament, via Defra and Natural England, has set up this working group, which you may know about, which is meeting on Friday for its fourth or fifth meeting in the hope that users of green lanes can see eye to eye and come up with recommendations that do not require new legislation and will see a better way of managing green lanes. As the convener of the subgroup looking at TROs, it seems to me that the chances of agreement are slim to vanishing.

**The Earl of Arran:** What happens then?

**Dr Michael Bartholomew:** We need to go back to Parliament. Parliament needs to get hold of this problem, take a deep breath and say, “Green lanes were not made for Land Rovers and motorbikes. They should be for non-motorised recreational users and farmers and occupiers who need them for access, but they are not suitable for motorised recreation”.

**Lord Bradshaw:** I declare an interest as a member of GLEAM, president of the Friends of the Ridgeway and a member of the Campaign to Protect Rural England. I also have long experience on the county council and the Thames Valley Police Authority, where I was responsible for the maintenance of rights of way.

Do you consider that the existing historical classification of rights of way, which of course stretches back to Victorian times, is fit for purpose, and would you recommend any changes to simplify it?

**Dr Diana Mallinson:** One thing that could be done without any changes in legislation is that some BOATS—byways open to all traffic—may have been misclassified in the 1950s when they were put on the definitive map, as roads used as public paths, and there is some evidence for that. Landowners, parish councils and non-motorised user groups only have until 2026 by which to make an application to get those routes downgraded to footpaths or bridleways, and you need cogent evidence to downgrade a public right of way. They need to be reminded, if they have that evidence, to make an application before 2026.

Going further, there is an argument that the vast majority of byways open to all traffic were created and became byways open to all traffic, because they were routes that were used by horse-drawn vehicles, so there is an argument to say that they should all be reclassified as restricted byways. However, GLEAM has felt in the past that Parliament would be unwilling to accept that because it would mean taking away rights from users.

**Lord Bradshaw:** How do you envisage that any new regulations, which might be drafted, might be better enforced?

**Dr Michael Bartholomew:** There are two things. One is that we would know who has rights over these green lanes. At present, there are 3,200 miles whose rights are unclear. They are, by the term, unclassified; nobody knows who is allowed to use them, so the police will not enforce anything on those lanes because they do not know who is allowed to be on them. The legislation that we are asking for would clarify that.

Beyond that, there is the big, practical problem of a thinly stretched police force trying to stop illegal use, and I have no magic wand there. There are examples of police days of action in combination with countryside officers to try to stop illegal use, and they are effective, but policing is a big problem.

**Dr Diana Mallinson:** In the Yorkshire Dales National Park Authority, there are joint action days throughout the winter between the police and the rangers, which have been effective.

**Lord Bradshaw:** What sorts of sanctions? Do they take evidence, impound vehicles? What do they do?

**Dr Diana Mallinson:** It depends on the type of lane they are looking at. If it is a lane that is legally open to motor vehicles, sometimes spot checks will reveal that there are other issues with the vehicles, so the police find it worth while in that respect.

**Baroness Scott of Needham Market:** I can see how that would work on a route where people are not living or there is may be one farm, but you sometimes get routes where there are quite a number of residents. In practical terms, how can you go about enforcing the rights if you have people who are using it in order to gain access, and visitors and deliveries and various things?

**Dr Diana Mallinson:** My experience from working in the Peak District is that where you have residents at either end or along the lane, they will enforce it and will report it.

**The Earl of Caithness:** You have answered most of the question I was going to ask, but what we are talking about is 3,200 of green lanes. Is there a similar problem in Scotland and, if so, how do they handle it?

**Dr Michael Bartholomew:** I cannot speak for Scotland beyond saying that the rights of way system is utterly different from that in England and Wales, so we have no authority to have an opinion on it.

**Dr Mallinson:** As Mike has said, the rights of way system is completely different in Scotland. There are about 120 miles equivalent to byways open to all traffic, so it is a tiny number compared to England and Wales. Green-laning goes on in Scotland, but my understanding is that it is all done by permission on private estates.

**The Earl of Caithness:** Dr Bartholomew, to be clear, you want a total ban on any unauthorised vehicle on green lanes?

**Dr Michael Bartholomew:** Yes, and authorised vehicles, to take the point made a moment ago, would be where occupiers, landowners, gamekeepers, farmers and anybody with business on property that the green lanes give access to are in the clear and are covered by the law. The recreational use of them by 4x4 users, motorbike users and a few quadbike users who do the damage that we have supplied illustrations of in our evidence have no place on green lanes. All that is required is that people leave their vehicles where the tarmac stops and walk, cycle or horse-ride. It is no different from being asked to leave a vehicle when you enter a pedestrianised area of a city centre. It does not stop people; it stops vehicles.

**The Earl of Caithness:** Are you not going to put a huge burden on the police? I am driving and I want to go down a green lane, so I take my 4x4 down a green lane, you stop me and I say, "I'm just going to call in to so and so". You say, "Right, okay", and I do not pull in, I pass his drive and go out of the end of the green lane. You are going to put an enormous



burden on the police to enforce that sensibly.

**Dr Michael Bartholomew:** It will require some vigilant policing, and I take that point very seriously. At present, the recreational vehicle-users go out in large parties and it is a social event where you will get a dozen 4x4s or a dozen motorbikes that are equipped for off-road travel with winches and so forth, and you would not have any trouble in distinguishing between a convoy of 4x4s with winches and somebody who wants to pay a visit to the farmer down the lane.

**Lord Faulkner of Worcester:** You have partly answered a question I was going to ask you, which is the whole point about enforcement. It would be a burden on the police to enforce the sorts of regulations which you are looking for. Do you think, given the cuts in numbers and the different sets of priorities, that they are going to see this as a particularly important job for them to do?

**Dr Michael Bartholomew:** No, I do not believe that they will suddenly say, "Yes, we can now go out and catch them all". Certainly, I agree with you that that is implausible, but if the legislation that we are asking for were enacted, the whole notion of going out in convoys of 4x4s and on trailbikes would be an illegal activity and would stop, so the police would not have so much to do.

**Lord Bradshaw:** The burden of enforcement is not quite as heavy as has been suggested. Thames Valley, which is a large police area, has one countryside officer and he effectively enforced the traffic regulation orders through the three counties, because you do not need to do a great deal. If you impound vehicles, that sends a very strong message.

Q142 **The Chairman:** I assume that was a question. If the TROs and the guidance thereon were simplified, made clearer and may be even less expensive, would that be a satisfactory answer to the problem?

**Dr Michael Bartholomew:** No. When Parliament passed this Act, it thought, "We have removed vehicular rights and protection of vehicular rights from thousands of miles and it leaves only a small number"—and the number was not known then—"and they can be mopped up with TROs". However, there are 3,200 miles of them, and even if the TRO system were simplified, as you have suggested, to work your way through all those lanes would take until kingdom come.

**The Chairman:** Being fair to both sides, is it not right that we work our way through them rather than have overall litigation that bans the process?

**Dr Michael Bartholomew:** I go back to what I said a moment ago: that Parliament has to take a deep breath and ask itself, "Do we want non-essential motor vehicles on these green lanes?" If the answer is, "Yes, we do. They have rights", perhaps we then follow the piecemeal procedure that you have outlined. If the answer is, "No, they're inappropriate", people should use this amazingly beautiful recreational resource on their feet, on a bicycle or on a horse.

**Baroness Scott of Needham Market:** I just want to go a bit deeper on the Chairman's point about TROs. I absolutely recognise your position, but if Parliament were to retain its current view, which is that TROs are a tool for dealing with problems on a one-by-one basis, certain things will be quite cumbersome in putting them in the legislation. For example, you are required to advertise in the local newspaper, which can be quite expensive, and in this day and age hardly anyone, sadly, reads hard copies of local newspapers. Are there some procedural things that could make their use a little less expensive and a little less onerous?

**Dr Michael Bartholomew:** There are ways in which you could trim it and simplify it, but to repeat what I said to Lord Cameron, that is an inadequate way of handling the size of the problem. I do not know if Diana wants to add anything.

**Dr Diana Mallinson:** I would go back to the point that you have these two categories of green lanes. The ones that are on the lists of streets the vast majority of which have public vehicular rights will become byways open to all traffic when they eventually get on the definitive map. If Parliament were to pass legislation that took those unrecorded motor vehicle rights away, you would halve the problem and make local authorities' lives much easier. They could concentrate on whether a particular BOAT needed a TRO or not, and they would not have to worry about the ones which were on the list of streets.

**The Countess of Mar:** We are talking about pleasure on the part of path walkers, cyclists and people who drive 4x4s. Have you ever met LARA and pointed out the difficulties that they are confronting you with? Is there any possibility of volunteers helping to remediate where roads have been destroyed?

**Dr Michael Bartholomew:** Yes, we have met LARA. We have regular informal meetings. They are very well represented on the working group which Natural England has set up, and I have met them on local access forums, so there is plenty of interchange between the motorised users and us.

On your second point, which was about voluntary repairs, it is true that the motorised users will go out and do the repairs under the guidance of the local authority. There is a problem with insurance and so on, but if those can be overcome, they do repairs. But it is an entirely self-interested enterprise; they are not doing it for the benefit of walkers and cyclists but so that they can get their vehicles along a track that has been made impassable by those vehicles.

**The Countess of Mar:** They reach a stage when they are impassable and you need a wetsuit in order to walk through them.

**Dr Michael Bartholomew:** Exactly so.

**The Chairman:** Thank you both very much for coming to see us.

## **Green Lanes Environmental Action Movement – written evidence (NER0038)**

Patron: HRH The Duke of Edinburgh, KG, KT

### **To the House of Lords Select Committee on the NERC Act**

### **Evidence from the Green Lanes Environmental Action Movement (GLEAM)**

#### **Introduction**

- The Green Lanes Environmental Action Movement (GLEAM) was founded in 1995 to campaign for changes in the law of England and Wales to stop off-road drivers damaging or destroying green lanes and for the rights of walkers, horse riders, pedal cyclists, carriage drivers and the disabled to use green lanes without danger, difficulty or inconvenience. Green lanes are ancient highways which are not sealed with tarmac or concrete; they may be recorded on the definitive map of public rights of way, which will specify whether they are legally open to the public with motor vehicles, or they may only be recorded on highway authorities' lists of streets which usually do not specify the level of public rights.
- We supported part 6 of the NERC Act during its passage through Parliament, and in its implementation by county, unitary and national park authorities and Defra. However it has become clear since the passing of the NERC Act in 2006 that it, and the related guidance on the management of motor vehicle use of green lanes issued by Defra, have not always had the effects intended by Parliament and by the government. We explain below what we consider the deficiencies in legislation and guidance to be, and suggest how this might be remedied. This is our written response to question 11 in the Select Committee's call for evidence. We would be glad to give oral evidence in addition, if required.

#### **What the NERC Act did and didn't do to protect green lanes**

- Up until the coming into force of part 6 of the NERC Act (2 May 2006 in England), any unsealed highway (green lane) which could be shown to have public vehicular rights created by horse-drawn vehicle use or modern motor vehicle use was legally usable by the public with modern motor

vehicles, and became a byway open to all traffic (BOAT) on the definitive map and statement of public rights of way. But increasing public unease about the misuse of BOATs, and other green lanes with undefined public rights, by motorised users and about the impacts of such use on non-motorised use and the countryside led Parliament, in the Countryside and Rights of Way (CRoW) Act 2000 and in the NERC Act, to introduce measures to prevent BOATs being added to the definitive map. In the government's response to its consultation on the legislative proposals which were the basis of part 6 of the NERC Act, the Framework for Action published in January 2005, Defra wrote:

*".. we believe that there is a strong case for legislation to better reflect historic dedication for and use by non-mechanically propelled vehicles on ancient rights of way which are the subject of future claims to modify the definitive map and statement."*

- The government's intention for part 6 was therefore that green lanes with historic public rights for horse-drawn vehicles should become restricted byways on the definitive map, legally usable by the public with horse-drawn vehicles and other non-motorised users, but not by the public with motor vehicles.
- Section 54A of the Wildlife and Countryside Act 1981 (inserted by the CRoW Act 2000) prevents BOATs being added to the definitive map after the cut-off date of 1 January 2026. However we understand that Defra does not intend to bring this provision into force, when other provisions relating to the cut-off date are implemented in 2018, i.e. it will be possible to add BOATs indefinitely, provided one of the exemptions in the NERC Act is met. However, the other relevant provision in the CROW Act, which automatically reclassified green lanes claimed as roads used as public paths (RUPPs) in the 1950s, and not reclassified as BOATs, bridleways or footpaths under subsequent legislation, was implemented on 2 May 2006, the same date as part 6 of the NERC Act. We estimate that this reclassification of RUPPs as restricted byways protected over 2,100 miles of green lanes in England by making public motorised use of them illegal.
- The NERC Act was intended to be more comprehensive than the CRoW Act in its protection of green lanes. It prevents any green lanes becoming BOATs on the basis of use by motor vehicles after 2 May 2006. It requires that applications for BOAT status made before 20 January 2005 had to be complete in accordance with the regulations relating to map

scale and evidence, in order to be valid applications for BOAT status. This requirement and cut-off date of 20 January 2005 were because the Trail Riders Fellowship (TRF) had made many applications, most of which were not in accordance with the regulations, to try to minimise the effect of the NERC Act on its members' access to green lanes, and despite having offered a partial moratorium on applications. It is not clear how many of the BOAT applications made before 20 January 2005 have resulted in BOAT status, because some county and unitary authorities have still to decide these applications.

- As explained above, the government's intention was that, for green lanes not covered by the exemption for pre-existing BOAT applications, historic public rights for horse-drawn vehicles should result in restricted byway status, not BOAT status, i.e. that unrecorded public rights for motorised vehicles should be extinguished. But because the NERC Act was drafted so that this extinguishment applied to all highways, not just green lanes, various other exemptions had to be included to ensure that the public's rights to drive motor vehicles on the ordinary road and motorway network remained. One of these exemptions is for highways which were on the highway authority's list of streets, i.e. highways which it is responsible for maintaining, but not on the definitive map of public rights of way as at 2 May 2006. Defra said that this exemption was to guard against "*unintended consequences on the 'ordinary roads network'*" and on "*people who access their properties by minor highways, without any recorded rights*"<sup>124</sup>. But it did not provide any estimate to Parliament of how many green lanes would fall into this exempted category.
- This exemption means that green lanes which are on the list of streets can only be added to the definitive map as footpaths, bridleways or BOATs, depending on the level of public rights (on foot, on horseback, or vehicular) which are found to exist. They cannot be added as restricted byways, unless they were omitted from the list of streets in whole or in part at 2 May 2006. (See below for a discussion of a recent High Court judgment which affects this.) The experience of authorities (primarily Derbyshire and Northumberland County Councils) which have been adding green lanes on their lists of streets to their definitive maps for the last few years confirms this and shows that the majority of such green lanes become BOATs. (No problems about unrecorded rights for owners and occupiers of property accessed by the minority of green lanes which have become footpaths, bridleways or restricted byways, have been reported,

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<sup>124</sup> Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways; a guide for local authorities, enforcement agencies, rights of way users and practitioners, Defra, May 2008, paragraph 30.

belying Defra’s fear of such consequences. This is because either such owners/occupiers already had private rights or because part 6 of the NERC Act converts unrecorded public motor vehicular rights to private motor vehicular rights where necessary for access.) However, in 2006, and again in 2016, the government was urging authorities to add green lanes on the list of streets to the definitive map as restricted byways<sup>125</sup>. This evidence indicates that Defra does not understand the consequences of this exemption, nor has it monitored its effects.

- GLEAM has surveyed English county and unitary authorities to find out the lengths of restricted byways, BOATs and green lanes on the list of streets. The results of this survey show that there are at least 2,100 miles of restricted byways (most of which resulted from the reclassification of RUPPs at 2 May 2006), at least 2,700 miles of BOATs and at least 3,200 miles of green lanes on the list of streets. When authorities with green lanes on the list of streets follow Derbyshire’s and Northumberland’s examples in adding these lanes to the definitive map, most of the 3,200 miles will become BOATs, legally open to motor vehicles. This exemption is therefore the primary reason why BOATs are being and will continue to be added to the definitive map, more than 10 years after the NERC Act was passed.
- Paragraphs 94 to 97 of Defra’s memorandum about post-legislative scrutiny of the NERC Act discuss various court judgments which have clarified part 6 of the Act<sup>126</sup>. However they do not mention a judgment given in July 2017 by the High Court, about the impact of differences between the alignments of a green lane, with historic public vehicular rights, on the definitive map and on the list of streets<sup>127</sup>. Hertfordshire County Council had argued that a mistake on its list of streets such that part of the alignment differed from the definitive line meant that that part of the definitive line was restricted byway, not BOAT. The inspector appointed by the Secretary of State to decide the case agreed. The TRF challenged the inspector’s decision in the High Court and the judge quashed the inspector’s decision, because he agreed with the TRF that the inspector’s conclusion was “*perverse and which Parliament cannot have intended*”. That is, he considered that Parliament had intended to exempt

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<sup>125</sup> Letter from Dave Waterman, Head of Rights of Way Branch, Defra, to all local authorities in England, 28 November 2006 and letter from Rory Stewart OBE MP, Parliamentary Under Secretary of State, Defra, to national park authorities, 11 February 2016.

<sup>126</sup> Post-legislative Scrutiny of the Natural Environment and Rural Communities Act 2006, Defra, July 2017, <https://www.gov.uk/government/publications/natural-environment-and-rural-communities-act-2006-post-legislative-scrutiny>

<sup>127</sup> Trail Riders Fellowship v Secretary of State for the Environment, Food and Rural Affairs, [2017] EWHC 1866 (Admin) (18 July 2017).

all green lanes with public vehicular rights on the list of streets from the extinguishment of motor vehicle rights, even if their alignment was recorded incorrectly on the list of streets. This judgment means that the proportion of green lanes on the list of streets which are added to the definitive map as part restricted byway part BOAT will decrease and the proportion added wholly as BOAT will increase.

- Paragraph 117 of Defra’s memorandum says that “*Part 6 of the Act has been successful in achieving its primary aims.*” We disagree, in that we think that the list of streets exemption has turned out to be a major shortfall from what Parliament and Government intended in part 6 of the NERC Act, and that amending legislation is required to close this loophole.

### **Traffic Regulation Orders (TROs) on green lanes following the NERC Act**

- County and unitary authorities have been able to make traffic regulation orders (TROs) to restrict or prohibit motor vehicles on green lanes and other highways for many years. The NERC Act extended these powers to national park authorities for green lanes and public rights of way on the definitive map in their areas, “*to control excessive or inappropriate use of mechanically propelled vehicles away from the ordinary roads network*”.<sup>128</sup>
- However, since national park authorities (NPAs) got TRO powers in October 2007, only two of them, Peak District NPA and Yorkshire Dales NPA, have used these powers. GLEAM thinks this is for the following reasons:
  - the reclassification of RUPPs to restricted byways and the changes in the NERC Act making it more difficult to get BOAT status for existing public rights of way meant that some green lanes in some national parks were protected by legislation.
  - insufficient resource for the TRO process; for example, North York Moors National Park Authority spent 3 years (2012-14) on a programme of assessing its 201 green lanes (mainly on the list of streets) and deciding which of the 82% which are highly vulnerable to motor vehicle use should be considered for TROs, before it decided to

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<sup>128</sup> Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB Road Traffic Regulation Act 1984, Defra, 2007, page 4

stop the programme because of the cuts to its funding.

- the risk of legal challenges by the TRF and other organisations representing recreational motor vehicle users, and consequent costs.
- We think that the latter two reasons are also affecting county and unitary authorities in the exercise of their TRO powers to protect green lanes. The Defra memorandum on post-legislative scrutiny of the NERC Act reports the 2009 challenge in which four of the TROs made by Yorkshire Dales NPA were quashed by the High Court, but it does not mention the three subsequent court cases brought by the TRF and other organisations against TROs made by Peak District NPA, Powys and Devon County Councils, of which the first two were lost by the authorities. In addition we know that TROs made by Durham, Hampshire and North Yorkshire County Councils on green lanes have been challenged by the TRF and quashed by consent. According to its Technical Directorate Report of April 2017 the TRF is also currently challenging TROs made by Carmarthenshire, Powys and Essex County Councils.
- GLEAM is analysing these challenges, where the results have been published as judgments and in authority reports, to try to explain what the authorities got wrong (or right) in the way they made these TROs and so provide guidance for all authorities on what mistakes to avoid.<sup>129</sup> But we think that this guidance should not be the responsibility of a pressure group such as us, but should be developed by a more broadly-based group and then endorsed by government.

### **Defra and Natural England remit for the current working group on green lane issues**

- Members of the Select Committee may recall that the minister then (February 2015) responsible for environment business in the House of Lords, Lord de Mauley, acknowledged the public's concern about motor vehicles on green lanes and gave a commitment on behalf of the coalition government that Defra and Natural England would set up a stakeholder working group to make recommendations to ministers, with majority and minority reports should the group be unable to reach consensus, to be followed by full public consultation. This followed evidence and debate on the issues during Parliament's scrutiny of the Deregulation Bill. The

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<sup>129</sup> See paragraphs 8 to 14 of <http://www.gleam-uk.org/guidance/the-use-of-traffic-regulation-orders-to-restrict-motor-vehicle-use-of-green-lanes/>



Conservative government which came to power in May 2015 established a stakeholder working group (which includes a representative of GLEAM) in November 2016, but it rejected the coalition government's commitment to subsequent public consultation and made it clear that the group must reach consensus on any recommendations and that legislative changes for green lanes are unlikely in the foreseeable future. It seems to us that these constraints go against Lord de Mauley's commitment that the group should be able to recommend changes in legislation and that it should be able to make majority and minority reports to ministers, if necessary.

- GLEAM thinks that the motor vehicle stakeholder working group should a) be free to produce majority and minority reports if necessary, b) be free to recommend to ministers that they consult on a change in legislation to resolve the issue of green lanes which are not protected by the NERC Act because they are on the list of streets, and c) be encouraged to develop new guidance on the use and making of TROs. This guidance should then be endorsed by Defra, following public consultation if necessary.
- We believe that the Select Committee should advise Defra
  - a) that new legislation appears to be necessary to protect the over 3,200 miles of green lanes not currently protected by the NERC Act because they are on the list of streets
  - b) that the motor vehicle stakeholder working group be free to produce majority and minority reports and to advise ministers on new legislation to protect green lanes on the list of streets
  - c) that new guidance is needed on using and making of traffic regulation orders on green lanes.
- These reforms would, in our view, be substantial improvements to the working of part 6 of the NERC Act.

**Diana Mallinson, on behalf of GLEAM**

**September 2017**

**Photos, showing examples of recreational motor vehicle damage to green lanes which are not protected by the NERC Act because they are on the list of streets, are provided on page 6.**

**Examples of damage to green lanes not protected by the NERC Act**

Narrow lane used by motorbikes in Otterton, East Devon Area of Outstanding Natural Beauty. Photo taken July 2015.



The damage by recreational motor vehicles (note tyre track in foreground) to this green lane has forced other users to make parallel paths. Osmotherley, North York Moors National Park. Photo taken July 2016.  
This lane has not been considered for a TRO by the national park or the highway authority.



10 September 2017

## **Green Lanes Environmental Action Movement and Green Lanes Protection Group – supplementary written evidence (NER0088)**

### **Further thoughts following the oral evidence session on 21 November**

Thank you for the invitation to offer further thoughts and comments on the green lanes issue following our oral evidence session on 21 November. For the convenience of the Committee we have merged GLPG and GLEAM reflections into a single document.

#### **Enforcement**

1 The Committee asked us about enforcement as an issue. There are clearly 'hot spots' of illegal use. However, a key point about enforcement which we did not mention is that there is clear evidence that, once a lane has become illegal for motor vehicles (because it has had a permanent Traffic Regulation Order (TRO) put on it, or because it has been protected by sections 66 and 67 of the NERC Act), motor vehicle use drops dramatically, even when there are no barriers. This is the observation of residents living on and at either end of routes formerly open to motor vehicle use, but objective evidence comes from vehicle loggers.

2 The Yorkshire Dales National Park Authority (YDNPA) reports that vehicle logger data shows an overall reduction in recreational motor vehicle use of more than 90% on green lanes on which it has made TROs, compared to pre-TRO levels<sup>130</sup>. This is without using barriers.

3 The Peak District National Park Authority (PDNPA) also makes systematic use of vehicle loggers to monitor compliance with its TROs and with changes in rights of way status which make use by motor vehicles illegal. Its 2016 report on illegal use<sup>131</sup> shows the following:

- an 86% percent drop in motor vehicle use of a route known as Black Harry Lane after it became a bridleway in 2015
- a 70% drop in motor vehicle use of the route known as Brushfield after it became a bridleway in January 2017. This had been one of the most heavily used and highly prized green lanes for motorists in Derbyshire Dales yet even here the reduction was dramatic and immediate.
- an 80% drop in motor vehicle use of a route in the parish of Abney after it became a restricted byway
- a 79% drop in motor vehicle use of the bridleway known as Hope Woodlands after it was protected by the NERC Act and the Winchester judgment.

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<sup>130</sup> Management of the use of green lanes (unsealed routes) in the Yorkshire Dales National Park, Final framework, Yorkshire Dales National Park Authority, reviewed October 2017, page 30

<sup>131</sup> [http://www.peakdistrict.gov.uk/data/assets/pdf\\_file/0008/966032/AP1705-Illegal-Use.pdf](http://www.peakdistrict.gov.uk/data/assets/pdf_file/0008/966032/AP1705-Illegal-Use.pdf)

None of these routes has motor vehicle barriers of any kind, only signage making it clear that motor vehicles are prohibited.

4 The vehicle logging data for the PDNPA's TRO'd routes<sup>132</sup> also show a similarly high degree of compliance - see Annex 1. All these TROs exclude motor vehicles at all times. Only one of them has a motor vehicle barrier and the barrier is at one end only. It prevents use of 4x4s and was put in place by Derbyshire County Council prior to the TRO to enable repairs. PDNPA itself is not using any barriers.

5 Vehicle logging data confirms a) that the vast majority of motor vehicle users are law abiding and choose not to break the law and b) that once a route has become illegal for motor vehicles, it is protected. It is not necessarily protected 100% (this requires barriers and/or regular enforcement action) but it is protected from the damage and public nuisance that comes from intensive use by large numbers of vehicles. For these reasons we believe that the need for and the cost of enforcement measures, though such measures are clearly desirable in 'hot spots' of illegal use, in no way undermine the case for restricting or extinguishing motor vehicle rights.

### **Costs to the public purse**

6 The Committee asked us why so many green lanes are out of repair. We said that highway authorities simply don't have the funds to maintain them. We would like to add to this by pointing out that motor vehicle use of green lanes is in fact a heavy, and we believe unjustifiable, burden on the public purse. Not only that, but the public purse is in effect supporting and bearing the cost of an activity which is inherently damaging to the wider public interest.

7 There are a number of areas of cost. First there is the statutory duty under the Highways Act which requires local authorities to repair and maintain all types of highway, including unsealed ways damaged by motor vehicles. Repair costs to BOATs and green lanes on the List of Streets damaged by motor vehicles can typically be as high as £75,000 per mile and often much higher. For example, Derbyshire's unwillingness to use TROs permitted many years of vehicle damage to the route known as Long Causeway, now a BOAT and a link between the Peak District and Sheffield. This led to the allocation of repair costs of £235,000 for just one mile of the route<sup>133</sup>. We showed pictures of the damage done to the Causeway in our written evidence.

8 Highway authorities simply do not have the resources to cover this kind of expenditure or keep up with the speed and scale of the damage which is being done. We believe highway authorities will never have sufficient resources to keep up, and unless they use TROs, they will increasingly be faced with having to do repairs over and over again to the same routes. For instance, Deadman's Hill, a route on the List of Streets that crosses the boundary between the

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<sup>132</sup> <https://democracy.peakdistrict.gov.uk/documents/s12161/Appendix%201.pdf>

<sup>133</sup> [https://www.derbyshire.gov.uk/images/2013-01-29%20Prudential%20Code%2C%20Cap%20Prog%2C%20Treasury%20Mgt\\_tcm44-218993.pdf](https://www.derbyshire.gov.uk/images/2013-01-29%20Prudential%20Code%2C%20Cap%20Prog%2C%20Treasury%20Mgt_tcm44-218993.pdf)

Nidderdale Area of Outstanding Natural Beauty and the Yorkshire Dales National Park, has, over the past 17 years been repaired four times – once by volunteers, once by the landowner (at his own expense) and twice by the County Council. The expense of the County Council’s repairs, together with the cost of the necessary temporary TROs, runs into many thousands of pounds, and yet it is unlikely that the route will ever be able to withstand the 4x4 and motorbike use to which it is subject. Moreover, the County Council’s decision to place the interests of vehicle users over those of the environment and non-motorised users has made a once-beautiful place ugly. (See the photograph below, taken after one of the futile and expensive repairs.)



*Deadman's Hill after repair*

9 The written evidence (NER0007) submitted to the Select Committee by the North York Moors Green Lanes Alliance (NYMGLA) identifies the size of the

task facing its National Park Authority (NPA) and its main highway authority (North Yorkshire County Council) in managing the green lanes in the North York Moors National Park. The NPA assessed 201 green lanes (on the List of Streets) and found that 165 (82%) were highly vulnerable to recreational motor vehicle use. It completed detailed assessment reports on seven of the highest priority lanes in 2014. These reports recommended permanent TROs. The vehicle logger data in these reports show that the majority of motor vehicles on all seven lanes are motorcycles (ranging from 88% to 100%). However, three years later, none of these seven lanes yet has a permanent TRO on it. This is because the NPA ceased work on its green lanes due to funding cuts. North Yorkshire County Council attempted to make a permanent TRO on one of the seven lanes. This TRO was quashed following legal action by the Trail Riders Fellowship (TRF) and replaced with an experimental TRO allowing motorcycle use. The Council has resolved (November 2017) to make a permanent TRO on another of the seven highest priority lanes and it has made temporary TROs on a further two. Temporary TROs are currently in force on a further five lanes, all of which will require detailed assessment reports by the NPA or County Council before permanent TROs can be considered. GLPG agrees with NYMGLA's conclusion that "*there needs to be a much simpler way [than TROs] ... to control the inappropriate use of green lanes by recreational motor vehicles*". We also agree with them that legislation to close the List of Streets loophole in the NERC Act could achieve this.

10 Hampshire County Council (HCC) is having to prioritise which of 69 BOATs with surface issues are to be considered for management. This prioritisation excludes a further eight BOATs where TRO consultations were carried out in 2017.<sup>134</sup> Of these recent consultations, five are for TROs prohibiting use by 4x4s and three for TROs prohibiting use by all motor vehicles. Of the latter, one is for a BOAT which has had a TRO on it prohibiting 4x4 use since 1992. Sporadic use by motorcycles during a temporary TRO for repairs on this BOAT caused enough damage to show that the surface could not withstand motor vehicle use.<sup>135</sup> At this rate of working (eight TRO consultations per year) it could take HCC almost nine years to decide how to manage the 69 BOATs with current surface issues. HCC also has a large mileage of green lanes on the List of Streets (9% of the total in England by length) and it is more than probable that many of these also require management of motor vehicles.

11 The East Riding of Yorkshire Council made a seasonal TRO prohibiting 4x4s on a group of green lanes on the List of Streets in 2015. Its Local Access Forum said in its written evidence to the Committee (NER0031) that 'excessive or illegal use by motorised vehicles' on green lanes 'continues to be a challenging and ongoing area', a comment which suggests that the 2015 TRO has not resolved problems in the East Riding. This is confirmed by the minutes of the September 2017 meeting of the Access Forum which record that, following concerns raised by the parishes about continuing damage to these lanes, the

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<sup>134</sup> Hampshire Countryside Access Forum, Agenda item 3, 12 September 2017

<sup>135</sup> Hampshire County Council public notices about proposed TROs

Council would consider a permanent restriction as the current TRO had proved ineffective.<sup>136</sup>

12 A further burden on the public purse is the cost of public inquiries. These are the inquiries into Byway Open to All Traffic definitive map orders made because of the List of Streets exemption to the NERC Act and the inquiries where vehicle user groups contest footpath, bridleway or restricted byway definitive map orders because they think another NERC exemption applies. The inquiry costs fall on highway authorities and the Planning Inspectorate. Defra has made some estimates of these costs - £12k for cases settled by written representation and £15k for those which go to public inquiry<sup>137</sup> This may sound modest, but as Dr Mallinson explained in her oral evidence, at present only Derbyshire and Northumberland County Councils are acting to investigate the rights of way on their List of Streets routes with a view to getting them onto the Definitive Map. This represents a very small proportion of the total 3,200 miles of List of Streets routes nationally. Should the 2026 closure of the Definitive Map be deferred with reference to green lanes on the List of Streets (see paragraph 39 below), there will be a huge growth in the number of public inquiries, in the costs associated with them and in the burden they place on the highway authorities and Planning Inspectorate. For each inquiry there are also heavy costs in time and effort for the members of local communities who contest BOAT claims through the public inquiry process.

13 Other demands on the public purse arise from the costs and burdens on authorities of making TROs, and the cost of high court actions where there is a successful legal challenge to a TRO.

#### **The issue of dead-end or interrupted Byways Open to All Traffic**

14 We did not have the opportunity during our oral evidence session to comment on the proposal from the Land Access and Recreation Association (LARA) which suggests amending the NERC Act to prevent routes which would otherwise be a through route for motor vehicles from becoming a dead end for motor traffic. We make the following comments on this proposal.

15 A dead end BOAT comes about for one of three reasons: because it terminates in a bridleway or footpath; because as well as being on the List of Streets part of the lane is also on the Definitive Map of rights of way as footpath or bridleway; or because part of the route is not on the List of Streets at all and so becomes a restricted byway.

16 LARA's proposal to do away with such outcomes is contrary to Parliament's intentions when it passed the CROW Act in 2000 and the NERC Act in 2006. It would reverse all the work which has been done on these routes by local authorities and user groups since the introduction of the Definitive Map through

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<sup>136</sup> East Riding of Yorkshire and Kingston upon Hull Joint Local Access Forum, 13 September 2017, minute 1094

<sup>137</sup> "Simplifying and Streamlining Rights of Way Procedures", Defra May 2012, [https://www.legislation.gov.uk/ukia/2012/35/pdfs/ukia\\_20120035\\_en.pdf](https://www.legislation.gov.uk/ukia/2012/35/pdfs/ukia_20120035_en.pdf)

the National Parks and Access to the Countryside Act 1949 - work which has added routes on the list of streets to the Map with their correct rights of way classification. It would also reverse, at least in part, the reclassification of roads used as public paths as restricted byways, approved by Parliament in the Countryside and Rights of Way Act 2000.

17 LARA is also arguing that routes which are part on the definitive map (as footpaths, bridleways or restricted byways) and part on the List of Streets should be removed from the definitive map and opened up to motor vehicles as through routes. And it wants Parliament to legislate for a similar removal from the definitive map of restricted byways which are also on the list of streets.

18 To illustrate: two high level green lanes in the Lake District, Walna Scar Road and Garburn Pass, which ultimately became restricted byways as a result of the NERC Act, would be removed from the definitive map if this proposal by LARA became law. They would become open once more to damaging and intrusive motor vehicle use, as happened before the NERC Act was passed.

19 Should the wishes of LARA be adopted it would lead to a very significant increase in the number of green lanes which can legally be used by recreational motor vehicles.

20 We invite the Committee to consider the issue of dead-end BOATs not from the point of view of motor vehicle users but from the point of view of farmers, landowners, non-vehicle users and the residents who live on these tracks or on the otherwise dead-end tarmac lanes which give vehicle access to them. A dead-end BOAT can still cause a degree of nuisance and damage if it is long enough and/or the surface is rough enough to be challenging for drivers, but for residents and non-motorised users a dead-end BOAT is infinitely preferable to a through-BOAT. We agree with Mr Kind when he said in his written evidence that a dead-end BOAT means a loss of amenity for motor vehicle users. It also vastly reduces the level of use, damage and nuisance to the local community.

21 As dead-end BOATs are of such little interest to motor vehicle users, the Committee might wish to consider an alternative legislative response to their existence, namely to extinguish motor vehicle rights on such routes, as suggested by the Peak and Northern Footpaths Society in its written evidence (NER0005).

### **Has the use of green lanes on the List of Streets intensified since the Act and is it due to displacement?**

22 The Committee was interested to know whether the use of the green lanes that have remained open to motor vehicles since the NERC Act (ie the BOATs and the routes on the List of Streets but not on the definitive map) has intensified since the Act came into force, and they wanted to know whether the Act has caused displacement onto these lanes. We agree that there could be a degree of displacement onto other green lanes in an area if a TRO is made, or if a route becomes a footpath, bridleway or restricted byway on the Definitive Map.



However, we also agree with Mr Costa-Sa of the TRF and Mr Kind of LARA that displacement is not a significant issue nationally. (Mr Costa-Sa told the committee that there has been no big increase in traffic and Mr Kind said that intensification has taken place only in some places).

23 The green lanes on the List of Streets started to become popular with recreational motor vehicle users when they were first shown on Ordnance Survey maps as Other Routes with Public Access (ORPAs) in the 1990s. Increasingly intensive use of them and the BOATs (ie all lanes which have remained open to motor vehicles since the NERC Act) is due not to the Act but to the growth of off-road 4x4 and motorcycle use as an activity *per se*. The problem with the Act is not that it has led to displacement onto the remaining green lanes but that it failed to protect them.

24 Evidence that green lanes on the List of Streets were being used and damaged prior to the NERC Act is available in data published by the Peak District National Park Authority (PDNPA). This Authority started systematically to monitor and manage use of its green lanes in 2005, in anticipation of the NERC Act giving it TRO powers. Five of the six TROs which the PDNPA has made to date are on routes which were on the List of Streets and not on the Definitive Map throughout their length at the time the TRO was made. One was made on a green lane which was a BOAT throughout its length. Most of the 34 routes which are on (or used to be on) on PDNPAs 'Priority List' of green lanes needing management because of motor vehicle use were on the List of Streets and not on the Definitive Map at the time they were put on the Priority List. Most of these lanes were assessed as being not sustainable by 2007 and were put on the PDNPA list of lanes causing concern in 2008. The green lanes on the Priority List are shown in the Table at Annex 2.

### **How many trail riders and off-road 4x4 drivers are there?**

25 Mr Costa-Sa of the TRF said in his oral evidence that he thought there has been no intensification in the use of off-road routes or any big increase in traffic. He said that the number of motor cycle licence holders as a whole has been falling, that the number of trail bike and enduro-type bikes has also been falling, and he mentioned that a 2005 research report found that the average number of uses of BOATs by recreational motor vehicles was just one per day. We think that this gives a misleading impression of the scale of recreational 4x4 and motorbike use of green lanes.

26 Between 2007 and 2010 there was certainly a dip in the number of new registrations of motor bikes capable of off-road use, but this is likely to be an effect of the recession. Numbers started to rise again in 2011 and have increased every year since then. Data from the Motor Cycle Industry Association (MCIA) shows that over 59,000 trail and enduro motorbikes and 118,000 'adventure motor bikes' were newly licensed in the ten years to December 2015. This is a total of 177,000 new motor bikes capable of use off-road and purchased in recent years. The figures from the MCIA are reproduced in Annex 3. Mr Costa-Sa has elsewhere acknowledged that the number of active trail

riders is very high. Reporting to the TRF membership in his role as TRF Marketing Director in 2015 he estimated that there are 70,000 trail riders in the UK<sup>138</sup>. The membership of the TRF stands at just over 4,000.

27 There are no comparable figures for the growth in the number of 4x4s being used off-road on green lanes. Observation on the ground indicates a very significant growth since the passage of the Act, particularly since Land Rover Defenders became cheaper on the second-hand market. There has also been a noticeable growth in the number of commercial operators offering off-roading experiences on green lanes.

28 The arrival of internet forums, YouTube, digital mapping and GPS technology is also driving growth. It is allowing information about the location of green lanes to be easily shared and there is an emphasis on sharing information on the most challenging (ie damaged and rutted) routes.

### **Irresponsible use: how much influence does the TRF have over whether green lanes are used responsibly by trail riders?**

29 The Committee indicated that it is concerned about irresponsible use of green lanes and asked Mr Costa-Sa what the TRF does about irresponsible use. Mr Costa-Sa said that the TRF has a Code of Conduct and seeks to get trail riders to ride responsibly. He also said that TRF membership has recently 'increased dramatically' and that this has had the effect of raising the standard of trail riding. He did not, however, say how many members the TRF has. Our understanding from its annual reports is that the TRF's membership grew from 3484 members in June 2015 to 4326 members in June 2016. The figure of 4326 members represents only 6% of the 70,000 trail riders which Mr Costa-Sa says currently exist. The TRF's ability to influence behaviour is therefore extremely limited and there is no evidence that trail riding can be effectively self-regulated so that it becomes a responsible activity.

### **LARA and TRF engagement with the TRO process**

30 The TRF said in answer to Q148 that they will challenge a TRO only if it is unreasonable and not because of minor technicalities or because they think the authority is biased against them. Mr Costa-Sa said of suspected bias and minor technicalities 'we will not go there'. But the TRF's reports to its members suggest otherwise. The TRF Technical Director's report to the organisation's 2017 AGM<sup>139</sup> says 32 green lanes were 'secured by the TRF for motor cycles' in 2016. This report is instructive reading as it shows the effort which the TRF puts into preventing the imposition of TROs which affect motor cycles. In each case the TRO was quashed, prevented or revised by TRF intervention so as to enable motor cycle use to continue. Seven of the 32 planned or made TROs were quashed by the TRF through high court challenges (to Durham, Hampshire and North Yorkshire County Councils). As far as we are aware, in each of these cases the legal challenge was based on and succeeded only on the grounds of minor

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<sup>138</sup> Paragraph 1, Part 3, [www.trf.org.uk/trf-brand-feedback-results](http://www.trf.org.uk/trf-brand-feedback-results) .

<sup>139</sup> TRF Technical Directorate Report, TRF AGM, 2 January 2017.

technical errors in the process by which the TROs were made. Three more TROs (in Hampshire) were 'shelved due to TRF intervention and recent litigation'.

31 We think that one of the reasons why TROs are expensive is because authorities find they have to remake them, either following successful legal challenges by the TRF or because they find that partial TROs encouraged by the TRF and permitting continuing motor cycle use are not effective. We also think that the TRF's track record in winning high court challenges has the effect of making authorities very wary of trying to use TROs which exclude motor cyclists.

### **Equestrian interests**

32 Mr Costa-Sa mentioned that the TRF has been 'reaching out' to the equestrian community by telling its members to remove their helmets, switch off engines and offer Polo mints to horses. With about 70,000 or, quite possibly from the Motor Cycle Industry Association statistics, as many as 177,000 trail riders not inside the TRF, we doubt if this will alleviate the problems and dangers caused to equestrians by off-road vehicles. We noted the written evidence (NER0016) submitted to the Committee by the Peak Horsepower bridleway group, in particular the results of their national survey on the impact which 4x4, quad bikes and motor bikes are having on horse riders. We ask the Committee to give serious weight to the evidence revealed by the survey. It found widespread surface damage making routes un-rideable and various other forms of danger to horses and riders from motor vehicle use of off-road horse riding routes. We also ask the Committee to consider the fact that unsealed tracks which are legal for motor vehicles are equally legal for carriage drivers and that deeply rutted surfaces, narrow tracks and blind bends are an even greater hazard for horse-drawn carriages and their drivers than they are for horse riders.

### **Lake District trail management scheme**

33 Mr Kind of LARA mentioned a scheme in the Lake District known as the 'Hierarchy of Trail Routes'. He said it was 'set up with the national park and the users', 'non-vehicular people as well', and that it has been 'very successful'. We beg to differ on all these points. The Hierarchy of Trail Routes scheme was designed by vehicle users for the benefit of vehicle users. It was not set up with the involvement of non-vehicle user groups and has failed to protect unsealed routes in the Lake District National Park. The Green Lanes Protection Group and some of its members have been pressing the Lake District National Park Authority for some time to use TROs to protect its routes from motor vehicle damage and it has sent to the Authority a detailed critique of the Hierarchy of Trails scheme.

34 The Committee will have seen the written evidence of Mr Fritz Groothues. He lives near a route on the List of Streets which is supposed to be protected by the Hierarchy scheme. He says that the scheme has led to 'a massive increase in off-road traffic' and has failed to protect the national park's vulnerable routes (paragraph 11 of his evidence, NER0020).

35 Mr Kind has sought over a number of years to promote and to encourage other national parks to adopt the Lake District hierarchy scheme. Not one has done so. We believe the reason the scheme has not been adopted elsewhere is because it has failed to protect a single green lane in the Lake District.

36 We invite the Committee to view the following YouTube clips of green lanes in the Lake District National Park which that National Park Authority believes are being adequately protected by the Hierarchy of Trails scheme.

<http://www.youtube.com/watch?v=aIiQnHoVIQc>

<http://www.youtube.com/watch?v=8Q68oAo3-Xc>

<https://www.youtube.com/watch?v=fIOGWtw0vO4>

<http://www.youtube.com/watch?v=7Rja0hkIWJA> (this route has a TRO permit scheme)

<http://www.youtube.com/watch?v=Q9JrZpmonx4>

### **Proportion of the rights of way network open to motor vehicles**

37 Mr Kind of LARA told the Committee that there is 'quite a small mileage of vehicular unsealed roads but a very large mileage of footpaths and bridleways', that in the overall scheme of countryside access vehicle use does not blight 'the whole network', that any blight is localised and 'needs sorting out locally', a characterisation which at least concedes that vehicular use can and does blight green lanes.

38 The current 2,700 miles of BOAT is 2% percent of the rights of way on the Definitive Map. The 3,200 miles of UUCR on the List of Streets is equivalent to a further 3% of all rights of way. On the face of it 5% is indeed a small proportion of all unsealed ways. But for a local community, a resident, a farmer, a horse rider, a carriage driver, a non-motorised disabled user, a pedal cyclist or a landowner, one or more BOATs or green lanes on the List of Streets can represent 100% of their local tracks and all too often they find themselves unable to use them, because of damage, danger and other forms of nuisance from motor vehicles. The only relief for such a community is via a TRO (Mr Kind's 'local solutions'). Yet the TRO regime is manifestly failing to provide such relief because so few local and national park authorities are willing to use them.

### **The List of Streets and the closure of the Definitive Map in 2026**

39 Dr Mallinson mentioned in her oral evidence that the government is considering, but has not yet decided, whether to defer closing the Definitive Map with regard to adding to it routes which are currently on the List of Streets but which should be recorded as BOATs because they have public vehicular rights and are exempted under section 67(2)(b) of the NERC Act. Under the Definitive Map process the majority of routes on the List of Streets are likely to be found to have public vehicular (historic horse and cart) rights. Should the Map be left open to the addition of these List of Streets routes, it will lead to the provision of thousands more miles of BOAT. This would be contrary to Parliament's

intentions in the Countryside and Rights of Way Act 2000, ie to stop more BOATs being added to the Definitive Map after 2026.

40 Should the Definitive Map be closed to the addition of BOATs in 2026, as currently intended under the CROW Act 2000, this will still not protect the 3,200 miles of green lanes on the List of Streets. Unless something else is done about them, they will remain unclassified highways indefinitely open to motor vehicle use. The only way to control or prevent this use will be through the use of TROs.<sup>140</sup> Yet there is no statutory duty on highway authorities to use a TRO on any route, even if it needs one, and, as we have explained, many Authorities are reluctant to use them.

### **Rural Communities**

41 We hope that in relation to the green lanes issue that the Committee may wish to reflect on the title of the NERC Act and its reference to rural communities. One of the most distressing aspects of off-roading on green lanes is the impact it has on rural communities. Our organisations and our supporters are regularly involved in public inquiries to establish whether or not motor vehicle users have a public right of way on a green lane. As part of the inquiry process we amass each time a large amount of evidence from rural communities whose green lanes on the List of Streets are being claimed as BOATs and used for offroading, usually by non-residents who come into the parish from many miles away. We find time and again that local residents have ceased to be able to use their own local routes or to enjoy them in peace and safety. We hear of damage to walls, banks, verges and trees as well as to surfaces. We are told by farmers that gates are left open, that stock escapes, that stock is injured by vehicles, and that farmers suffer surface damage which is so severe that they are unable to access their own fields and animals. We even know of farmers who have lost Single Payment income because routes are so rutted that they are deemed no longer fit for agricultural use. Local horse riders, who depend on safe off-road routes to get away from tarmac roads and traffic, tell us they have been driven off their historic riding routes. Carriage drivers are confined to the tarmac.

42 We hope that the Committee will agree that rural communities deserve better than this and that the NERC Act can and should be amended to give them relief. As Dr Mallinson explained in her oral evidence, if unrecorded public motor vehicle rights were extinguished on the 3,200 miles of unsealed routes on the List of Streets, the highway and national park authorities would be able to focus their management efforts and resources on the 2,700 miles of BOAT.

### **Final thoughts.**

43 As we see it, Parliament can tackle the problem of the destruction of green lanes by recreational vehicles in one of two ways. It can either leave the

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<sup>140</sup> John Riddall, joint author of 'Rights of Way, A Guide to Law and Practice', provided an explanation of the legal position if the 2026 cut-off is applied to routes on the List of Streets which have public vehicular rights. This explanation is at Annex 4.

law as it is, and hope that local authorities will use their TRO-making powers to ameliorate the problem, or it can legislate to remove motor vehicular rights at least from the unsealed routes on the List of Streets. We believe that the hope that TROs will be effective and sufficient is a vain one. Green lanes are a precious part of the rural heritage. It is only archaic, horse-and-cart law that makes them available to modern 4x4s and motorbikes. We believe that the only way to protect them from the damage and nuisance inflicted by motor vehicles is to legislate.

**Michael Bartholomew, Chair, GLPG**  
**Diana Mallinson, Honorary Secretary, GLEAM**

Annexes on the following pages:

Annex 1 Compliance with TROs in the Peak District

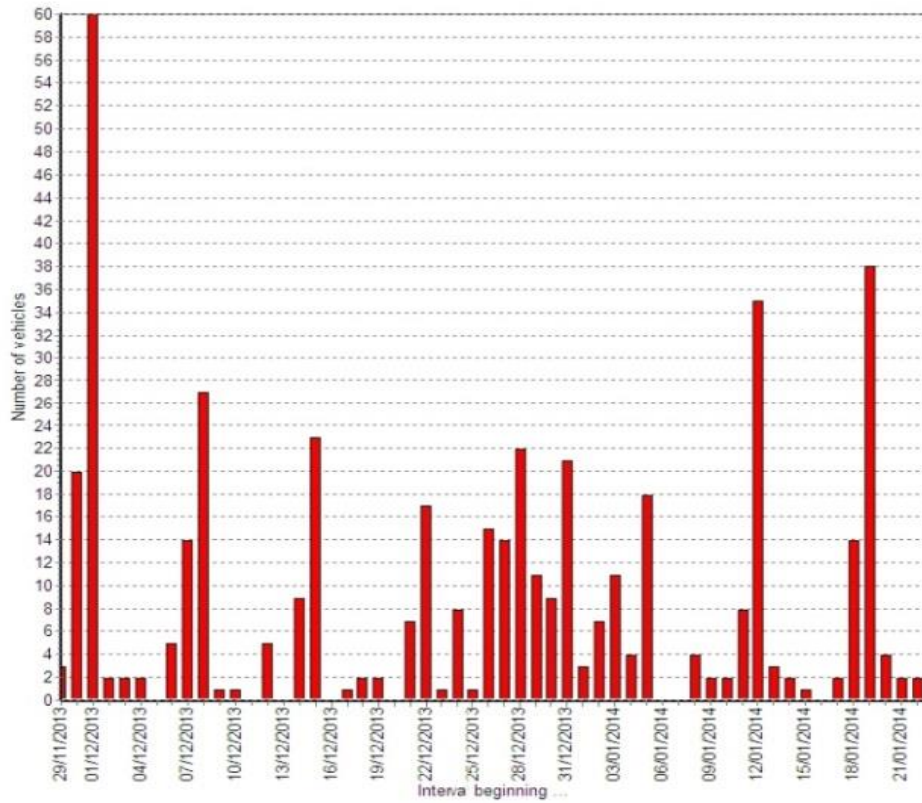
Annex 2 PDNPA list of priority routes, ie routes causing concern due to motor vehicle use

Annex 3 Motorcycle registration data

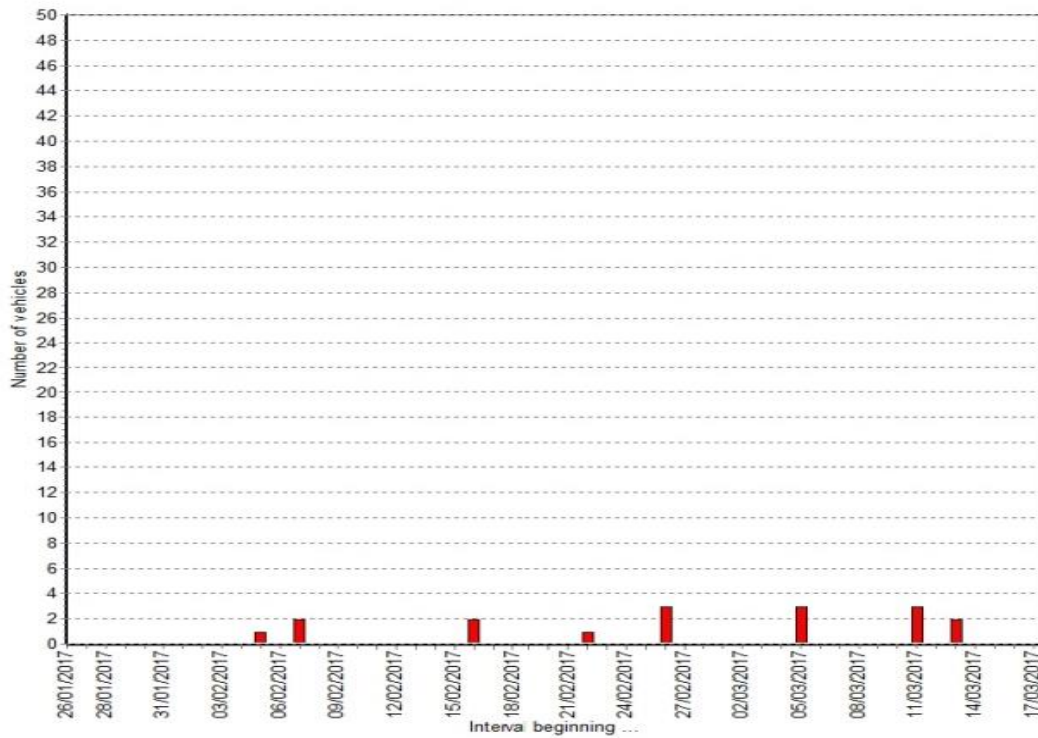
Annex 4 Opinion of John Riddall, joint author of Rights of Way a Guide to Law and Practice, on the implications of the 2026 cut-off for routes on the List of Streets

**Annex 1 - compliance with TROs, Peak District National Park Authority data.**

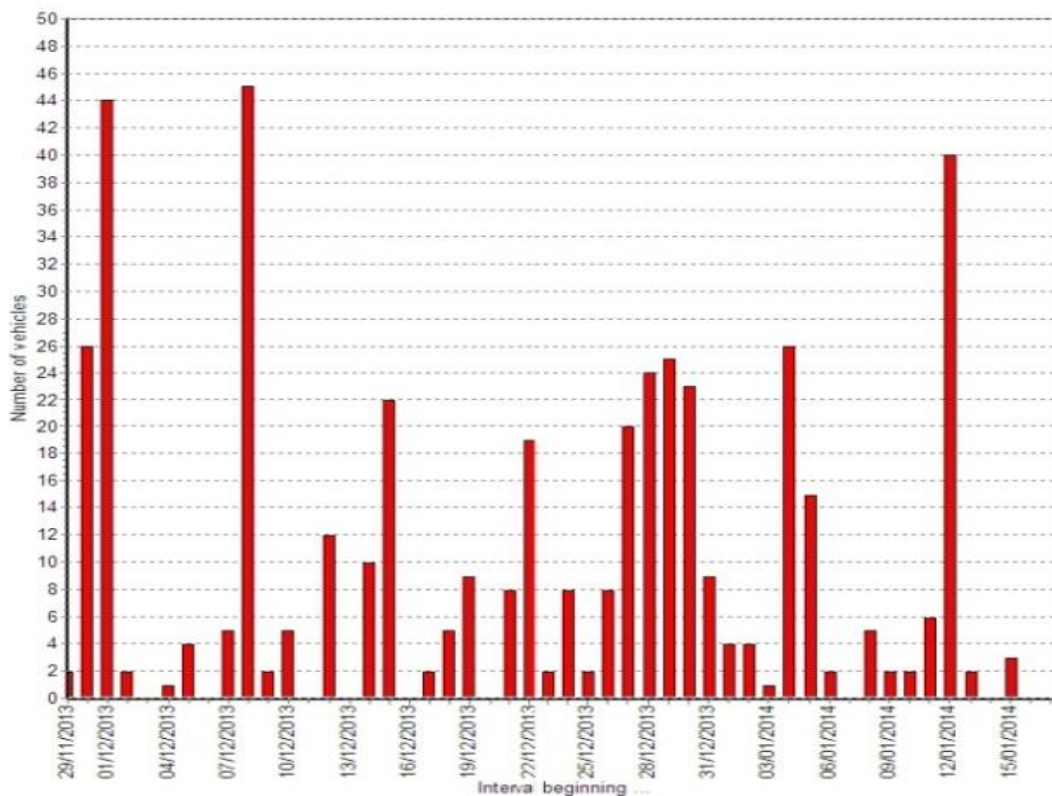
**Roych, Use Winter 2013/14, prior to TRO**



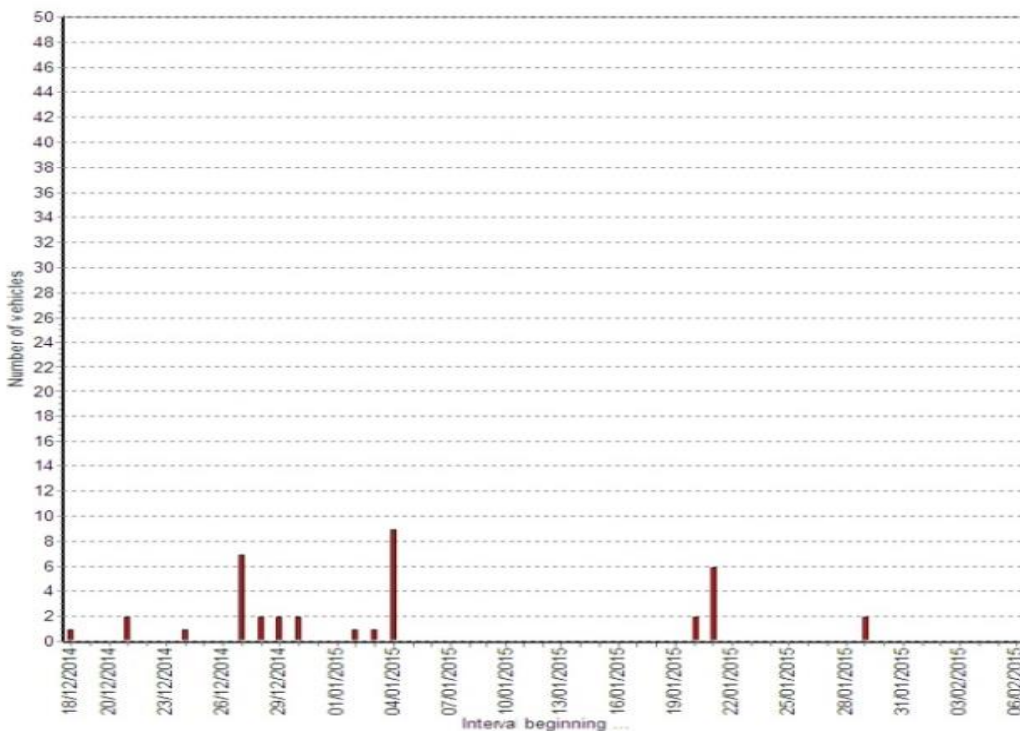
**Roych Use in Winter 2017, after TRO**



**Chapel Gate Use in Winter 2013/14, prior to TRO**

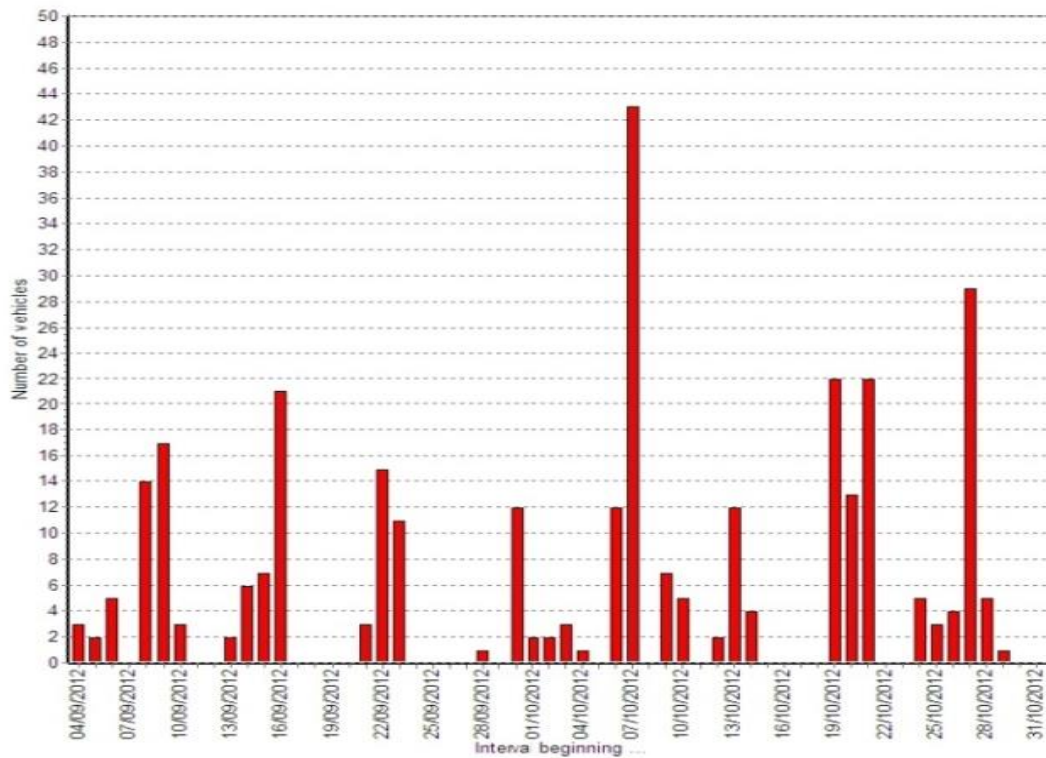


**Chapel Gate, Use in Winter 2014/15 after TRO**

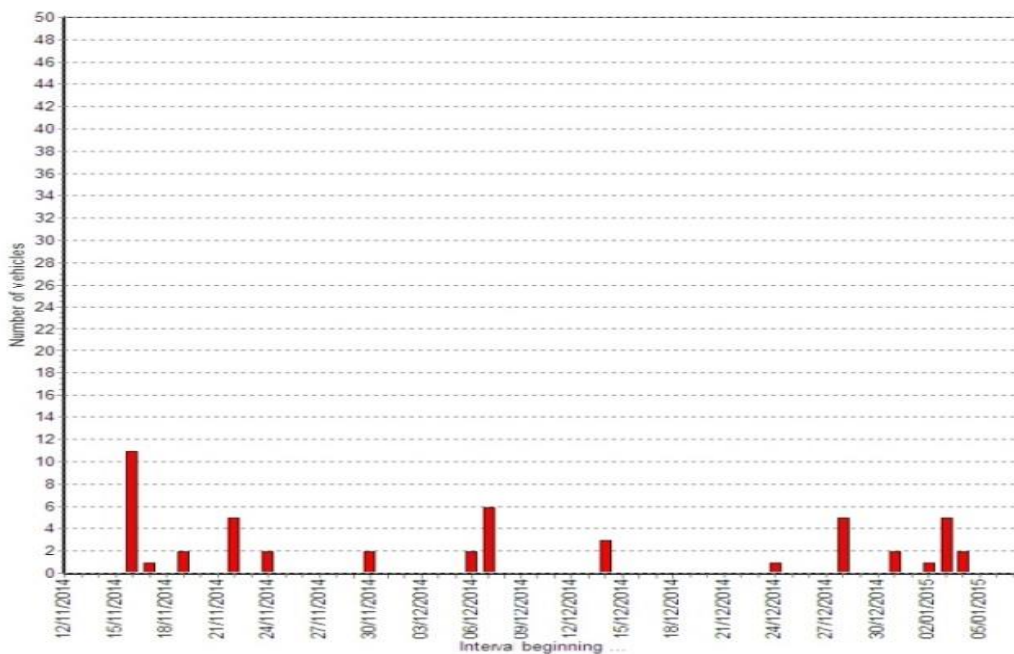




**Long Causeway Use in Autumn 2012, prior to TRO**

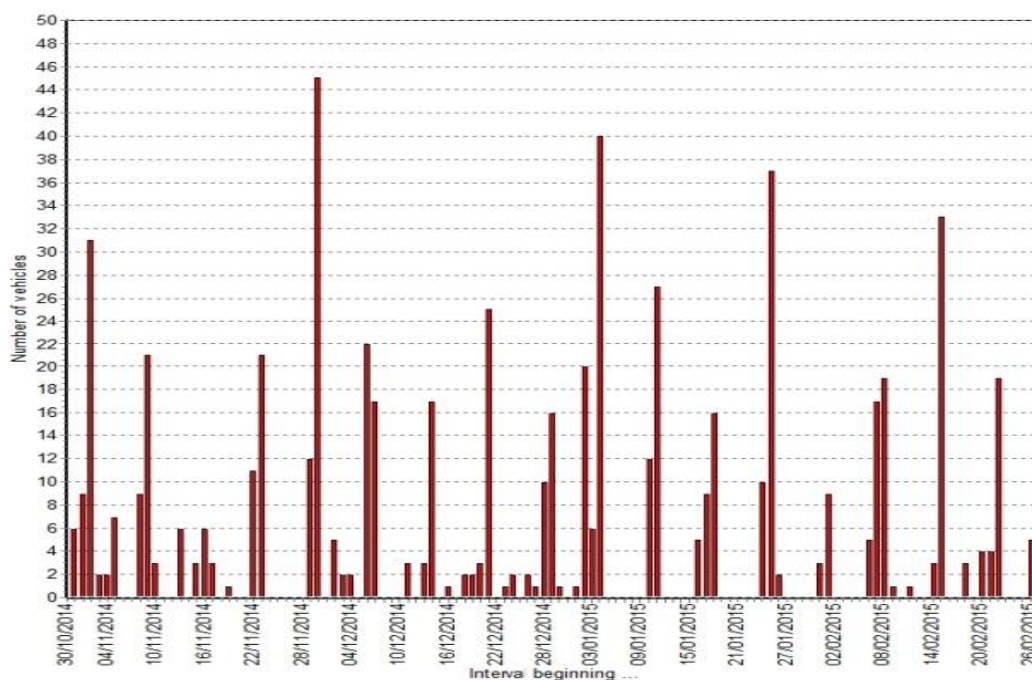


**Long Causeway Use in Winter 2014/15, after TRO**

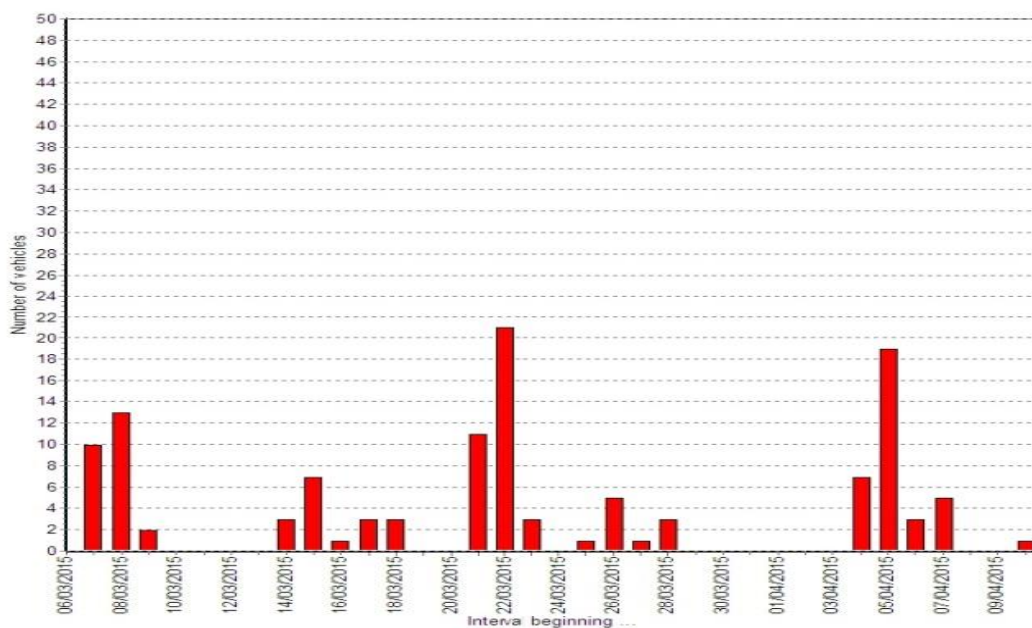


**Leys Lane Use in Winter 2014, before TRO**

Green Lanes Environmental Action Movement and Green Lanes Protection Group  
 – supplementary written evidence (NER0088)



**Leys Lane Use in Winter 2015, after TRO\***



\*GLPG Comment on the above Leys Lane data: the higher level of illegal use of Leys Lane compared with other Peak Park TRO'd routes is due to Leys Lane having been the subject of the first sustained campaign by a local community in the Peak District National Park against motor vehicle use of a green lane. The TRO when it was made generated an unusual degree of anger and defiance.

**Annex 2: PDNPA List of priority routes - ie routes causing concern due to motor vehicle use**

	<b>Date classified as 'may be unsustainable for motor vehicle use'</b>	<b>Date added to PDNPA list of priority routes causing concern</b>	<b>Status when added to the priority list</b>	<b>Became BOAT in</b>
Bamford Clough	2007	2008	List of Streets	2012
Brough Lane	2007	2008	List of Streets	2014
Charity Lane	2013	2014	List of Streets	
Clough Wood	2007	2008	List of Streets	2016
The Cop	2007	2008	List of Streets	
Cumberland Lane	2013	2014	List of Streets	
Haydale	2007	2008	List of Streets	2015
Houndkirk Road	2013	2014	BOAT	
Hurstclough Lane	2007	2008	List of Streets	2015
Jumble Lane	2007	2008	BOAT	
Limer Rake	2013	2014	List of Streets	
Minninglow	2007	2008	List of Streets	2017
Moorlands Lane	2007	2008	List of Streets	2014 (part BOAT part Restricted byway)
Moscar Cross Road	2013	2014	BOAT	
Nether Bretton Road	2007	2008	List of Streets	
Pindale	2007	2008	List of Streets	
Rakehead	2013	2014	List of Streets	
Ramsden Road	2013	2014	BOAT	
Riley Lane	2007	2008	List of Streets	2014
School Lane	2007	2008	List of Streets	
Shatton Lane	2013	2014	List of Streets	2014
Swan Rake	2013	2014	List of Streets	
Three Shires Head	2013	2014	List of Streets	
Wetton	2013	2014	List of Streets	
<b>Routes no longer on the priority list</b>			<b>Status when added to list</b>	<b>Why no longer on list</b>

Green Lanes Environmental Action Movement and Green Lanes Protection Group  
 – supplementary written evidence (NER0088)

Chapel Gate	2007	2008	BOAT	TRO
Chertpit Lane	2007	2008	List of Streets	TRO
Derby Lane	2007	2008	List of Streets	TRO
Long Causeway	2007	2008	List of Streets and BOAT	TRO
The Roych	2007	2008	List of Streets	TRO
Washgate	2007	2008	List of Streets	TRO
Black Harry Lane	2007	2008	List of Streets	Now bridleway
Brushfield	2007	2008	List of Streets	Now bridleway
Bradley Lane	2007	2008	List of Streets	Now bridleway
Monksdale Lane	2007	2008	List of Streets	Now bridleway

Note: The List of Streets routes added to the list in 2014 are in Cheshire East, Kirklees, Staffordshire and Sheffield and were assessed by PDNPA only in 2013. The reason they were not assessed sooner is that until 2013 PDNPA concerned itself only with routes in Derbyshire

### Annex 3: Motorcycle registration data

<b>New registrations recorded by the Motor Cycle Industry Association, United Kingdom</b>					
<b>Year</b>	<b>Type</b>		<b>Total Dual sport</b>	<b>Overall total</b>	<b>Dual sport as % total</b>
	<b>Adventure</b>	<b>Trail/Enduro</b>			
2006	9,225	9,934	19,159	133,076	14.4%
2007	12,339	8,608	20,947	144,540	14.5%
2008	13,304	7,305	20,609	139,869	14.7%
2009	10,418	5,515	15,933	111,510	14.3%
2010	9,308	4,686	13,994	95,922	14.6%
2011	10,208	4,057	14,265	93,849	15.2%
2012	11,759	4,197	15,956	93,667	17.0%
2013	12,601	4,555	17,156	91,908	18.7%
2014	13,129	4,926	18,055	101,277	17.8%
2015	16,653	5,581	22,234	114,160	19.5%
<i>Definitions</i>					
Adventure	These bikes are similar in style to enduro motorcycles but are predominately designed and capable for on-road use.				
Trail/Enduro	These bikes encompass trials, enduro and trail bikes with an off-road or cross-country capability.				
Source:	<a href="http://www.mcia.co.uk/Press-and-Statistics/SubPage/NewReg_Statistics.aspx">http://www.mcia.co.uk/Press-and-Statistics/SubPage/NewReg_Statistics.aspx</a>				

**Annex 4:**

**Motor Vehicle rights on UCRs (routes on the list of streets) at 2026 cut-off**

**20 June 2007**

**Explanatory Note by John Riddall - Joint Author, "Rights of Way"**

In your email of 29 March you asked -

"who will have the right to use a UCR (NCH in Derbyshire) on the list of streets which has not been regraded after 1 Jan 2026 if there is no change in the law?"

I am sorry that it has taken so long to let you have a reply. My understanding of the position is as follows.

1. The fact that a way is classified by the Derbyshire County Council (as highway authority) as a Non Classified Highway (NCH) does not, the Council states, indicate whether the way carries vehicular rights. The matter could only be settled after research.
2. Similarly, the fact that a way is on the authority's List of streets does not indicate whether the way carries vehicular rights. Here also, the Council states, the matter can only be settled by research.
3. If a way that is a NCH or a way that is on the list of streets is depicted on the definitive map as a BOAT, then it carries vehicular rights.
4. For the purpose of answering your question I will assume that the NCH is not shown on the definitive map, that it was on the list of streets on 2 May 2006, and that whether the way carries vehicular rights has not been determined.
5. The way is not affected by section 66 of the Natural Environment and Rural Communities Act 2006 since this deals with the creation of new rights of way.
6. If vehicular rights do exist over the way, these are not extinguished by section 67 of the Act since the section has no application because (s.67(2)(b)) the way was on the list of streets on 2 May 2006.
7. When paragraph 4 of Schedule of 5 of the Countryside and Rights of Way Act 2000, (which adds section 54A to the Wildlife and Countryside Act 1981) is brought into force, this will prevent the addition to the definitive map of the way as a BOAT.
8. But the new section 54A does not extinguish vehicular rights.
9. If there are vehicular rights over the way, these will not be affected by the

extinguishment provisions of section 53 of the Countryside and Rights of Way Act 2000, since the way does not come within any of the categories that the section covers.

10. The result (i.e. if there are vehicular rights) will be that the way will be one that is on the highway authority's list of streets under section 36(6) of the 1980 Act, it is not shown on the definitive map, and cannot be shown as a BOAT. The answer to your question will, in this case, be "Everybody, including motorists."

11. However, if there are no vehicular rights, but public rights exist that are capable of being recorded in the definitive map and statement (i.e. the way carries footpath, bridleway or restricted byway rights), then if by the cut-off date (1 January 2026) the definitive map has not been modified to show those rights, those public rights will be extinguished by section 53 of the Countryside and Rights of Way Act 2000, and the answer to your question will be "Nobody".

12. In this case, since no public rights exist over the way, it cannot be a public highway and so cannot be a highway maintainable by the public at large. This being so, the way should be removed from the list of streets. Further, the way will be subject to section 34 of the Road Traffic Act 1988, under which it is an offence to drive a mechanically propelled vehicle (inter alia) off-road without lawful authority.

13. So the effects of the cut-off provisions of the 2000 Act depend on whether or not vehicular rights exist over the way.

14. But, you may ask, how are you to know whether the way does, or does not, have vehicular rights? The answer is that if you are aware of the existence of evidence that proves that the way carries vehicular rights, then this provides the answer. But the converse does not apply: the fact that you are not aware of the existence of evidence showing that the way carries vehicular rights does not prove that vehicular rights do not exist, since even if meticulous research is carried out, it is always possible that a piece of hitherto unknown evidence of vehicular rights will come to light. And it is this that will be the snag if an attempt is made to prosecute the drivers of mechanically propelled vehicles for breach of section 34 of the Road Traffic Act 1988, since a successful prosecution would depend on proving that no vehicular rights existed, and this could not be done. Indeed, because of this it seems likely that the Crown Prosecution Service would decline to prosecute on the ground that they did not consider that they

would stand a reasonable chance of success due to their inability to establish beyond all reasonable doubt that an offence under section 34 of the Road Traffic Act 1988 had been committed.

15. In view of the complexity, expense and uncertain outcome of seeking to establish by legal process the existence or non-existence of rights over the way, someone who objects to the use of the way by motor vehicles would find a more straightforward course to be to request the highway authority (or, in a national park, assuming that section 72 of the Natural Environment and Rural Communities Act 2006 has been brought into force, the national park authority) to make a traffic regulation order prohibiting use of the way by mechanically propelled vehicles other than for access to adjacent properties.

16. The government has stated that the fact that the existence or non-existence of vehicular rights over a way is uncertain is no bar to the making of a traffic regulation order in respect of the way.

Yours sincerely,

J.G.Riddall

*10 December 2017*



Green Lanes Protection Group and Green Lanes Environmental Action Movement  
– oral evidence (QQ 137-142)

**Green Lanes Protection Group and Green Lanes  
Environmental Action Movement – oral evidence (QQ  
137-142)**

[Transcript to be found under Green Lanes Environmental Action Movement](#)

## **Green Lanes Protection Group – written evidence (NER0015)**

### **Evidence to the House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006**

#### **About the Green Lanes Protection Group (GLPG)**

1 The Green Lanes Protection Group (GLPG) is an informal alliance of 25 environmental, landowning and recreational organisations that share the aim of achieving a workable regulatory framework – legislation and firm government advice – which will protect green lanes from unsustainable recreational use by motor vehicles. It further aims to protect users on foot, horseback, pedal cycle and horse drawn carriages from the noise, pollution, danger, damage and disruption caused by recreational motor vehicles. Equally, those who use green lanes for the purposes of necessary access – farmers, gamekeepers and landowners – also need protection from the nuisance caused by recreational motor vehicles. Green lanes are the 5000 mile network of unsealed highways created for and by horses and carts. The network is made up of Byways Open to All Traffic, a category of right of way, and unsealed tracks on the Lists of Streets maintained by the highway authorities. The membership of GLPG is set out at the foot of this page.

#### **Summary of this response to Question 11 in the Call for Evidence**

2 Section 67 the NERC Act, through which the government intended to control and reduce use by mechanically propelled vehicles of rights of way and other unsealed highways in the wider countryside, has failed to protect the nation's network of green lanes. New legislation is urgently needed to close the gap in the NERC Act which has allowed the use and abuse of green lanes by recreational motor vehicles to continue to grow since the Act came into effect. Section 67 of the Act should be amended to give protection from motor vehicle damage to unsealed routes on the List of Streets. Two annexes of photographs show the nature of motor vehicle damage being done to green lanes.

#### **Background**

3 One of the intentions of the NERC Act was 'to limit the basis on which rights of way for mechanically propelled vehicles may be acquired and end the situation whereby historic use by non-mechanically propelled vehicles, such as horse-drawn vehicles, can give rise to a right of use by modern mechanically propelled vehicles'. This aim was made clear in the *Use of mechanically propelled vehicles on rights of way*, the Defra consultation document published in December 2003 in anticipation of the NERC Act.

4 In his introduction to the consultation document the then Minister for Rural Affairs, Alun Michael, said: '*As Rural Affairs Minister, I have been approached by*

*many individuals and organisations who are deeply concerned about problems caused by the use of mechanically propelled vehicles on rights of way and in the wider countryside. I share these concerns, having seen for myself examples of damage to fragile tracks and other aspects of our natural and cultural heritage in various areas of the country. There is considerable concern about behaviour that causes distress to others seeking quiet enjoyment of the countryside ...*

*I do not think that it makes sense that historic evidence of use by horse drawn vehicles or dedications for vehicular use at a time before the internal combustion engine existed can give rise to rights to use modern mechanically propelled vehicles. Those who suffer from vehicle misuse find this incomprehensible....'*

5 Following this consultation Defra published (January 2005) *The Government's framework for action*. This set out its intention to legislate to curtail claims for motor vehicular rights of way where those claims derive from historic use and dedication for use by non-mechanically propelled vehicles. These proposals formed the basis of Part 6 of the NERC Act.

6 Part 6 of the Act extinguished unrecorded public rights for mechanically propelled vehicles on some but not all green lanes. It protected from use by recreational motor vehicles only those which were already classified as rights of way, i.e. were on the Definitive Map of Rights of Way as footpaths or bridleways and those not covered by certain exemptions.

7 Subsection 67(2)(b) of the Act specifically exempted from the extinguishment of motor vehicle rights green lanes that are not classified as rights of way but are recorded as highways on the "List of Streets". These are the routes known as unsealed unclassified county roads (UUCRs) and normally shown on the OS map as Other Routes with Public Access. In its subsequent guidance to Authorities on Part 6 of the Act Defra explained that this exemption for routes on the List of Streets was to 'guard against ... unintended consequences on the 'ordinary roads network' (*Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways A guide for local authorities, enforcement agencies, rights of way users and practitioners Version 5 - Defra, May 2008*).

## **The problem**

8 Despite the no doubt best of intentions at the time when the Act was drafted, the exemption for routes on the List of Streets under S67 (2) (b) has had serious unforeseen consequences of quite another kind - continuing and growing motor vehicle use of and damage to those green lanes which are on the List of Streets. This use and damage takes place throughout the countryside, including in the National Parks (one of which, the Lake District, is now a World Heritage Site), in the Areas of Outstanding Natural Beauty and on the National Trails. Photographs of typical motor vehicle damage to unsealed routes on the List of Streets (ie the UUCRs) are in Annex 1.

9 This is not what Parliament intended when it set out to put an end to historic use by horse-drawn carts and carriages giving rise to a right of use by modern mechanically propelled vehicles.

10 We know from our members that the scale and extent of the problems which S67 of the NERC Act sought to address have grown rather than diminished since the NERC Act came into effect. The growth in the problem is in part due to driving on green lanes with a motor vehicle having become an increasingly popular leisure activity since 2006. For example, according to data collected by the Motor Cycle Industry Association, over 59,000 trail and enduro motorbikes (the type of motor bike used 'off-road') were newly licensed in the ten years ending December 2015. This figure excludes 118,000 newly licensed 'adventure motorbikes', sales of which are also increasing. The latter is a type of vehicle designed to be capable of use both off- and on-tarmac. (There are no data for the recreational use of 4x4s off-road, but monitoring of websites and observations on the ground by our members indicates that this has also grown exponentially since 2006).

11 The growth in the problems which the Act was intended to address is also due to the failure of the Act to protect from use by mechanically propelled vehicles the 3269 miles of green lanes on the List of Streets. (The rest of the green lanes network consists of the 2700 miles of Byway Open to All Traffic. Photographs showing typical motor vehicle damage to BOATs is included for information at Annex 2).

12 Unsealed routes on the List of Streets were not created or engineered to withstand use by modern motor vehicles. In the light of the growing impact which recreational motor vehicle use of these routes is having - on local communities (residents, landowners, farmers, horse riders, carriage drivers, walkers and cyclists), on the National Parks, AONBs, National Trails and the countryside generally, and on repair costs to highway authorities - it is no longer tenable to regard UUCRs, as Defra did in 2006, as part of the ordinary roads network.

## **The solution**

12 The solution is to amend the NERC Act either to:

a) extinguish unrecorded motor vehicle rights on unsealed routes on the List of Streets, with exceptions only for emergency service vehicles, residents requiring access, landowners and tenants, or

b) classify unsealed routes on the List of Streets as either Restricted Byways or BOAT according to suitability.

13 Of these two options GLPG as a whole favours a) (extinguishment). Cycling UK, one of our member organisations, favours option b).

14 Under the Highways Act 1980 all the routes concerned would remain maintainable by the relevant highway authority.

### **Conclusion**

15 The damage being done to green lanes on the List of Streets is severe and growing. Dealing with it is an urgent issue. GLPG asks the Select Committee to recommend that new legislation is needed to close the loophole in S67 of the NERC Act which allows the public to use all unsealed highways on the List of Streets with mechanically propelled vehicles.

### **GLPG September 2017**

### **Annex 1: Typical motor vehicle damage to unsealed routes on the List of Streets**



*Tilberthwaite, UUCR Lake District World Heritage Site*



*Oxenfell, UUCR Lake District World Heritage Site*



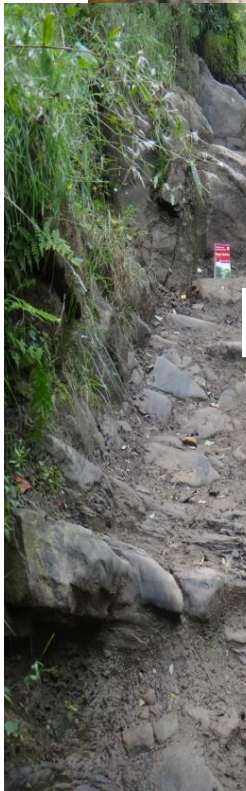
*High Knitbwaite, UUCR Lake District World Heritage Site*



*Newton Poppleford, UUCR East Devon AONB*



*Coleson Bank, UUCR North York Moors National Park*



*Borough Hill UUCR, Leicestershire*

*Swan Rake, UUCR Peak District National Park*





*Turbary Road ,UUCR Yorkshire Dales National Park*



*Rivington Pike, UUCR Lancashire*

**Annex 2: Typical motor vehicle damage to Byways Open to All Traffic**



*Moscar Cross Sheffield, BOAT Peak District National Park*



*Drakes Lane BOAT, North Downs AONB*



*BOAT through a bluebell wood in North Downs AONB*



*Viking Way, BOAT Lincolnshire*



*Simonburn, BOAT Northumberland National Park*



*Bucklebury, BOAT North Wessex Downs  
AONB*

*Langrish, BOAT South Downs National Park*



*Long Causeway, Peak District National Park. Now repaired, resurfaced and protected by a  
Traffic Regulation Order*

Green Lanes Protection Group and Green Lanes Environmental Action Movement  
– supplementary written evidence (NER0088)

**Green Lanes Protection Group and Green Lanes  
Environmental Action Movement – supplementary  
written evidence (NER0088)**

[Evidence to be found under Green Lanes Environmental Action Movement](#)

## **Fritz Groothues – written evidence (NER0020)**

### **Question 11 in the call for evidence: Are there any parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006? Section 67 2 (b) of the Act**

Christine and Fritz Groothues, Stella and David Collard, Jinty Nelson, Sarah Budd, Sunny Budd

1. We are submitting this evidence as joint owners of a small house in Little Langdale in the Lake District, bought by our families in 1956. We have also sought the views of local farmers, other residents and rambling associations and, although we cannot claim to represent them in a formal way, we know that they support our submission.
2. Our submission focuses on the effects of the NERC Act on one particular area in the Lake District, a stretch of land between Coniston and Little Langdale, part of the estate left by Beatrix Potter to the National Trust and the nation on the condition that it be preserved for future generations. In 1930 the Chairman of the National Trust, John Bailey, wrote in The Times that of all the stretches of land owned by the NT 'not one of them .... was better worth saving and holding than this glorious stretch of mountain, moor and tarn.' For over 60 years we and many others have been walking on this land and cherished its exceptional beauty and tranquillity.
3. In contrast to a number of footpaths and bridleways in this area, two unsurfaced green lanes are included on the 'List of Streets' as Unsealed Unclassified Country Roads (U5004 High Oxenfell – Hodge Close) and U5001 (High Tilberthwaite – Little Langdale). They are therefore excepted from the effects of section 67(1) of the NERC Act and motor vehicles are allowed to use them. There is no clear reason why these tracks differ in status from other, similar routes. A slightly wider and more easily navigable track from High Tilberthwaite to Little Langdale is in fact classified as a bridleway and closed to motor vehicles.
4. As the examples of U5001 and 5004 in the Lake District demonstrate, exempting green lanes on the 'List of Streets' from the extinguishment of motor vehicle rights has had disastrous consequences on these lanes themselves and on a uniquely beautiful landscape, degrading other users' experience and endangering the livelihood of traditional Lake District farms.
5. Until approximately the year 2000, these tracks were only used by local farm traffic, walkers and, while the copper and slate mines were still operating, by horse-drawn vehicles. The two tracks were not, and are not, part of the ordinary roads network in the sense implied by the NERC Act, so closing them to motor traffic would have had no unintended consequences for the network of roads in the area. The tracks are not needed by any residents to access their properties.

They are, however, essential for the farmers at High Oxenfell and High Tilberthwaite to reach their livestock.

6. Since the NERC Act came into effect in 2006, and despite a voluntary restraint scheme put in place by the Lake District National Park Authority, there has been an exponential increase in the number of recreational off-road vehicles on these two tracks. For 2005, the Lake District National Park Authority gives usage figures for U5001 (High Tilberthwaite to Little Langdale) of 30 4x4s and 80 motor cycles per month. Since then the National Park Authority has not monitored the tracks, but the farming family at High Tilberthwaite has counted an average of 450 4x4s a month, sometimes as many as 30 vehicles a day, and many more motor cycles than before.

7. These green lanes are being commercially exploited by a company offering recreational tours in off-road vehicles, travelling in convoys of up to four large 4x4s three to four times a day. In addition, individual 4x4 drivers now promote the tracks on social media to off-road enthusiasts nationally, further accelerating growth in vehicle numbers. This image, taken from a YouTube video, shows several individual 4x4 drivers and in the background a commercial convoy on an eroded section of the Tilberthwaite track. The extent of the erosion is clearly visible.

8. The effects of allowing this activity here, in this area of exceptional beauty and tranquillity, are devastating. The off-road vehicles can be seen and heard from far away and affect a much wider area than the linear routes on which they travel. At many times of the day throughout the year quiet enjoyment of this part of the National Park is no longer possible. The tracks here are not only a means to access the special qualities of the Lake District National Park, but are themselves a valued part of those special qualities. They have been badly eroded, in many places more than a metre deep.



9. There are also serious repercussions for the farmers along the routes. In an open letter the High Tilberthwaite family wrote that 'access with a quad bike to take feed to animals or see to their welfare is becoming increasingly difficult'. The letter concluded: 'The problem of increased access pressure is making us seriously consider relinquishing the tenancy of Tilberthwaite Farm which has been in the family since 1960.'

10. Subsection 67(2)(b) of the NERC Act reflects the Government's awareness that tracks such as these on the 'List of Streets' would be 'vulnerable to abuse by mechanically propelled vehicles'. The Act specifies the instrument to be used by Highway and National Park Authorities to prevent this type of problem, namely Traffic Regulation Orders (TROs).

11. DEFRA has set out clear guidelines for National Park Authorities on Traffic Regulation Orders, based on the need to preserve natural beauty and amenity. Whereas the Yorkshire Dales and the Peak District use TROs in line with DEFRA guidance, the Lake District National Park Authority appears to act independently, preferring to rely on a scheme of voluntary regulation. In the High Oxenfell – High Tilberthwaite – Little Langdale area such a scheme has now been in place for over 20 years, resulting in a massive increase in off-road traffic.

12. Although the National Trust has a duty to preserve the land it owns and the working farms on it, the NT does not have traffic regulation powers. It does, however, have an influential voice in the Lake District Partnership, which so far it seems unwilling to use in pursuance of its conservation duty.

13. Given the need to extend the environmental protection to routes on the 'List of Streets', we ask the Select Committee to recommend an amendment to Section 67 of the NERC Act, thus extinguishing unrecorded motor vehicle rights on routes on the 'List of Streets'. If this and other such areas are to be preserved for future generations, urgent and decisive action is needed now.

*7 September 2017*



Lord Haskins- oral evidence (QQ 12-17)

## **Lord Haskins- oral evidence (QQ 12-17)**

Tuesday 5 September 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Lord Faulkner of Worcester; Lord Foster of Bishop Auckland; Lord Harrison; Countess of Mar; Baroness Parminter; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 2

Heard in Public

Questions 12 - 17

## Examination of witness

Lord Haskins.

Q185 **The Chairman:** Thank you for attending this evidence session of the Select Committee on the Natural Environment Research Council Act 2006. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript will be taken and published on the Committee website and you will have the opportunity to make corrections to it where necessary.

The first series of questions deals largely with Natural England. How closely does Natural England match the initial vision that you set out for such an organisation in your 2003 review? Has it worked as you envisaged it?

**Lord Haskins:** I read my report not having looked at it for 13 years, and I felt I was living on another planet, given the way we were approaching the rural agenda generally. There was quite strong optimism generally in society. The Government of the day, which happened to be a Labour Government, seemed quite interested in attracting support from the rural community because they had done rather well there in general elections. Although the rural community felt that it had been left outside, there was a general public acceptance that rural things mattered. We were dealing with a new department, Defra, which in my view was, and still is, a slightly absurd department; the concept of putting agriculture and environment together and hoping that everyone will be happy has not been tremendously successful.

It was a difficult situation. Rural economic policy itself is much more complicated than urban metropolitan policy, because there are so many variables: natural assets, where you live, economic viability, environmental appeals, sustainability—a whole range of complexities. We were trying to put that into some sort of national order—and indeed European order, because of course a huge amount of European was involved in it.

My first impression was that everybody was too keen and there were far too many initiatives. There were initiatives right, left and centre, there were organisations right, left and centre, and the right hand did not know what the left hand was doing. There was a huge desire to control things from the centre. Initiatives were coming from the centre, people were making policy and delivering the same policy, which is a very bad and unhealthy thing to do, and it needed a bit of a sort out.

I see a lot of Natural England now in my role as chair of the Humber local enterprise partnership. We get the Defra agencies together—I have not given up on devolution—to talk about the issues at a local level and about how they might work together, and it has been very successful, I have to say; the Government are pretty impressed by what we are doing to get statutory agencies working together at a local level. My impression of the two main bodies—Natural England and the Environment Agency—is that for their remit, which is basically regulatory, they are doing a pretty good job. They work very professionally, with great difficulties because of the

lack of resource, and they talk to each other. We certainly found 15 years ago that they were not talking to each other; they were all in their Whitehall silos.

Beyond the regulatory initiatives, I was hoping that a lot of the rural development policy stuff would be picked up through Natural England, but it has not been, basically because the money has run out. Since 2008, the amount of money allocated to rural development has been decimated. I was very keen to get the local authorities much more into the act, but the funds for local authority and rural development have been slashed dramatically. Indeed, rural development is now entirely dependent on European funds, and there is a strong question mark about those now, too.

**Q186 Lord Faulkner of Worcester:** May I ask you about the balance that Natural England has struck with land managers? Is it encouraging positive behaviour sufficiently and at the same time investigating bad behaviour? How is it managing that balance?

**Lord Haskins:** It is managing it remarkably well in the circumstances, bearing in mind that in 2002-03 these balances were seriously wrong. We had just gone through two big traumas in the countryside, mad cow disease and foot and mouth, both of which I was closely involved with, and you could clearly see a non-connect right across the piece. I might be prejudiced, but I think that today's Natural England is very sensible about the need to balance the economy against the need to sustain the environment. I think we have made great progress on that. The culture in the countryside with regard to the environmental agenda is much more positive, and people are working much more closely with the Environment Agency and Natural England, and vice versa.

As I say, though, the social development side, which I was hoping Natural England would pick up, has gone completely.

**The Chairman:** Before we leave Natural England, and looking forward a bit, do you have any thoughts on how Natural England will best be able to represent the environment post Brexit? That might not be within your brief, but will Natural England be independent enough to be able to put the finger on government when it comes to representing the environment, or should it report directly to Parliament? Are there other ways of pinning the Government to a sound environmental agenda?

**Lord Haskins:** That is an interesting point. Both Natural England and the Environment Agency are at present guided to a large extent by European regulations, so there is a degree of independence from Whitehall, although not much. But when the European funds dry up, which they will, and the dependency falls straight on to Defra, there will be a serious question generally as to whether it would be more appropriate for statutory agencies to be directly responsible to Parliament—many of them already are—rather than being funded by Defra, where they will be very much subject to Treasury pressure. All the agencies that we are working with now on this very agenda are very apprehensive about what might happen.

On the regulatory front, the general view is that EU regulations will just be transposed into the great repeal Bill and nothing much will change. But on the funding side, which is the key element of the thing, some 60% of funds for rural development come from European sources at the moment and there is reason to be very concerned about what will happen to that and where that will go.

**The Chairman:** Michael Gove has already announced that Pillar 1 will probably disappear in the future, as will Pillar 2, which at the moment is delivered almost entirely by Natural England, the Forestry Commission and other organisations, so their funding will have to be greatly increased in order to make that work.

**Lord Haskins:** I will believe that when I see it. There is a lot of muddled thinking in most parts of the Government on the situation post Brexit but particularly on the rural agenda. Whether that is the farmers or the environment, I do not think anyone has given much attention to it.

Q187 **Baroness Scott of Needham Market:** From your opening remarks it is clear that you believe as strongly now as you did then that policy and delivery need to be kept separate. The Government's response at the time to your report was the creation of the Commission for Rural Communities to deliver the policy role. That has been abolished for the last three or four years. Could you reflect on whether forming the commission was the right thing to do? Did it do the right things? What was good and what was bad, and what lessons do we therefore need to learn and make sure get carried forward?

**Lord Haskins:** I do not think it was radical enough. While doing the report, I spent quite a lot of time in France and Germany seeing how policy and delivery are separated and how central government does not get involved in delivery of rural policies. The then Government did not accept that; nor have successive Governments. In a sense, I could see that the CRC was doomed to hit the buffers when it came to 2008 and 2009. Now, however, there is talk about a devolution agenda. I never hear the rural side talk about it—I live in the north of England and we are talking vigorously, if optimistically, about the need for devolution. That is separating policy from delivery. That is exactly the key element: that we have the local authorities delivering. My own local authority, East Riding, has done sterling work without much money but with a lot of enthusiasm to develop its own local delivery policies. I am sure that is the way to go. The CRC was a sort of compromise that was never going to work.

**Baroness Scott of Needham Market:** Do you have a view on whether what we might call the strategic policy function is better delivered from within government, or is an arm's-length body with some expertise and independence a better way forward?

**Lord Haskins:** This is the whole nub of devolution. As long as taxation is largely collected centrally, there is no way Her Majesty's Treasury will abandon responsibility for that on the policy side. Ultimately, policy development has to lie with central government as long as we have a

centralised system of taxation. That applies right across the piece. However, on the issue of consultation and developing policies, Natural England and the Environment Agency both do sterling work on behalf of government. Those two agencies are at arm's length from government. For the most part, they do a pretty good job in advising government on that front.

**Q188 Baroness Whitaker:** We have shared opinions before. My question is still in this general area but moves us on. Since the closure of the Commission for Rural Communities and the subsequent winding-up of Defra's rural communities policy unit, how, if at all, have the CRC's original functions of advocate, adviser and watchdog been fulfilled? I would really appreciate your opinion, as I am sure we all would, on how rural proofing is working out.

**Lord Haskins:** Bear in mind that I am a lot further away from all this than I was years ago. The request to come to this Committee was based on something out of the past, so I am trying to catch up. My impression, and it is purely an impression, is that a huge gap has appeared since the rural communities policy unit and the CRC's advocacy unit disappeared. With them went any basic interest that Defra might have had in the agenda that we were trying to develop. Michael Gove is making some mild noises on the environment, but the issue that we were concerned about was rural communities being left behind.

The metro areas were going ahead and there was a growing inequality between them. That has become clearly exaggerated in the past few years, because any devolution deals that have been talked about are purely metro deals. No thought has been given to any devolution outside the eight big cities in England. I contrasted that in the report with the engagement on the rural agenda that you get in the Celtic nations, for obvious reasons: there are more votes in the rural agenda in Scotland, Wales and Northern Ireland than in England. Interestingly, the rural voice does not seem as wound up about it as it was in my time. They gave me a really hard time on it. Now there is a sort of defeatism about it.

**Baroness Whitaker:** Do you have an opinion as to how those gaps would be best filled?

**Lord Haskins:** Yes. The people who understand rural issues are local people. They are such diverse issues. I live in the countryside, so called, five miles from the centre of Hull. That is a very different agenda from that which you might have if you were sitting in Cumbria or in remote areas. To try to have a one-size-fits-all from the centre does not work particularly well for the rural agenda. If I were in government, I would pick nine or 10 essentially rural unitary authorities, rather than district authorities, and I would say, "Let's do a bit of piloting. Let's see what we can do to devolve delivery of policy". We would have to have a policy first of all. Sometimes I am not entirely sure that there is one. Once we get the policy, we should devolve it and ask those local authorities to deliver as they see fit locally. That was missing. That was the theme I was obsessed with in 2002-03 and

I am obsessed with it still. There is a greater need now than there was then.

**The Chairman:** So you are saying that, apart from the policy-making, which probably includes rural proofing across departments, the countryside is best left to its own devices?

**Lord Haskins:** No, I did not say that. I said that local authorities that have a strong countryside element—that element varies greatly from local authority to local authority—should take more responsibility for rural development than at present. They do not do a bad job in the circumstances with European funds. Ownership of rural development should be given to where it belongs. At the moment, nobody owns it.

Q189 **Lord Harrison:** First, a very warm welcome here today. You talked partly about localism in your 2003 review and extended that in some of your comments about local authorities. I remember 35 years ago chairing the countryside committee of Cheshire County Council, and even today I am embarked on working with others—along the Mersey and the Dee; in other words, cross border into Wales—about pumping up the economic viability of that whole area. It strikes me that that would fit into the idea that you just expressed about local authorities building their strengths together, on the economics but especially on what the countryside can do.

**Lord Haskins:** I recollect having to declare an interest in the report: I was on the board of Yorkshire Forward, the regional development agency. It seemed to me that Yorkshire Forward, covering a range of rural issues, was the best body to bring all this together, but it did not have the cash or resources to do it. Frankly, if you do not have the resources to develop policy, you will not get much policy.

**Lord Harrison:** Which links back to some of your other comments earlier about the lack of funding and the perilous nature of what might happen if we lose the EU funding.

**Lord Haskins:** Yes. This is not just a rural issue, of course. EU-funded universities are in much the same position. Local authorities and all their infrastructure issues are heavily dependent on European funding. We are all working very hard to find a way to create alternative funds for that. It will be extremely difficult. I am concerned that rural needs might be neglected in favour of the metros' needs for expensive infrastructure funds. The Treasury will have to find substantial funds to replace what is coming at the moment. I am concerned that Defra will not defend its position as vigorously as, let us say, BEIS in that fight.

**Lord Harrison:** Just to take the jigsaw one bit further, you have given a tick to the Environment Agency and Natural England. If the local authorities were to play a stronger role, would they fit naturally into that part of the jigsaw?

**Lord Haskins:** Absolutely. The Humber LEP has a particular body, a sub-board, that deals with investment and regulation. It is chaired by the leader of East Riding of Yorkshire Council on behalf of the four authorities.

There is another initiative, which Michael Heseltine put me up to. It is a really good idea. Every couple of months we meet the regulatory bodies—the Defra bodies and others, such as the Highways Agency—to discuss major issues such as floods and major projects going through. The idea is that when people are going for planning development they do not have to go from one agency to another and another. The agencies are all in the room and there is a single conversation, and we shame them into agreeing something. That pilot has been very successful, and I hope it will be developed nationally, because again it is a way of bringing the statutory agencies together. The statutory agencies love it, by the way; it brings them into contact with local people, local business people and local authorities, and people can see that that avoids awful failures in the planning process and makes progress. It is very encouraging.

So I stick with the themes in my report.

**The Chairman:** With Defra closing the rural communities policy unit and you saying that rural development ought perhaps to be part of the local authority domain, would it be a good idea to move rural development back to DCLG?

**Lord Haskins:** That is a good question. Yes, is probably the answer. I had not thought about it, but it probably would be, because Defra's role is a complicated one at any rate. I know, and you know very well, that Defra as an organisation was put together in the middle of the night after a general election without any thought at all to its strategic purpose but in order to satisfy the personal political ambitions of certain senior people in the Labour Party.

**Lord Faulkner of Worcester:** Surely not.

**Lord Haskins:** We have lived with that hybrid, and hybrid it is, because Defra's problem is that it has to try to reconcile what are essentially tense relationships. Elsewhere in Whitehall you separate them, and they fight. MAFF was the farmers' body. I am not saying that we should go back to MAFF at all, but the Defra agenda is too complicated. Local authorities should take a much bigger role in rural development, and maybe your suggestion to move rural development back to DCLG would be a good idea.

Q190 **The Earl of Arran:** You have expressed very strongly your fear for the future, and I think that all of us around this table totally agree with that. If there was ever a need for MAFF to return as its own entity, it would probably be now, because I do not have much trust in Defra producing what is sensible.

In all honesty, if there was one recommendation that you would like to see this Committee make, what would it be?

**Lord Haskins:** It would hinge on this issue of separating policy-making from delivery. I was very struck by how France in particular makes that separation. France has a very centralised system of government, as we do, and policy-making there is probably more centralised in some ways than it is here, but there is a significant break at the actual point of delivery.

That brings me back to another obsession of mine: accountability. Where does the accountability lie when things fail? When we were looking at foot and mouth—and I spent a lot of time looking at problems of foot and mouth in Cumbria—it was very difficult to pin down where the accountability lay. Whitehall is very good at blurring accountability, which you see going on in these Brexit negotiations: who the hell is in charge? Nobody knows at all what is going on. I learnt in business that the more you throw accountability down to the front-line troops to better reward, the more effective it is and the more rewarding it will be. We have not really grasped that in England. We are doing it in Wales and in Scotland, but not in England.

**Baroness Whitaker:** I have a supplementary question on that. If you separated policy formation from implementation, you would presumably have to guarantee input from the local level into the policy. That would require quite a developed communication structure.

**Lord Haskins:** Absolutely. There is a problem, let us be clear. We have run down our local authorities spectacularly for the past 60 years, so the quality of local authorities is very variable, shall we say. There are some good ones; there are an awful lot of not very good ones. Whitehall often runs behind that and says, “We can’t give these people these responsibilities, because they are not competent enough to do it”. Sometimes you have to jump, and if you make those local authority jobs worthwhile and reasonably rewarding, not financially but in terms of job content, I guess you will get good people wanting to do those jobs. If you demean them—and they are being demeaned terribly at the moment; the slashes to public expenditure on local authorities have been far worse than those to any other parts of the central budget—you will get what you deserve. It is not an easy issue at all, and it is not particularly a rural issue—it will be interesting to see how this develops with the metro mayors. It is a real problem, and they will have to deal with it. Do they have the competence to do it?

**Lord Foster of Bishop Auckland:** I well remember you coming up to my constituency during the foot and mouth saga. One of the qualities that you brought to the discussion was what you have revealed this morning: the keenness for everyone to work together and for local authorities to take the lead. I also favoured the Rural Development Commission in its day but also the regional development agencies, which you, too, have referred to. I think I am one of the few politicians who approve of the odd quango—although I am not keen to sit on them and never have—because it seems that they can bring all the players together very much more effectively than central government on its own. Do you agree?

**Lord Haskins:** I have spent quite a lot of my time on quangos, and on getting rid of them, too. The word “quango” is pejorative. What we are talking about is getting the engagement of people who know what they are talking about on issues. The local enterprise partnerships and the regional development agencies were exactly that: you got business people, local authority people and universities around the table, and you could produce



something at local level that was meaningful which you then put back to central government. That is what I do all the time with Greg Clark, who is a very responsive and receptive Secretary of State. He likes that dialogue.

There are issues with this, of course. The issue of conflict of interest comes up time and again. It is an issue that does not bother me too much, because as long as people declare their conflict of interest, that is fine. Actually, you want conflicts of interests; you want people who understand what they are talking about. I am a largish farmer, and I will know a bit more about farming than some guy in the middle of Manchester, but I have to declare an interest when it comes to these issues.

So I think that the concept of statutory agencies talking to quasi-independent bodies, which is what quangos are, is perfectly healthy.

**Baroness Scott of Needham Market:** I want to come back to the question of rural proofing as opposed to rural policy-making. Most of us observe constantly that government legislation and delivery is not equal across the piece. Assumptions are made, for example, that it is easy to access something such as a hospital, but it is not easy for people living in the countryside who live 40 miles away from one. We can all come up with those examples. How can we begin to break some of that down? Is it a Civil Service problem? Is it a government problem? Is Parliament not scrutinising properly? Why does this get worse and not better?

**Lord Haskins:** There are two reasons for that. The rural advice in this place is much weaker than it was, so people listen less to what is being said than before. The other thing that has always struck me—and, again, I come back to devolution—is the French concept of society: that a big town or whatever with an area of 150 kilometres around it is a community, because the people within that 150 kilometres would identify with the big hospital, and all that sort of stuff. That embraces the rural communities well. The trouble if you make those sorts of measurements here is that we are so thickly populated that the imbalance is very strong and it does not work. We looked at it to see whether that rural-proofing approach would work. You, Lord Chairman, were the creator of rural proofing and you know from the wounds on your back how difficult it is to get it. It is very difficult across the piece to do it nationally. It has to be done locally.

**The Chairman:** Does anyone else have any further questions? No. Thank you very much for coming to see us today.

## **Hastoe Housing Association and Rural Services Network – oral evidence (QQ 127-136)**

Tuesday 14 November 2017

12.05 pm

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Lord Cavendish of Furness; Lord Faulkner of Worcester; Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 15

Heard in Public

Questions 127 - 136

## Examination of witnesses

Sue Chalkley and Graham Biggs.

Q127 **The Chairman:** Thank you both very much for coming to see us. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee's website, and you will have the opportunity to make corrections to it where necessary. As I say, thank you for coming. Would you both like to introduce yourselves? If you have any introductory statement to make, please feel free to do so.

**Sue Chalkley:** I am chief executive of Hastoe Housing Association, a rural specialist housing association, and co-chair of the Rural Housing Network, a body representing a number of rural agencies that are interested in rural housing, such as the Country Land and Business Association, ACRE, the Rural Services Network and the CPRE.

**Graham Biggs:** I am chief executive of the Rural Services Network, company secretary of the Rural England community interest company and a board member of the Connexus housing group, a housing provider operating across Shropshire and Herefordshire.

Q128 **The Chairman:** Thank you. My first question is about the Commission for Rural Communities. Do you think the CRC performed its functions adequately as advocate, adviser and watchdog for rural needs? Was it the right body with the right responsibilities and powers to do that job? In particular, how important was the in-depth research to the successful functioning of the CRC?

**Sue Chalkley:** I came into this rural world towards the end of the CRC's life, but I have to say that since it has gone we have not had the same quantity and quality of data around rural communities. The annual state of the countryside reports were data-rich and were useful for a whole range of purposes, as were the individual reports on particular aspects of rural life. I can say a bit more about this later. There are many bodies looking at different aspects of rural communities, but the CRC seemed to bring that all together and provide rural communities with a voice. That does not exist to the same degree now.

**Graham Biggs:** I am afraid to say that I predate Sue by a number of years in that respect. For me, the CRC was one of many bodies that you do not realise how good they are until they have gone. There is no doubt in my mind that it did some very good and original work. It was well respected by rural stakeholder organisations, although I am not so sure about its prominence among rural residents generally. I question how much traction it had across Whitehall departments.

On the matter of whether it was the right body with the right responsibilities, there can be no doubt that all those roles best sit outside

as an independent body. I accept that there were perhaps some tensions between its roles—how can one be both an adviser to Whitehall and its watchdog?—but on the whole it balanced those very well indeed.

With regard to my opening comment about not really missing it until it had gone, the main aspect that is missed is the qualitative research. There is a key gap in what we have now compared to what we had with the Commission for Rural Communities. Bodies such as Rural England are trying to do their bit to plug it, but that gap is still significant.

Q129 **Baroness Scott of Needham Market:** I want to go a bit deeper into whether it is possible to be both watchdog, adviser and advocate. Are any organisations managing to do all three of these things, or are they dispersed? Does that matter, and where are the gaps?

**Graham Biggs:** I do not think anyone is fulfilling the watchdog role as such. Regarding the advocate role, many organisations, individually and collectively, such as the Rural Coalition, can do a very good job, but if you are going to have a watchdog you have to have a body that understands the role and is accepted across Whitehall as having the right and the responsibility to exercise that function, and its views must be listened to.

**Sue Chalkley:** I entirely agree. For me the word is “weight”; we need a body that carries weight.

**Lord Cavendish of Furness:** An idea has occurred to me. Overwhelmingly, we have heard that the research element was highly valued. Is it conceivable to have a body that just did the research?

**Graham Biggs:** Yes, if it were funded so to do, if it were accepted across Whitehall as a body that had been charged with doing that, and if its research were properly listened to, not simply dismissed with, “Oh, they would say that, wouldn’t they, because they’re rural advocates”.

**Sue Chalkley:** Research is an important and valuable element, but we need a body that can articulate to the Government what rural communities are like. Obviously there is a wide range of different aspects of rural communities, but policymakers tend to think that rural communities are like urban communities but a bit smaller. We need a body that can articulate the differences in the rural setting and explain how that might impact on the development of policies. Research is really important, but we need a body that can also influence and think forward.

Q130 **The Countess of Mar:** Where in recent years has rural policy worked well and where it has worked less well? What are the reasons for success and failure in each case? In particular, do you think that the quality and depth of rural-proofing has changed since the demise of the CRC and the RCPU?

**Graham Biggs:** You know, I have been thinking about this ever since I saw the possible line of questioning. I really struggle to find where rural-proofing has been an undoubted success. It is almost entirely—I am not sure why I said “almost” then—brought in too late to be able to do the actual job that is needed.

Sue might want to say more, but the two areas that immediately come to my mind where it has not worked are where policy changes had a direct effect on the affordability of housing—those were certainly not thought through from a rural perspective—and the Department for Education policy on all schools providing meals. That policy was entirely laudable but completely impractical in many schools, and it gave the schools significant problems in complying with it.

It is hard to assess how the quality and depth of rural-proofing has changed. There is relatively little information about the extent of rural policy being undertaken by departments. Normally when we as representative groups get to see it, we wonder why we were not asked earlier what the implications would be for rural communities, businesses and areas. A short while afterwards, we then ask why they did not listen to what we said, even though it was too late.

**The Chairman:** Would you have noticed rural-proofing if it was actually working well and if good policies had evolved from discussions in a department having been rural-proofed right from the beginning?

**Graham Biggs:** Absolutely. Show me a good policy.

**The Chairman:** Good point.

Q131 **Baroness Whitaker:** In your written evidence, Ms Chalkley, you recommended that rural-proofing should be the responsibility of a single public body. What sort of body ought that to be and where do you think it should sit in government?

**Sue Chalkley:** I am trying not to look too much as if we are moving back to where we were before. However, if you look at the options available for properly representing the interests of rural communities, we now have a range of different bodies and entities—I can instantly think of 10 or 15, but there are many more—representing individual aspects of rural life. I include within that this Select Committee and APPGs. There are all sorts of activities going on, but none of them has that collective weight and the voice of rural communities to look across the piece at how this and that policy come together and impact on a rural setting.

**Baroness Whitaker:** We would probably still have Select Committees and APPGs.

**Sue Chalkley:** It is longevity as well. It is the ability to see what was happening 10 years ago, compare it with what is happening now and then look forward. I know that that front-footedness has been mentioned before, but if every time a policy is drafted rural representatives say, "That would not work in a rural setting", we will subtly become quite irritating. We are always semi-objecting to something and saying that it would not work. It would be much better to have a body involved right at the beginning that said, "This is what would work in a rural setting". There are a lot of great things happening in rural communities.

**Baroness Whitaker:** Are you thinking of a body with any independence—

an arm's-length body or one in a department?

**Sue Chalkley:** It probably needs to be a quango. It needs to have the weight of being a government body so that it can influence government departments and thinking, but it also needs a degree of independence. That would be my dream come true.

**Baroness Whitaker:** Should it have a direct link to a Minister? Should it share direct accountability to the Minister rather than through a department?

**Sue Chalkley:** I would be slightly nervous of that, because we also need a body that is not too political. It needs to be able to state the position without being concerned about what a current Government might think. We would have to find that middle ground.

**The Chairman:** It would have to come under some form of government budget. Most of the services that affect rural areas—housing, transport, planning, economic growth and so on—are delivered by local government. Would it be best if this body were in DCLG rather than in Defra? I seem to remember that the Countryside Agency was reasonably effective when it was under DCLG or its predecessor. Things started to go wrong when everything moved to Defra. I put that to you as a possible theory.

**Sue Chalkley:** I am going to aim high and suggest the Cabinet Office.

**Baroness Whitaker:** Mr Biggs, do you have a view on this?

**Graham Biggs:** On balance I will go the same height as Sue and say the Cabinet Office. It is there at the heart of government and has the respect of other government departments. It can go in and see what is happening in those departments and try to shape their output. Even if the policy is the same, there are flexibilities in the way that policy is played out in rural areas. It is not necessarily the policy that is bad. It is everything else that gets strapped around it that means that you have a one size fits all in every respect. It is the bits of detail and implementation where the rural rub often comes.

Q132 **Lord Faulkner of Worcester:** I want to ask about affordable rural homes, which was the subject of some very powerful evidence from Hastoe and other organisations. Reading it, I get the sense that the situation is desperate and is getting worse. There have been changes in regulations regarding the development of smaller sites, which mean that it is not necessary for affordable homes to be included in the mix of a development. What challenges do people face in attempting to get a home in rural areas?

**Sue Chalkley:** If I can take us back briefly to the mid-1980s, 24% of rural homes were considered to be affordable. Today it is about 8% and reducing: the proportion of affordable homes is going down and down. It is reducing more dramatically, because housing associations and councils are selling off rural homes because they are of higher value. You can sell off one rural house rather than two in a nearby market town. It makes sense from a value-for-money perspective. There is now a net migration

of 50,000 people from towns and cities into rural villages every year. There are second homes and holiday lets. The housing market is shifting dramatically, as is the rural demographic. The average rural age is now 47 compared with 35 in urban areas. The age of the rural elderly is going up more quickly than in urban areas.

Young families are being squeezed out in this dramatic shift. The rural affordability gap is much more significant than it is in an urban area. The latest Halifax research this year showed that average house prices are about 20% higher in rural communities than in urban areas, yet local earnings are 23% lower. Housing policy is not addressing that massive affordability gap. For example, starter homes do not help rural people who are on £20,000 a year. That, in a way, is why I say that we need to think more positively about policy that is right for rural communities.

**Lord Faulkner of Worcester:** What sort of policy changes would you like to see?

**Sue Chalkley:** One of the things that we need to be doing is thinking more broadly. The policy on rural exception sites for example is very successful, but it has been dependent on communities coming forward, which they do in rural areas, but also on landowners making land available at very low prices—at between £8,000 and £10,000 a plot. Rural landowners are kind of invisible. We could be doing a lot more to incentivise rural landowners to develop homes for the community. About two months ago, a landowner rang me and said that he had between 10 and 16 acres available for housing development. He did not want a capital receipt; he wanted long-term income that his grandchildren could benefit from. To recognise that rural context and unlock some potential in rural communities with landowners, I definitely think—and you would expect me to say this—that a premium ought to be available on a grant for affordable housing to recognise the additional cost of delivering in rural communities. But it is not just about money; it is about unlocking some of the potential that exists already.

**Graham Biggs:** I would not argue with anything that Sue has said. There are some funding issues in that something like 9% of the Homes and Communities Agency grant goes into rural locations, but 20% of the population live there. I agree with Sue absolutely about grant rates. It is much more expensive to deliver a small number of homes, or indeed a large number of homes, in a rural location. You do not have the economies of scale, and you often have extensive ground works; it is not going to be on mains sewerage or gas. Thank goodness, there are higher design standards so that it actually fits in with the community. Then there are much longer timescales to deliver in many respects. One great thing about community-led housing is that the community welcomes it and wants it and understands why it is being provided, but it takes a long time to develop so that everyone feels they have had their say, particularly if it is an exception site, when it has to go through those realms of planning.

To return to the threshold—that developers do not have to provide an affordable housing contribution on sites of fewer than 10 houses—I was

told that 80% of Shropshire Council’s development sites in Shropshire are on sites of fewer than 10 houses. With the affordable housing contribution, they would all be delivered in effect without a grant; the grant was in the fact that the land was being provided at substantially less than market value. There has been a change in recent years such that there is now much more acceptance of perhaps a couple of market-rate houses that have a bit of surplus—I would not call it profit—that can then contribute to some of those additional development costs. At a stroke, the Government’s decision that sites of fewer than 10 houses do not have to make an affordable housing contribution, either on site or by an off-site contribution, is devastating to rural areas. It is a prime example of rural interests not being consulted early enough. When they were asked and they told the government what was wrong with the proposal, it still went ahead, despite all the pressures and amendments from other places.

**Sue Chalkley:** As a supplement to that, the Bishop of St Albans asked two Parliamentary Questions about the small-sites policy. One was about the impact on rural communities of affordable housing delivery, and the second was about the impact of small and medium-sized enterprise builders, because the policy was designed to incentivise them. The answer to the first Question was, “We don’t know, because we don’t monitor communities with less than a 3,000 population”. The answer to the second was, “We don’t know, because we have data only up to 2016”. So a policy that is having a fundamental impact on the availability of rural affordable housing has been put in place, but there is no monitoring of its impact.

**Baroness Byford:** I am in an unfortunate position. I cannot ask a question, much as I would like to, because I am secretary of the All-Party Parliamentary Group on Rural Services. However, if I could ask a question I would mention the word “perpetuity” with regard to affordable housing.

**The Chairman:** The word “perpetuity” has floated in from the outside. Perhaps you would like to comment.

**Sue Chalkley:** It is vital for the sort of landowner I spoke about earlier, who is generously making land available at a lower cost, and it is vital for a community that often has to overcome all sorts of internal dimensions when it has a vision of a scheme for local people and sees it over various hurdles over the years. I cannot say how vital it is that those homes remain in perpetuity for the purpose for which they were designed: for local people or people who are contributing, working or living, in that community. That is where government policy can accidentally undermine something. I do not know whether we will talk about right to buy later on, but that is a really good example of a policy that has accidentally caused a loss of confidence.

Q133 **The Earl of Arran:** Do you think that rural exception sites have been successful in unlocking sites on the outskirts of villages for affordable housing? Secondly, how has the extension of right to buy to housing association tenants affected the delivery of rural exception sites? What could have been done to mitigate the negative effects?



**Graham Biggs:** I should say that I used to be a local authority chief executive of a very rural authority, and we used to be one of the leaders in rural exception sites. Unquestionably, they have played a fundamental part, with community support, in bringing to the fore small numbers of homes that are affordable to local people in perpetuity. Without such policies, those houses and homes simply would not be there. If the landowner, and perhaps more importantly his or her advisers, believes that there is some hope value or development value in the land, that is what they are going to go for, and you will not get these small sites released to housing associations.

Over recent years, exception sites have been combined with community-led housing. These days, many communities approach housing associations, community land trusts and councils after identifying a need for housing for local people at affordable prices after doing a village appraisal, a neighbourhood assessment or whatever, and they go on to seek to identify an appropriate site and to give an informed view on the design of the site, so you have community buy-in right from the outset. Over a longer timescale, but it is very worthwhile by the end of the process.

As for the damage done by the right to buy, why should a landowner give up a substantial proportion of the value of the land for someone else to make a profit on it? It pushes philanthropy to the nth degree. Unquestionably, it would have been so easy for the policy to have excluded exception sites, and I would have to say rural sites, if there had been some common definition across government of what "rural" means. They could have been excluded, and it would not have impacted at all on the Government's policy. You only have to look at the small number of homes that have been sold, historically and now, under right to buy that have not been replaced nationally, and certainly not in the parish or general area where the sale took place.

**The Earl of Arran:** Is a housing association a tradeable asset? Could it be bought by a foreigner?

**Sue Chalkley:** A housing association is a non-profit-making organisation. The majority of them are charitable. They are all industrial and provident societies. I cannot think of the current term.

**Graham Biggs:** There are certainly no shareholders, so they cannot be sold in that respect.

**Sue Chalkley:** There are shareholders, but they pay only £1 each for the share, and they receive no dividends.

**The Chairman:** I can tell that you are dying to come in on these questions.

**Sue Chalkley:** I love the rural exception site policy. It is a really sweet policy that has been around since the mid-1980s and is a great example of how rural communities are doing stuff that is great. They should be leading the way in urban areas as well. Rural England is not always backward-looking. Sometimes it has some innovative, useful and interesting things

happening. Every year, rural exception sites across England usually deliver about 1,500 affordable homes for their communities. The schemes can be any size. We have had schemes with two houses on Dartmoor, and some go up to 40. On average, there are about 10 homes in a village, so we are talking about that sort of size.

In 2015-16, delivery slumped by about one-third, so we were down to just over 1,000 homes on rural exception sites. That was due partially to the fear caused by the talk of the voluntary right to buy and partially to grant levels reducing, because rural housing delivery is a bit more expensive. Right to buy has had many impacts on rural communities. There is the psychological impact on communities and landowners, but also the fact that a one-for-one replacement could be built anywhere nationally. If one rural home is built, it is highly unlikely that the landlord will replace that on home in that community. They will probably replace it somewhere where it would be better value to replace it.

The other concern was that local authorities were expected to sell high-value assets to fund the discount being offered to the tenant, and many local authorities would sell their rural houses because they have a higher value than the flats in towns. It has impacted on rural communities in every way. However, the good news is that it was a voluntary right to buy in a deal done between the Government and the National Housing Federation, and things have slowed down considerably, so at the moment the discount is not being funded other than in the pilot areas and is not being fully introduced.

**Q134 Lord Cavendish of Furness:** My question addresses the additional cost of delivering services in sparsely populated areas. To what extent do you think that funding cuts in local authorities and government agencies have intensified the problems associated with the rural premium? Have rural areas suffered disproportionately as a result of public sector budget reductions?

**Graham Biggs:** For the generality of rural services, the starting point for the funding cuts was that for decades the government grant to fund other government services has been skewed towards urban and against rural. Therefore, with this era of funding cuts, the starting point for what services were available in rural areas was so very much lower. It therefore follows that any cut is going to be a deeper cut in effect than in the urban context. But at least in the early years of the policy you could say that there was some degree of equity, if you excluded the historical underfunding, in that every council would have received X% of its grant being cut—10% in a rural area and 10% in a rural area. In an urban area, in monetary terms that would be far greater sum than in a rural area, but in percentage terms it would be the same.

However, in 2015, the Government changed the basis on which they would distribute the necessary cuts and brought into play not only the amount of government grant that a council received but the council tax that it raised. To counterbalance the historical underfunding of rural areas, rural councils had over the years increased council tax to much higher levels than their

urban counterparts. So, naturally, when the income that councils got from both grant and council tax was taken into account, the next wave of cuts fell disproportionately on rural areas. Between the provisional and final settlements of that year, the Government were persuaded—I am choosing my words carefully here—that there was something desperately wrong about that, and they introduced transitional relief for a two-year period. That transitional period ceases on 31 March next year, and we then go straight back to the same position, as was demonstrated by the then provisional settlement.

There can be no doubt at all that the implications for services of these cuts has generally been harsher because the starting point was lower, and the changes to how the cuts are calculated will make that even worse. One way in which that plays out is that in rural areas in the current financial year, rural residents will pay fractionally less—one penny less—than £87 per head, not per household, more in council tax than their urban counterparts. Many of us struggle to see the equitability in rural residents having to pay more for their fewer council services than their urban counterparts in the urban context.

**Sue Chalkley:** I have two specific points to make here. First, we commissioned a study into rural homelessness a few months ago, one outcome of which was the understanding that, in a rural community, the causes of homelessness may be the same but it can look very different. People who have troubles in their lives cannot access the support services that they need at the right time. By the time they start asking for help, the situation is much more serious and entrenched than it might have been if they had been in an urban area where they could have got support services. Rural homelessness is an example of an area in which a body could represent rural communities. When the Homelessness Reduction Bill went through, it would have been nice if it had given some consideration to the impact of homelessness in rural communities and how it plays out there.

The other contemporary point that I would like to make is that we had a planning consultation that ended on Friday on the right homes in the right places. Interestingly, and I am really pleased to see it, it is a subtlety but the report recommends that housing need should be calculated based on a formula that includes household projections. Rural communities have an influx of retirees, with the average age getting higher and higher and squeezing out younger people. Older people do not reproduce as younger people do, so the household projections will be quite low compared to those for urban areas. Household projections will be for a lower increase, so less funding will come in to rural communities for housing, which is exactly what is needed to reverse this deterioration. That is where a body might be able to make the case and see through something into the consequences in a rural setting.

**Lord Cavendish of Furness:** Do you think that the terrible inequity that is being described here would be better served if there was a better understanding in the Treasury and the political class generally of the public

good that the rural communities deliver?

**Sue Chalkley:** I listen to “The Archers” and I love it, although it is seen as being a bit backward-looking—and it is not actually; there is a lot of really forward-looking stuff happening in it. I would like a body representing rural communities to be quite forward-looking. There is a lot of really good stuff happening in rural communities. We even have a scheme that started in Wiltshire. The landowner insisted that we call “Imby Close”. We have many imbys out there in rural communities—they are loud and proud—and it would be good to promote that.

Q135 **The Chairman:** Moving on to Brexit, do you see Brexit affecting the quality of life in rural areas at all? If so, how do we involve rural communities in the process?

**Graham Biggs:** There are two headline concerns. Obviously, there is the question of the labour force that will be available, which is fundamental to many businesses, which are mainly agricultural and food-producing businesses but not exclusively; there are other businesses as well. That is a major concern. There is also a concern about what happens at the end of the common agricultural policy to the money that hitherto has gone into rural farms, rural environmental businesses and so on. The concern is not just about individual farms or businesses but about the loss of that money to rural areas.

I think it is accepted that the Government will change the way they distribute money for food production and environmental protection, and I will certainly not sit here and argue that that is wrong and that we should just continue with the CAP way of doing things, but one of the important considerations is that, broadly speaking, the same amount of money at least ought to go into rural communities to support the wider rural economy and the wider rural communities.

**Sue Chalkley:** Briefly, from a housing perspective, our concern is about materials and labour. We can see our construction costs going up. Having said that, landowners might be more open to thinking about what they can do with their land, so there might be opportunities there as well.

Q136 **The Chairman:** The final question is a general one. What one recommendation would you like to see in our final report?

**Graham Biggs:** A comprehensive and properly-resourced strategy for rural areas is needed that embraces the economy, the environment and social well-being and covers at least the next 10-year period.

**Sue Chalkley:** I would like rural communities to be visible and understood. The only way to achieve that is to have a separate body that can be there for the long term. We need to collect data for rural communities. Not having data is not helpful.

**The Chairman:** Good. Thank you both very much for coming along today. It has been a very good session.

## **Hastoe – written evidence (NER0067)**

### **Response from Hastoe to the Lords NERC Select Committee inquiry**

Hastoe is England's largest specialist rural housing association and is a leading provider of affordable rural homes. We own and manage 7,500 affordable homes in southern England and work in more than 250 villages. We welcome the opportunity to respond to this inquiry and hope that you find our responses helpful.

### **Rural advocacy and the Commission for Rural Communities**

*1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?*

#### ***Hastoe response:***

17% of England's population (9.2 million people) live in a rural area. Rural areas have a higher proportion of working age people in employment than their urban counterparts (in 2015 it was 77% in rural settlements, compared to 73% for urban) and the "rural economy" (as measured by its Gross Value Added contribution) contributes around £237 billion to England's economy each year.

Despite this massive contribution to the nation's prosperity, we are concerned that there is insufficient specific or informed focus on the rural context and policy consequences across government. The closure of the Commission for Rural Communities and the introduction of a greatly reduced successor, the Rural Communities Policy Unit and its successor (Defra's Rural Policy team) and the large cuts to Defra's overall budget (30% from 2010 to 2015 with another 30% cut from 2015 to 2020), have all combined to leave rural businesses, organisations and communities without both a strong government department to advocate for them, and the vital independent policy and research underpinning that is necessary to inform decision-making and achieve real policy change.

The Commission for Rural Communities (CRC) played a key independent role as a rural advocate – its regular "State of the Countryside" reports were data-rich and very helpful for rural organisations. In addition, the CRC's independence enabled it to provide advice on what is happening in the countryside and sometimes to provide healthy challenge to the government. Its demise was a real concern to rural organisations and the much lower level of investment in its successor (Defra's Rural Communities Policy Unit) did not allay our fears. That Unit's subsequent closure and the even lower levels of investment in its successor – the Rural Policy Unit in Defra – has made a difficult situation worse. Some research is done and reports made available, but the lack of data and the lack of a driver for the ONS to consider rural data is concerning. To give two

pressing housing-related examples, we cannot see how the sector will be able to monitor the impact of the voluntary Right to Buy on rural communities (under 3,000 population), or how it will be possible to track and measure changes in the proportion of rural homes that are genuinely affordable for local people.

We would also argue that the CRC's role as an independent advocate and watchdog for rural issues has not been adequately replicated. When the CRC was abolished, the Government announced that in its place, it would "*reinforce Government's capacity to reflect rural interests in policies and programmes, so in theory, Defra could act as this rural advocate and watchdog. However, as a government department, Defra is restricted in its ability to be openly critical of government policy and to pro-actively raise rural issues – a point acknowledged by the Rural Housing Policy Review in its 2015 report *Affordable housing: a fair deal for rural communities.**

*2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?*

**Hastoe response:**

Ensuring that national and local Government policy is rural-proofed in a way that is robust, independent of Government and is binding on Government departments, is vital in ensuring that policy doesn't result in unintended negative consequences for rural communities. At present – despite Lord Cameron's 2015 rural proofing review making six clear recommendations – national policy is still not being rural-proofed adequately. This has a knock-on effect on local policies, which cannot be properly rural-proofed, because the national policy that underpins it hadn't itself been rural proofed. Rural proofing as a routine is no longer carried out by government departments when preparing policy documents and legislation. It would be a useful exercise to map out changes that have been put in place as a consequence of the Cameron Review

Two examples of the consequences of not rural-proofing policy, are the voluntary agreement reached with the National Housing Federation on extending the Right to Buy to housing association tenants, and the ending of the requirement to provide affordable housing on sites of less than 10 dwellings:

- Right to Buy: although voluntary, this agreement (and the proposed sale of high-value council homes to fund it) has had a dire effect on the supply of new affordable homes, particularly on rural exception sites. Homes built on these sites should be affordable in perpetuity, but, once those homes can be bought by their occupants, they can then be sold on the open market and would therefore no longer be affordable. Communities who had worked for the delivery of affordable homes for local people before the voluntary Right to Buy announcement, became concerned about the probable loss of these homes and backed-away from developing schemes. Landowners who had

made land available at below market value were angry that others might benefit financially from their generosity and many were withdrawing from new affordable schemes. The replacements would not have been built in the same community for the reasons just mentioned and other practicalities, and then the discounts would have been funded by the sale of the few remaining council houses in the village. A proper, independent rural-proofing process would have identified this unintended effect on rural communities and could have challenged the Government to require changes to the voluntary agreement – for example, by recommending a clear exemption for rural communities.

- Affordable housing on small sites: Small sites are critical to the continued supply of affordable rural homes, with small mixed market and affordable housing sites accounting for 66% of all affordable housing delivery in settlements of less than 3,000 population. The announcement in November 2014 to end the requirement to provide affordable housing on sites of less than 10 dwellings has drastically hit the new supply of rural affordable homes. According to the CLA, only half of the affordable homes that small rural communities need are actually being built. This decision does not encourage SME developers as was hoped but very simply feeds through into increased land prices.

In a similar vein to our response to question 1, we would argue that the closure of the Countryside Agency, the Commission for Rural Communities and Defra's Rural Communities Policy Unit, has left the rural sector without any strong or independent voices to advocate for better rural proofing. Various organisations and coalitions of like-minded rural organisations have tried to fill this gap (for example the CLA, Action for Communities in Rural England (ACRE), the Rural Housing Network, the Rural Coalition and the Rural Housing Alliance, etc), but they are all voluntary bodies and limited in what they can do, not the least because there is so little data available now.

Defra's efforts to provide training and guidance to improve rural awareness among other Government departments are very welcome, but nevertheless, as a result of the disproportionate cuts to its budgets and staffing, Defra currently lacks the capacity to be a powerful advocate for the needs of rural communities and businesses across Government. In addition, as mentioned in our response to question 1, Defra, as a Government department, is also hamstrung in its efforts to argue for rural communities when this conflicts with Government policy.

### **Recommendation**

The Rural Housing Policy Review's 2015 report *Affordable housing: a fair deal for rural communities* recommended that:

*"The Department for the Environment, Food and Rural Affairs (Defra), as the champion for rural areas, should "ensure 'rural proofing' is continuously and consistently applied to national policies specific to delivery and access to affordable housing. This should be supported by the availability of specialist,*

*rural technical expertise available for all government departments. An annual report on action taken and delivery of rural affordable housing, should be produced jointly by DCLG and Defra.”*

Little has changed, on the ground, since this report and it would still seem desirable for there to be a single body capable of advocating for rural communities and ensuring that all prospective Government policies are examined and rural-proofed at an early stage in their development. A beefed-up Defra, with sufficient powers (if not any additional funding), could do this.

*3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?*

**Hastoe response:**

The Rural Policy team in Defra provides advice, guidance and expertise on rural issues for Government departments. However, in her evidence to this Lords Select Committee, Shirley Trundle (Director, Natural Environment Policy at Defra) explained that the Rural Policy team is currently below its full complement of 24 staff – partly because of recruitment being carried out in reflection of the pressures around EU exit. It is likely that Brexit and its impact on farmers’ and landowners’ access to EU funding (£2.4bn per year in direct payments, plus access to £4bn funding for UK rural development projects from 2014-2020) will continue to be Defra’s main priority, which could leave little room for other issues facing rural communities, such as housing or transport. So, although Defra could play the key role as the champion for rural areas and act as a watchdog/ coordinator to ensure that all new policies are rural-proofed, it is clear that they are not currently able to do this fully.

It remains too easy for rural needs and/or rural consequences to be disregarded or sidelined. We argue that only a wholly independent body can properly advocate for rural areas and that one should be set-up to do this.

**Natural England**

*4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?*

*5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?*



**Hastoe response:**

We have very limited involvement with Natural England, so we have no comments on these questions.

*6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?*

**Hastoe response:**

We were pleased to welcome the amendments to the rules around registering Village Greens in the Growth and Infrastructure Act. This closed an expensive loophole that was allowing abuse of the system but, other than that, we have no issues to raise.

**Sustainability and biodiversity**

*7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?*

*8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?*

*9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?*

**Hastoe response:**

We have no comments on these questions.

**The changing context since 2006**

*10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?*

**Hastoe response:**

Brexit could change how rural landowners manage their land and some may look to housing development as an additional income stream for their businesses. We feel that rural landowners could – and should – be encouraged to consider responsible small-scale affordable housing development on some of their land for the benefit of people living in their rural communities (for example using the Rural Exception Site policy to deliver this).

We also feel that strong consideration should be given to which incentives could be provided to rural landowners to facilitate this and that Defra should take the lead on this – working with other interested departments as needed. For example, taxation of rural landowners is fearsomely complex and may be acting as a disincentive to affordable rural housing development. Defra with others, could work with the Treasury and DCLG on measures to simplify the tax situation for rural housing development.

*11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?*

***Hastoe response:***

We have no comments on this question.

*11 September 2017*

## **Professor Dieter Helm CBE – oral evidence (QQ 59-66)**

Tuesday 24 October 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; Countess of Mar; Baroness Parminter; Baroness Scott of Needham Market; Baroness Whitaker.+

Evidence Session No. 8

Heard in Public

Questions 59 – 66

## Examination of witness

Dieter Helm.

Q59 **The Chairman:** Good morning, Professor Helm. Thank you for coming to see us. We know that you have to leave us at 11.50 am, and we will try to organise things so that you do. If not, just walk out.

**Dieter Helm:** Not my style.

**The Chairman:** You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website, and you will have the opportunity to make corrections to it where necessary.

I will ask the first question. What is natural capital—a reference to the committee that you chair—and how do we measure it? What do we measure well and less well? How easy is it, and less easy, to measure such capital? More importantly, how do we integrate such a system of examining our environment into our system of governance?

**Dieter Helm:** That is quite a few questions.

**The Chairman:** I know. I apologise.

**Dieter Helm:** Let me try to unpack them. Natural capital is just one of the three pillars of the capital of any economy. There is manufactured capital, human capital and natural capital. Many people would argue that neither of the other two can function without natural capital. Some people would say that it is primary. It is absolutely core to any economy and the functioning of any economy and to economic growth. It is capital, so it is about assets and the state of assets. Assets yield services, but this is not an eco-service approach; this is looking at hard capital assets and such things as current-cost accounting and capital maintenance—hard accounting concepts to apply in this area.

It is natural in that nature gives it to us for free, and in the case of renewable natural capital it goes on giving itself to us for free for ever, provided that we do not deplete it below a level where it cannot contain itself. Think of the herring stocks in the North Sea. They might still be there in 100,000 years' time yielding nature's bounty for free, but if you overfish them there will be none. Non-renewables, such as oil, gas and minerals, are crucial to the economy, but you can use them only once. That essentially is what it is.

On your question about whether we can measure it, there are two parts to the answer. One is the perfect versus the good. We cannot measure manufactured capital or human capital very well, but we get by with it. The crucial thing in natural capital is to work out which bits really matter and to focus on the measurement of those. Of all the things in natural capital that you really want to measure well it is the renewables bit—the bit that nature would go on giving us for free for future generations for ever—and

the ones in that category that are at risk of falling below a threshold where they cannot renew themselves.

We can make a pretty good estimate of the value of core parts of this framework, and it is always best to be roughly right than precisely wrong, which is what people do when they do not try to value these assets, because too often they are treated as being of zero value. That is why one is always making an approximation.

**The Chairman:** Excellent. What about integrating such a system into our system of governance?

**Dieter Helm:** That has a variety of different levels. The crucial thing is to integrate natural capital with the other forms of capital at the heart of the Treasury. This should be core to economic policy. This is about the economy, and economic growth is about combining our various sorts of assets to produce the best outcome for people over time. That is the starting point.

When the Natural Capital Committee was set up it was set up to report the economic sub-committee of the Cabinet, which was utterly crucial to the structure. The front of the 2011 White Paper *The Natural Choice*, of which the Natural Capital Committee is a product, was all about why we will only take natural assets, nature and the environment seriously if they are treated as a core part of economy policy. That is the big integration bit.

Below that, you have a plethora of different institutions and organisations, which I am sure we will come on to, some of which are better designed than others, many of which overlap. My personal remark is that the sum of what could be achieved is much higher than what is actually achieved by the structure that we have in place.

**Baroness Scott of Needham Market:** May I cheat a little and start by asking a supplementary question? I absolutely understand your examples of herring and renewables, but can you just describe what a natural-capital approach to, say, air quality might be? That is not a renewable issue, but it clearly has impacts on society in terms of quality of life and cost.

**Dieter Helm:** In a strict sense, it is a renewable; the atmosphere continues to renew itself, and the forests and trees—look out of the window here—are releasing oxygen and clearing up quite a lot of the mess. In our very first report, we emphasised that the economic benefits from dealing with air pollution in cities were of an order of magnitude bigger than anything else that we found. There are many natural-capital things that you can do in cities such as London, Manchester and other great cities that make a great deal of difference in lots of different ways. Trees are really important. You can imagine, if you were stargazing, planting every street in London with trees, and actually the cost is not that high for those kinds of activities. Green spaces in the city are important for enabling people to get out of the traffic and inhale air that is somewhat better, as is access to green spaces for children, green corridors and so on.

There are lots of practical things here that have their economic benefits, such as health gains, educational benefits and well-being benefits, which are every bit as important as wages. They are part and parcel of what a good economy comprises. So the example is a great one, and there is a huge amount that we can do.

**Q60 Baroness Scott of Needham Market:** Thank you. My main question is this. The Treasury, business and so on will all have to be persuaded by the evidence of the benefits and all that to take this approach. What is your assessment of the quality of the data that we have from which those judgments can be made?

**Dieter Helm:** On your first point about business et cetera, we have done a lot of work on how these things should be brought on to the balance sheet of companies and organisations. If you are a farmer, you can see straightforwardly that almost all your assets are natural capital; if your soil is no good you are in trouble, and if you do not maintain it your assets will depreciate. However, we on the committee, particularly my colleague Colin Mayer, developed a template very early on for how corporate accounts should be done to incorporate natural capital along with other sorts of assets, capital maintenance and current-cost evaluation. All the standard accounting stuff should be applied to this frame.

In due course—we do not recommend this yet—since we require companies to report quite a lot of risks, if companies own renewable natural capital that is at risk it should be on a risk register, and ultimately it should be identified in accounts.

There is quite a lot of data. Indeed, I often reflect that Britain has the most intensively empirically-documented decline of its natural capital of any country in the world. Naturalists have been following the decline of each and every species for a century, and there are books on every one that is going down, so we have a lot of back data, and natural history is understood much better than in most countries in the world, right back from Gilbert White, Darwin and others. So we have that. We also have quite a lot of assessment of what is out there.

There are two really important points to make about the data. First, we are genuinely on the cusp of a technical revolution that enables the amount of data that we can have to be dramatically increased. You can know to a very close resolution what is going on in every fraction of a hectare in this country. You can see from the higher-level stewardship schemes, field margins and so on that it is no longer a question of inspectors from some organisation going out and checking that people are doing what they are supposed to be doing; you can do it from the air now very quickly. This GPS-style data will transform what we know about our landscape. We in the committee have spent some time helping Defra to think about how to do that, and there is enormous potential for facilitating that process. Back to your example of air quality, we can now know with very close resolution what the air quality is in almost every street in London, so we know what to concentrate on. This is a huge advantage. That is one area that we as the Natural Capital Committee are really keen to push along.

The other area is in accounting. We think it is really important that natural capital is naturally incorporated into national accounting, like any other form of capital. The Government have a commitment to produce green national accounts by 2020—an outcome of the Rio meeting. I think it was Nick Clegg who pushed that particularly hard, although I may be wrong about that. The ONS is already producing partial natural capital accounts for the economy. If you want to enhance the natural capital of the economy—if that is your policy objective—if you do not measure it in accounting terms, you cannot tell whether you have preserved the assets or not. So the ONS is one route.

Then there is the huge plethora of new digital information that we have. That should make the whole practice of how we monitor and assess what is going on in our natural environment both very much better and, for any given level of knowledge, incredibly cheaper. That should be built in. It is a fantastic opportunity.

**The Countess of Mar:** May I go back a step? Very little has been said about soil and soil quality in the papers that we have here, yet it is probably one of the most important assets that we have, apart from air and water. Everything comes from the soil: what we eat, what we wear, and everything else—our fuel comes from the earth. Do you regard soil as a renewable or as being at risk?

**Dieter Helm:** There are two points. If I may slightly disagree, not everything comes from the soil; we have marine assets and all sorts of other assets. But I take your point. Is it incredibly important? Of course it is. We farm 70% or 80% of Britain's land area, and our soils are enormously important reserves, not just for the minerals and the fibre that we need to grow crops but for carbon, and trees require soil. Of course it is an absolutely crucial part. It is also a renewable. It is true that if you deplete it below a certain threshold you will destroy your soils. You can look at the dust bowl in America and chunks of China, which are desertifying because we have not looked after the soil.

**The Countess of Mar:** We heard yesterday that East Anglia is losing 5 centimetres of soil a year.

**Dieter Helm:** That sounds entirely plausible to me, although I could not confirm or deny the precise number. If you look at the precise accounts of a farm, where is the asset soil on the accounts and where is the capital maintenance requirement to maintain that soil as a cost to the business? If you think about this as assets in perpetuity, which these renewable national assets are, you use current cost accounting, so you never depreciate them as you would in historic cost accounting, and you have to provide capital maintenance to do that. So one way of answering your question is that it is pretty obvious that, in this country, as an economy as a whole we are not providing sufficient capital maintenance to maintain the stock of soils so that future generations have the benefit of those soils. Yes, it is very serious indeed. It is more serious in some parts of the country than in others, but there are all sorts of other dimensions, not just the agricultural one: water run-off, water quality, how much we pay through

our water bills to deal with the consequences of how soils have been treated, dredging rivers. It is an enormously important part of the frame.

**Q61** **Baroness Whitaker:** Good morning. I am a great fan of the concept of natural capital, which I think came after biodiversity, although to some extent it includes it. Could I follow the Chairman's question by asking you whether you think that public authorities should have a duty towards natural capital that would extend or absorb the NERC Act duty to have regard for biodiversity? Would this be phrased better as a duty to "have regard to" or to "enhance" natural capital rather than focusing on biodiversity?

**Dieter Helm:** Your Committee is looking at a particular Act. Since then, there has been a White Paper, which sets out a clear objective of the Government in 2011 to be the first generation to leave the natural environment in a better state than it found it. That is absolutely clear and it lies behind everything that the Natural Capital Committee does. The Natural Capital Committee suggested that the way to do this was to draw up a 25-year environmental plan, and we suggested that pilots should be taken forward. At the 2010 election, all three of the then major parties supported the 25-year plan concept. Unfortunately, in 2017 only two of the parties did, and one of them neglected to put it in its manifesto. We now have a Secretary of State who is committed to producing that 25-year plan, and we at the Natural Capital Committee have given our advice on that.

In that advice we say that that 25-year environmental plan should be put on a statutory basis. Therefore, I envisage a natural capital Act, or something similar, which embeds the 25-year plan, in an analogous but not quite the same way as the Climate Change Act embeds the commitment to reduce emissions by 2050. Once you do that, you cascade down and ask yourself, "What would the architecture in institutional terms"—local authorities and the bodies that you are looking at—"look like to achieve that?" We advise clearly that this plan will never be achieved unless a single body is given the statutory duty to deliver that outcome: the improvement of natural capital. That leads one to think radically about the role of the Environment Agency in particular. We have no environment protection agency in Britain, for example, and much of the Environment Agency's work is taken up with floods, as well as a lot of production activities. Natural England has a different remit within that frame.

My approach to your question is to start by asking what the objective, the central purpose, of the policy is that you are trying to achieve? Once you set that out as an objective, what are the institutions that you need to achieve that? I would then subsume consideration of what you do with the NERC Act under that framework.

**Baroness Whitaker:** In that case, biodiversity might figure lower down in the hierarchy of obligations under a natural capital instrument.

**Dieter Helm:** It is hard to think about improving natural capital without improving biodiversity. It is an absolutely central part of it. The trouble with having the objective of biodiversity as currently pursued is that it is



not clear what it means. It is very hard to measure biodiversity as a concept, by the way. Do you think that biodiversity is doing very well in the current framework?

**Baroness Whitaker:** Personally, no.

**Dieter Helm:** We know—it is well plotted—that it is doing very badly. The response to that should be to observe that one reason why it is doing very badly is because it is already well down in the hierarchy. It is not actually right up top but in particular institutions, which are set within a framework that has lots of other things in play. I do not think that in a natural capital world we would downgrade biodiversity. We would upgrade it. It is very downgraded within the existing framework.

**Baroness Whitaker:** Thank you.

**Baroness Byford:** My question follows on from that. Obviously, we have the environment plan, which we have all had a chance to look at, but we are waiting for the food strategy policy to come out. Do you think that the two should go together or should they be separate? Clearly, there are overlaps in some instances.

**Dieter Helm:** We do not have a 25-year environment plan yet. We are promised one, and we have given advice on it. I have always been deeply concerned by the idea of two separate pillars: a farming plan and an environment plan. This to me is nonsense, because agricultural land is absolutely the critical part of natural capital and therefore the natural environment. What happens when you have two separate plans is that the lobbyists in each area pursue their own interests. Whatever view one takes about what should happen after the common agricultural policy, I find it hard to believe that anyone can think that it has been an environmental success. I can think of lots of reasons why it has been environmentally extremely damaging at times, particularly in its early period in the 1970s and into the 1980s. So I have always been clear that there should be an overarching 25-year environment plan, and agriculture is a crucial part of that. My understanding is that that is what the Secretary of State has said in effect, and I think he is absolutely right.

**Baroness Byford:** Thank you for the clarification.

Q62 **Lord Faulkner of Worcester:** You have written about the deep pockets of developers and how they can muster advice at inquiries and similar places that can often swamp the pro-environmental, pro-biodiversity experts. What can be done to help local authorities and other relevant public bodies to implement natural-capital accounting effectively at local level? Is there enough understanding of what is actually needed?

**Dieter Helm:** In a variety of areas in our economy where there are substantial economic rents to be gained from public policy, and therefore understandably deep vested interests, there is always the problem of who represents the public interest, particularly future generations' public interest. It is true in agriculture, because it is a subsidy-driven industry, so it is bound to powerful lobby groups. I make no criticism of them at all, but

they pursue those arguments and they have the resource to do so. It is true in energy, where there are very large-scale subsidies and now powerful lobby groups to pursue those interests. Again, I make no criticism of those bodies. It is also true in planning; the value of different designations of land to potential developers means that planning permission is a huge and binary one-nought—you either make a lot of money or you do not. The problem in all these cases is not that those people are representing those interests; it is that the public interest is not represented. The best advice and the highest fees, to advisers, to experts et cetera, are always paid by the people in receipt of these benefits.

So the question is: how do you lean into the wind of vested interests to make sure that this wider interest is taken into account? Here I have a number of thoughts, the first and most important of which is clearly statutory duties. That is why I think that the 25-year plan has to have a statutory frame. Then, it is not a question of bending the rules here and there; it is clear. We have not got to this in the Natural Capital Committee, but I have set this out in my book on natural capital: anyone who damages renewable natural capital should have to compensate for that damage. Once you embed the principle of compensation, the balance of these interests changes very substantially.

Finally, if you have these statutory duties and set up appropriate databases and so on, you have to resource this properly. The evidence is that we do not resource looking after our natural capital particularly well. Why? Because it is going down, and it has been going down for a substantial period of time. Also in that framework should be duties on companies to have proper asset registers in order to identify assets at risk under the normal accounting rules. All these things are ways in which you cut away some of the thicket of lobbying and expose the key component parts. From that basis you can start to apply the analysis et cetera.

Lots of areas of our economy have these problems. It is so serious here, because we have damage to our assets that will undermine the whole of our economic performance if we carry on as we are carrying on at the moment, not just in particular sectors—we had the example of soils and farming earlier—but more generally. This is not a sustainable path, and if it is not sustainable it will not be sustained, and we will suffer in economic growth and performance terms.

**The Earl of Caithness:** May I follow on from public authorities to the public themselves? It is very interesting to see how this debate and these discussions have evolved since you floated this idea some years ago. Natural capital has become a buzz word, but nobody really understands what it means. As politicians we have to sell it. Have you given the Secretary of State a format or an idea of how we can include it in the 25-year plan and how we are going to sell this to the public, because in some cases preserving biodiversity and the environment by following your process through will very much go against what local opinion wants? Given that we will be in a new era, giving compensation in the right places, this will cause a lot of antagonism. How do we get the message across to the

public?

**Dieter Helm:** There are quite a lot of component parts to this. The first is that natural capital is a hard concept in the way that sustainability is not. We have solved unsustainability by making the concept almost meaningless, so that everyone can say that anything they do is sustainable and then they tick the box. I am quite serious; sustainability is one of those really plastic concepts—nobody can be against it, but what counts as it? It is very hard to measure, if possible. Natural capital is a very hard concept. It is grounded in economics. It is about assets. It is about the asset state, the asset quality, capital maintenance. Take the soil example. There is soil, it is physically there, and you can assess the state of that asset. That is the first point.

The second point is that if you simply say that whenever people do not really care about natural capital—they care about something else in the short term—we should just sacrifice natural capital. Of course, you can be utilitarian and weigh everything up in the balance in a short-term maximising way, but you will damage the interests of future generations substantially and reduce their choices. Most of this stuff is not instant; it happens over time. We can see in a lot of other areas of our public life just how much damage we have done to the prospects not just of future generations but of the next generation compared with ours. So that is part of it.

The third point is that because we have degraded natural capital next to people so much, many people do not experience it, so they do not know what they are missing. I was horrified recently when I asked one of my students what they would say if no more swallows turned up in the summer. It was quite obvious to me that they did not know how to identify a swallow. That is a reflection of the fact that they have no experience of nature. Where that matters is next to people: city parks, green spaces for children, green-belt land right next to cities—all these core assets. We have kind of taken that away.

In the end, however, you are a politician and I am not. All I can say is that by taking natural capital seriously we will be better off in aggregate. Some people will not be able to do some of the things they want to do, others will have greater opportunities, but if you as politicians cannot persuade people to take their natural environment seriously, you at least have to look in the mirror and ask, “What am I promising my grandchildren will be here in Britain in 20, 25, 30 years’ time, that they will have left? And how exactly will they grow the food without the soils?”

These things are fundamental: education, accounting, hard principle and proper national reflection. We do this in other areas of our life, and I do not see why it cannot be done here. I would like to see it in the Budget Report—“This is what has happened to our natural capital over the last year. This is the economic outlook for the economy, taking account of what we have not maintained”—and taken forward.

I am very glad not to be a politician and to have to try to do what you have to do.

Q63 **The Countess of Mar:** My question is twofold. First, I have a supplementary question to ask. You have painted a terribly depressing picture of our loss of natural capital. Can we build it up again? Secondly, my main question is: do you think that the natural-capital approach would tend to enhance or weaken the protections afforded by current nature conservation legislation?

**Dieter Helm:** The scale of the opportunities out there is absolutely enormous. Our discussions so far have focused mainly on the fact that our natural capital is in decline, in some areas more than others, but the economic opportunities to improve this are very large, and many of them very practicable. Let us think of two or three. One is air quality in cities. We know what the economic detriment is. We know what it costs the health service, roughly. We know these kinds of numbers.

This is perfectly fixable. It is not as if sorting out the air quality outside this building is rocket science, just as it was not rocket science to clean up the big stink that made your predecessors have to leave this site. Observe the first thing: rivers and river catchments. There are phenomenal opportunities in river catchments to improve what is there. We currently pay the water companies to clean up the mess that goes into them, which is partly from agricultural land and which, regulated and subsidised, is completely separate from the way the water companies operate. Then we have the Environment Agency looking after flood defence as a completely separate activity. We have no catchment system plans or integrated approach to catchments. This is perfectly plausible and does not involve substantive greater costs.

You mentioned the agricultural example. We know what to do; farmers know how to maintain their soils. If they do not, we are in serious difficulty. This can be done. Take cities and imagination. In the 19th century, when we were much poorer, cities could think quite seriously about their infrastructure. In fact, many of the green spaces come from earlier decisions. We can do a great deal about urban greenness and improve the lot of people, particularly the most disadvantaged. It is not a Natural Capital Committee proposal, but I think we should toy with the idea that no child should be within X-hundred metres of a green space. That would put a lot of resources into creating such small environments in poor urban areas.

**The Countess of Mar:** You said no child. Did you mean every child?

**Dieter Helm:** Sorry, too many negatives. No child should not be within that distance. Those things can be done. This is why you need a national plan within which the local bits are set, which is the framework. Lots of this stuff is locally delivered by local authorities. I would have river catchment authorities within the framework. That is not a Natural Capital Committee view but my view. We can seriously get the institutions structured up to

deliver this. It is not very expensive. In many of these cases the benefits are much larger than the costs.

**The Countess of Mar:** Do you think that the natural capital approach would tend to enhance or weaken the protections afforded by current nature conservation legislation?

**Dieter Helm:** It would certainly improve them, because if you do not know what the state of the assets are, you are hardly likely to know when you are damaging them where their value-added is in making investments—so absolutely, yes.

Q64 **Baroness Byford:** May I move on to the next question, which is about the objectives and functions of Natural England? Before I do so, I refer back to the paper you gave us on the triennial review of the Environment Agency and Natural England. In it, you have clearly suggested that there could be a change of structure in what they do and how they do it. Particularly on the biodiversity side you recommend that a new body could be set up between those involved in SSSIs and the RSPB. My question is: if you are creating a new body, to whom will it be responsible, and what effect will it have on Natural England's current responsibilities?

**Dieter Helm:** When I wrote that paper, quite a long time ago, in the context of the triennial review of the Environment Agency and Natural England, this was pre natural capital discussions. The 25-year plan was not imagined at that stage. Broadly, I always start with the Environment Agency rather than Natural England, because it is so big and it has such a core responsibility. I have always been in favour of breaking up the Environment Agency. It is 10,000-plus people, it combines policy advisory functions with a large production activity—that is, flood defence management—prosecutions, and so on. I would start with a small, tight environmental protection agency that enforces the law. If you look across the environmental territory, particularly waste at the moment—fly-tipping, and so on—you will find that there is a real question about whether all this is enforced. It would be a small enforcement agency, and its chief executive would not be worried about whether they would have to appear on Sunday and deal with the flood, flying back from holiday or doing whatever they have to do to do that stuff. They would just focus on their core duty. This is what HMIP used to do. When the Environment Agency was set up, HMIP was a small protection agency only for, essentially, air quality. It was merged and then subsumed within the National Rivers Authority.

I would take the flood defence stuff away and put it in the catchment framework. Then you have to ask: who would look after the land in the broader sense? That is the body that I think—my committee did not take a view on this, so this is my view—is statutorily responsible for delivering the 25-year plan. Natural England in its current form is not resourced, designed or structured to do that. It could, but so could something else. That comes back to your concern with the NERC Act. That Act focused on a very narrow dimension of this problem and dealt with, in my view, the rearrangement of the deck chairs. If you go back through the Nature Conservancy Council, English Nature, Natural England, this has been a

saga of moving from one body to the next, and it has not been thought of within the framework of integrating our environmental policy.

If you have an Act of Parliament to entrench the 25-year plan that is analogous to the Climate Change Act, and you have a serious body that is independent of this to do environmental protection, prosecution and regulation properly, you then need a body to look after the delivery and to co-ordinate the functions with the local authorities, the NGOs and lots of other players out there. That is how I go about answering the question, rather than starting with Natural England and asking what I would do to tweak a power here or there. That is subsumed into the wider question of whether you really want a 25-year plan, whether you really mean it and whether you really want Parliament to commit to do this and hold people statutorily to account for delivering it in the way we have done on the climate change side.

**The Chairman:** Would this committee report to the Treasury, the Cabinet Office, or to Parliament?

**Dieter Helm:** Again, this is an analogy, because the Climate Change Committee is not quite the same. Climate change, dare I say it, is easy from a technical point of view; you just measure a small number of gases and it does not matter where they are emitted. In contrast, the natural environment and natural capital biodiversity are very location-specific, and there are a whole set of complexities about measuring them that are different from climate change. The Climate Change Committee reports to Parliament, as I understand these things—I am not an expert. It does not report to Defra, to BEIS or to the Treasury. If this is a parliamentary Act, it seems to me that this should be a stand-alone body and report essentially directly. I am not an expert on how to design agencies and rules, but independence matters a lot. As with the climate change committee, you have to have the power to say, “Your policies are not consistent with this. Either go back to Parliament and legislate to stop doing this, and give up on your 25-year plan, or here are the measures you would have to pursue”.

**Baroness Byford:** You would then have three different bodies to do the work that two are currently supposedly not doing as well as they might, in your view, and we have a blank sheet of paper on which we can start again.

**Dieter Helm:** No, I would have an environment protection agency and a body to deliver the 25-year plan.

**Baroness Byford:** That is statutory.

**Dieter Helm:** That is it.

**Baroness Byford:** But you are taking away flood protection to give to another bit and then taking away biodiversity to another bit, unless I have misunderstood you.

**Dieter Helm:** No, I would not take biodiversity anywhere else. On flood protection, I suggested that, as in the electricity system, we have a system operator—a national grid, although I question whether it should be a

national one—who is responsible for securing supplies of energy. I have in mind that in the catchments we would have a catchment system operator responsible for co-ordinating between the farmers, flood defence and the water activities and put out to tender the stuff that needs to be done. Effectively, that is what the Environment Agency does. It does not build flood defences; it goes out to companies to tender. I would do that in an integrated way. We have done a lot of work, and the pioneering in Carlisle shows that taking an integrated approach can be a much more cost-effective and environmentally benign way of protection from floods than what currently goes on on a short-term Treasury budget. I think we should do that anyway.

Of course, Ofwat's role would change quite a lot, because there are a lot of other bodies here, but I would treat river catchments as we treat the electricity system; you need a system operator to make sure that the thing adds up. So I would suggest two bodies, not three, and I would slim down the Environment Agency substantially. I do not understand how, even with the best-quality management you can conceive of, people are capable of managing simultaneously operations, emergency staff, regulation, prosecution and policy advice. The ambit which the board is supposed to control and operate across is just huge, and it is not surprising that there are questions about the consequences of that.

**The Chairman:** Just so that I am clear, are you saying that your new national rivers authority should be lots of little different bodies looking after individual catchments? There would be no national flood defence body, such as the NRA, which I thought was a good body.

**Dieter Helm:** Let me disagree with you; I thought it was a bad body. The NRA had 6,000 people, to start with. It was not a system operator and a co-ordinator; it was an organisation with lots of employees doing production jobs. I think one should be very careful about the distinction between what public bodies should do and what companies, organisations and contractors should do. The NRA was always essentially an amalgamation of little NRAs for each catchment. The co-ordination between dealing with the catchment of the Derwent and the catchment of the Thames or of the Itchen is zilch. We have no overarching body that makes Thames Water co-ordinate with Yorkshire Water, and there is no reason why we have to have the national co-ordination of flood defence. Floods happens in catchments, and each catchment is local. Local authorities have more claim to being part of this frame than some national organisation. That is slightly tangential to this, but it fits within the framework of the overall organisation and structure.

If you ask yourself what you want to achieve here, and if the answer is an overarching objective, as in the White Paper in 2011, to leave the natural environment in a better state and enhance its natural capital, then you ask what institutions you need in order to do that. My fear is that you say, "We've got this existing institutions. We've changed the question, but we're now going to try to get them together to do something different", and you inherit all the current characteristics of these organisations. You see it in

the natural capital territory; people think, “We’ll take this bit over and take that bit over”.

How well are the catchment pioneers going? Not as well as they could. An important reason for having a pilot is to learn lessons, and our observation and advice was that they are not going as well as they should because nobody is in charge of each one. No one is trying to say that it is their responsibility to deliver on the ground in Manchester, Cumbria, north Devon or elsewhere.

Q65 **The Earl of Arran:** You have already answered this question, but just to keep the Chairman happy I will quickly ask it again. What changes could be made to Natural England’s objectives and structure to improve how the natural environment is protected and valued?

**Dieter Helm:** My answer is that I would not start with that question; I would start with the top-level question and work back down.

Q66 **Baroness Parminter:** Can you share with us your views on the necessary changes to the governance arrangements for nature conservation and agriculture if you are going to deliver the 25-year plan? Is anything additional needed following Brexit?

**Dieter Helm:** The biggest issue for the natural environment post Brexit is what happens to the agricultural subsidies: who administers them and how they are taken forward. Again, in our advice to the Secretary of State, the Natural Capital Committee said quite a lot about what should come after the common agricultural policy, and we broadly endorsed the public goods for public money argument which the Treasury advanced back in 2005.

My own view is that, beyond that, we should build on farmers’ knowledge of what they have and encourage them to come forward with innovative ideas about how they can improve their natural capital and the natural environment. You can think of that as an auction without prices. In other words, you can say, “We’ve so much money available for these tasks. Bid, in the sense of come forward with proposals as to how that money could be spent on your farms and so on, and explain exactly what the benefits are going to be and what the measurable outcomes of that product will be”. I like a bottom-up farmer driven approach to this. Other people have a much more top-down view of how that should be done. All I can say very briefly is that urgent consideration should now be given not so much to what the money will be spent on in aggregate but to how it will be administered.

**The Chairman:** Have you given thought, post Brexit, to who keeps their finger on the Government’s environmental performance? At the moment, the Commission does quite a lot of that with regard to dirty beaches and so forth.

**Dieter Helm:** An environmental protection agency is incredibly important to who is enforcing this stuff and who is in charge of the regulation. If you are enforcing and in charge of the regulation, of course, you have a role in



giving advice on how that regulation should be changed over time. That would be my very tight environmental protection agency.

In the absence of the EU's framework, and even with the Bill incorporating all this stuff back into British law, someone has to be in charge of enforcing it. I do not believe that can be the Environment Agency. I think it does an extraordinary job for what it has been asked to do, but the really focused issue is the enforcement and ownership of the rules and the responsibility for them, and I just do not see anything like that in the current architecture. In the case of the Environment Agency, it is natural, particularly in a winter period and if you have heavy rainfall, that all the minds of the board and the key people are on floods. The question I always ask is, "How much time do you spend thinking about enforcement?" Of course, it just drags the resource in a particular direction.

**The Earl of Caithness:** There is an EPA in America, but it is not a powerful body. The body that you want here has to be one that can hold the Government to account.

**Dieter Helm:** Yes, but we do not even have the starting point for this, which is a clearly focused body just enforcing the law as we have it. When someone fly-tips on your land, who does what and with what resources? Who has the expertise to do this? What are the other calls on the resources that these people have? If someone suspects you of not declaring your proper VAT requirements, it is pretty clear what happens; there is a focus body that comes after you for that. In the environment and waste areas it is quite lax, and in the waste area what is happening is quite alarming.

**The Chairman:** It is 11.53 am. I was going to ask you one final question, but perhaps you can write to us about it. It is: what one recommendation would you like to see us make as a result of this?

**Dieter Helm:** Embedding the 25-year plan in a new statute, in line with my advice.

**The Chairman:** Right. Thank you, and thank you very much for a very interesting session.

## **Bishop of Hereford and Lord Bishop of St Albans - written evidence (NER0043)**

Response by The Rt Revd Dr Alan Smith, Lord Bishop of St Albans and The Rt Revd Richard Frith, Bishop of Hereford

Introduction:

The Bishop of St Albans responds as the lead Bishop on rural affairs in the House of Lords and on behalf of the Lords Spiritual. He also serves as the President of the Rural Coalition. The Bishop of Hereford responds as Chair of the Rural Affairs Group of the Church of England's General Synod.

1. This is a timely opportunity to examine the effectiveness of this legislation, given the importance of the provisions of this act in light of current Brexit negotiations. Comments are offered for the first three consultation questions.
2. The Commission for Rural Communities (CRC) had an important role primarily as adviser across government departments and related bodies. The advisory role was well expressed in the quality of the research, particularly that which explored the realities for rural residents. This qualitative research which often included the impact of policy on rural communities and people was extremely valuable. Despite the high quality of the research, it is clear that it was not always taken into consideration as seriously as needed by other government departments. This qualitative research base is missing from Defra's current research programme and although quarterly updating of quantitative statistics is useful for many, it does not go beyond a limited range of measures. Policy makers are missing out on grassroots experience and understanding which is having a detrimental impact on the quality and applicability of legislation (illustrated by repeated negative policy changes in affordable housing in rural areas).
3. There are many excellent university based research departments that could provide this qualitative evidence for Defra and other departments. We urge consideration to be given to Government finding appropriate ways of commissioning this sort of external and therefore independent research to support relevant rural policy making.
4. In terms of its advocacy and watchdog roles, CRC, like Defra subsequently, seemed not to be as effective as was and still is needed. The advocacy role relied too much on the skills, personality and working relationships of one individual. As such the role of Rural Advocate was not always listened to, and this had a similar impact on the watchdog role. CRC and the RCPU did not always seem to be informed of policy announcements in advance and were often trying to rural proof after the policy had been announced, something

that continues to be the case. For example it is obvious from the Department for Education revision to the schools funding formula that rural proofing had either not taken place or had not been applied effectively.

5. Organisations such as the Rural Coalition have sought to work with Defra and other Government departments to offer advice, relevant grassroots experience and related input. However, as they rightly operate independently of Government, they find it hard to make a difference early enough in the policy making process for the needs of rural communities and their residents to be adequately taken into consideration. Rural proofing must take place earlier in the policy cycle and we recommend that mandatory annual reporting is applied to all Government departments and bodies.
6. The watchdog role is missing currently as by definition it is difficult to have an independent watchdog across Government if Defra is trying to take on the function. Lord Cameron's 2015 report *Independent Rural Proofing: Implementation Review* made some critical recommendations for high level engagement by ministers and officials and to which Defra responded, with a promise to mainstreaming of the approach to the impact of policy on rural areas. We urge Defra to work with other Government departments to ensure that key staff have the seniority and experience to apply the relevant rural proofing guidance effectively.
7. To this end we would recommend that Defra make more use of recognised rural experts and academics to advise on the potential impact of proposed policies much earlier in the process, supply relevant examples of related good practice and challenge inaccuracies or assumptions. Bodies such as the Rural Coalition could carry out this role.

*11 September 2017*

## **Historic England – written evidence (NER0073)**

### **Rural advocacy and the Commission for Rural Communities**

Historic England is the Government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Digital, Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

Historic England welcomes the opportunity to submit evidence on the following questions:

**1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?**

Historic England's own Rural and Environmental Advice team work (on behalf of DCMS) with a wide range of rural stakeholders on a number of policy areas, including the Common Agricultural Policy, the RDPE and tourism. We are also responsible for rural-proofing Historic England's own work. Currently we are working with Defra, the CLA and NFU on revising and re-issuing our guidance on the reuse of traditional farm buildings. Our regional teams also collaborate with local authorities, communities and rural landowners on agri-environment, LEADER projects and rural regeneration projects more broadly. Following the Culture White Paper we have been particularly keen to get engagement on Heritage Action Zones.

**2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**

As above, whilst we still work closely with Defra on a number of policy issues of mutual interest (as summarised in our 2013 MoU with them), since the loss of their Rural Communities Policy Unit we have found it much harder to get engagement, or to gauge the strategic sense of direction.

**3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

Whilst we are strong advocates of local delivery – such an approach works best where there is an accessible and well understood framework and over-arching

leadership to give support and a sense of direction to local practitioners. With the loss of the Rural Communities Policy Unit we are not convinced that these important needs are currently being met.

## **Natural England**

### **4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

Although primary duties as set out in the NERC Act, there does not appear to be representation on landscape or access within Natural England's senior leadership. Similarly, landscape and access are not strongly represented amongst the board membership, which has experience predominantly in biology and ecology.

On a specific point, we highly valued Natural England's expert guidance, reports and evidence. These have however in many cases become inaccessible with the loss of the agency's website and the migration of content to GOV.UK. GOV.UK is an excellent platform for conducting transactions, and for finding out about broader policy. However, in the interests of transparency, clarity and accessibility, we believe that there is a good case for reviewing whether some of the lower level, more detailed content (practical guidance, detailed evidence etc) that Natural England was previously renowned for should once more be made available on a separate branded website.

### **5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

We would note that the UK has a long history of countryside protection, which in many cases predates EU membership (including milestones such as the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968). In addition, the broader international legal frameworks for conserving nature and landscape (such as the Council of Europe's Bern and Florence conventions) have been transposed into UK law and will remain in place when we leave the EU.

Brexit will nevertheless present many challenges, and we think that Natural England will have a vital role as a trusted expert adviser to Government.

### **6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

We have seen an increasing emphasis upon local delivery of access arrangements – notably by local authorities. Given the financial and other pressures under which some local authorities find themselves, this has led to fragmentation on the one hand and access being accorded a lower priority on

the other. The diminution of central funding and support for national trails in favour of local solutions – in our view – represents a particular challenge. In the context of the Hadrian’s Wall trail specifically we are concerned that this could have a detrimental impact upon the management of heritage assets, in this case of international significance.

### **Sustainability and biodiversity**

#### **7. Is the duty to ‘have regard’ to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

We have no comments to make.

#### **8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

Given the international context (principally the European Landscape Convention’s emphasis upon the cultural and the natural being indivisible), Natural England’s statutory remit in relation to landscape, and the Department for Digital, Culture, Media and Sport’s reciprocal interests in these areas, in our view, work on developing the ecosystem services and natural capital approaches as future frameworks or mechanisms for delivery should give more appropriate weighting to cultural services and values. With landscape effectively representing the “common currency” between the natural and the cultural, we also believe taking this approach would offer an opportunity for better integration, and for greater efficiencies.

#### **9. How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

We have no comments to offer.

### **The changing context since 2006**

#### **10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

As in our response to question 5 (above), the UK has a long history of domestic legislation in relation to the conservation of the environment (cultural and natural), and international legal frameworks (such as Council of Europe conventions) will remain in force when we leave the EU. We see no reason therefore to be pessimistic about the future prospects for these important considerations. On the contrary, in our view the approach taken by the EU to the protection of the wider environment often created a somewhat arbitrary and

artificial distinction between the cultural and the natural which we now have an opportunity to address and to improve upon domestically.

**11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

We have no comments to offer.

**Dr Vince Holyoak**

**Head of National Rural & Environmental Advice**

**Historic England**

*11 September 2017*

## **Historic Houses Association – written evidence (NER0057)**

1. Thank you for the opportunity to provide evidence to the Select Committee on the Natural Environment and Rural Communities Act 2006. The Historic Houses Association (HHA) represents more than 1,600 historic houses, castles and gardens in independent ownership across the UK. Member houses range from world-renowned tourist attractions such as Blenheim Palace, Highclere Castle, Castle Howard, Knebworth House and Burghley House, to more intimate houses such as Traquair in Scotland, Treowen in Wales and Belle Isle in Northern Ireland. Approximately 60 per cent are open to the public, either as day visitors or by appointment.
2. HHA Member houses attract over 24 million visits each year, contributing over £1 billion to the economy and generating the equivalent of 41,000 full time jobs, more often than not in rural areas. As tourist attractions, events venues and business hubs, HHA Members are vital linchpins for rural communities not only through secondary spend from visitors but also through procurement; annually HHA Members spend over £247 million a year with over 23,000 businesses across the UK.

### **Question 1: Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?**

3. There is a tendency to pigeon-hole rural issues as primarily related to farming and land management, but – while these are very important areas – many landowners are also diversifying their businesses through rural tourism and events, which are becoming increasingly important drivers of enterprise and employment in rural areas. The majority of HHA Member houses are situated in rural communities, creating employment opportunities both directly and indirectly as mentioned above. While there are organisations advocating for rural policy, advising those who live in rural areas, and acting as a 'watchdog' for the impact that legislation might have on rural regions, many of these seem to be outside of government. Given the increasing role of trade associations and other non-government bodies in fulfilling the former functions of the CRC, it is vitally important that DEFRA works collaboratively and inclusively with the full range of these organisations to ensure effective policy-making.

### **Question 2: Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**

4. At a national level, the HHA would like to see Defra develop the important work that it does to champion rural communities, but working in partnership with other departments – such as DCMS - will be essential. There is work



being done by the Government to develop individual policies that will be beneficial to rural communities, for example the continued work on the roll out of rural broadband. However, the Government should go further by ensuring that rural needs are considered across all legislation rather than solely rural-targeted schemes.

5. For example, while the HHA welcomes the work that is being done to develop tourism in the UK, both domestic and inbound, the key issues that impact rural tourism are not being addressed as part of the whole. There is still a lack of basic travel infrastructure and information-sharing between public transport and tourist destinations (the 'final mile' issue) that deters both domestic and inbound tourists from visiting rural attractions such as historic houses. As a result, many rural attractions do not feel the benefit of tourism schemes that might increase visitor numbers to the region but do nothing to improve physical connectivity. If rural needs were more central to the formation of tourism policy – i.e. tourism policy as a whole was 'rural-proofed' – there might be more central government investment in transport schemes that would increase visitor numbers and visitor spend in rural areas, invigorating many rural communities.
6. At a local level, many HHA Member houses find it difficult to engage with their LEP or DMO as: a/ many are located in the hinterland of towns and cities, not the urban centres where LEPs and DMOs tend to focus their engagement; and b/ there is not enough understanding about what less frequently open historic houses can contribute to the local tourism offer, as well as a reluctance to engage with popular attractions that are not open 300+ days a year. The HHA would welcome support from national government, perhaps Defra and DCMS working in tandem, to encourage LEPs and DMOs to engage fully with the full diversity of tourism attractions in their area. Such deep engagement would result in more vibrant business partnerships and more enticing rural tourism offers across the UK.

**Question 3: What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests – of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

7. The effective coordination of government departments to work together for the rural community remains a concern for many HHA Members, especially if they are rural tourism attractions open to the public. As noted above, many HHA Member houses are economic, social and cultural lynchpins in their local communities, providing jobs, supporting local suppliers and bringing in visitors who will spend money in local towns and villages. The HHA is concerned that there is not enough strategic communication between government departments, especially Defra and DCMS, to allow for really innovative tourism policy to be developed for the whole country – rural communities included.

8. An example of this is the delay in the publication of the long anticipated 'TD 52/04 – Traffic Signs to Tourist Attractions and Facilities in England – Tourist Signing: Trunk Roads'. This important guidance was initially expected by the end of 2016, but still has yet to be published. So-called brown signs remain a significant factor in rural tourism, and there is still confusion around which attractions qualify for these signs that have such wide public recognition. With the increase in domestic overnight stays, up 14% according to Visit Britain statistics, 'brown signs' are likely to become increasingly important. The HHA would urge Defra to work with other government departments, most notably the Department for Transport and DCMS, so that all stakeholders receive a clear briefing from the Brown Signs Working Group (DfT, Highways England, DCMS and Visit England) explaining the key changes to the guidance and how it will better support genuine tourism attractions, in line with Government's tourism strategy.

Polly Martin  
Policy Officer, Historic Houses Association

*11 September 2017*

**Institute for European Environmental Policy – oral evidence (QQ 168-176)**

Tuesday 28 November 2017

12 noon

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Earl of Caithness; Lord Cavendish of Furness; Lord Faulkner of Worcester; Countess of Mar; Baroness Parminter; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 20

Heard in Public

Questions 168 – 176

## Examination of witnesses

David Baldock and Martin Nesbit.

Q168 **The Chairman:** Good morning, gentlemen, and thank you both very much for coming to see us today to give evidence. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live on the parliamentary website. A transcript of the meeting will be taken and published on the Committee website and you will have the opportunity to make corrections to that transcript where necessary. Do you want to introduce yourselves or shall we go straight to the first question?

**David Baldock:** Thank you for inviting us. My name is David Baldock. I was for 18 years the director of the Institute for European Environmental Policy, which is an independent charity concerned with all aspects of the environment, although we take a lot of interest in rural affairs, including agricultural policy, as well as the environment per se. I am now a senior fellow. This is my colleague Martin Nesbit.

**Martin Nesbit:** I am director of the London office of the IEEP. Our executive director is now based in Brussels and the organisation is progressively becoming a Brussels-based organisation, for reasons that will be fairly obvious. I joined the IEEP about three years ago to head the environmental governance and climate programme. Before that, I was a civil servant for many years working in Defra and DECC, as well as briefly in the Foreign Office, on environmental and farming issues.

Q169 **The Chairman:** Thank you both very much. My first question is this. Michael Gove has indicated that he intends to consult on the creation of a new environmental body to hold government to account after the UK leaves the EU. How do you feel this body might be set up? What powers and duties should it have? Who should fund it, because he who pays the piper and all that? To whom should it report and what should its relationship be with the courts?

**David Baldock:** That is quite a few questions. I start by saying that we welcome that discussion. It is a moment of potential change in the institutional structures in the UK and a moment for thinking again and making sure that we can meet our ambitions. Specifically, we see the role of a new body as being at a high level, not duplicating the roles of the existing agencies, including the Environment Agency and Natural England in England, but rather being the curator of compliance and maintaining obligations that we have entered into.

I will break those functions down a bit and underline the key ones. The first function would be to receive reports on progress in implementing and taking forward environmental policy in a fairly rounded sense—meeting particular reporting requirements but going a bit further on how we deal with the challenges that arise as we go along.

The second function is resolving issues and providing advice on how they might be resolved. At the moment, for example, the European Commission

deals with potential derogations where they arise. That kind of thing could be covered instead by the new body. The body's role would also be to publish reports, to review legislation, to pursue complaints and to oversee free and accessible mechanisms for civil society, maintaining the avenues that civil society has, both as individuals and as groups, to play a role in implementation and to have an avenue for complaints in securing environmental justice. The body would be able to turn to the courts if it felt that that was necessary. Where there are issues of compliance, its main focus would be on compliance by government agencies and government departments with our existing obligations and whether we are meeting those, which is a bit like the way the Committee on Climate Change acts in that sector. In cases where there was lack of progress and there had been a proper discussion about why compliance was going wrong or the challenges had perhaps not been met, it would have recourse if necessary to the courts to take forward the issue. Alternatively, it could propose a parliamentary process and make a recommendation to either House of Parliament, including to Committees such as yours and the Environmental Audit Committee in the Commons.

In terms of its overall reporting, my view is that it should report to Parliament, not to the Environment Minister at Defra, so that it would have a genuine independence. We have interesting examples of this, such as the way in which the National Audit Office reports to the Environmental Audit Committee at the moment. That would be quite a workable relationship. I will hand over the Martin on the funding issues.

**Martin Nesbit:** I will start with a potential additional benefit of this kind of governance body, which is its usefulness in negotiations with the EU 27. One of the things that has been made clear in the EU 27's negotiating position on the UK's departure is that they are very opposed to the risks of environmental dumping and social dumping; in other words, the UK undercutting EU standards. Assuming that we get to some sort of agreement with the EU 27, there is likely to be a list of environmental obligations of some sort that the UK has to comply with. The UK being able to demonstrate that there is a credible monitoring and enforcement mechanism domestically within the UK might make it easier for the EU 27 to accept that there does not need to be an ECJ role in monitoring the implementation of those obligations. It could be similar, essentially, to the mechanism set up under the EEA. The body could be a natural interlocutor with the European Environment Agency, providing UK input to that body, which has members not just from the EU but from beyond it into the EEA, as well as Turkey, Switzerland and others.

On the question of funding, UK, European and global experience is littered with the corpses of environmental bodies set up in a flush of enthusiasm, and which are then progressively starved of funds as their advice to government became increasingly troublesome. In the UK, we have had the Sustainable Development Commission and the Royal Commission on Environmental Pollution, for example. The question of funding and the permanence of funding is important for the stability and credibility of an organisation like this. Some people have suggested that fines could be used

as an element of funding for this body. That is probably a bad avenue to pursue, because it creates a number of perverse incentives for the body; you risk not having sufficient confidence in the bona fides with which it brings cases forward and argues for fines. In any case, central government would be fined to fund a body that was otherwise being funded from central government funds; the Treasury would take notice of that and reduce the funding available from other sources as funds became available from fines.

There is no easy answer on funding. Clearly, permanence and predictability will be very important. My guess is that if the body is set up in a way that provides Environment Ministers from the various parts of the UK with a veto both over reductions to funding but also over the activities of the organisation, that could provide a greater degree of certainty over the future funding stream. But it is not an easy problem to resolve.

**Baroness Whitaker:** I appreciate your view that the arm's-length body could negotiate in Brussels. The Government already have expert arm's-length bodies that do that, but I do not think that any of them report to Parliament. I wondered whether the Executive might get a bit tetchy at the idea of a body negotiating the national interests that was not beholden to the Executive.

**Martin Nesbit:** To be clear, I was not suggesting that the body would negotiate with the EU. I was suggesting that if the EU 27 are convinced that the UK has credible monitoring and enforcement mechanisms, they might be more relaxed about what they demand from the UK Government in terms of compliance mechanisms.

**Baroness Whitaker:** And it could still report to Parliament.

**Martin Nesbit:** Yes. It would still report to Parliament. There is also potential value in this body taking part in discussions at European level on the evidence underlying policy-making; that is to say, having a role working with the European Environment Agency, which collects evidence on the state of the environment in the different parts of the EU and other countries in Europe and provides comparative information on the state of the environment and the performance of individual administrations. It is an evidence-gathering role rather than a policy-making role.

**Baroness Whitaker:** Understood. Thank you.

**Baroness Parminter:** You have been very clear about the functions of this body and the opportunities, but I am struggling with a sense of the model and scale, because you cannot answer the question about finance until there is some clarity about scale and interrelationships with others. You mentioned the Committee on Climate Change, and others have mentioned a body parallel to the Office for Budget Responsibility, for example—an office for environmental responsibility. Has work been done on a model for this body and the scale of this body?

**David Baldock:** I do not think there is a directly comparable body, and because of our departure from the EU we have a totally new and

unprecedented situation. We are trying to create a set of functions that essentially are done elsewhere at the moment, and bring them into a domestic setting in a way that works. We have to do that in an imaginative way and not be completely confined to tried and tested models, however desirable that is—and I accept that is better.

There are aspects of a number of bodies, which I think are interesting. The Committee on Climate Change, for example, has around about 30 staff of a high calibre and competence to review policy in the kind of way that we are talking about. It provides separate reports for England, Scotland, Wales and Northern Ireland, and retains the confidence of the devolved authorities in doing so, and it has quite a lot of credibility. It is that sort of gravitas and analytical detachment and a body not having its own political agenda that we seek. It would not have to be an absolutely massive body, with hundreds of staff, but it would need to be adequately resourced. Other bodies, such as the National Audit Office, have some functions that we could borrow from—and, again, they have the right kind of analytical capacities and independence.

**Martin Nesbit:** I would add that, if one of the roles of the organisation is to take receipt of complaints or concerns from individuals, NGOs and community groups, and investigating them, that role is not really carried out by the Committee on Climate Change, and it is quite difficult to predict in advance how popular that would be and how much work would be generated. That could be quite a significant element in the need for staff of the body.

**The Chairman:** Just to go back to Mr Nesbit's concept of the body giving the UK credibility with the EU 27, would that touch on the methodology and standards of production? How far into detail would you envisage the body going? Obviously, food is the example that we might mention here, but it could be other products as well.

**Martin Nesbit:** I would not expect it to get into the regulation of products, because UK manufacturers, producers and traders will simply have to comply with the product requirements set in EU legislation in order to export to the EU. However, the outcome of the negotiations might involve the 27 remaining members of the EU saying to the UK that they would like to see the UK continuing to implement air quality legislation, for example, and legislation on emissions from power stations and other combustion installations, or the UK continuing to apply elements of the water quality acquis, simply because they do not want the UK operating to a lower level of environmental standards and therefore imposing lower costs on their manufacturers.

At that point, assuming that the UK signs up to some of those areas of environmental commitment, either to the letter of European legislation or to targets set in European legislation, the monitoring body that we are talking about would be able to give the EU 27 some confidence that the UK had robust mechanisms to ensure that these obligations were going to be delivered in practice. It would be a bit like the EFTA monitoring mechanism

set up under the EEA, which replicates the work of the Commission in relation to the EFTA members of the EEA.

**David Baldock:** There is an interesting question about the scope. We have conceptualised it as a concern with environmental policy, because we are very dependent on such a large body of law for environmental policy, and it does not have a natural economic interest to support its implementation. However, you could argue about where the parameters of environmental policy lie and whether that encompasses food standards, for example. So there is an interesting boundaries issue.

**The Earl of Caithness:** Would you envisage that body also reporting to the Government that EU standards are dropping below UK standards, because the EU has followed us in animal welfare, and things like that?

**Martin Nesbit:** Yes, that is a very valid point. It is clearly the case that environmental legislation is not perfectly implemented in the UK, but then it is not perfectly implemented in other member states either. So to that extent there would be a kind of bilateral interest in the UK ensuring that there were credible mechanisms in the EU. My feeling would be that the Commission and the European Court of Justice provide quite robust mechanisms in the remaining parts of the EU, but I would guess that the UK would want to continue to monitor that and monitor EU 27 implementation of mutual commitments on the environment.

Q170 **The Countess of Mar:** As you know, environmental and agricultural policies are devolved matters in the UK, and parliamentarians have so far made differing suggestions about the relationship of a new environmental body to the devolved Administrations. What are your thoughts about those relationships?

**Martin Nesbit:** There are a number of options for how you set up this body. It could be set up either on an England-only basis, or on a more broad-based structure. I think that it would be more effective as a broad-based organisation covering all four parts of the UK, but it can be effective in doing that only if it has the whole-hearted support of the relevant Administrations in the different parts of the UK—where there are Administrations, which is not currently the case in Northern Ireland. It clearly requires a lot of discussion with devolved Administrations to establish that body. I guess that one approach would be to set it up in a way that it could have participation from the devolved Administrations but does not have to have participation from them. One of the roles that it could ultimately play is in avoiding environmental dumping between different parts of the UK, or avoiding challenges to the single market in the UK from the implementation of environmental or agricultural legislation in the different parts of the UK. That starts to get slightly more controversial, because it means that to some extent you are putting it above the political interests in the different Administrations, which might be a step too far. But it would be a useful role if you could secure the whole-hearted enthusiasm for that from different parties.



**David Baldock:** I would just add that there are examples of bodies that maintain the support of the four countries, such as the Committee on Climate Change and the JNCC, so it is possible. But we would not underestimate the importance of managing to secure that confidence and support. If that was not possible, one might look at having separate bodies in different parts of the UK, which would obviously be a different model.

Q171 **Lord Cavendish of Furness:** I have three related questions from the policy perspective. What opportunities and threats do you think Brexit brings not only for the environment but for agriculture and rural communities? Do you see a threat to upland communities heavily reliant on agricultural subsidy? How might we seek to sustain those communities following the end of the CAP?

**David Baldock:** How long do you have? On your first question about threats and opportunities, we produced a report a couple of years ago, prior to the referendum, in which we set out some of our thoughts on potential threats and opportunities.

On the opportunities, there is the chance for a reinvigoration of British thought, engagement and enthusiasm for environmental and agricultural policy, using our considerable resources, expertise and interests in those topics to get it right. There has been a certain amount of passivity and a reactive tendency, because so much has been taken forward at a European level. Over time, that could result in some fresh thinking and new ideas—and, of course, we can tailor our policy better to the different parts of the UK and different issues within the UK.

On the threat side, the difficulty is that most UK environmental policy has grown up in the European context, so we have become quite dependent on the expertise that lies behind that, and the EC pressure to comply with measures, not only here but in other member states, to make sure that things get done. It is not a self-sustaining machine all the time.

There is a danger, given the considerable worries about the economy, that we might select a more deregulatory approach which could be amplified as a result of trade agreements with countries that would like to export to us. We can think of many countries that would like a trade agreement with the UK, including America and Australia; they want to export livestock products. However, in some cases they have lower standards in terms of livestock and other products, so a new raft of potential threats arises from that direction.

Turning briefly to agriculture and rural communities, we have recently done a study considering scenarios for agricultural land use and the environment in the UK, which was paid for by the countryside agencies of the four countries. The scenarios had different outcomes, but one thing to emerge is that there were quite a few scenarios in which beef and sheep farmers in particular would be exposed to substantial pressures on income and reductions in their markets. Those pressures would be relatively rapid and farmers would find it potentially difficult to buffer changes in their situations. We do see that as a pressure point under quite a few scenarios;

not all, because in some we could see that prices might actually increase. Of course there is also a major concern about what the policy will be. For all its failings, the CAP has provided a substantial resource that, when used properly, has produced some positive outcomes in rural areas as well as some perverse ones. There is no certainty about how the Treasury will react in that situation.

I turn finally to the question about sustaining communities after the end of the CAP. We would see a need for measures to be applied in particular to the more extensive livestock systems. We need indigenous policies that are aimed at supporting high nature value farming. We might want to put more money into rural development in the uplands on things like rural abattoirs, marts and training support. These are areas that are under-invested in at the moment, along with a bit of support for local communities. We could have agri-environment schemes that have been adapted to upland situations quite well. We would not see a freeze on all upland land use as desirable. There is room for a more balanced set of different land uses, with not all of them based on agriculture. Some will be based around recreation and tourism, carbon sequestration and nature conservation.

**Lord Cavendish of Furness:** Is your thinking informed by the fact that our farmers have not really had an open market since long before the CAP? Really that has been the case since the Great War of 1914-18. We have had an artificial marketplace since then, so you could start with a fairly clean slate.

**David Baldock:** You could, although ironically the EU less favoured areas measure was negotiated by the UK and France. It was one of the UK's contributions to the CAP. We have always had a soft spot for supporting the hills. It is an area where we have not had a terribly free market for quite a long time.

**Martin Nesbit:** Perhaps I may add one point on the impact of potential future trade agreements. In a sense this is the big unknowable in terms of what happens on environmental and food standards. One can expect a lot of pressure to come from potential trade partners for the UK to accept, to some extent, lower standards in some areas. I think one of the governance questions that is potentially of interest to the Committee and Parliament is: what would be the role of policymakers in the devolved Administrations and Defra in ensuring that environment and agriculture policy interests were reflected in the UK's negotiating position on trade agreements? Clearly trade is a reserved matter, but some of the commitments that are potentially to be made in trade agreements would have significant implications for policy-making in environmental areas, which are devolved.

**Baroness Byford:** We have been talking about how payments are currently being made. The remit of this Committee is to look at Natural England and rural communities. Do you think that our current arrangements are about right? We know we have to agree to and comply with regulations, but some have suggested that fewer people are now going in for environmental schemes because they have become too

stringent and complicated. Do you share that thought?

**Martin Nesbit:** There is a fair amount of flexibility for the Administrations to design agri-environment schemes within the broad guidelines laid down by the legislation at European level and interpreted by the Commission. One challenge has always been concerns about the risk of disallowance, and therefore arguably a tendency to put more focus on farm businesses abiding by the absolute letter of what they have agreed to and ensuring that the schemes themselves are designed in ways that can be verified. To an extent that makes them structurally less flexible than they might be under a more flexibly designed domestic system. However, there is already a fair degree of flexibility in the legislation and some of the complexity for farm businesses comes from the need to ensure that we are actually generating public goods for payments. It is actually much easier to spend money through a direct payment mechanism on a per hectare basis than it is to spend money in order to secure specific outputs for the environment. There is almost inevitably a degree of complexity in agri-environment payments as compared with income support payments.

**David Baldock:** There is some concern about the low take-up of the scheme. Bearing in mind that we have not done any detailed work on this, my understanding is that there is the sort of complexity that Martin has been talking about, along with issues around the IT system. Farmers who I have spoken to feel that the barriers to entry have been accidentally raised rather than lowered during the current regime for the sort of reasons we have outlined. I think I am right in saying that we have a problem at the moment.

**The Earl of Arran:** Once we have left the European Union, do you think that the CAP will change across the rest of Europe?

**David Baldock:** Tomorrow we will see a communication from the Commission, in fact a proposal from DG Agri. Yes, I think that it will change. The kind of thing that they are talking about at the moment, which may or may not be adopted, is to pass considerable responsibility back to member states and to reduce the gap between Pillar 1 and Pillar 2, which would be a pretty large change if it came about.

**Martin Nesbit:** I would just add, having been the UK's negotiator on the EU Special Committee on Agriculture, that there were a number of things I thought everyone else would get significantly wrong if we had not been banging the drum in certain directions. One of those is coupled payments. I would expect to see significantly greater pressure from the remaining member states to have more capacity to make coupled payments, particularly in the livestock sectors. That has the potential to distort markets not only between the continuing member states of the continuing EU but also for UK exporters to those member states.

Q172 **Baroness Whitaker:** You have partly answered my question in your response to Lady Byford, but I will go into a bit more detail. To what extent does Natural England rely on the obligations contained in EU law in fulfilling its nature conservation objectives?

**David Baldock:** The general objective for Natural England is pretty broadly framed to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. That is an admirable aim but it is very broad. What has happened in practice is that EU nature conservation objectives, in particular those expressed in law rather than the aspirational ones, have resulted in giving Natural England a pretty strong framework for prioritising, organising and monitoring nature conservation activities. That framework in law, particularly the nature directives but others as well, has been pretty important in laying down how Natural England should set about meeting its general objectives. One can see a difference in how protection is applied to purely domestic SSSIs versus those which are protected under EU law. The latter are more stringently protected in various ways, along with the prioritisation of those sites. There are multiple impacts on both Natural England's priorities and its operations.

**Baroness Whitaker:** Would you say that EU obligations have helped Natural England to resource its biodiversity work? Obviously funding cuts have been a pressure, or do you think that they have proved to be a bit of a corset, so that the organisation has not been able to be as innovative as it might have been?

**David Baldock:** That is a good question but in some ways quite difficult to answer. Something that I felt happened when the Countryside Agency was effectively folded into Natural England was that landscape priorities, which generally speaking are not supported by EU targets or legislation, did not receive as much attention. That was not because anyone wished to neglect them or felt intellectually that they were inherently less important, but just because they were not underpinned by EU targets and requirements. They tended not to be at the forefront of Natural England's mind. The Countryside Agency was an admirably versatile and quite innovative organisation which would look at ways of piloting schemes. It relied mostly on national money so it was not, if you like, constrained by the rules of European money. I think that we have lost a certain agility and focus in that area. On the other hand, if one looks at the severe and continuing decline in biodiversity in the UK and indeed in other parts of Europe, the need for some fairly stringent measures and a serious effort to try to manage biodiversity better is clear. If Natural England had not had that European propulsion behind it, it would not have gone as far as it has in certain respects. Moreover, some of the cuts that have been imposed on the organisation, not through its own fault, might have gone further without those European obligations behind it.

Q173 **Baroness Parminter:** Following on from there, we have heard that in recent years Natural England has cut back on its data collection capacity in respect of the obligations imposed on it by European directives. Martin has talked about how the public will get environmental justice in the future. What is the scale of that issue? If there is no knowledge base, it is not going to be possible anyway. How can we ensure that the knowledge base on biodiversity is not diminished further so that the capacity to pursue

environmental justice can be achieved?

**Martin Nesbit:** That is clearly an important question. One of the impacts of any constraint or reduction in expenditure for a body is that it will tend to focus on its legal obligations rather than the nice-to-have elements of its remit. The extent to which the provision of credible evidence and data behind the responsibilities of Natural England or other bodies is written into its legislative remit is therefore important. However, I do not have any detailed suggestions to make on how that would be achieved, but it is clear that without the evidence it is difficult to develop policy in a credible way. Similarly, it is difficult for individual members of the public and public interest groups to challenge the ways in which policy is developed and implemented.

**David Baldock:** We would be inclined to argue that, should there be a new body of the kind that we talked about at the beginning of this session, it should have a remit to try to ensure that there is adequate monitoring, reporting and transparency. Indeed, it would be desirable to see more transparency and engagement than we have at the moment, particularly if there is to be more locally based participation in land management, which a lot of people see as being an important opportunity. As long as the reporting and transparency can ensure that everyone is fully informed so that no one goes off in diverse and undesirable directions, a new body could help to oversee that. There would be, if you like, an incentive at that level as well as one at a lower level. As has been said, we have seen evidence that Natural England, which to be frank is under very considerable financial pressure, has had to cut back on certain things, and has cut back on some of that monitoring.

**Baroness Byford:** Can I just ask a follow-up question? Evidence that we have heard suggests that some of the data coming in has been collected, if I may be forgiven for putting it like this, in a slightly informal way. There is no solid evidence of the sort of data that Lady Parminter suggested. If it is not there, how can it be drawn together?

**David Baldock:** One of the UK's great assets is our communities of naturalists and people who observe nature. I think that one has to accept that there are limits to how much money one is prepared to pay, but an organisation that is capable of bringing together work that is sometimes done informally as well as on a statutory basis would be helpful. It is also worth noting that a lot of European policy draws heavily on evidence coming from the UK and elsewhere. We have some of the best evidence of anywhere of how the natural environment works and on how interactions develop. The kind of work being done here, of which monitoring is a fundamental building block, will continue to be influential. However, it needs a body that can provide quality control and organise the data in a sufficiently rigorous way.

Q174 **The Earl of Arran:** We have heard that the biodiversity duty in the NERC Act lacks any bite or effect. Do you think that a duty on public authorities to report on how they have implemented the biodiversity duty could ensure the continuation and even possibly the widening of the reporting

obligations that are currently to be found in other EU countries?

**Martin Nesbit:** I will start by confessing that, although I was a director in Defra for several years, I was never particularly conscious that my department was under the duty imposed on it by Section 40. I suspect that perhaps one or two of the dozen or so people around the table at senior management meetings might have been aware of Section 40, but it was not something where people would say, "I had better think about our obligations under Section 40 of the NERC Act before making this decision". That is Defra. To some extent, of course, part of Defra's reason for being is precisely to deliver the biodiversity policy, but I would be surprised if officials at the head of HMRC, which obviously has a big impact on invasive alien species and border protection, or officials in most government ministries are aware of Section 40. I would also be surprised if most of the chief executives of local authorities are aware of it. It is a weakly phrased requirement, and therefore potentially ignorable, and therefore probably ignored by most of the bodies to which it applies.

A more rigorous duty to report on the biodiversity impacts of what an organisation is doing would be more valuable. Clearly we need to be careful about the number of reporting obligations on general interest topics that are imposed on bodies across public administration. There are already requirements on issues such as gender equality, disability and climate change, so you need to be mindful of that. One option would be to try to focus a reporting obligation on biodiversity on those organisations – particularly planning authorities – and central government agencies that are interested in it, by requiring the Secretary of State to set out a list of the bodies to which the duty would apply and to update that list on a regular basis. The Secretary of State's decisions would then themselves be justiciable as regards who the duty applies to, but you would avoid a situation where you are asking, for example, the Department for Work and Pensions to report regularly to Parliament on its biodiversity impacts, which would be nil.

**David Baldock:** Our colleagues who work specifically on biodiversity feel that such an obligation would work better if it had clear and reliable measures of biodiversity through appropriate metrics and referred to certain species and habitats, in particular those listed under Section 41 of the NERC Act. Their feeling is that an obligation would be more helpful if it were tied into something rather more concrete. However, neither of us works on this issue on a daily basis.

Q175 **The Earl of Caithness:** Can I focus on how government agencies implement their responsibilities? I think that Mr Nesbit will be able to shed some light on this. We have Natural England with its broad sweep of responsibilities. We have the Environment Agency and we have some very good and some very bad NGOs along with certain other environmental delivery bodies. Is the structure right or is this a good opportunity to have a rethink and then reorganise these responsibilities in a better way to implement the policy?

**Martin Nesbit:** Shall I start on this, and then David can correct me if I am wrong? Both Natural England and the Environment Agency have reasonably clear remits and a reasonably clear understanding of the division of responsibilities between them. In my experience, they are pretty good at talking to each other in areas where they have common interests or there is an element of overlap in their activities. That said, if the Secretary of State says that he wants to set up a new monitoring and governance body, almost of necessity that body would either take on some of the responsibilities of Natural England and the Environment Agency, or if not it would almost certainly take on some of their staff, because the expertise would be found largely in those two bodies. That in itself would probably trigger a need to think again about the structure of the two organisations. I am reluctant to say that because my experience is that restructuring within government for the delivery of efficiency savings almost invariably generates significant disbenefits in the early years of the new organisation and fails to deliver the efficiency benefits that were meant to be the positive in the restructuring. However, I think that in the current circumstances there is an inevitability about thinking again on Natural England and the Environment Agency.

**The Earl of Caithness:** Would you advise the Secretary of State that he ought to be thinking of a model such as that of the former HM Inspectorate of Pollution?

**Martin Nesbit:** Probably not, because I would say that HMIP was much more focused on large-scale industrial point-source emissions and less focused on some of the areas of responsibility of Natural England and the Environment Agency. The range of environmental legislation and policies has probably moved on a little since HMIP was folded into the Environment Agency.

**David Baldock:** There is bit of tension here. As Martin said, this is a good moment to reflect on what the different institutions do, as this is a watershed. We will have less external restraint than before. There will be new relationships between England, Scotland, Wales and Northern Ireland; considerable devolution will take place, which will change the world that we know. So it is sensible on that side. On the other side, with so many other things changing, including devolution, and with the uncertainty for farmers and people involved in nature conservation arising from how the Government will follow the withdrawal Act exactly, if you choose to change another thing that you do not need to change at the same time, you amplify that uncertainty. So if there were to be a new body of the sort that the Secretary of State is talking about, maybe it would make sense to make sure that there was a clear understanding of how the different institutions fitted together and a clear understanding of how the devolution settlement would work, including in marine areas, for example, and to think through how we get the institutional architecture for the UK right; but perhaps not to accelerate that process too rapidly. There are arguments other ways, but there are interconnections and trade-offs between which bits of the architecture you change and how rapidly.

**Lord Cavendish of Furness:** I would like to ask about something that has emerged from this session. From the papers that I have read, it seems that the Commission has been responsible for holding the British Government to account on environmental matters. This will now change and people ask what will take its place. Although I am a great age, I cannot remember what the arrangement was before we joined the EC for holding the Government to account.

**David Baldock:** What happened was that the Government were not held to account in the same way, to put it at its most basic. We did some pioneering things. Often the Government would have the powers to pursue a certain line of attack, such as reducing air pollution, but if they took a long time to do so and chose not to spend much money on it until the moment seemed right to some incoming Government, then it did not happen. There has been a certain pace and discipline about procedures since we joined the EU that was not there before.

**The Chairman:** To go back to Lord Caithness's question, Dieter Helm indicated to us that he felt that the whole flood defence side of the Environment Agency did not fit very well with the HMIP duties and that that ought to go back to Natural England. Have you thought about that?

**David Baldock:** I personally do not have a view on that, because we have not really looked at it and we try to be a bit evidence-based. Martin may be wiser.

**Martin Nesbit:** I doubt it. The honest answer to whether I have thought about that is no. I could start thinking about it on the hoof, but it probably would not—

Q176 **The Chairman:** You had better not think about it on the hoof. My final question is the same as to the last witnesses. If you had one wish for us to put into our report, what would it be?

**David Baldock:** A helpful recommendation, from our perspective, would probably be if you felt that there was a role for a new governance institution to support and oversee the implementation of policy and to give the UK some momentum and sense of forward direction in this area.

**The Chairman:** Mr Nesbit, would you support that? You are allowed a second one, if you wish.

**Martin Nesbit:** I am tempted to say that my recommendation would be, "Don't leave the European Union", but that would probably not be very helpful to the Committee. I would say instead that the long-term nature of environmental policy and commitments and the follow-through necessary to ensure that they are delivered have been helped to some extent by the relative lack of swiftness with which the European Union changes course on things. Once you leave the European Union, the UK system is not wholly dissimilar to that of Jacobin France moderated by a House of Peers; so the chances of rapid change in policy increase significantly. That could either be rapid change in the right direction or rapid change in, from an environmental perspective, the wrong direction. In either case, the mere



fact of chopping and changing policy and legislation makes it difficult both for businesses and for the delivery of environmental objectives. We need to bear in mind that fragility of the UK system outside the constraints of the European Union, and think about what sort of structures would make it easier to hold the Government to account on the delivery of promises that they make on environmental subjects.

**The Chairman:** With a degree of stability. Thank you both very much for coming to see us today. It was a very good evidence session.

## **Joint Nature Conservation Committee (JNCC) – written evidence (NER0039)**

**Submission by JNCC, 11<sup>th</sup> September 2017**

**JNCC has provided some consideration of the following questions:**

### **Sustainability and biodiversity**

**7. Is the duty to ‘have regard’ to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

This duty has provided opportunity to build on the increasing recognition of, and interest in, natural capital to establish biodiversity as a positive contribution to sustainable development. In this way ‘have regard’ can deliver positive outcomes to the bodies applying it rather than being seen to have potential negative implications.

Business has begun to contribute to the purpose of the NERC Act because of stakeholder demands, licence to operate and opportunity to increase market share through acceptable actions etc., rather than directly because of the duty, but the fact that the duty is there underpins those other reasons.

**8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

Developments in our understanding of the value of ecosystems and biodiversity allow us to promote the duty much more positively. In future, it will be important to create the natural partnerships between those taking action for biodiversity and the interests that receive benefits from biodiversity. These partnerships would significantly improve implementation of the duty.

### **The changing context since 2006**

**10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

UK-wide and international action in relation to nature conservation will continue to be needed once the UK has left the EU for the following reasons:

- UK-wide environmental standards and frameworks will be required to enable the UK to meet international obligations such as the Convention on Biological Diversity, the Convention on International Trade in Endangered Species and the OSPAR Convention.

- UK-wide standards provide a level playing field for industry and support the internal UK market and international trade deals.
- Coordination of activities within the UK is essential to deal effectively with issues such as climate change and air pollution that operate across national boundaries.
- UK-scale coordination is often the most cost-effective way of providing each government administration within the UK with robust environmental evidence (through economies of scale, avoiding duplication of effort and leveraging funding through partnerships).
- Brexit will provide new opportunities for the UK to show international leadership on environmental issues.

We therefore see a continuing need for JNCC although the organisation's role will need to evolve to take account of post-Brexit changes, as well as other factors including new policy approaches (such as natural capital) and new technologies.

*11 September 2017*

## **Peter Karner – written submission (NER0028)**

Natural Environment and Rural Communities Act 2006 (NERC)

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### **Written submission to the NERC Act 2006 Committee by Peter Karner**

**1.** This submission is confined to views on question 11:

#### ***The changing context since 2006***

*11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?*

**2. Summary**

The Committee is invited to consider if the Secretary of State at Defra is missing an opportunity to place an Order to prescribe a number of illegally used pesticides, under Section 43 of the NERC Act, as a contribution towards protecting wildlife.

**3. Introduction**

I am grateful to have the opportunity to provide my views on a specific part of the NERC Act to the Committee. These views are a personal submission and the views expressed are my own. I am not funded directly or indirectly by any government or non-government organisation.

**4.** I worked for Natural England and predecessor bodies for 33 years prior to my retirement in September 2016. I was a senior specialist in compliance and enforcement with particular responsibility for species issues. I worked on the Wildlife Incident Investigation Scheme (WIIS) for all of those 33 years and was technical lead in Natural England for the last two decades. The WIIS scheme makes enquiries into the death of wildlife and beneficial invertebrates where pesticides are thought to be involved.

**5. The Issue**

The evidence shows that England continues to have a problem with the abuse of pesticides. The raw data is to be found at:

<http://www.hse.gov.uk/pesticides/topics/reducing-environmental-impact/wildlife/wiis-quarterly-reports.htm>

This abuse of pesticides kills a number of birds of prey each year and is a contributory factor to the National Wildlife Crime Unit having raptor persecution as one of its national priorities. See:

<http://www.nwcu.police.uk/how-do-we-prioritise/priorities/raptor-persecution/>

6. It has been a privilege in my working life to participate in the Raptor Persecution Priority Delivery Group for England and Wales which takes forward the national priorities set by the UK Tasking and Co-ordination Group. The membership spans a wide range of countryside management, game, government, conservation and policing organisations. It strives for attitude and behaviour change such that raptors are not subjected to illegal activity.
7. Under the Act, Section 43 to 46 gives the Secretary of State the power to issue an **order** making it an offence to be in possession of a named pesticide or prescribed ingredient if it was necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm. No order has been placed.
8. For ease of reference, [Annex 1](#) provides extracts of the Defra Post-Legislative Scrutiny of the Natural Environment and Rural Communities Act 2006 relevant to Section 43 of the Act. [Annex 2](#) provides the “Explanatory Notes” provided with the legislation relevant to Section 43.
9. There is no “silver bullet” to resolve the issue of raptor persecution and solutions need to be found that reconcile the management of our countryside and the conservation of our biodiversity. Multiple measures are required and each organisation needs to make its contribution be it encouraging all members to be vigilant and to report incidents to the police, or influence all contacts and peer groups with rural interests to adhere exclusively to the legal options.
10. One contribution that the Secretary of State at Defra could make is the placing of an Order with an appropriate list of prescribed pesticides. The potential substances are well known and is likely to mirror the list implemented in Scotland in 2004. (In Scotland, a number of individuals have subsequently been prosecuted.)
11. Poisoning raptors with pesticides is illegal and no organisation condones such activities. Indeed, in written submissions to the Environmental Audit Committee examination of Wildlife Crime in 2012 a number of organisations supported the prescription of a list of pesticides including Royal Society for the Protection of Birds Written Evidence 16; Moorland Organisation Written Evidence 4.2; Countryside Alliance Written Evidence Summary; Northern England Raptor Forum Written Evidence Eighth Paragraph. This measure was recommended by the Environmental Audit Committee - Wildlife Crime - Third Report, see Paragraph 36.
12. The placing of an Order would be a welcome measure by many and is overdue since the enactment of the 2006 Act. It should be reconsidered.

### 13. **Looking forward**

*If we are to protect our precious natural environment for future generations*

*we need to do everything possible to influence those who might be considering acting in an illegal manner.*

14. This small but important step offers in my view an opportunity to specifically safeguard and enhance England's biodiversity.

Peter Karner

Independent Adviser

Annex 1

Memorandum to the Environment, Food and Rural Affairs Committee about the Natural Environment and Rural Communities Act 2006.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/632027/nerc-act-2006-post-legislative-scrutiny-9473-web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/632027/nerc-act-2006-post-legislative-scrutiny-9473-web.pdf)

41. Section 43 to 46 of the Act allowed the Secretary of State to issue an order making it an offence to be in possession of a named pesticide or prescribed ingredient if it was necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm. The Act allowed for enforcement powers to inspectors and regard to any relevant codes of practice.

78. Sections 43 to 46 have not been implemented in England as no pesticides have been identified.

85. To date, no orders have been issued in England making possession of any named pesticides an offence under section 43.

## Annex 2

NERC Act 2006 - Explanatory Notes

<http://www.legislation.gov.uk/ukpga/2006/16/notes>

### *Pesticides harmful to wildlife*

#### **Section 43: Possession of pesticides harmful to wildlife**

116. The Secretary of State may, by negative resolution order, prescribe those ingredients of pesticides that she believes could cause harm to wild birds and/or animals. An order under section 43 could be made in relation to several pesticide ingredients that have been linked with poisoned bait and that are known to be very dangerous to animals, in particular to birds of prey. It will be an offence to possess a pesticide containing a prescribed ingredient unless it can be shown that possession was for lawful use in accordance with relevant pesticide, biocide or poisons legislation.

117. Existing legislation in Part 1 of the Wildlife and Countryside Act 1981 already provides for an offence where it can be shown that a person has set or used a poisoned bait (sections 5(1)(a) and (b) and 11(2)(a) and (b)). However, in practice, it has been difficult to prove that the person set or used the bait, and so under the new section 43 offence it will not be necessary to show this.

118. A similar offence to that set out in section 43 has been introduced in Scotland by the Nature Conservation (Scotland) Act 2004.

119. The offence in section 43 is not inserted in the 1981 Act partly for reasons connected with enforcement powers. Section 43 needs to be read with section 44, which confers enforcement powers in connection with the new offence, including certain powers contained in Schedule 2 to the Food and Environment Protection Act 1985 (FEPA) that are available in connection with other provisions regulating pesticides.

*8 September 2017*

## **Kent County Council Public Rights of Way and Access Service – written evidence (NER0040)**

Dear Sir/ Madam

### **Select Committee on the Natural Environment and Rural Communities Act 2006 Call for Evidence**

I refer to the Select Committee on the Natural Environment and Rural Communities Act 2006 call for evidence, dead line 4pm Monday 11 September 2017. This reply is made by the Public Rights of Way and Access Service, Kent County Council.

In respect of the changing context since the introduction of the Act in 2006 and specifically question 11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

Sections 66 – 72 of the Act dealt with the extinguishment of unrecorded motor vehicle rights where not shown in a definitive map and statement or where shown as a footpath, bridleway or restricted byway.

A number of exceptions were set out including where a route was shown in a list required to be kept under section 36(6) of the Highways Act 1980 section 36(6) known as the List of Streets. This is a record of maintainable highways, not of highway rights. The additional scrutiny this record has been subject to as a result has exposed its limitations and the absence of a standard means of establishing, maintaining and amending it.

The provisions were narrow in their reach and unlikely to find universal approval with motor vehicle organisations or organisations dedicated to the protection of unsealed minor highways, in that:

- the provisions extinguished only unrecorded historic rights (subject to exceptions)
- the use of existing unsealed highways with motor vehicles was not addressed. It could be argued that this was the reason that the legislative change had been considered necessary.



Parliamentarians were lobbied at the consultation stages of the Deregulation Act 2015 on the subject of motor vehicle use of unsealed highways almost certainly as a consequence of failure to consider such use at the time of the Natural Environment and Rural Communities Act 2006.

The law of unintended consequences may apply. Anecdotally at least the extinguishment of un-recorded rights and the reclassification of Roads Used as Public Paths to Restricted Byway status (Countryside and Rights of Way Act 2000 section 47 – in force as from 2 May 2006) concentrated the recreational motor vehicle use of unsealed routes on a considerably shorter network. Even if the number of recreational motor vehicle users has not increased, what use there is, is now limited to a shorter network.

The outcome is greater use of the remaining unsealed motor vehicle network and inevitably greater levels of wear and tear as a result. While we believe that a blanket approach to the management of unsealed motor vehicle network is not appropriate and that existing powers and duties in respect maintenance and regulation provide a sufficient range of management options these must be properly resourced.

While not a National Park Authority we would also point out that the extension of powers to make Traffic Regulation Orders under section 72 of the Act it failed to extend the powers in section 92 of the Road Traffic Regulation Act 1984 section 92 and as a result limited the ability of National Parks Authorities to effectively enforce Traffic Regulation Orders should they be made.

Yours faithfully

Graham Rusling, Public Rights of Way and Access Service Manager

*11 September 2017*

## **Kent Downs AONB Unit and Dr Nigel Stone – oral evidence (QQ 25-30)**

Tuesday 10 October 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Earl of Caithness; Lord Faulkner of Worcester; Countess of Mar; Baroness Whitaker.

Evidence Session No. 4

Heard in Public

Questions 25 - 30

## Examination of witnesses

Nick Johannsen and Dr Nigel Stone.

Q25 **The Chairman:** Good morning, gentlemen. Thank you very much for coming to see us and for volunteering, if that is the right word, to give evidence to us today. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live, via the parliamentary website, and a transcript of the meeting will be taken and published on the Committee website. You will have the opportunity to make corrections to that transcript where necessary. Thank you very much. I do not know whether either of you wants to introduce yourself for the record and say anything, by way of general introduction, that is unlikely to come up in the questions, but please feel free to do so.

**Dr Nigel Stone:** I am Nigel Stone. I retired at the end of March as chief executive of Exmoor National Park Authority, so I am not here in any official guise; I am here with a personal interest, particularly from that experience. I was 17 years at Exmoor, so I have that experience.

I currently still chair the South West Uplands Network, which brings together farming and environmental interests in Dartmoor, Exmoor and Bodmin Moor. I have been doing some research on farmer attitudes to funding after Brexit, focused on Exmoor farmers, with the University of Exeter Centre for Rural Policy Research, so I have kept my involvement.

**Nick Johannsen:** Good morning. I am Nick Johannsen; I am the director at the Kent Downs Area of Outstanding Natural Beauty. I will do my utmost to try to speak for other AONBs as well. Thank you for forwarding some questions. I have been speaking to my colleagues across the AONBs in England to try to generate a series of answers that come from a group of AONBs, not just from Kent Downs' perspective, but I may need to draw on Kent Downs' examples.

**The Chairman:** Thank you very much. Perhaps I could start with the first question, which is to ask you about your general experience of working with Natural England and the extent to which the budget cuts for Natural England have affected its ability to engage in work or partnership, or even deliver its core objectives, as far as the landscape side of it is concerned.

**Nick Johannsen:** With regards to my experience, I have worked as a Director of an area of outstanding natural beauty with Natural England since its inception. To begin with, it was our funding partner. Since then that has been moved to Defra. I also worked with the predecessor organisations, the Countryside Agency, Countryside Commission and English Nature.

To start with, it is worth saying that we see Natural England as taking a really important and significant role in supporting all the objectives that the NERC Act seeks of it. We see all those objectives as being very important but, as you point out, there have been significant cuts, which I understand are 60% of the funding and 50% of the staff. In speaking to

my colleagues, I think the response to that is mixed. We have seen a loss of many staff, we have seen a loss of experience, but we still see good partnership work going on and there are examples brought to my attention where work is going on very well.

We think, with regards to the landscape, access, education and understanding, perhaps with the exception of the coast path on access, there has been a reduction in focus. The focus has been more on the biodiversity function. That is seen across the board.

More specifically at an individual AONB level, we have the Joint Advisory Committees of the local authorities, which provide overarching governance and direction. The Countryside and Rights of Way Act places responsibilities on all local authorities with areas in the AONBs. There are simply fewer Natural England staff attending those. Sometimes there is less seniority. A national champion banging the drum for a nationally important landscape is so vital for health, well-being, the economy—all the amazing attributes of these AONBs. Perhaps there is a move to being a little too local. It is important to have a national advocate being clear, when there is a local debate, that this is a national landscape and a national asset. That kind of engagement is really important.

I talked a bit about access. Early on in Natural England's days, we saw some really innovative and good work going on around the access issue. Again, that has declined with the access focus on the England coast path. We have seen proposed reductions to National Trail funding and that kind of thing. In the early days, there was some really good, innovative access, engagement and education work, and we have seen a decline in that.

**Dr Nigel Stone:** My experience is very similar. It was not that long ago when Natural England was very proactive at the regional level within England at bringing people and partners together, right across its remit. We appreciated the ability to make a contribution towards that. In more recent times, they have had to focus effort and resources at the local level on biodiversity and particularly the administration of agri-environment schemes. I understand there are real challenges there too, particularly with the new countryside stewardship, IT problems and so on.

The other more recent contact, just before I left and ongoing, has been the England coast path, part of which goes through Exmoor. On those very specific topics, where they clearly have a statutory function, they are doing their best to implement that and doing it very effectively. We might come on to boundaries later, but my colleagues up in the north, with the lakes and dales extensions, were very positive about the role that Natural England played in delivering the very complex job of extending those two national parks.

There were other things that they had much more influence on in the past. In particular, I was very involved in the local enterprise partnership for Devon and Somerset. In the past, they would have had an engagement with that kind of body, but it is quite a modest or almost non-existent engagement now. They are involved in the South West Uplands Network,

so we have an officer from Natural England who contributes to those discussions. That again is useful, because we need that insight into what the thinking is in government and in Defra, as well as in Natural England.

I would just echo the point that Nick made about innovation and risk. It seems there is no capacity now for innovation and risk unless it is focused on a very specific action around biodiversity conservation. We will touch on some of the elements later when we talk about the social and economic well-being aspects, but in the past we would have backing if the national parks were taking some innovative approaches to that. There is really nobody now to talk to about new approaches. It has had a significant impact.

**Lord Faulkner of Worcester:** What you are both saying is consistent with quite a lot of the written evidence that we have already received. For example, one AONB has said that, as a result of significant staff downsizing at Natural England, it has lost much of its landscape expertise that it had inherited from the Countryside Agency. "The retention of wildlife staff appears to be at the expense of landscape staff". Would you agree with that? Do you think enough priority is given to both those objectives: landscape conservation and biodiversity?

**Dr Nigel Stone:** It is very interesting that it talks about landscape. "Landscape" appears a lot, but it usually has the word "scale" after it. Landscape scale is a different thing from landscape. They are talking about resilient landscapes for biodiversity and wildlife, which is an important aspect. I am not detracting from that, but it is not the same as an appreciation of landscape. They certainly have a very small team focusing on landscape, as I understand it. I believe a lot of their effort has been on High Speed 2 rail and its impact. That affects their capacity to engage more widely, despite the considerable pressures on the wider countryside.

The other thing is the feeling that the majority of Natural England's staff probably do not feel very qualified to talk about landscape. There is that notion of aesthetics that comes into a discussion about landscape, and they feel they are starting to get on to unsafe ground there even though, among landscape professionals, there is a clear worked-out approach to how one monitors quality and landscape change.

**Lord Faulkner of Worcester:** Do they not have access to the right levels of expertise, even if they are not directly employed?

**Dr Nigel Stone:** It is a capacity issue. I do not have the same confidence that I would get engagement on landscape impact now as I would have done in the past.

**Nick Johannsen:** I completely agree with the points made. There is this issue of being clear about the difference between landscape operating at a scale, which is often about doing biodiversity work at a larger scale in response to the science, and taking a landscape approach, which is an integrated approach of all the components that make up landscape,

including biodiversity of course. Biodiversity is a component of landscape character and quality.

There are two points I would add. The recent conservation strategy is written with an understanding of landscape. Natural England also took forward national character area work, which is written with an understanding of landscape. Nigel's point is about confidence and the understanding of that across the board. Inevitably there are people who work on and whose experience is in the needs of a particular plant or bird at a species level. The point that there are hard-nosed ways to discuss, describe and ensure that landscape is treated properly is perhaps misunderstood. With biodiversity you can count the number of birds or how many plants. That feels more scientific and rigorous, but there are rigorous ways to deal with landscape matters. As Nigel said, they can be deployed.

**The Countess of Mar:** This question is specifically for Mr Johannsen. Is Natural England able to fulfil its duty to provide advice on planning applications and developments within the AONBs? Are its responses to planning consultations informed by local knowledge and understanding? We have had evidence that people feel that Natural England does not have enough feet on the ground and that, very often, it will only intervene in a planning application if it is something to do with crested newts or bats, and not much else. What is your impression?

**Nick Johannsen:** I do not think it is that simple. Crested newts are always mentioned, are they not? In opening, from a protected landscape perspective, it is not just within the protected landscape that planning issues matter, but also within their setting. That has been worked through in guidance and in planning decisions. I am probably not saying anything that you are not fully aware of, but planning is an important lever to achieve conservation enhancement of the landscape. Planning really matters.

We try to engage, as do the parks differently, in policy and development management advice. Both of those areas are really important. Again, there is a mixed response, but the overwhelming experience is that there is less advice being provided and, quite often, there is a reliance on standing advice. That is much less informed. There is a central planning hub.

This is about capacity. We understand this and we have enormous sympathy for these issues. Natural England are trying to respond in the best way they can, but there are a lot of planning applications going on and a lot of policies to influence. Standing advice is a helpful way to do that, but they do not have that local knowledge. Standing advice might have been supplied in cases where we are talking about quite significant development proposals. Our experience, and the experience across the AONBs, is that advice is more freely provided in respect of nature conservation and less so with regards to landscape.

However, where landscape advice is provided, our experience is that it is done well and Natural England can be very influential with regards to landscape. Where they provide advice, it is good and is based on site visits

and local knowledge. There is an ability organisationally to do that. The problem is one of capacity and feeding in.

There is a point that several of my colleagues asked me to make, which is a slightly technical one. Natural England is the statutory adviser on landscape. AONB partnerships and units are not statutory advisers; we provide advice, but Natural England's advice is valued over ours. There can be confusion where advice is given such as: "No objection on biodiversity matters and please refer to the local AONB unit for landscape matters". That can be taken in a hurried, pressurised planning department as "no objection". That can be misunderstood and can potentially undermine the AONB unit's advice, which is after all non-statutory. It is quite a technical point about how standing advice is offered, but it can really matter in terms of how Natural England's advice is understood by planning officers and members.

**Q26 The Chairman:** I was going to turn now to the duty in the NERC Act to have regard to biodiversity, which largely applies to local authorities. I was just wondering whether it has had any effect on the level of biodiversity in England and how effectively local authorities and other public authorities, including national park authorities, have discharged this duty.

**Dr Nigel Stone:** That is a very interesting question. I do not think anybody is looking, are they? Nobody is monitoring it or looking for examples. The aspiration and intention are clear and positive, but how do they come into practice? I think the question was particularly asked around national park authorities. Well, national park authorities already have a duty around conservation of natural beauty, wildlife and cultural heritage. Basically, the national park authorities are very actively engaged, often with Natural England, around biodiversity conservation as part of their statutory role.

**The Chairman:** Do you have to report on measurements and factors of biodiversity within your national parks? You are really saying that no one is measuring, no one is looking and no one is questioning what local authorities are doing. Therefore, they are ignoring it.

**Dr Nigel Stone:** The condition of SSSIs is probably the closest you will come to monitoring the state of biodiversity, and that is not a particular duty on national parks or national park authorities; it is something Natural England does across the piece. As far as I am aware, it is pretty rare for local authorities to be challenged under this duty. I do not know if you have any examples.

**Nick Johansen:** No, I think you are right. The point you made, Lord Chairman, was about whether it is measured. Duties are interesting things. I remember sitting with a QC in a public inquiry who saw the CROW Act duty and his eyes lit up, thinking, "This is positive. This is about making positive change. It is not about thinking about what we might do and discarding it". Duties can be applied differently, but they can also be seen as passive and something that might be discarded quite easily. I understand that the Countryside Agency were considering how they might monitor the CROW Act duty for AONBs, and then we moved to Natural

England and things changed. I am not saying that Natural England were not considering that but, if there were a monitoring regime against a duty, it might be taken more seriously.

The duty is potentially very powerful. It is across statutory undertakers, across government and across public bodies. If all those organisations took it seriously and acted positively against the duty, it could achieve a massive change. Our experience from trying to act positively with the duty for AONBs is that you can do good things on the back of a duty, but it needs consistent energy and consistent drive, reminding people of the duty and seeing positive ways to try to deliver that. Whether there is capacity to do that is an absolutely moot point. There are very good examples of documents evidencing how duties can be applied positively.

**Baroness Whitaker:** Do you think local authorities get biodiversity easily enough? They are beset by other pressures: housebuilding, infrastructure building. It is not an easy balance to strike. Do you think they have clear enough guidance about how to strike that balance?

**Dr Nigel Stone:** In my personal view, I do not think they give it much regard at all. I am seeing it all over. We are not talking about a major pressure point being Somerset and Devon, but in developments right across Somerset and Devon I see what are classified as brownfield sites. Because they have not had any active management, very often they become little islands of biodiversity by default, but they are not designated in any way. That wider countryside and those little rough patches are being completely annihilated by new development, completely scorched earth, clearing everything, way beyond what you would need to clear. Then everything ends up in a big pile being set alight to, in a middle of a barren patch, before they start building houses on it. I do not think very much regard is given at all.

There is paranoia about whether there might have been a few dormice there that somebody knows about, or some newts or bats. Then they will do what is required. They often will ask for bat surveys and those kinds of things but, ultimately, unless it is a particular protected species, the wider biodiversity richness within our landscape is often sacrificed in the name of more houses or whatever it may be.

In my view, you can develop in a way that integrates biodiversity and, in fact, look for win-wins. I had all those arguments at the local enterprise partnership about trying to link a green infrastructure plan with what I used to call their grey infrastructure plan. They had all the grey infrastructure going in, all the roads and the buildings, but let us put a bit of green infrastructure in at the same time. It was an uphill struggle to get them seeing that. You can tell I am fairly passionate about this. I do not think there is a great deal of regard for biodiversity in practice.

**The Countess of Mar:** I am interested in the words “duty to have regard to” in a completely different judicial context. There was a requirement; there was a duty to have regard to, and this was interpreted as, “Yes, I have looked at it and I am going to do nothing about it”. They have had



regard to it, but they are going to do nothing about it. Does this term need strengthening in order to give it proper effect, as has been done in Wales and Scotland?

**Dr Nigel Stone:** It is interesting. One could probably do that. Again, it is that notion of being challenged. Ultimately, if you have mentioned it in your report and seen nothing of significance, if they say, "There is nothing particularly rare on this site", you do not have to pay it much attention beyond that. You have had regard. If you have a "requirement to further", it might be a way of trying to get that green alongside the grey, in terms of saying, "We are still looking to do a development in this area, but we will look at ways to enhance, not just replace, the biodiversity that is here".

**Nick Johannsen:** May I just add to the points made, with which I agree? It feels quite passive and relatively easily disregarded. Monitoring and measuring would help, but a stronger duty would also help. If there is a consideration of other duties, one might consider the other duties, particularly with AONBs and national parks, because they have the same potentially passive interpretation.

**The Chairman:** You are specifically talking about landscape here, I presume, in terms of other duties.

**Nick Johannsen:** Under the CROW Act, there is a duty in Section 85 to have regard to the purposes of areas of outstanding natural beauty. Nigel, help me on the national park provision.

**Dr Nigel Stone:** It goes right back to the National Parks and Access to the Countryside Act, where there is a duty to have regard to national park purposes. At various times, there was a perception that that was pretty weak. In other words, you could say, "We have thought about it", particularly in terms of development affecting the setting of a National Park. It might be something just outside the park that could have a big impact inside. You ought to have regard to that impact. Sometimes that was done, but not always.

Q27 **Baroness Whitaker:** Mr Johannsen, you referred to a reduction in focus on public access by Natural England. I would like to ask specifically whether the current framework of environmental law and the work of Natural England and its partners strike the right balance between public access and promoting conservation. I ask that in the context that we are the fifth largest economy in the world, but we are very far from being the fifth healthiest, the fifth with the most well-being or the fifth happiest, yet we arguably have one of the most beautiful landscapes in the world, which could obviously enhance health and well-being.

**Nick Johannsen:** I am entirely with you on those points.

**Baroness Whitaker:** How is it working out?

**Nick Johannsen:** I am assuming the question is about biodiversity conservation with regards to access. We are talking about that part of conservation. There is an important point, which you sort of made, that

access to the natural environment is a really important component of its future conservation and enhancement. If people do not recognise and value these places, if they have not experienced them, often at a young age—and it matters that it is a young age, the science tells us—you will never 'get it'. You will never have that health and well-being, so it really is important to promote access.

**Baroness Whitaker:** Do you mean that there need not be a tension?

**Nick Johannsen:** Apologies, I am coming to that. That said, there are occasions where there is tension between access, conservation of the components of landscape and biodiversity conservation. The protected landscapes are very sensitive, and high-levels of access activities can impact on that. Species and habitats are often very sensitive to the impact of access, so there is a tension at play. The wider point is that it matters that people have access to natural places.

My understanding of the environmental law framework is pretty much around the habitat species regulations and Sites of Special Scientific Interest. I understand that those are the places where environmental law might be brought to bear, with regard to conflicts about access. I am not aware of others. There is experience, not my direct experience, of habitat regulations recognising that a new development will create new access and that will have an impact, and significant new investments being made to mitigate that impact.

That can be quite effective, but I understand that it is only in those places that there is a legal framework to deal with the tension between access and conservation. Elsewhere, it is generally a management arrangement between landowners, land managers, organisations like mine and Natural England, local access authorities, public rights of way teams and that kind of stuff. Often those tensions are recognised, but they are managed outside the framework of law in a practical way to try to address the issues.

A point I would like to make, which you raised, is that we are moving into a different place. From a south-east perspective, the trajectory of growth is quite astonishing. London adds a Birmingham every 10 years. I have some figures that the London city region, which we are thinking about conceptually, is due to grow from 12 million to 20 million in 25 years, in the period of the environment plan. By 2031, my own county will have 21% more houses and 17% more people. That is currently, and in advance of the consultation on *Planning for the Right Homes in the Right Places*, which uplifts those substantially.

As we look ahead, we need to think really hard and have arrangements. There are problems between access and conservation but, with the sheer trajectory of growth, we need to look harder at how we balance those matters, and how we invest in landscape and conservation to provide the health, well-being and quality of life that these places offer, given this extraordinary growth trajectory. It is going to be hard to deal with, and it will be really important to get our biodiversity areas and our fine landscapes—all our landscapes—properly conserved and enhanced.

**The Chairman:** If you say that it is about management arrangements, possibly outside the structure of the law, have either of you ever run access training for land managers? I am totally with you on that. I think you can create access without disturbing other land operations in any form, whatever they may be, if you manage the access. You need to think about it and work it out. I just wonder whether you have ever been involved. To get this step change that you talk about in the south-east, that is going to be more and more important.

**Nick Johannsen:** Yes, I agree on a practical level, not necessarily through training, but through practical investments in landscape management and engagement. The Kent Downs have this extraordinary landscape with major urban areas all around it. There are well over 1 million people within a kilometre of our boundary, and parts of the AONB have really difficult urban fringe matters. We have had to engage with quite hard measures, involving police and seizure of vehicles. We have an innovative partnership called Securing the Landscape, which is landowners, police and communities engaging to overcome illegal and inappropriate access. Landowners had withdrawn from land management; people had withdrawn from accessing the countryside for pleasure, other than the pleasure of tearing around in a 4x4. By intervening, we have made a step change there, but it is a lot of money, effort and engagement. To do it well, you need resource and time.

**Baroness Whitaker:** This is just a quick supplementary: should more be done by the state?

**Nick Johannsen:** Yes.

**Baroness Whitaker:** We can explore that later.

**Dr Nigel Stone:** Very briefly, there are lots of good examples of national nature reserves and those kinds of places with high biodiversity value, where you have well managed access. People have visual access and that obviously enhances their enjoyment greatly. People like to see wildlife when it is there. One of my little things is that it is not the people necessarily but the dogs they bring with them that are the issue. It is managing access but maintaining that, so that people can still enjoy having their dogs with them, but containing those dogs in some way. There is a lovely bit of saltmarsh on the coast of Exmoor, which has access almost willy-nilly. People wandering around is one thing, but dogs are chasing around the saltmarsh, putting up the birds and everything else. Unfettered and uncontrolled access means it should be managed better. There is definitely a tension.

I am not sure and do not have any examples but, in relation to the England coast path—and I guess they also have experience of this in Wales—there must be some places where access is being provided that was not there before. It would be interesting to know whether the right level of consideration is given to biodiversity impacts as that project is being unwound.

**Nick Johannsen:** I can help. The England coast path is a really good example of how Natural England can deliver access. On the coast there are many areas that have high biodiversity and landscape value, and I know that very serious consideration is being given to that matter. Also with regard to the England coast path, we need to look to its future maintenance. While it is being created, there are more questions about how it is going to be maintained to the very high standards of the National Trails. There are quite a lot of questions around that.

**The Earl of Caithness:** Following up your answer to Baroness Whitaker's supplementary, could you write to us as to why you think the state ought to be more involved, the reasons for it and how that would actually work? That would be helpful.

Following up Dr Stone's point on dogs, let us take an extreme example. I was in Richmond Park at the weekend, and I would not want to be a deer in Richmond Park at the moment for the crass behaviour of individuals, dogs and children. Do you have the power to prevent access to rights of way for periods, in order to regenerate or preserve species, at the moment, or would you like that power?

**Dr Nigel Stone:** In the majority of cases, dogs are intended to be under close control. That is what the law says and it is a very difficult thing to enforce.

**The Earl of Caithness:** It can ban them: ban the people.

**Dr Nigel Stone:** There is a hierarchy of people's attachment. You can probably stop their children doing something, but you cannot stop their dogs doing something. People get very passionate. There are examples around the country of beaches that are dog-free in the summer, and that is often controversial. I do not think it is the right approach to try to ban dogs. It is much more about doing one's best to ensure that people are keeping them on a long lead; even that is better than no lead whatsoever.

**The Earl of Caithness:** Can you also let us know what percentage of non-urban land in England is either national park or area of outstanding natural beauty? That would be helpful. My question is really about Section 99 of the NERC Act. Has that made any difference in the way that you designate statuses for AONBs or national parks?

**Dr Nigel Stone:** That particular section was brought in when there had been a claim during the designation of the New Forest National Park. The claim was made by an estate that their land could not be regarded as natural, because it was essentially a man-modified or managed landscape. This clause has very effectively headed off a similar challenge subsequently. I am not aware of any similar challenge in relation to South Downs or the two extensions in the lakes and dales. I do not know whether it applied in the same way to AONBs.

**Nick Johannsen:** I think Section 99 pertained to national parks, but we rely on previously the Countryside Agency's and now Natural England's

guidance with regards to what is included in “natural beauty”. We agree with the guidance. It is very clear that it includes a wide variety, including human and cultural influences, as part of natural beauty. That goes back to the intent of the original 1949 Act, actually.

**Baroness Byford:** Can I make two observations and then ask my question? Can I go back to the question of dogs on leads? When we took the Bill through, and several of us around the table took that through and it became an Act, one of the biggest problems was to try to get the Government of the day to accept that dogs needed to be on short leads, let alone long leads, particularly in the breeding season. That is still relevant, but the biggest worry is that people put them on a lead to start with and then slip them anyway. Of course, “My dog always comes back”, but the dog does not. Dogs are still a huge problem.

Can I then ask you a second thing? We have been talking about “having regard to”. Do you think that we need to look at the legislation as it is and alter it in a way that would be more helpful than it is currently in “having regard to”? Then I will come on to my other question.

**Dr Nigel Stone:** The suggestion was made to seek a duty to further biodiversity, conservation or whatever.

**Baroness Byford:** Do you think a regulation or a direction would help local authorities and people like you to fulfil it better?

**Dr Nigel Stone:** If local authorities felt that someone was taking an interest in it, starting to monitor it and ask for examples where they had proactively had regard to, without any need for legislation, that would be a good start. Part of the problem is, with all the other demands, unless they feel that is something they are potentially going to be asked about or taken to task over, it will be one of those things that just lapse.

**Nick Johannsen:** To follow up my previous point, if duties are being looked at, it would be helpful to include duties to have regards to AONB and national park purposes, as well as biodiversity. Strengthening the duty would have an effect, because otherwise you rely on something that feels passive. It need not be passive, but it feels passive and it relies on agencies, Natural England and others, to be very active in ensuring the duty is adhered to. It would feel more of a ‘stick’ than it currently feels like. Inevitably, organisations have to make judgments about how they respond to their many duties.

Q28 **Baroness Byford:** Could I pose three things? We have talked about the lack of resources. We have talked about the lack of local knowledge and the reduction in staff, so the question as it stands is very important. Are the current arrangements for designating or amending boundaries of AONBs or national parks appropriate, and does Natural England provide the appropriate level of leadership and oversight to a boundary review process, in the circumstances?

**Nick Johannsen:** To be clear, Kent Downs AONB is not seeking a boundary review, but several of my friends in other areas of outstanding natural

beauty, as you may well be aware, are actively seeking boundary reviews and extensions. I do not think anyone is seeking a reduction in area. The view is that the arrangements are appropriate and it is proper to have a really rigorous approach to boundary review. However, the timescale is far too long. My colleagues in Dedham Vale and in Suffolk Coast and Heaths have been waiting 20 years since they first asked.

To be positive, they have said, "We are really keen to help". There is a shared endeavour to extend the boundaries in those AONBs, and in Surrey Hills and some others. Natural England has the list. Their simple case is that they are saying, "We are here to help". The local partnership is happy to provide resources, time, effort and expertise to try to make the actual rigorous process happen more quickly. I can supply the Committee with a note that Dedham Vale and Suffolk Coast and Heaths have provided, which basically makes an offer saying, "Let us not diminish the rigour. We need a rigorous process, but perhaps we can support Natural England", because the point you make is around the allocation of resources.

It is a lengthy, expensive and properly rigorous approach that needs to be taken. You cannot do that if you do not have the money to do it. They recognise that there is an issue, and whether you get boundary reviews only when they can be afforded is a wider question, but they are saying, "We are here to help. We can provide landscape evidence of the quality that Natural England would need in order to make a decision". There is an offer for help.

**Baroness Byford:** It is really quite surprising, is it not? You said that they have been waiting 20 years. Natural England was not in being then and there was more money around then. The question has to be: what was making the delay then and what is now?

**Nick Johannsen:** It has always been expensive to take that forward. I guess a judgment is made as to how important this activity is against other activities. Do you want to invest in boundary reviews or conservation enhancement? That is probably a question for Natural England rather than me.

**Dr Nigel Stone:** I reiterate, from the experience in the lakes and dales, that they were very complimentary about the role Natural England played in getting through the extension. Of course, not that long ago the South Downs National Park was established as well. As Nick has said, it is a rigorous process that takes a lot of time, because it requires a lot of public engagement. Personally, I would not want to see that process weakened. It has the effect of saying, because it is such an in-depth process, it does not necessarily happen as often as it may. Cases like this one are delayed because there is no resource to do it.

**Baroness Byford:** Could I please apologise to the two gentlemen? I have to go. Thank you.

Q29 **The Earl of Arran:** When Lord Haskins appeared in front of us as a witness, he said his impression was that "a huge gap has appeared since

the rural communities policy unit and the CRC's advocacy unit disappeared. With them went any basic interest that Defra might have had in the agenda that we were trying to develop". My question to you is: how serious are these gaps and how do we deal with them?

**Dr Nigel Stone:** How long do we have, Chairman?

**The Earl of Arran:** Prioritise maybe.

**Dr Nigel Stone:** For me, this is a huge loss. I have felt very frustrated over the last six or seven years in relation to trying to influence policy where, usually totally inadvertently, a national policy is having an impact particularly on the more diverse and sparse local communities. It is not necessarily intended at all, but it has a big impact in those local areas. I will give one example.

The Growth and Infrastructure Bill would have had the unintended consequence of removing one of the main policy instruments for achieving affordable housing in local communities, which is a rural exceptions sites approach. It basically had a clause that would enable development on a small scale alongside settlements. It was only the national parks giving evidence to the Bill Committee that got that issue addressed. The Government, to give them their due, made an amendment and that was changed.

Even now, there are things such as the notion of not requiring affordable housing on sites of fewer than 10 homes. Many developments in small communities providing housing are of that kind of scale. It seems to me that there is just nobody there now being that kind of rural concern to government. The notion that there are lots of rural constituencies, which of course there are, is okay, but there probably is no constituency without a major town or two in it. That is where people are. That is where a lot of the attention is. Issues relating to the more remote and sparsely populated countryside do not necessarily get heard or represented.

As for rural proofing, I am going to be a bit unkind to Defra here, but they did not even do it themselves. They went to 'digital by default' in terms of service delivery before most other departments, when most of their customers do not have broadband, a mobile signal or even much prospect of getting it. You can probably tell I feel pretty strongly about this. There really needs to be far more focus given to the often unintended consequences of policy, as I said earlier, when people do not have that local perspective.

It is very difficult for civil servants to give that perspective. It has to be people living and working in those communities, and that is where the CRC played its role. It brought together people who really understood how rural communities tick. I am sure there are lots of people in the House of Lords and House of Commons who have a pretty good idea. Nevertheless, trying to get that influence on policy so that some of these adverse consequences do not take place is really important.

**The Earl of Arran:** I feel that you fear for its being able to be done. You

have presented the problems, and the solutions ain't easy.

**Dr Nigel Stone:** At the moment, it is a small department trying to influence bigger departments. Ultimately, if you want to bring about influence you need leadership, one imagines that, if the question is asked in Cabinet: "What about the impact on rural communities?" or "Where is your impact statement on rural communities?" that would have impact. The trouble now is that, without the CRC or something like it, there is no body to go to.

This is a personal comment again, but I feel that the removal of the CRC also means that a lot of data is not being collated. Often the Government do not know the impact of the policy; they are not collecting data on small communities in the way that was done.

I will go on to mention Natural England and say they have been made spineless. They have basically been put in a position in which they are not really encouraged or allowed even to provide any constructive criticism. There is no constructive challenge either on Natural England's side or, because of the absence of CRC, on the rural side, I feel.

**The Earl of Arran:** It is rather similar to the removal of MAFF. I expect no comment.

Q30 **The Chairman:** I would not worry; most of the people around the table will share your enthusiasms. I have one more question, which is slightly unfair, because you have not been warned about it. If you feel you would prefer to come back to me with a written answer, feel free. Part 6 of the NERC Act was supposed to resolve some of the tensions between motorised traffic and those who believe that such traffic mars the quiet enjoyment of the countryside or even scars the landscape. I just wondered whether you felt that Part 6 had succeeded in any way. If not, what do you believe should be done?

**Dr Nigel Stone:** For those who are not keen on motorised traffic on some of the more rural routes, it has succeeded. Those who say they have a right to use them are clearly frustrated by the reclassification. They have to go through a process to establish vehicle rights and, given the resources in local authorities, I cannot bear to think how long the waiting list is for considering these appeals for byways open to all traffic. In some cases, it was a helpful move in trying to draw a line, but the lack of resource in local government to deal with a backlog of claims means that it has almost become a static thing now. I am probably not the right person to ask but, if you are somebody who enjoys that kind of green laning, I am sure you would feel very frustrated by that reclassification.

**Nick Johannsen:** I will take the invitation to provide more information in written form, but this is a really significant matter in Kent, where there is some good work and some good ideas. Hopefully we can provide you with helpful advice on that matter.

**The Chairman:** Have you ever used a traffic regulation order successfully?



**Nick Johannsen:** Yes.

**Baroness Whitaker:** If you are inviting a letter, could I add on to it what more the state could do in this regard?

**Nick Johannsen:** Yes.

**The Chairman:** Thank you both very much indeed for coming in to see us. It was a very good evidence session. Thank you.

## **Mr Roger John Kirkham – written evidence (NER0063)**

### **Written Response from Roger Kirkham ,Dip TP Dip Mgmt, MRTPI(Retd)**

Thank you for your invitation to send written responses about these matters to your Select Committee. I have considerable experience working as a professional planner in United Kingdom. I wish to raise particular concerns about some current governmental practises over rural soundscapes.

It is now more common for people to take greater interest in their surrounding soundscapes of our natural environment and rural communities. Contemporary changes are increasing noise impacts in the countryside, for example, effecting the rapid provision of double glazing windows for rural houses partly as noise attenuation measure and partly as a thermal insulation measures in one lifetime. Rural soundscapes are worthy of your attention.

There is general acceptance that rural resident populations value the rural characteristics such as fresh air, good local food, lots of open land , beautiful scenery and quiet as well as those who visit these areas from urban areas.

The English countryside is our great collaborative masterpiece to be sustained for future generations. People like Wordsworth and Ruskin to Octavia Hill to Patrick Abercrombie have all instinctively understood the responsibility for our countryside. Contemporaries like Andrew Motion, Melvyn Bragg , Simon Jenkins and Max Hastings continue to restate its importance .

Our rural soundscape is an integral part of the countryside yet its significance does not receive the attention it deserves.

Whilst we are right to emphasise natural beauty to justify special designations like National Parks and Areas of Outstanding Natural Beauty, we cannot assume the quality of their soundscape will remain unchanged, say from their sound characteristics present at the time of their designation and deserve more attention because they may well be more sensitive to change.

It is true that some recognition has been given to tranquillity as a special characteristic and this can lead to some coverage in their Management Plans. The picture is worse for some of our designated Areas of Outstanding Natural Beauty like the Chilterns AONB which serves a large visitor population.

For the remaining countryside without special designations, these are no less valued by the public but decisions are as a result of discretion being exercised because the same regulatory framework applies for those in use for higher background noise levels. It is far from clear whether the ability to exercise local discretion is taken in rural area to address these matters. It is acknowledged that there are equivalent concerns about the higher levels of noise are experienced by urban dwellers and absence of quieter places in urban areas but

the value placed upon quietness in rural settings deserves better actions. I want to draw the Government's attention to these.

I would draw attention to the report by Saint Gobain, a glass supplier which states that 70% of people(urban and rural) admit to feeling harassed by noise and imply an escape to the countryside might be the only option. It might well be a mistaken belief that our countryside is necessarily a quiet haven.

Pilkington trade literature for windows suggests that a quiet garden would represent a noise reading of 28dBA and Saint-Gobain Glass Literature gives a similar figure for a quiet forest. These figures will generally be lower overnight. I would ask you to keep these figures in mind.

Research into the impact of unwanted noise over the years and efficacy of current practice in rural areas remains particularly thin. The evidence suggests the Government priorities have lain elsewhere. Whilst this has meant what efforts have been made to identify the noisiest concerns, it has largely neglected the countryside, perhaps because these are seen of lesser importance or possibly for fear of adversely affecting the rural economy.

Government noise policy has been slow to alter its policy direction regarding noise control and even though there are signs that a change in right direction is taking place, there are significant failings to prevent or reduce adverse noise impacts.

It has always been the case that efforts on noise control largely cover impact of people's way of life inside dwellings. Even here, there is really only limited success as it can be deemed acceptable to take down to the bare minimum, requiring windows to stay closed if discretion is exercised by the local decisionmaker.

It may come as a surprise to house owners that the regulations are far less stringent for enjoying residential amenities around dwellings, often considered of considerable importance to those living in rural settings. Government advice suggests measurements of noise from noise generated from neighbouring development be taken 1m away from the nearest habitable window of the neighbouring dwelling rather than at the side boundary itself.

The emergence of noise laws has largely been historic. Much of UK noise law has come from balancing the interests of industry in their own designated use zones or for those in mixed use zones. Residential areas, hospital and schools are seen as most sensitive. Whilst past noise policy will avoid stating specific upper limits, these can be found in accompanying guidance and these remain in use largely unchanged. Information given to the public about local decisions will generally imply that the continuing noise levels or the noise calculation in the assessment is within the limit.

Their position is really assisted by no laws governing low frequency noise in UK and no specific noise laws for residential areas.

Difficulties arise because UK noise laws have previously relied upon common application of 'upper permissible limits' regardless of background noise levels in existence. This approach has been strongly criticised because of the automatic acceptance of the highest permissible figure regardless of surrounding background noise level. It means the gap will be larger in rural settings.

One example would be domestic heating equipment which has historically been internal and covered by building regulations and environmental health dealing with residual noise problems outside. The Government's encouragement of Microgeneration programme permits new external plant such as air source heat pumps for domestic dwellings. Poor equipment and location can create disamenity and nuisance problems for neighbours yet are accepted because of higher noise emission level (based upon the Government assumption of 40 dBA background noise level for the UK and the equivalent sound reduction requirements found in the traditional building envelope not being required).

Interestingly most noise specifications of permanent plant machinery for domestic dwellings such as air source heat pumps (59dBA) fall above the identified figure of 55dBA in the World Health Organisation's 1999 noise guidelines treated as falling in the serious annoyance category. It relies upon noise levels reducing away from the noise source.

The alternative approach of prevent, reduce or adapt really implies that greater efforts should be made to accept zero or small incremental increases to take place. However past custom and practice are proving extremely difficult to change.

These are very important matters for those living in rural property in compact settlements or those faced with new development with external noisy plant close to their boundaries at ground level and where low background noise levels prevail. It is unlikely that developers will self-regulate because of the loss of investment. This places the burden upon the local government regulatory framework with its reliance upon guidance largely based upon compliance with higher background noise levels still in place. Indeed staff still need to acknowledge that Heat Pumps are noisy and create nuisance problems because some of the Government information suggests that these are quiet.

Indeed developers has seen the Government's position on Air Source Heat Pumps as giving the green light for developers to avoid seeking planning permission for new development without much fear of enforcement. I consider that the Government approach to the larger Air Source Heat Pumps to be flawed. There has been a failure to acknowledge the effects upon those in rural settings because of the inflated figure of 42dBa set by permitted planning development for existing buildings whereas background noise levels are

much lower for rural settings. Whereas the Welsh Office suggest Air Source Heat Pumps are noisy and require attention during the original site design and the Scottish Government office point to strong concerns about effects in their Impact Statement, the English Government office fail to address this as much of a rural matter and different views from the devolved government offices about whether they are noisy or not.

Professional voices from the Institute of Acoustics and all of the regional associations submitted strong criticisms but these were not fully reflected in Government's Impact Statements. Furthermore, no independent scrutiny takes place of these Impact Statements when used for introducing new Statutory Instruments.

It is accepted that action was taken to revise noise parameters for Inland Wind Turbines to lessen the impact. For rural areas, attention is necessary for many more because of the background noise levels are lower.

All of this points to an insufficient rural voice addressing these matters. Too little attention has been given to the impact upon rural areas or the inability to create feedback channels over real difficulties arising.

Relevance of Noise Assessments relying upon A Weighting methodology to rural areas.

I have already referred to the Noise Planning Guidelines and reliance by local decisionmakers upon standard practices for noise assessment methodology and measurement and those relating to the certification of Sound Reduction materials. These contain inherent weaknesses particularly with past custom and practice continuing unchanged

There is evidence suggesting that the A weighting methodology is misleading insofar as it underplays the effect of low sound frequencies(that remain audible for long distances) and avoids attention being given to materials required for sound reduction for these frequencies below 50Hz , resulting in a rumbling noise audible to human hearing. It encourages the assessment to be based upon a single weighted average noise figure rather than a range experienced by different humans. For example reports about Air Source Heat Pumpsare imply risks from strong sound pressure waves felt by some humans and the prospect of Helmholtz Resonance effects felt within neighbouring properties. It is most worrying.

## **Recap**

- I make no apology for submitting evidence about soundscape of rural areas. It is really an integral part of the natural environment and rural communities. It has been treated on a subject basis, rather than as an organisational mater.

- Many of the national regulatory provisions for noise have arisen as a result of being devised for urban settings yet applied to countryside areas. Past policies have accepted significant jumps in noise levels deemed acceptable as part of new development despite much lower background noise levels.
  - Many noise sources come from mobile activity and treated as intermittent. My response principally covers permanently fixed equipment making it more easy to regulate.
  - It is true that Local Government Local Plans can address noise affecting amenity for new development where these might differ from regulations coming from Central Government. However this response briefly highlights present deficiencies and many Local Plans are failing have specific noise policies different from UK national law. There would appear to be too much of a postcode lottery here.
- 5) It is generally accepted that significant differences exist between background noise levels of urban and rural soundscapes but little differentiation takes place unless at the discretion of local decisionmakers and often lacks adequate justification.
- 11.Noise concerns in rural areas are somewhat unreported and deserve more attention . The cumulative effect can alter the soundscape character of the rural area.
- 12.Acoustics is a complex science only briefly been touched upon here. Whilst people can generally express their judgement about noise nuisance or annoyance, the public remain poorly informed about why decisions are taken and only limited technical information is given pro to the public.
- 8) Decisionmakers are wary of noise concerns because it is treated as obstacle to economic prosperity .
- 13.The UK geographic landscape is still predominantly rural(70-80%of land area) albeit with 65% of the population living in the urban areas. The soundscapes of our rural areas complement are our environmental capital.

## **Conclusion**

Changes to our contemporary building and business practices continue to occur. Too little attention is being given to the rural soundscape at the present time. Acoustics is a highly technical subject. It is timely for the Government and public to pay more attention to changes to our rural soundscapes both now and in the future. Further evidence can be supplied to inform the Select Committee if requested.

Mr R J Kirkham

*11 September 2017*

## **Landscape Institute – oral evidence (QQ 158-167)**

Tuesday 28 November 2017

11.05 am

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Earl of Caithness; Lord Cavendish of Furness; Lord Faulkner of Worcester; Countess of Mar; Baroness Parminter; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 19

Heard in Public

Questions 158 - 167



## Examination of witnesses

Merrick Denton-Thompson OBE and Rebecca Hughes.

Q158 **The Chairman:** Good morning to you both and thank you for coming. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website and a transcript will be taken and published on the Committee website. You will have the opportunity to make corrections to that transcript where necessary. Would you like to introduce yourselves for the record, although I am quite happy for everything to come out in the questions?

**Merrick Denton-Thompson:** Thank you very much indeed for inviting the Landscape Institute to present evidence today. Perhaps I may introduce our policy director, Rebecca Hughes, who is here to ensure that I make sense and answer your questions appropriately. The relevant background is that I was a board member of Natural England from 2006 to 2009. I sat on the cross-compliance board representing the Local Government Association and I directed the rural pathfinder for the south-east of England. I also served on Jane Brown’s agri-environment review group, which set up the environmental stewardship scheme. I have a long history of working in both the public sector and the voluntary sector.

Q159 **The Chairman:** Thank you very much. From your written evidence you say that Natural England seems to have lost its landscape capabilities. You also say that some of the work of the Countryside Agency was specifically removed from the work of Natural England. Can you tell us what Natural England does well vis-à-vis the landscape and what it does less well? What was the Countryside Agency doing that Natural England is not doing now?

**Merrick Denton-Thompson:** Members of the Committee will recall the setting up of Natural England by bringing together the Rural Development Service, English Nature and the Countryside Agency. The Countryside Agency pioneered new ideas. It was deeply involved in innovation and establishing guidance, but a lot of that work has been lost.

I would point to two or three things in Natural England’s performance. It has been outstanding at the coalface and its field staff are working collaboratively with the farming industry, which has been so successful that I do not believe the centre really understands the public goods that are being delivered through the relationship. Certainly in its new strategy I urged the chairman to make sure that he could capture all the coalface experience being gathered at the time. The field staff of Natural England are a national resource, because they have such a good working relationship.

On the question of its other activities, Natural England has been very pioneering in making the national character area assessments and the new map of England, which establishes 159 different national character areas. Perhaps I may add that if we are going to have an overarching policy for managing the countryside, which I hope we will end up with, we have no single vision for what we want out of a multifunctional countryside, but we

desperately need one to sit beside our spatial planning mechanisms. However, it needs to be articulated at the landscape scale because its work, which is basically about mapping the interaction between human activity and natural systems—those of soil, climate, geology, topography and ecosystems—is crucial to setting the national agenda at the landscape scale, which can then be delivered much more easily. Natural England has undertaken that work, which is money in the bank in terms of public investment, and it has produced an extremely up-to-date framework for the agenda that the Committee is considering today.

**The Chairman:** What did you mean when you said in your written evidence that from the outset there was a clear strategy for removing much of the valuable work being undertaken by the Countryside Agency? You have talked about a very good relationship being fostered with farmers. Is that vis-à-vis the environment and habitats and that landscape has got lost in that? It is quite difficult to deal with landscape when you are talking to farmers.

**Merrick Denton-Thompson:** The rural strategy was quite clear that Natural England had a responsibility for ecosystems and biodiversity as well as a responsibility for landscape. When we look at the way Natural England was set up and the presence of technical staff, the landscape element of the Countryside Agency failed to survive those changes. At the time I had a conversation with Lord Haskins, who did not know who I was, at a lunch where Henry Smith MP was our host. Lord Haskins was very clear that there was a need to remove the Countryside Agency and the landscape element. I never understood why and I did not have a chance to ask him that specific question. The answers I had back from Richard Wakeford, who was the last chief executive of the Countryside Agency, frankly did not hold water, so I will not repeat them in this forum.

Q160 **The Countess of Mar:** The Landscape Institute has suggested that Natural England had annually lost scientific expertise and funding to the extent that it has become unwilling to formulate national policies to secure the conservation and enhancement of the landscape. Does Natural England have access to sufficient scientific expertise to allow it to fulfil its statutory objectives?

**Merrick Denton-Thompson:** I believe not, because from the outset there was a very ambitious plan to set up Natural England as an arm's-length government organisation that was going to have a scrutiny function and indeed have the scientific and research resources upon which it could then recommend policy development within Defra and the Government as a whole.

However, over time that strength of purpose has gradually been reduced. I am afraid there was a moment when the establishment was a bit upset by an intervention by the chief executive and indeed the chairman; I will hold both to account since I was on the board. An announcement was made at the NFU annual conference—the Committee will see the point in a moment—that Natural England was going to change the policy for environmental stewardship by raising the bar on entry level and to stipulate

that the higher levels of stewardship would be by invitation only. In other words, it was total state control. That was not the intention of Ministers at the time. I can repeat the following because a director-general in Defra, Peter Unwin, confirmed it for me only a year ago that that event still resonates within Defra. The fact was that Defra had no knowledge that the statement was going to be made; nor, indeed, had Ministers.

Moreover, I have to say that as the board members we had no knowledge that the announcement was going to be made. It might sound like a minor event, but it was critical to Natural England's relationship with the National Farmers' Union, the Country Land and Business Association and the farming industry. We should bear in mind the proposal at the time that we should try to capture 70% of all land into the environmental stewardship programme. The idea, put without consultation, of raising the bar on entry level and by invitation only was a dramatic statement that had repercussions.

As a direct result of that, Natural England lost its policy director and chief scientist, Dr Tom Tew. So I would say that the science base and the policy development was radically reduced and that there was a distinct change of climate in which Natural England was reminded that it was a delivery agent only. That marked a moment when suddenly the fortunes of the organisation changed.

**The Countess of Mar:** Are you saying that cuts have had an effect on the capacity of Natural England to provide bespoke scientific advice about landscape and biodiversity?

**Merrick Denton-Thompson:** Yes, I am. At the outset, Natural England's overall budget was £200 million a year in grant in aid while this year it is £80 million. It had 2,000 staff, which has now reduced to 1,600. It was inevitable, when bringing three government agencies together, that enormous economies could be made, so there was a moment when all the duplication of administration and electronic systems was cut out. A disciplined approach was taken to formulating the establishment of Natural England, but that seemed to be forgotten almost immediately in the drive to carry on reducing, reducing, reducing. The organisation was already fit for purpose in 2006, but there was a continuation of driving forward economies and reducing resources.

**Baroness Byford:** I would like greater clarification. Who made the announcement at that stage at the NFU conference?

**Merrick Denton-Thompson:** That was Helen Phillips, the chief executive of Natural England.

**Baroness Byford:** But the board members had no idea that that was going to happen.

**Merrick Denton-Thompson:** I will tell you the exact story. I was a board member, and Helen Phillips was very proud to announce that the NFU had invited her to give the keynote speech. I have worked with the NFU for

many years, and I offered her my support. We had a board meeting not a week before her crucial speech. She had promised to show me a draft of it and I told her that I could contribute and help her. I had an email on the day she was to give her presentation in which she said, "I'm about to give my speech. You'll have a copy of it when I have given it". So the board had a meeting not a week before, but not a whisper of such a dramatic change in policy was given to us. I subsequently raised this with the chairman, because I did not feel that I was doing my job because I had no idea as a board member that such a dramatic change of policy was about to be announced. It turned out, which I did not know, that Ministers felt exactly the same.

**Baroness Byford:** Could I clarify something else? I should declare that I am a member of the NFU and I was probably at that conference, although I cannot remember. I queried the point, because we are looking at whether Natural England works well, and if, as your example suggests, things did not work as they might and might have worked better, that is certainly of concern to me; I do not know whether it is of concern to other colleagues here. Although this is slightly away from what we are discussing, it is hugely important, because you are talking about a standalone body that should be governed in a proper manner, and clearly there was a question mark at that moment. I will put it to bed there, but it raises other issues which I do not think are covered by questions later. I hope I am right.

Q161 **The Earl of Arran:** Your written evidence suggested that Natural England's status has "incrementally diminished" in recent years. How does this affect its ability to carry out its role as effectively? Does Natural England have sufficient independence from the Government to perform its role?

**Merrick Denton-Thompson:** I do not believe it has, in the light of the way I answered the previous question. It was reminded very strongly that it is a delivery agent only, so the policy development and the scientific work were put to one side and it delivered government policy as the Government's agent. So my personal view is no. I would hate the Committee to judge Natural England's performance based on one historical event like that. All the personalities have changed, and the board, I am sure, is now very effective. Certainly I see what is happening at the coalface, particularly through the field staff, what they are delivering and their relationship with the farming industry as immensely positive, and I do not think the public have any real idea of what is being achieved with the farming industry. That is a bit of an issue.

I believe you are about to hear evidence from Andrew Sells, the chairman of Natural England. I would commend its new strategy, because it is very much about capturing the spirit of the new agenda, which is about natural capital and working collaboratively with the farming industry to move towards a more sustainable approach to food production.

**The Chairman:** What about the independence from government bit? Does it still hold good that it has no independence, really?

**Merrick Denton-Thompson:** I am afraid that I do not believe it has the independence. That is my observation, based on what has happened since 2009.

**Lord Cavendish of Furness:** In a public body, is it a zero-sum game that if you fund less you will get less, or can you get more out of less by clever reorganisation?

**Merrick Denton-Thompson:** I do not think that funding is necessarily the doorway to efficient working. I mentioned that there was a huge, disciplined approach to setting up Natural England at the outset to make the very best of public investment. Subsequently, it was given the task of delivering the first round of the environmental stewardship programme, and we should bear in mind that 70% of farmers, for example, were targeted in that round—and we are talking about a farming community of about 225,000 at the moment. Inevitably, in order to have a collaborative relationship with that number of the farming community it is important to have the right level of staffing to connect in a collaborative way.

If we had a clearer public agenda and could perhaps work more collaboratively with the farming industry and the voluntary sector, I suspect that we could do more for less, especially at the moment, given that so much of our administration with the farming industry is about distributing European money, and the problems of disallowance have created a totally dysfunctional relationship with the farming industry, on the basis that every farmer is potentially a fraudster.

Surely in this day and age we have to move beyond that. We have a large force in the RPA, which is inspecting every nook and cranny of farmers' work, and I do not think that is necessary. That is completely the wrong relationship to have with the farming industry.

Q162 **Lord Faulkner of Worcester:** You talk in your written evidence about where the rural affairs brief should be handled in government. We are getting differing views in the written evidence that we receive. Some say that it should be handled by Defra, some say it should be the DCLG, and some say it should be the Cabinet Office. Could you explain to us why you think it should be largely transferred from Defra to DCLG, and what the practical effects of that change would be?

**Merrick Denton-Thompson:** This is not a major part of our evidence; I just make that point. From my experience of working in the public sector, I would say that the whole process of rural-proofing is happening at local authority level, and there are some excellent examples of that. I suppose we go back to principles: why would you treat one part of society differently from another, and are you not missing a trick if you do not see the whole of society as one target audience? It is the responsible public-sector approach to ensure that the opportunities are there for everybody, and part of the rural-proofing exercise is to ask whether we are serving our rural communities as well as our urban communities. I know that work is going on at the moment.

It therefore seemed right and proper to us that DCLG have the responsibility for rural affairs and that Defra should concentrate very much on the priorities of sustainable food production and the environment, because we think that is a challenge enough. In a way, it is diluting the effort and the perseverance of Defra to pursue those objectives by also having to deal with rural affairs and rural communities. Please do not get me wrong: of course rural communities desperately need the right services from the public sector, and it is no part of our argument that either society should be treated differently.

**Lord Faulkner of Worcester:** What about the view that has been put to us that it is all too difficult for DCLG or Defra and that it would be more happily situated inside the Cabinet Office?

**Merrick Denton-Thompson:** Perhaps some form of scrutiny role, in making sure that rural communities are properly served, might be reported back to the Cabinet Office. That is probably a good idea, primarily because we tend to work in silos, and it is not until you get to the Cabinet Office that you get that strength of purpose that makes all the connections. But I would not suggest that it is a huge bureaucracy. There may be an executive connection, but I believe that the DCLG is the right department to run that particular service.

Q163 **Baroness Whitaker:** Moving on, I would like to ask Miss Hughes, in view of her architectural background, about the socio-economic aspect. The Landscape Institute is notable for taking the broadest possible view of the importance of landscape. It would be helpful for us to know, following the demise of the Countryside Agency, and the subsequent abolition of the Commission for Rural Communities and the regional development agencies, is sufficient attention being given by the Government to the socioeconomic needs of communities that support valued landscapes? Are any new measures required to improve the support given to rural communities?

**Rebecca Hughes:** There is a lot in those questions, and I will take them in stages. First, on whether the function of the Countryside Agency has been carried forward, in my experience—I have had experience of working with the Countryside Agency and in another agency, in another part of the UK, in Scotland—no, it has not continued on from where it was before Natural England came to be.

It is a long time since I was with Scottish Natural Heritage—10 years or more—but I have kept in touch with it in the policy role that I now have. I also have connections with Northern Ireland and Wales. There is some considerable concern that the leadership role that the Countryside Agency provided at one stage in the landscape arena, even if it has not been lost completely, is in a lesser capacity than it was. That is a great loss. Many professionals in the public and private sectors, and in the developing community, miss this guidance and the direction that was given clearly by a set of experts in the Countryside Agency at the time.

We all know of the resource restrictions that have been put on all of us over the past few years, and the implications of that, but there are functions that we feel could still be continued in providing quality assessment methods to judge landscape situations—whether they have the capacity to accommodate change or whether there is a sensitivity to valued landscape settings, or in the wider setting of landscape. All landscapes matter to somebody somewhere; it is not all about the valuable areas of national parks or the national scenic areas, as we have in Scotland, or the AONBs that you have in England and in other parts of the UK. They are very important, but it is about the much broader landscape-scale thinking that we have, which crosses all types of landscape quality settings. They were so much part of what we had at one time in the Landscape Character Network, which looked at character and distinctiveness of landscapes right across the board, no matter what the condition. It is that understanding and complete perspective that is so important for the general public, and that is where we start to connect it with the health and well-being of local communities, which is a very important area of policy in various parts of the UK.

**Baroness Whitaker:** Would you suggest any new measures to make up for the deficit in focus?

**Rebecca Hughes:** I might err on the side of the reintroduction of measures as opposed to the introduction of new ones. This whole area of guidance, which Natural England cannot produce at the moment, is very much a restriction on what can be said. The illustrative guidance is very limited; it is only in words. For the guidance that we use in landscape analysis, and in assessing capacity for accommodating change, we often use visual and illustrative techniques. They are important for those who are practising and for those considering and deciding whether changes are okay or not okay, or approvable or not approvable. Those people depend on visual materials. At the moment, I understand from colleagues who I have connections with in Natural England that it is very difficult for them to put out any guidance in that form.

**Baroness Whitaker:** I was struck this morning by more information about social mobility and how very much worse it is in rural areas. Do either of you in the Landscape Institute have anything to offer on that?

**Merrick Denton-Thompson:** Further to the point that I tried to make about local government rural-proofing services, there are some really innovative ideas. There is a very good one in west Sussex, which I am very aware of. The mobility of young people in accessing employment is very restricted by the issue of rural buses and transport. West Sussex County Council is not an authority that I have any dealings with, but it has introduced a new system whereby it will support access to mobility methods for young people.

**Baroness Whitaker:** You are talking about physical mobility.

**Merrick Denton-Thompson:** It is about accessing jobs and being able to move around the landscape and get to employment. That council has set

aside an investment package, having undertaken the rural-proofing and discovering that there is a problem with restrictions on young people getting jobs because they cannot get to the work, and put a mechanism in place whereby there is subsidised travel.

**Baroness Whitaker:** So it might be a matter of sharing good practice.

**Merrick Denton-Thompson:** Exactly. Rebecca made the point that the Countryside Agency was very quick at demonstrating best practice and issuing guidance. I think that is missing now.

**The Chairman:** In answer to the question, neither of you mentioned the Commission for Rural Communities. Do you feel that that organisation fulfilled a purpose, or was it merely a statistical or analytical body that produced reports?

**Merrick Denton-Thompson:** I well remember the rural advocate, Stuart Burgess. If we can just stand back for a moment, here was a proposal to amalgamate three government agencies, but then suddenly we did not have one and we were beginning to have yet another. So it was rather half-hearted, and I do not think that the investment or penetration by the rural advocate was really effective. I do not say that that was the rural advocate's problem; I suspect that it was due to how the commission was set up in the first place. The work was very valuable, but it was very restricted by the resources available to it.

Q164 **The Earl of Caithness:** May I turn the spotlight on to Natural England's role as a planning consultant? Is it doing a good job on that, and is landscape taken fully into account?

**Merrick Denton-Thompson:** I have to say that landscape is not being taken adequately into account. It does not have the resources, so in a staff of 1,600 there are only four or five people with a landscaping qualification and an ability to support it. I will give you an example. We went out to our members, and we had a plethora of responses, which we can make available to the Committee. Natural England was consulted on a major development in the South Downs National Park, which is a new national park, and back came three pages on biodiversity and three lines on landscape, which basically said, "We don't have the skills. Consult your local authority".

That might sound like an effective bit of communication, but of course Natural England had not recognised that landscape skills have haemorrhaged out of the public sector. From our research we can see that we have lost 50% of the posts in the public sector at all levels of government, particularly in local government. As a professional institute we are trying to say that, yes, we understand that there is a balance between wealth generation and public investment, but the balance is not right at the moment. We cannot see growth back into the public sector of these skills, although perhaps what we can see is the development of the intelligent client function within the public sector so that the policy of commissioning the private sector to deliver services is carried out from an



informed position. That seemed to us to be a move towards bridging the gulf. Natural England assumed that the skills were there, but they were not. On that particular development ambition, the response on landscape was very poor indeed and I am afraid that it is pretty similar to other instances across the country.

**The Earl of Caithness:** Looking ahead, we are going to have a 25-year environmental plan and it seems that natural capital will play quite a significant role in it. What are your views on how to value landscape in a natural capital world?

**Merrick Denton-Thompson:** That is a challenging question. Let us start with the natural capital process. We fundamentally support the building of a business case for the foundations of life: clean air, clean water, restored soils, and a countryside teeming with wildlife, while ensuring that all that does not conflict with society. Indeed, it is what society would like to see in the countryside. We are still undertaking natural capital accounting separately from our budgeting. Until the Treasury audits the natural capital account and owns that audit, we will not see zero-based budgeting, although that is the extent of the change that we need to see.

In the 25-year environment plan, with respect to the Government we believe that there should be a national rural land management policy—I use my words carefully; it is not a plan but a policy—that sets out the public agenda for a multifunctional countryside. I think that society and the Government recognise the symbiotic relationship between the countryside and towns and that there is a real need for close working. The 25-year environmental plan falls out of that policy and the mechanisms for its delivery will be very different in towns than in the countryside. We have recommended to Defra how to deliver on this. Our towns really ought to see community-led initiatives: the urban village concept where a community is defined and interaction sought from it in collaboration across the private, voluntary and public sectors. In rural areas we are saying no and that the policy and the plan ought to be articulated at the landscape scale using the national character areas as the framework, either individually or a multiple of them.

Our starting point, as you will see in our evidence, is that for our national parks and areas of outstanding natural beauty, under the Environment Act 1995 and the CROW Act there is a responsibility to prepare management plans for these protected landscapes. However, there is no obligation on anybody to do anything about those plans. This is a bit of dysfunctional government which we think ought to be made to work. Why not at the landscape scale—let us take the South Downs National Park as an example—have national appointees on the board along with local appointees and representation from the parishes? That is the standard model for a national park authority, which ensures that both national and local interests are represented.

If they are producing a single-articulation public agenda for the South Downs, surely it makes sense for all government investment to be made through that plan. I have to say that we think there is a need for the

Environment Agency and Natural England to be more locally accountable, because the public will then understand what is being delivered by the investment. There will be more rather than less support for investment to support the farming industry in its move towards more sustainable food production. We therefore suggest that for the landscape scale—the 159 national character areas or a multiple of them—there should be a management plan. That is very scientifically effective because the character areas are defined by the science in terms of their soils, micro-climate, topography, geology and natural systems. That gives you the character; it is really the interaction between human activity and natural systems.

No value is placed on the process of assessing the national character areas; it is purely a description of place. The beauty of it—this was originally down to the Countryside Agency, because before 2000 the process had been a joint effort between English Nature and the Countryside Agency along with Scottish Natural Heritage—was that it was about saying, “Look, if we’re going to define landscapes, we ought to give them place names so that people can relate to them”. In that way you know that you live in and are a passionate supporter of the south Pennines as much as if you live in and are a passionate supporters of the New Forest. These are landscape descriptions of place, and you can get the very best out of any intervention, because these places have responded in the same way to previous interventions. A very strong business case can be developed for using the character areas and the landscape framework as the foundation for agenda-setting, accountability and delivery.

**The Earl of Caithness:** There is a lot to pick up on in that, but I cannot do so because of a lack of time. I have a brief question for Rebecca Hughes. Is there anything from your experience in Scotland that could be useful in England?

**Rebecca Hughes:** We still have a fairly healthy level of landscape expertise in Scottish Natural Heritage. I checked on the numbers just a few days ago and the team up there is still quite healthy in scale, with around a dozen people to cover the whole country. Similarly, Natural England landscape staff are restricted in what they can comment on, even with extra hands on deck. The organisation is putting out guidance. It cannot work with Natural England, but it needs to move forward on certain things, particularly in relation to coastal and offshore developments: namely, seascape situations as well as mainland ones. It works very directly with what it calls natural heritage future, which is what Merrick has been talking about in the landscape national character map. It is about a combination of biodiversity and landscape diversity in what are landscape-scale units. Everyone is working on the same agenda regarding the health of the situation and the condition of processes. Ultimately that provides biodiversity and scenic qualities while relating them closely to rural sustainability and the future of communities in rural settings. As you can imagine, rural sustainability in the Highlands is dependent on tourism along with a very different form of agriculture from that practised in England,

although there are some areas of commonality. However, the idea of rural sustainability is very much about landscape and agriculture.

**Q165 Lord Cavendish of Furness:** My question follows on from Lord Caithness's question. Does the current planning system, with its emphasis on local plans and reliance on the National Planning Policy Framework, allow local authorities to conserve and enhance landscapes? Are decisions taken at the appropriate spatial scale to allow the landscape to be protected?

**Merrick Denton-Thompson:** We obviously had a period of transition, moving away from structure and regional spatial planning, so there is rather a large cavity between the National Planning Policy Framework and local plans and neighbourhood planning. If we are being sensitive about our land-use planning system, when you have that great cavity you lose landscape scale immediately; you are driven directly down to local plans. The Landscape Institute has been approached by local government to produce a model landscape-led local plan. That reflects our belief that it is very important that the delivery of landscape, particularly in our urban areas, is intrinsically linked with our economic performance and the health and well-being of our communities. We think it is a massive asset to society if we can deliver landscape infrastructure associated with any development, particularly housing. Our response to the housing White Paper was "homes, not houses", which implies that these are places where children will make friends for life and where the elderly will live. We need multifunctional landscapes to deliver society's needs.

On spatial planning, at a time when we have densification of our towns and cities, there is an issue with greenbelt, which predates the sustainable development imperative. There is a lot of misunderstanding among the public about green belt. We think that landscape infrastructure is absolutely vital in any change or review of our spatial planning strategy. At the moment, we do not think that Natural England has the resources to operate at a local scale. By having your National Planning Policy Framework up here and then immediately dropping down to hundreds of local plans, how can Natural England ever connect with that framework? It cannot.

**Lord Cavendish of Furness:** Can you give me an example of the cavity or shortcoming that you have in mind, without necessarily naming names? I want to link this shortcoming in the system.

**Merrick Denton-Thompson:** How can you plan infrastructure if you have an all-embracing national policy up here and then a local delivery at a local plan, which by its nature deals with a very small area of land? We have neither strategic planning at a county level or a regional spatial planning system. Both those have been lost with the strategic scale of planning. Consequently, planning of infrastructure is very difficult. I personally think that even meeting the housing targets in the way we are trying to meet them is extremely difficult if you are drilling directly down without any context-setting that respects regional variations.

**Q166 Baroness Byford:** Following on from that question, you spoke earlier

about the protection that the AONBs and national parks have and about the planning authorities and how that works. You have also told us this morning about the holes in other areas. I have two questions. First, do you think that local government has the capacity to look in the broader way even outside its own patch to make decisions on the broader context in which they are placed? Secondly, if there is a gap in Natural England's ability to do what we want to achieve, as you have described, what could be put in its place or be done to rectify the gap that exists?

**Merrick Denton-Thompson:** I will answer the last question first, if you do not mind. This is where my professional institute must be much more proactive in pointing out to local government that without the necessary skills—to use a European term—you are not a competent authority in the delivery of what the public needs out of a fully functioning spatial planning system. If you do not have the skills, how can you possibly press through your regulatory and other systems the sort of standards that we as a modern society should be demanding?

**Baroness Byford:** Could one buy in those skills?

**Merrick Denton-Thompson:** I think that the model that I tried to express, which I probably have not explained very well, means that yes, you can do that. We must have a system whereby we build the intelligent client to enable local authorities to buy in, but from an informed position. We have made a proposition, with the Chartered Institute of Ecology and Environmental Management; we are suggesting that we should push for a head of landscape and biodiversity as a title but not as a huge industry. It would be a single, strategic post within every local authority, who could then advise members across party of the issues and policy needs. Crucially—and this is the single most important job—it would act as the intelligent client in buying in specific ring-fenced services to meet the particular needs of that particular authority. That is a pragmatic way forward; it is about skilling the local authority to make sure that it is properly skilled, to drive policy in this area, and commission the private sector. But most of the work and investment will be done through the private sector.

**Baroness Whitaker:** Following on from what you have said, would either of you make the case for a regional tier of planning, at least for the aspects that you have been discussing, if not for the whole planning system?

**Rebecca Hughes:** I think my answer would be yes, definitely, because there is no other place for it to sit except at that middle tier level, and the direction to connect with the strategic above it and local from it is very clearly needed. We are very much missing that presence.

**The Chairman:** So in today's structures is that at LEP level, now that the RDAs have gone?

**Rebecca Hughes:** Yes.

**Merrick Denton-Thompson:** I would say that it is not at LEP level, which is very confined, constrained and targeted specifically. We need a much

more comprehensive, sub-national scale of delivery, whether that is at a county, strategic or at a regional level—I do not want to enter into that debate. There are signs, of course, that regions are re-emerging with collaboration, but that collaboration is at the incentive of individual authorities and, frankly, we will not get a comprehensive coverage of the country through that mechanism. But it takes some courage to restructure local government to put in a comprehensive structure for spatial planning.

**Baroness Parminter:** At this stage, there is a lot of agreement at a high level about the opportunities to improve the environment post-Brexit. Where do you see the policy capacity and delivery capacity to ensure that we deliver for the environment and minimise the clear threats as we leave?

**Merrick Denton-Thompson:** This is a massive opportunity. Putting aside the arguments for and against Brexit for a moment, we have not been in control of our own destiny when it comes to our rural landscapes. We think that this is a huge moment in time that will pass fairly quickly. Your work is incredibly important, because if we get the model right the next 200 or 300 years will be much more positive for rural areas.

The model I have painted is of a land management policy articulated at the national level and on the landscape scale along with working with the mechanisms of the farming industry. Let us go back to the South Downs as a model. In the end, the landscape is determined by farming and food production, and we must not forget that. In fact, sometimes we have to say to our ecologist friends that they should remember that the richest terrestrial habitats are actually the products of farming. The question is how we connect and make that efficient. We feel that there is a need for clarity in the public agenda. I am afraid that the legislative framework is littered with initiatives for giving local government new responsibilities under the various annual local government Acts. Not many people in the LGA can say exactly what the statutory obligations of local government are on the handling of interventions in the farming industry. Clarity for the farming industry is very important, as is certainty. We would say that if there is a 25-year plan, with respect to Ministers we ought to have a commitment from the Government to 25 years of investment of around £3.5 billion so that we have certainty, because that is very important. We absolutely support the concept of public investment for public goods.

However, at the top of the pile should be sustainably produced food as a public good. That is quite a challenge. A huge amount is being done by the farming industry, but frankly not enough. We think that we can get the agenda right by building a business case around the natural capital of clean air, which is not just an urban issue. It is very much a serious rural issue too when we consider nitrous oxide being released from nitrates. The case is there for clean water; I am thinking in particular of phosphates and nitrates. There is a case for restored soils. We have put out the strapline, “Let the legacy of Brexit see the restoration of UK soils”. We have not paid enough attention to this issue and we have not helped the farming industry through our interventions.

Our suggested model would provide clarity in the public agenda and a contractual relationship with the farming industry for the delivery of that phalanx of public goods, accepting that sustainable food production is a public good. I have to accept that the CLA does not agree and nor do the conservation organisations, so we stand a little alone on this particular point. However, we will stick with it. We believe that secure and sustainably produced food requires public investment. You cannot treat farming like any other business. Given what it delivers for society, it is too important. So we have listed in our evidence what the public goods are and that there should be a contractual relationship. We think that there should be certainty. I hinted earlier that the way we have administered public investment is very dysfunctional. It is all about the problems of disallowance and the fact that we might not get our investment back from Europe. That has driven our administration, which is profoundly dysfunctional. We ought to be building a collaborative relationship and sharing some of the responsibilities. Part of our model is therefore a new position, perhaps building on the field staff of Natural England, where responsibility for the delivery of public goods is shared with the farming industry so that a collaborative relationship is developed.

When I reviewed rural services and the rural pathfinder, the point made by representatives of the farming industry was that the farm gate opens and different people from the public sector come through it, all of them with different agendas. That is not very effective communication. We ought to have a one-to-one relationship with the farming industry. I hope that that has answered your question properly.

**Baroness Parminter:** It is an answer. Thank you.

Q167 **The Chairman:** The last question is the \$64,000 one. If you have a single recommendation that you would like us to make, what would it be? You are allowed one answer each.

**Rebecca Hughes:** My key ask would be to find a means to reinstate the function of providing local authorities with strategic guidance from Natural England. The opportunity to provide a toolkit ought to be established. We know that the issues of staffing and resources are not going to go away, so a key way of working around them is by providing guidance and direction on landscape matters. That applies at all scales from the valued landscapes of national parks and AONBs to the ordinary landscapes of the areas where people live. It is about providing guidance as a result of landscape character assessment of development types and how landscape capacity can be identified. In that way we will not lose our landscape resources.

**Merrick Denton-Thompson:** I would really love the Committee to recognise the importance of landscape. It has not been well served, although through no single action, so it would be good to see landscape recognised in legislation and regulation without it being heavy-handed. There is a lack of presence on the one thing that bonds all these agendas together in a way that the public can really respond to. Their local landscapes are precious to them, but we do not recognise that in legislation.

**The Chairman:** Thank you both very much. We are extremely grateful to you.

## **Landscape Institute – written evidence (NER0070)**

The Landscape Institute (LI) is the royal chartered body for the landscape profession. As a professional organisation and educational charity, we work to transform and manage the built and natural environment for the public benefit. The LI represents over 5000 landscape planners, managers, scientists and designers. We champion multifunctional and sustainable landscapes in both rural and urban areas.

The Landscape profession is trained to understand the action and interaction of natural and human systems in any given location, and to manage change in the landscape in a way that simultaneously delivers a range of societal, environmental and economic benefits. A significant proportion of our members are already involved in rural affairs, such as preparing Farm Environmental Plans, Farm and Estate Management Plans, Landscape Character Assessments, and Management Plans for protected landscapes, biological quality, countryside stewardship, catchment planning and resilience to climate change.

The Landscape Institute welcomes the opportunity to present evidence to the House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006, including the role of Natural England.

### **1. Executive Summary**

1.1 The Landscape Institute seeks to promote the ideal of integrated policy-making in which a shared physical environment provides tangible benefits to all aspects of public life. The landscape of both town and countryside is either designed or a bi-product of humanities interaction with natural systems. The elements of the landscape, including the natural environment, and the potential for meeting numerous needs of the wider public, are inseparable. In our evidence, we have focused on landscape, on the role of Natural England, sustainability, biodiversity and the changing context.

1.2 We would encourage Defra to take a more strategic, corporate and holistic responsibility for integrating the multi-functional aspects of Rural Land Use and Rural Land Management. In particular the Institute recommends that the Select Committee considers the following suggestions:-

- The possibility of a new Act of Parliament or an amended NERC Act to modernise the management of the Countryside.



- The Department of Environment, Food and Rural Affairs should pass responsibility for Rural Affairs to the Department of Communities and Local Government, leaving it to concentrate on the environment and sustainable food production.
- A National Rural Land Management Policy to be prepared as the policy framework for the rural aspects of the proposed 25 Year Environment Plan.
- For that Policy to be articulated at a landscape scale, set within the National Character Map developed by Natural England for - agenda setting, public accountability and collaborative delivery across the private, public and voluntary sectors.
- A new role for Natural England to act as the single point of contact with the farming community in the delivery of the 25 Year Environment Plan, with back office support from the Department of Environment, Food and Rural Affairs, the Department's Agencies – Environment Agency, Forestry Commission, Rural Payments Agency and local Government.
- The restoration of policy development and scientific research by Natural England.
- Natural England to be adequately equipped to respond to national and regional consultations on Landscape matters.
- Ensuring that the trade negotiations associated with Brexit do not lock the UK into policies it is unable to change such as those linked to the sustainability of food production.

## **2. The Natural Environment and Rural Communities Act 2006 (NERC Act)**

2.1 The NERC Act followed the Government's Rural Strategy 2004 and the review of rural services by Lord Haskin. The implementation of the Rural Strategy was a function of the English Regions and Rural Development Agencies were the focus of delivering the Strategy. The members of the Committee will be fully aware of the administrative changes that have been put in place by the last two governments, at the same time the Committee will also be fully aware of the changing circumstances following the decision to leave the European Union. As a consequence, the LI is looking forward to new and emerging opportunities when responding to the Committee's questions.

## **3. Rural advocacy and the Commission for Rural Communities**

***Q1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?***

3.1 The Landscape Institute very much regrets the loss of the Defra Rural Communities Policy Unit as it is not clear to our members how the essential role of "rural advocate" is being achieved within the present regime. Given the substantial changes that have occurred since 2006, in particular the loss of English Regions, the Landscape Institute questions whether the separation of the public support for rural communities from the support given to urban communities should be continued going forward? We believe that the Department of Environment, Food and Rural Affairs should be allowed to focus on its statutory responsibilities for the environment and rural land by removing the rural affairs brief for communities from its remit (we set out how this brief should be taken forward in our answer to question 3). This would enable Defra to take more strategic, corporate and holistic responsibility for integrating the multi-functional aspects of Rural Land Use and Land Management. It should be the legal decision-making body that coordinates and monitors the over-lapping and sometimes contradictory policies relating to the countryside emerging from Natural England, Forestry Commission, Environment Agency, Historic England and local authorities.

3.2 The Landscape Institute is in no doubt that Brexit will result in radical changes to the function and appearance of the countryside, potentially positive as well as possibly damaging. 2018 will see the 50th anniversary of the Countryside Act 1968, which set up the Countryside Commission, and 2019 will be the 50th anniversary of the National Parks and Access to the Countryside Act, both pieces of visionary legislation. Select Committee members may be interested to read the English Nature/ Countryside Agency report "Agricultural landscapes: 33 years of change" to appreciate how effectively those predecessor organisations monitored the landscape impacts of farm management practices. To quote from the foreword of the 2006 report<sup>141</sup>: "First carried out in 1972, and repeated in 1983 and 1994, the New Agricultural Landscapes work gives a unique insight into the visual effects of changes in farming methods and agricultural policies over a third of a century."

***Q.2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?***

4.1 In theory, Defra takes the lead on rural policy matters but the emphasis tends to shift between individual topics, from air pollution, to animal and plant health, to water supply and flooding, to waste management and environmental regulation, depending on media campaigns at the time. Their current research themes and published papers focus on climate change adaptation. There appears

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<sup>141</sup> <http://publications.naturalengland.org.uk/file/117019>

to be no vision for the sort of countryside we want to achieve, and no over-arching national plan or strategic policy for rural areas.

4.2 The Landscape Institute would argue that, because of Brexit, and because uncertainty is a very powerful deterrent to investment, rural communities need a robust policy framework which sets out future governance, environmental action and social development. We discuss below (question 3) the roles of DCLG and DEFRA and consider which government department is best placed to lead on rural policy matters.

***Q.3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?***

5.1 Other than for National Parks, AONBs and other statutorily protected landscapes such as SPAs, SACs, RAMSAR sites, SSSIs, etc, there is no clear policy lead for the countryside in England. Landscape-scale planning was dismantled when Regional and County Planning Authorities were abolished pre-2011. The Devolved Nations are beginning to re-introduce this landscape-scale approach via new environmental/ well-being legislation<sup>142</sup>. However, with the abolition of the Countryside Commission, set up by the Countryside Act 1968, and the cancellation of past planning guidance in PPG7: "The *Countryside* - Environmental Quality and Economic and Social Development" (1997), there is no surviving over-arching vision for the rural landscape in England.

5.2 Natural England acts as the government's adviser for the natural environment in England, and is a delivery body rather than a policy-making and decision-taking organisation. It is a statutory consultee to DCLG, the Planning Inspectorate (PINS) and local planning authorities who are the regulators of the national land use planning system.

5.3 In England, planning policies and decisions are required to be consistent with planning guidance in National Planning Policy Guidance (NPPF 2012)<sup>143</sup>, which introduced the imperative to achieve sustainable development.

5.4 The over-arching NPPF "Core Planning Principles" include the following:

1. recognising the intrinsic character and beauty of the countryside;

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<sup>142</sup> For example, the **Wellbeing of Future Generations (Wales) Act 2015**

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

2. supporting thriving rural communities within it;
3. supporting the transition to a low carbon future in a changing climate;
4. taking full account of flood risk and coastal change;
5. encouraging the reuse of existing resources, including conversion of existing buildings;
6. encouraging the use of renewable resources (for example, by the development of renewable energy);
7. contributing to conserving and enhancing the natural environment and reducing pollution;
8. encouraging multiple benefits from the use of land in urban and rural areas;
9. recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production)
10. conserving heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;
11. taking account of and support local strategies to improve health, social and cultural wellbeing for all, and
12. delivering sufficient community and cultural facilities and services to meet local needs

5.5 Major contributions can be made to the achievement of all these principles by effective land management practices in rural areas. However, in practice, the planning system has very little control over the management of open land in the countryside. NPPF section 3 "Supporting a prosperous rural economy" paragraph 28 explains that "planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development." Surprisingly there is no positive planning references to food production and farming as a critical ingredient to overall land use, as part of the nation's infrastructure.

5.6 The DCLG has become the lead responsible body for achieving sustainable development, principally in built up areas including rural towns and villages. Local authorities constantly manage the issues around rural services, those of rural transport, education, employment and social care. The Landscape Institute believes that rural affairs brief is best dealt with by DCLG and Local Government with the exception of land use and land management in rural areas, which we consider to be best serviced by DEFRA. However, over the years successive governments have inserted a variety of duties for local government linked directly to farming such as animal health, food standards, rights of way, historic environment and biological records amongst others. Indeed, many of the Cross-Compliance conditions attached to the Single Farm Payment are associated with functions of local government.

5.7 Natural England does already operate within the context of the National Planning Policy Framework by acting as advisers to DCLG and as a statutory consultee to local planning authorities, supporting both decision-taking and

policy-making functions. NPPF Section 11 "Conserving and enhancing the natural environment" paragraph 109 states that "The planning system should contribute to and enhance the natural and local environment by, for example, "recognising the wider benefits of ecosystem services". Paragraph 9 states that pursuing sustainable development must involve "moving from a net loss of bio-diversity to achieving net gains for nature". It is notable that this is the only reference to the Natural Environment White Paper 2011 in national planning guidance.

5.8 NPPF stresses that Local Plans should set out strategic priorities, including for climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape. In our view, DEFRA with its agents Natural England, Forestry Commission and the Environment Agency with Historic England, is the department best able to support such policy development.

## 6. Natural England

### ***Q.4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?***

6.1 In 2006 the NERC Act set out the general purposes of the new proposed agency – Natural England –

(1) 'Natural England's general purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.

(2) Natural England's general purpose includes—  
(a) Promoting nature conservation and protecting biodiversity,  
(b) Conserving and enhancing the landscape,  
(c) Securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment,  
(d) Promoting access to the countryside and open spaces and encouraging open-air recreation, and  
(e) Contributing in other ways to social and economic well-being through management of the natural environment.'

6.2 The Natural England Corporate Plan 2014-2019<sup>144</sup> explains that:

- "Our general purpose under the Natural Environment and Rural Communities (NERC) Act 2006 is *"to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future*

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<sup>144</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300746/ne-corporate-plan-2014-2019.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300746/ne-corporate-plan-2014-2019.pdf)

*generations, thereby contributing to sustainable development."*

- "The 2011 Natural Environment White Paper<sup>145</sup> set out the most powerful policy context for our wildlife and landscapes for a generation. The White Paper is clear that a healthy natural environment is the bedrock on which our future prosperity rests and our ongoing work to protect and improve the natural environment in England has a key role to play in the growth of the UK economy."
- "Our duties and powers under this general purpose are wide ranging. For example, we may undertake research, give advice to any public authority or person, and publish information about our work. All of our work is carried out under this and other environmental legislation (including European and international obligations) or at the specific request of Government. We are formally responsible to the Secretary of State for Environment, Food and Rural Affairs, who is accountable to Parliament for our activities and performance."

6.3 The Corporate Plan also advises that "our work is a significant component in the delivery of the Government's aspirations for improving the natural environment in England as described in the Natural Environment White Paper (NEWP) of 2011." Natural England operates as a partner to other Government departments, mainly with Defra, but also with Business, Energy and Industrial Strategy (incorporating DECC in 2016) and to a limited extent with DCLG. However, in terms of economic growth and the achievement of sustainable development, Natural England appears to have very little power to influence the spatial planning system other than supporting the protection of individual designated landscapes (National Parks and AONBs) and designated wildlife sites (SSSIs, NNRs and EU designated sites) and advising public bodies about their duty to conserve biodiversity under the NERC Act.

6.4 Landscape Institute members who work on landscape policy, design and management projects in rural areas inform us that landscape, flooding and climate change issues are frequently of great concern to local landowners, residents and visitors, in parallel with the social, educational and health needs of their communities. Of particular concern to our members is the general lack of awareness, in all government departments, of issues around the long-term sustainability of our landscapes, our countryside and our soils, the essential and irreplaceable growing medium. Unfortunately, these urgent matters also only rarely seem to garner the adequate level of interest of Natural England officers, who are very often hard-pressed and under-resourced, and consequently unable to become involved in any project beyond the offer of biodiversity advice. The Institute has seen various pieces of communication relating to the assessment of planning applications by Natural England which evidence the fact that not enough attention is paid by Natural England to commenting on the impacts of

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228842/8082.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf)

development on the landscape even within nationally important, protected, landscapes. The advice issued by Natural England in the cases which have come to our attention suggests that such matters should be referred back to the Local Authorities or internal staff at the affected National Park Authority<sup>146</sup>. We are also aware through our engagement with AONBs, that further issues exist where Natural England raises no objections in response to development proposals for sites within an AONB. Even in cases where the applicant is referred to consult the relevant AONB (which is agreed protocol), applicants see Natural England as the senior authority and follow their decision. This becomes even more of an issue because at the same time the skills associated with the landscape have been largely lost from local government. The Institute knows from a members' survey carried out in 2011 that over 50% of Landscape Professions in the public sector have gone within the last 15 years. The exception to this observation is the very valuable work undertaken by Natural England in developing the National Character Map and its supporting text (see Para 8.3 below).

6.5 Much has happened to Natural England that has weakened its potential contribution to the environment. From the outset, there was a clear strategy for removing much of the valuable work undertaken by the Countryside Agency, in particular the responsibility for 'conserving and enhancing the landscape'. The 2006 amalgamation of three Government Agencies – English Nature, Countryside Agency and the Rural Development Service brought immediate economies through combining support and technical services. The reductions to the staff compliment however continued two years later, almost as if the economies had not happened, and it continues today. New emphasis was given that Natural England was a delivery agent and its ability to develop policy diminished through the loss of its Policy Director and Chief Scientist posts.

#### ***Q.4 How well do its wide-ranging functions fit together?***

7.1 The LI considers that, in terms of collaborating with other agencies that direct national policy, Natural England has insufficient authority and inadequate resources to deliver the very wide range of integrated environmental benefits that its purposes require. It has annually lost scientific expertise and funding<sup>147</sup> to the extent that it has become unable or unwilling to formulate national policies to secure the conservation and enhancement of the landscape (one of their NERC statutory purposes). In particular, it has been unable to secure and safeguard a coherent ecological network to overcome the damaging fragmentation of habitats across the whole country.

7.2 It also appears to us that the status of Natural England has been incrementally diminished, so that it struggles to impose essential constraints on developments that will inevitably give rise to environmental damage. We fear it

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<sup>146</sup> Copies of the communications can be made available at the Committee's request.

<sup>147</sup> According to Natural England's annual reports, the number of permanent and fixed-term staff has reduced by around 28% between 2006 and 2017. This is in addition to a significant reduction in staff when the three original agencies were merged to form Natural England.

has less and less influence on its partners, even though it is the only government agency with the expertise to deliver effective management of the natural environment, even though it is the lead delivery body for the Government's Biodiversity 2020 programme (building on the Natural Environment White Paper) and the invaluable MAGIC (Multi-Agency Geographic Information for the Countryside) database, and despite the promises of the current and preceding governments to be the first generation to leave the environment in a better state than they found it. For example, Natural England is sponsored by Defra, but Defra's policies for farm management have led to the loss of soil fertility, the despoliation of natural water courses, the degradation of groundwater quality and the extensive loss wildlife (see response to Question 10 below).

***Q.4 Does it have the appropriate powers and resources to perform these functions?***

8.1 The issues around landscape and rural areas that were previously the responsibility of English Nature and the Countryside Agency are of vital importance to members of the landscape profession and to our clients in the private sector - including developers of infrastructure projects, housing and employment sites - and our employers in the public sector - including planning managers, policy makers and elected Committee members. Brexit presents an opportunity for Natural England to recast their terms of reference to explicitly underline their responsibility to promote and safeguard the sustainability of all landscapes. In our view, the multi-functional value of the countryside and green infrastructure should be given prominence in Natural England's plans and programmes equivalent to, and preferably greater than, nature conservation issues.

8.2 Natural England's Corporate Plan is signed off with a statement "Natural England is here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations." In delivering that role, Natural England has published landscape character assessments and profiles of each National Character Area (NCA) in order to identify and explain the unique combination of elements and features (characteristics) that make landscapes distinctive<sup>148</sup>. This data is of great value to LI members as it provides baseline evidence to inform the large- and small-scale projects that enable us to plan, design, manage and monitor the impacts of development and landscape change.

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<sup>148</sup> NCAs divide England into 159 distinct natural areas. Each is defined by a unique combination of landscape, biodiversity, geodiversity, history, and cultural and economic activity. Their boundaries follow natural lines in the landscape rather than administrative boundaries.

<https://www.gov.uk/government/publications/national-character-area-profiles-data-for-local-decision-making>



8.3 However the National Character Map has huge potential in framing the agenda and delivering national policies and programmes. The map records the variations in the resulting landscapes created by human activity, over thousands of years, on natural features – topography, geology, soil types, micro-climate and wildlife. Consequently, the grouping together of places of the same basic natural features enable effective and efficient targeting of resources.

8.4 Each of the mapped Character Areas have been given a local name, consequently the National Character Map provides the framework for enabling local people to understand how public policies and programmes of investment will impact positively on their local area. Local accountability for the outcomes of public intervention could be more effectively delivered in this way.

8.5 In future, we see an important role for Natural England to initiate research, developing policy advice and producing technical information. For example, guidance for landscape character assessments, cultural and heritage landscape assessments, landscape capacity assessments, and publishing 'toolkits' for such assessments. However, our members interaction with Natural England in the course of their work, had led us to form the view that NE currently employs fewer professional officers who are qualified to deal with landscape issues. We understand that currently there are no resources available to support this work. In our view this is short-sighted, bearing in mind the paucity of relevant guidance published by other government agencies. The limited landscape resource within Natural England is mainly a consequence of how Natural England was set up in the first place.

***Q.5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?***

9.1 In 2006, the UK government signed up to the European Landscape Convention (ELC) which requires landscape *'to be integrated into regional and town planning policies and in cultural, environmental, agricultural, social and economic policies, as well as any other policies with possible direct or indirect impacts on landscape'*. This is a Treaty and not an EU Directive, therefore it is binding on all the states that signed it. The convention places landscape on an equal footing with biodiversity and cultural heritage as the context and framework for planning and managing change. It applies to all landscapes everywhere and in any condition, whether they are exceptional, designated and subject to special protection, or ordinary and degraded. It recognises the dynamic nature of landscape and places emphasis on the effective planning, designing and management of change with people in mind. It encourages all signatories to act to raise awareness of the value of landscape among all sectors of society, and of society's role in shaping it.

9.2 The LI therefore strongly supports Natural England's Corporate Plan, which is generally consistent with the purposes of the ELC, to:

- work at a landscape/larger scale to restore ecosystem function and develop ecological networks, with 'bigger, better, more and joined' habitat areas that will be as resilient as possible to climate change and other pressures;
- improve our understanding of the way that habitats and species contribute to landscape quality;
- promote and support more access to and engagement with the environment;
- enable people and communities to identify and act for the places and priorities that matter to them, and
- increase wider understanding of the natural environment and the benefits it brings.

However, looking at Natural England's current interventions and projects, these aspirations will demand a radical change in approach, away from the narrow precautionary approach adopted in past years and towards a vision of a highly sustainable countryside post-Brexit. Strategic outcomes that the Landscape Institute has been advocating include the following public goods:

Secure, sustainably produced food;  
Clean water in our aquifers, rivers and seas;  
Clean air free of pollutants and airborne chemicals;  
Restored soils with natural fertility created by healthy biota;  
Sustainable rural economy with multiple outputs including food, timber and fibre, renewable energy, construction products and water supplies;  
Countryside teeming with wildlife, actively managed;  
Accessible countryside, supporting health and wellbeing for everyone;  
Resilient countryside able to survive unpredictable changes in climate;  
Biologically healthy landscapes, resilient to disease and to invasive non-native species;  
Retained and restored distinctive local variations in landscape character;  
Safeguarded and enhanced historic environment;  
Landscape that holds and slows surface water flows resulting from exceptional rainfall;  
Landscape that sequesters carbon;  
Landscape that contributes to climate change adaptation and mitigation, including through ecosystem restoration.

9.3 The LI sees the greatest risk of developing a post-Brexit agri-environment policy as imposing a new regime without the public fully understanding the need to encourage the farming industry to transform the way it operates, and without clear environmental and social, as well as economic, benefits being seen to be delivered as a result of public investment. The opportunities for sustainable rural development are limitless, from developing farming and forestry industries with lower costs and less dependence on non-renewable resources, to choosing to support biological rather than chemical agri-research, to the creation of equitable markets for clean water and other eco-system services, and to

transforming the countryside to one where ecosystems are in balance and where resilience to unpredictable changes in climatic events is significantly improved.

9.4 These are not short-term goals. In our view, the majority of these outcomes should be made the responsibility of Natural England and other agencies within Defra, and incorporated into a National Rural Land Management Policy setting the context for the forthcoming 25-year plans – integrating Environment, Food and Farming. At the same time, the LI would urge the government to fully integrate the new imperative for multi-functional outcomes as outlined above, to be achieved by positive partnerships and by the sustainable management of the countryside.

9.5 Therefore, in order to achieve the wider objective of a highly sustainable countryside post-Brexit, the Landscape Institute suggests that Natural England's role should be expanded to coordinate all landscape-related matters into a national policy articulated at landscape scale. We believe that this Rural Land Management Policy for England is essential, to be delivered through local partnerships and producing multiple environmental outcomes.

***Q.6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?***

10.1 The NERC Act 2006 has encouraged Natural England, Forestry Commission, Environment Agency, Historic England and partners such as the Woodland Trust, the Community Forests Trust and the Canal and Rivers Trust to become active in recent years promoting access to the countryside via Rights of Way, Coastal Paths, long distance footpaths and cycle ways, etc. The beneficial effects of access to open spaces and the natural environment, encouraging informal recreation, leisure activities and casual visits for fresh air, health and wellbeing, particularly for urban communities, are beginning to be better understood.

10.2 The Landscape Institute has published a Green Infrastructure guide<sup>149</sup>, to demonstrate that networks of landscape infrastructure, of open spaces incorporating water bodies, wildlife habitats, trees and woodland, in both urban and rural locations, make a significant contribution to social and economic wellbeing. We are now planning to build on this guidance by commencing a new piece of work around public health, concerned with the wellbeing of children and young people in urban and rural areas. The natural environment offers multiple opportunities for experiential learning out of doors, for imaginative play, social play, physically challenging and creative play, and for other aspects of play that are largely unavailable in confined urban settings, parks and playgrounds. In our experience, rural landscapes offer informal play and learning opportunities that

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<sup>149</sup> <https://www.landscapeinstitute.org/wp-content/uploads/2016/03/GreenInfrastructureLIPositionStatement2013.pdf>

allow young people to reconnect with the natural world of forest, lakes, rivers and associated wildlife, and also with food growing, harvesting and seasonal changes. The Community Forest Trust, and in particular the Mersey Forest and their "Natural Health Service"<sup>150</sup> campaign with NHS England, ably demonstrate the physical and mental health benefits of such activities.

10.2 In light of this greater knowledge and experience, it would be helpful if Natural England could revise and update the NERC Act arrangements and provisions for access to the countryside to support essential health and educational opportunities. One of the more obvious transformation of access arrangements that needs further strategic exploration is the potential for modernising access infrastructure. The Rights of Way network is founded on direct routes from one place to another but today the demand is for circuits of different lengths and of different characteristics. We now know that offering high quality walks to everyone could have a profound effect on the health and wellbeing of everyone. Therefore, starting out on walks from villages, towns, cities, bus stations, railway stations and car parks and being able to return to those places without retracing footsteps would be of great benefit. Linking stretches of the Rights of Way network to create circuits might be the way to do it. If the Government is considering new supporting mechanisms for the farming community on a public money for public goods basis then paying for new and improved access could be part of the new agenda.

## **11. Sustainability and biodiversity**

***Q.7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?***

***Q.8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?***

***Q.9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?***

11.1 The Landscape Institute is committed to ensuring that through all commissions for transforming the landscape its member's starting point typically includes securing the biological health of every landscape. Consequently, the Landscape Profession work closely with CIEEM members for example on helping the Building Research Establishment to develop its strategic ecological framework.

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<sup>150</sup> <http://naturalhealthservice.org.uk/wordpress/>

## 12. The changing context since 2006

**Q.10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

**Q.11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

12.1 The decision to leave the European Union has created, for the first time for 50 years, an opportunity to have a new vision for the British Countryside. The quality of the countryside has defined this country in the past and today the pressures have changed, increasing population growth, a changing climate and the extreme pressures on natural resources all point to the need to develop a healthy symbiotic relationship between town and country. Our urban landscapes have a planning system but our rural landscapes have no clear policy or plan. Brexit requires the Government to decide on how the farming industry is to be supported in the future through public intervention. As negotiations with the EU evolve it is important that any trading arrangements do not lock the UK into farming policies it is unable to influence.

12.2 The Landscape Institute takes the view that actions that have been adopted to achieve the Common Agriculture Policy objectives have failed to comply with the corporate environmental policies of the European Commission. The underlying strategic direction of agricultural systems supported by the CAP, specifically intensive systems designed to stifle the power of natural systems, has been demonstrated to be financially, socially and environmentally costly and unsustainable<sup>151</sup>. The resulting impacts vary considerably across the great variety in landscape types in this country so, for the purposes of this evidence, the Landscape Institute will draw on just one these to illustrate the potential impacts of modern agricultural processes – the chalk landscapes of Southern England.

12.3 Despite the regulatory mechanisms and the extent of public investment into farming the impacts from agriculture include:-

- The loss and impoverishment of our soils - a national asset - loss of supportive micro-organisms, loss of structure, loss of carbon, loss of water holding capacity and loss by erosion of the soil itself;
- Diffuse pollution of aquifers and rivers by nitrates and phosphates, leading to water companies having to import water to dilute drinking water by blending;
- Impacts on air quality, including extensive emissions of greenhouse gases, in particular nitrous oxide from applied nitrate fertilizers;

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<sup>151</sup> [https://ieep.eu/archive\\_uploads/2000/IEEP\\_Brexit\\_2016.pdf](https://ieep.eu/archive_uploads/2000/IEEP_Brexit_2016.pdf)

- Large-scale landscape management regimes that fail to slow down rainfall released into urban areas, leading to unnecessary flooding, often exacerbated by over-grazing and monoculture;
- The unnecessary destruction of habitats and species through the application of herbicides, fungicides, insecticides and slug pellets;
- The erosion of the nation's historic environment such as the continuing ploughing of Scheduled and Unscheduled Ancient Monument sites;
- The loss of on-farm skilled labour resulting in farm woodlands being unmanaged and not contributing to the economy or environment;
- The loss of the distinctive variety in the landscape that defines this country and has always been highly valued as a priceless resource for tourism.

12.4 In contrast to this list of negative impacts the Landscape Institute can offer the Select Committee, as evidence, an example of arable and mixed farming on shallow chalk soils which recognises the power of natural systems as a central component of the business plan of the farm<sup>152</sup>.

12.5 The Cholderton Estate on the Hampshire/ Wiltshire border is a 2,500 acre estate with a private water company, two dairy herds and a large arable holding. This thriving agricultural business relies on the biological diversity of its soils and an integrated crop management system to fix airborne nitrogen for the sustainable production of healthy food. No chemical based controls or stimulants are used on this estate, which unfortunately has to spend £30,000 a year on removing nitrates that have migrated laterally through the aquifer from neighbouring estates. The result is a productive agricultural estate with an outstanding landscape that is teeming with wildlife<sup>153</sup>. For example, as a result of their integrated crop management approach, Cholderton supports a total of 18 species, out of the total 23 species, of British Bumble Bee.

12.6 The impacts of modern agriculture have largely passed un-noticed by the general public and despite extensive public investment in support of farming the public remain unclear about what the investment is achieving. The exception to this might apply to the protected landscapes of National Parks and Areas of Outstanding Natural Beauty the administrations of which do incorporate locally elected members of local government as well as national appointees. Both nationally protected landscapes are subject to statutory prepared Management Plans however there is no obligation on any level of government to implement the plans. The bulk of public funding in support of managing the countryside is held by a variety of government agencies such as Natural England, Environment Agency, Forestry Commission and the Rural Payments Agency.

### **Proposition for Restructuring Public Intervention into Farming following Brexit.**

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<sup>152</sup> <http://www.cholderton-estate.co.uk/fp.php?id=648>

<sup>153</sup> <http://www.cholderton-estate.co.uk/fp.php?id=649>

13.1 The Landscape Institute recommends to the House of Lords Select Committee that the Natural Environment and Rural Communities Act is revised or replaced in order to transform the way the British countryside is managed to secure an agricultural system that follows the principles of sustainability, delivers a multi-functional countryside to benefit the whole of society and ensures that public investment is fully accounted for. The new legislative mechanism to ensure a rebalance of regulation over incentives to develop a more collaborative relationship with the farming community in contrast to the current system where the threat of disallowance from the EU has created divide.

13.2 The Institute recommends that the Government prepare a National Rural Land Management Policy as the basis of the proposed delivery plan – The 25 Year Environment Plan. For rural areas, the Environment Plan is fully integrated with any future Food and Farming strategy. For the Policy and Plan to be articulated at a Landscape Scale making use of the existing protected landscapes and remaining Character Areas (or multiple of them). The existing Statutory Management Plans for protected landscapes to be modernised to set out the national policies and local policies. For the remaining Character Areas new Management Plans are pulled together to articulate the national policies for the area.

13.3 These Landscape scale Management Plans forming the brief for individual Farm Plans (prepared by the farmer) being the mechanism for a contract between the farmer and the state for the delivery of public goods set out above in paragraph 9.2. Central to the Landscape Institute's recommendation is the need to harness the power of natural systems in support of sustainable food production as opposed to a system that stifles natural systems that is widely practiced at the moment. A critical ambition is to see the legacy of Brexit as the restoration of UK soils and this will take many years to fulfil. It is recommended that the same level of funding of £3.5 Billion per year is invested over the plan period of 25 years to be applied to all rural farms. It is also recommended that the investment is made on a per hectare basis, paid bi-annually. Investment will continue where the farmer is already delivering the public goods but funding for the remainder of the farming community will only be available where a binding commitment is given to transform to the sustainable food production processes and the provision of public goods.

13.4 We recommend a change to the administrative systems making the best use of Natural England's field staff. These staff to be the single point of contact between the farmer and the public sector, with back office support from the Environment Agency, Forestry Commission, English Heritage and local government. The responsibility for being accountable for the expenditure of public funds to be shared between the farmer and the field staff.

13.5 Outside of the protected landscapes with their own administrative organisation it is suggested that the Government encourage Local Joint Advisory Committees to be set up to advise on the preparation of the Management Plan

for the area to be signed off by the Secretary of State for DEFRA. They would also monitor delivery via the Farm Plans. These Committees would be the start of DEFRA programmes being locally accountable. Any modification of Joint Committees can be achieved through the annual Local Government Act. It is recommended that a modern Joint Committee includes elected members from the relevant local authorities, representatives from the farming community – NFU and CLA, Wildlife Trusts, Council for the Protection of Rural England and others, all with full voting rights. Such an approach should also stimulate voluntary support to the delivery of public goods through research and innovation.

13.6 In the long term the Government might like to consider devolving powers and programme funding by agreement to Joint Advisory Committees in line with the clause in the NERC Act that enables such delegation to happen.

*11 September 2017*



## **Lincolnshire Wildlife Trust – written evidence (NER0064)**

### **Introduction to Lincolnshire Wildlife Trust**

Lincolnshire Wildlife Trust is one of a national family of 47 Wildlife Trusts, and is a membership based charitable organisation with over 28,000 members, around 70 staff and 100 nature reserves, with the following vision and mission.

#### *LWT Vision:*

Lincolnshire and the neighbouring sea and estuaries to be rich in wildlife for the benefit of all.

#### *LWT Mission:*

To safeguard wildlife in Lincolnshire and in the neighbouring sea and estuaries by:

- protecting existing wild places as reservoirs of biodiversity;
- restoring and creating wildlife habitats;
- sharing this vision with others, particularly relevant decision makers;
- encouraging more people to enjoy Lincolnshire's natural environment and to understand the need to conserve it;
- promoting research projects which lead to a better understanding and appreciation of the natural world.

### **Rural advocacy and the Commission for Rural Communities**

- 1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?**
- 2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**
- 3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

The Lincolnshire Wildlife Trust covers the historic county of Lincolnshire from the Humber to The Wash which is a highly rural area interspersed with some larger conurbations (e.g. Lincoln, Scunthorpe, Grantham) and smaller market towns (e.g. Sleaford, Horncastle, Spalding). In England 18% of the population live in rural areas, that is in towns of less than 10,000 people, in villages, hamlets or isolated dwellings. In Lincolnshire the figure is 48%. Some parts meet the

'Rural-80' definition i.e. 80% of the population live in a rural area, such as the district of South Holland. Other parts score highly on the Indices of Deprivation, particularly in the coastal zone. Therefore, Lincolnshire Wildlife Trust conducts its day to day work in a mainly rural context.

It is noticeable that in recent years, there has been a 'squeeze' on rural public services that help deliver our Vision and Mission (set out above). For example, the Trust has been an active member of the RDPE Leader programmes across the county in the past and currently, and the staffing of these programmes and support to applicants has noticeably decreased. The Trust recognises that Lincolnshire County Council is providing the best service they can at present within the budget constraints they have to operate. The guidance for this is set by Defra, as are other guidance and application processes for various rural funding streams with limited access to reach face to face support with on the ground people who understood the local rural context. This probably reflects that the 'Rural Policy Team' of Defra is relatively small, and centralised, further impacted undoubtedly by the need to service the European exit processes. The Trust appreciates the efforts of Lord Gardiner as the rural ambassador and the Defra Team, but without the Commission and/or a clear statutory body for rural issues then the focus is lost against the backdrop of urban issues and growth, and where rural specific funding streams do exist, they are not wholly accessible due to the lack of people on the ground to support often complex application processes.

It should be noted that within the Lincolnshire context, the Greater Lincolnshire Local Enterprise Partnership (GLLEP) and Greater Lincolnshire Nature Partnership (GLNP) do work at highlighting rural issues for the area at a national level, which the Trust participates in and appreciates these bodies being existence. These two types of devolved organisations require better central resourcing in rural areas from Defra. Particularly to maximise the opportunity of the natural environment underpinning the social and economic well-being of this rural county, where multiple benefits from a landscape scale delivery for people and wildlife can be secured better within the right rural policy framework that is well resourced.

## **Natural England**

**4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

**5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

**6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

The Trust work across a series of areas that Natural England is involved in and/or lead, these include:

- Agri-environment advice and working with local land owners
- Agri-environment applicant for Countryside Stewardship and previous schemes as a land and livestock owner & manager
- Coastal access and delivery of the ECP
- Greater Lincolnshire Nature Partnership that includes the local environmental record centre and biodiversity action plan
- Landscape scale approach through NE Focus Areas and Trust's Living Landscapes – ecosystem services and connectivity
- Marine Protected Area designation and trying to achieve the 'blue belt' and securing proactive management of risks to those sites
- National Nature Reserves joint management
- Planning: forward and development control on land and at sea
- Research and monitoring: building the evidence base of the natural environment, change, green-blue infrastructure and natural capital
- Securing external funding through joint bids and project delivery

The Trust would firstly like to recognise both the local and national expertise and experience of the staff of Natural England across land and sea, and their dedication even in trying times.

However, the endless excessive budget cuts, pressure from central Government to resource the 'Brexit' process and pressures to facilitate income generation as an organisation and other similar political pressures, has hamstrung the organisation in its ability to meet the functions as set out in the NERC Act and for 'wild England'. The NERC Act states Natural England's general purpose is to, "*ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*". This view is clearly evidenced by Government bodies own reports and the NGO-sector's *State of Nature Report* (2016). This shows that since 1970, 56% of species declined with 53% declining since 2002<sup>154</sup>.

Examples 1: resource constraint impacts locally

- Lincolnshire creates a GVA per capital in agriculture of £30,600 against a UK figure of only £18,300. The GLLEP's Agri-Food Sector Plan 2014-2020, estimates that the food chain contributes over £2.5bn in GVA to the GLLEP economy and this rises to £3.4bn if food retail and catering are included. With the farming industry therefore being critical to the socio-economic welfare of Lincolnshire and also critical to ensuring that wildlife within

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<sup>154</sup> <http://www.wildlifetrusts.org/stateofnature16>

Lincolnshire is sustained and enhanced then it is highly alarming that Natural England East Midlands Team can only manage to resource 3 part-time advisers supporting land managers to understand and apply for Higher Tier under Countryside Stewardship. There are no advisers for mid-tier just a 'call centre hub'. The new application and online systems are hard for even a technically minded individual to follow, let alone a hard pushed small-scale farmer running a business. This highly limited support alongside a highly complex application process has seen drastic drop-out rates in agri-environment schemes across Lincolnshire. In 2016, there were only 2 applications for Higher Tier out of 37 Higher Level Schemes that expired, and only 15 went on to request Mid-tier packs. This does not bode well for wildlife connectivity across Lincolnshire and also in terms of consolidating public resource investment of the past, is a highly poor outcome.

- The Trust has taken on the role of managing for Natural England the Saltfleetby National Nature Reserve. This is a cost effective arrangement for Natural England and helps us all work towards a landscape scale approach to coastal Lincolnshire where an innovative super-NNR will hopefully result alongside a Heritage Coast designation working with the Local Authorities. The issue being this is agreed through an annual agreement, as Natural England cannot commit beyond a year. This causes medium-term operational management issues for the Trust, which reduces the positive potential impact for biodiversity.
- Natural England has not attended the GLNP quarterly Steering Group meetings for over two years. Their representation on other partnerships is sporadic also due to resource constraints including where highly innovative approaches to multi-sector, multi-benefits are materialising where you would hope Natural England would be a leading voice and funder. An example being the South Lincolnshire Water Partnership which has been invited by Defra to submit a case study to be included in the 25 Year Environment Plan.

#### Examples 2: resource constraint and political change impacts

Natural England working in partnership and across a landscape scale has been reduced, as evidenced by:

- The Lawton Review in 2010 recommended 'more, bigger, better, joined', but there is little to no clear terrestrial programme of a review of designations for new or existing sites: notifications, renotifications and denotifications.
- Natural England was due to take forward tranche 3 of the Marine Conservation Zone designation programme with JNCC resulting in a Defra consultation early in 2017. This still has not occurred even though in 2016 environmental NGOs were only given a 6+ week window to turn round a sudden new ask to provide evidence on mobile species to meet wholly new criteria system. Even more worryingly, a new timetable is still not clear.
- Many existing Marine Protected Areas still do not have a baseline condition assessment in place based on a scientifically robust monitoring programme. Along with many not having conservation advice packages in place for Relevant Authorities and those who wish to take forward positive measures for marine nature conservation and management. There was a comprehensive programme for both of these elements, but these have been reduced and/or pushed back over time due to budget constraints.

- East Midlands Team identified the first round of Focus Areas in 2016 for taking forward a landscape scale outcomes approach, with a second round due in 2017 including for the Lincolnshire Fens. This has not materialised.
- Natural England now only responds on spatial planning matters if SSSIs or European sites are likely to be impacted by a development, not Local Wildlife Sites. This neglects the Lawton principles, commitments under Biodiversity 2020 and Nagoya agreement, as Local Wildlife Sites and significant developments not within or adjacent to any 'designated' site have the potential to deplete the natural capital of an area.
- Furthermore, due to the drive of generating income within NE to try and fill the budget gaps, a 'Discretionary Advice Service' has been introduced. The principle of engaging early with developers to get the development right from the outset, is a sound one, and Natural England should do this, but it should not be constrained by charging if it is the right thing to do for the natural environment and nor should it be at the expense of responding to wider forward and development control planning to ensure biodiversity is taken into account. The Trust is a great supporter of this proactive approach to pre-development, and has fully participated in the South Humber ecological mitigation planning process that has seen true innovation between planning authorities, environmental bodies and statutory agencies. Natural England has also participated and this approach should be applauded, but as a statutory body for biodiversity they also need to ensure this is not at the cost of delivering their regulatory duties.
- The Trust also has concerns with the change in approach by Natural England towards European Protected Species and the resourcing of the related licensing team. The principle of looking at a spatially coherent population of a species and undertaking forward planning for development and front loaded mitigation/compensation at that scale is sound in principle. But again lessons need to be learnt from this approach, such as 'Great Crested Newt Woking Pilot', before mass roll out across the country. This has not been the case and therefore a nation that should be proud to be the stronghold for Great Crested Newt across Europe, may actually deplete the viability of the species nationally and internationally.

### Examples 3: resource constraints and sudden changes in approach

The Trust understands the need for an efficient and effective public sector that maximises the resources for all, but this should not result in what seemingly feels like 'knee-jerk' reactions to save money in the short-term at the cost of long-term needs. This is particularly pertinent to developing and maintaining a meaningful evidence base that can illustrate the value of nature, the impacts of positive management & development and how the world is changing and how we need to adapt natural environment management to ensure we halt the overall decline in biodiversity.

- In April 2016, Natural England ended its long-standing Memoranda of Agreements with Local Environmental Records Centres (LERCs) with limited notice. These are not-for-profit organisations that collect, collate and

manage information on the natural environment for a defined geographic area. LERCs support and collaborate with a network of local experts to ensure information is robust, and make information products and services accessible to a range of audiences including decision-makers, developers, the public, and researchers. Significantly, they also provide the crucial local support and validation for the many UK recorders, who entrust and share their data – much of which is then made available through open source platforms like the NBN Atlas<sup>155</sup>. This network of recorders is highly cost-effective, as many do it as volunteers at no cost as trained citizen scientists. In a joint statement issued by Natural England and the Association of Local Environmental Records Centres (ALERC), the main reasons for taking this decision *'is Natural England's drive for open data. This means that the limited resources available to them have to be spent accessing data that conforms to this policy and can no longer contribute to funding the agreements with LERCs. In addition, Natural England's evidence budget is significantly less than it was eight years ago, so they have had to make difficult spending choices'*. The statement goes on to say *'Natural England recognise that ending these MoAs will mean that they are not able to access or use much of the high resolution and verified data provided by LERCs.'* This is a short-term gain with a long-term impact that sends the wrong message to people on the ground that collect evidence on biodiversity often free of charge. It also sends the wrong message to the wider public bodies covered by this Act that have a duty to biodiversity. In that, the national agency for biodiversity does not support the maintenance of the evidence base for local biodiversity and Local Wildlife Sites that have to be taken into account in the planning process. This is a lack of leadership, and if improvements were required, then Natural England needed to participate not pull out at very short notice. The Trust now questions how Natural England fulfils its legal responsibilities under the NERC biodiversity duty and the Wildlife and Countryside Act 1981; and the validity of the evidence on which it bases its decision making. In contrast to Natural England, the Environment Agency has recognised that this local data remains vital in delivering its duties and has continued to support its agreements with LERCs. The Trust in Greater Lincolnshire continue to value this service so much so that we host the LERC and support the recorders of Lincolnshire, Natural England should be doing the same, and locally I know some staff feel this is the case and this solely reflects resource constraints and a national decision.

#### Natural England and the future in regards to NERC Act

Natural England has the ability to fulfil its remit under the NERC Act based on expertise and experience of the staff on land and at sea, but it needs to be resourced in a manner that enables this and allows for a long-term approach to

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<sup>155</sup> <https://nbnatlas.org/>

wildlife and nature conservation based on sound evidence and not subject to political changes.

Natural England is an executive non-departmental public body, and the Hampton Principles have been incorporated into the objectives of the organisation including *"Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection"*<sup>156</sup>. The Trust believes that a healthy, wildlife-rich natural environment is not only valuable in its own right, but is fundamentally important for human health, wellbeing, personal development and prosperity. Ultimately, it is the foundation on which our economy is built and provides economic benefits in many forms including reducing public expenditure on flood risk management, water quality improvements, soil management and restoration. Within Greater Lincolnshire this is particularly the case when much of its economy and projected growth is based on farming, tourism and manufacturing goods relating to the environment. Given the perilous state of nature in England, we need an organisation which has greater independence from central Government, not bound by principles that potentially undermine their core purpose and one that is able to advise, develop, deliver and critically comment on policy in a public arena.

The Trust believes that ambitious goals and spatial plans for nature's recovery and environmental improvement post-Brexit are required. The Trust in Lincolnshire is not alone in this thinking, as is illustrated in briefings produced by the Greater Lincolnshire Local Enterprise Partnership and the Greater Lincolnshire Nature Partnership. The 25 Year Environment Plan could provide this and a further step forward would be to introduce a framework Environment Act that would be most effective in meeting clear objectives for nature's recovery and the needs of business, farmers, landowners, local communities and others.

Natural England needs to be adequately resourced and empowered to deliver on its general purpose as set out in the NERC Act. It needs to implement strategic landscape thinking across the organisation and outwith – both in policy and action on the ground. The Trust would like statutory strategic plans for an area which describe the attributes required for a healthy, resilient natural environment. Only through an integrated approach can we hope to reverse the downward trend in biodiversity.

## **Sustainability and biodiversity**

- 7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**
- 8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

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<sup>156</sup> <https://publications.parliament.uk/pa/cm201213/cmselect/cmspeak/1069/106911.htm>

The Trust believes that the level of understanding and awareness varies significantly amongst local authorities and public bodies and that further work is required to raise awareness. The Trust provides regular training to public bodies to fill a void in this knowledge gap, most recently evidenced by a training event held at South Kesteven District Council offices where over 40 local authority participants from across the county attended. Surely it is not the role of the charitable sector to inform the statutory sector of their duties, but this is necessary on a regular basis due to current staff turnover, which the Trust believes reflects the ongoing public sector cuts and workloads of overloaded planning authorities. It is also noticeable that many of the local authorities now have a much reduced in house ecological resource, based on the increased number of queries we are asked by them on the basics.

It is also critical for their planning role as set out within National Planning Policy Framework (NPPF) that local authorities, as well as to meet their biodiversity duty under NERC Act, continue to support their Local Environmental Record Centre. Further public sector cuts will jeopardise this.

One possible cost effective solution to this would be for Defra to core resource Local Nature Partnerships to deliver training/awareness raising on the NERC Act at a locally relevant spatial scale for all public bodies.

The Trust considers that the greatest practical impact of the duty has been in us using it to secure support for biodiversity partnership approach for the Greater Lincolnshire Nature Partnership, Local Environmental Record Centre and in responding to forward and development control planning consultations. There has been a noticeable change in some public bodies, such as the Internal Drainage Boards, in consistently supporting and engaging in biodiversity related partnerships, programmes of works and projects, which in part may reflect the NERC Act. The Act has been particularly useful in responding to forward planning consultations, such as Local and Mineral Plans to ensure biodiversity is given due regard. The section 41 list is also useful in helping public bodies prioritise habitats and species in regards to planning.

However, disappointingly, the NERC duty is not taken seriously enough and has had limited practical impact considering biodiversity still is in decline. Whilst it may be understood, we believe it is not well or consistently applied. An organisation can suggest that it has adhered to the duty and still proceed with significant environmental damage without fear of any recourse or penalty.

The 25 Year Environment Plan currently being produced by Defra could be an opportunity to integrate the duty into decision making for all Government departments. It is also fundamentally important that decision makers have access to high quality, locally-derived data on Section 41 habitats and species, and so the need for Local Environmental Records Centres is key to ensuring the Act is dispensed effectively.



**9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

No comment.

**The changing context since 2006**

**10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

**11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

The Act itself is not necessarily insufficient, but reducing public resource, lack of political will and lack of enforcement of the Act do reduce its potential positive impacts for the appropriate protection and enhancement of the natural environment and addressing rural issues.

The 25 Year Environment Plan currently being produced by Defra could be an opportunity to integrate the duty into decision making for all Government departments and public bodies.

The Trust believes that, if further pressures are brought to bear on the natural environment as a result of Brexit or any other political or economic forces, then changes in some format – either to the Act itself or in how it is enforced – will be required in order to ensure that the public bodies do 'have regard' for biodiversity and that the Government's commitments and aspirations for the natural environment have a chance of being achieved. This could be through introducing a framework Environment Act that would be most effective in meeting clear objectives for nature's recovery and the needs of business, farmers, landowners, local communities and others.

*11 September 2017*

## **Local Government Association – written evidence (NER0014)**

Dear Lord Cameron,

As you conduct your inquiry into the Natural Environment and Rural Communities Act 2006 you may be interested in the following information the Local Government Association (LGA) has on non-metropolitan areas (NMAs), what they stand to benefit from devolution and the industrial strategy, and how they will be affected by the UK's exit from the European Union.

### *Non-metropolitan authorities*

The LGA's People and Places Board represents the interests of non-metropolitan authorities (NMAs). Its remit includes inclusive growth and skills and employment support, devolution, the implications of Britain's departure from the EU, digital connectivity, and public service reform. It is not always a simple task to separate out specifically rural issues from the wider economic and social agenda. Our experience is that all communities want the opportunity to thrive, with access to the housing, jobs and infrastructure that enables this. As local leaders we are also keenly aware of the critical role public services can play in supporting the vulnerable and in connecting local people to the rewards of national growth.

The economic potential of NMAs is significant, as is their existing contribution to the national economy. This was well-demonstrated by the final report of the Non-Metropolitan Commission<sup>157</sup>, the findings of which found that NMAs account for a significant proportion (56 per cent) of England's economic output. Their economies are diverse and often include industries that are vital for Britain's global position in the export market, such as manufacturing and agriculture. The wide economic bases of NMAs and their rapid growth potential are evidence of sophisticated and evolving economies. Yet despite their economic potential, NMAs are also experiencing a range of demographic and economic challenges, which include:

- Local authorities in NMAs are experiencing significant financial pressures, with national figures indicating that English councils will face a funding gap of £5.8 billion by 2020.<sup>158</sup>
- Demographic pressures will add to the demands on councils, and in particular social care services, which nationally face a funding gap of £2.3 billion by 2020.<sup>159</sup>

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<sup>157</sup> [Final Report of the Non-Metropolitan Commission](#), 2015

<sup>158</sup> [Growing places: building local public services for the future](#), 2017

<sup>159</sup> [Growing places: building local public services for the future](#), 2017

- Infrastructure is key to the economic prosperity of NMAs but these areas are faced with the particular challenges of dispersed housing settlements, ageing or overloaded infrastructure networks and the need to maintain close links with urban neighbours and global trade routes.

### *Devolution and industrial strategy*

Beneath these headlines, every area is different, with the scale of opportunities and challenges within NMAs determined by a wide range of local factors. Rather than focusing on the role of central government departments in developing rural policies to respond to shared but locally specific challenges, devolution to local leaders presents the most effective means to ensuring that the social and economic interests of non-metropolitan communities are reflected in the delivery of services and the development of policy solutions. As such, if a gap in the Government's approach has been created by the closure of DEFRA's Rural Communities Unit then this might be best addressed by providing councils with the freedoms and finances to deliver for their communities, rather than seeking to develop additional capacity or functions at the national level.

The Government has shown a clear preference for a form of devolved governance: a mayoral combined authority. This one-size-fits all approach sits at odds with many of the well-established governance structures already in place and risks excluding large parts of the country, particularly NMAs, from accessing the important levers of growth provided by devolution.

It is positive that the Government committed to developing an industrial strategy that is rooted in place and delivers for all corners of the country. In line with evidence presented above there are key elements of the industrial strategy that would benefit from a more tailored local approach:

- **Skills** – evidence shows that counties have low value, low productivity industry, and do not currently have the skills base to support high value growth sectors.<sup>160</sup> NMAs and the wider economy could benefit from greater local government influence over the employment and skills systems, enabling local solutions to be developed to address the specific challenges they face.<sup>161</sup>
- **Trade and investment** – NMAs are yet to achieve their full potential in international markets and are currently having to operate in a crowded institutional and policy landscape. The current approach to trade and investment must be streamlined and local influence strengthened in order for NMAs to realise their potential in this area.
- **Housing** – issues of housing shortage and affordability are particularly prevalent in many NMAs. While many of the proposals in the government's Housing White Paper were encouraging, there is a need for more substantive measures to tackle the significant housing issues in NMAs.<sup>162</sup>

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<sup>160</sup> [A New Deal for Counties](#) (County Councils Network), 2017

<sup>161</sup> For further information on the LGA's proposed reforms to skills and employment see our [Work Local report, 2017](#)

<sup>162</sup> [LGA Housing Commission Report, 2017](#)

- **Infrastructure** – intrinsically linked to the issue of housing is the need for infrastructure to support it. Transport in particular is key to the future economic prosperity of NMAs and it is essential that local leaders have the necessary levers to address local transport challenges.

### *Exiting the EU*

A similarly place-based approach will be required as the Government negotiates the United Kingdom's exit from the European Union, and in particular with regards to the design and delivery of the proposed UK Shared Prosperity Fund. Following the EU referendum, one of the biggest concerns from councils was addressing the potential €10.5 billion (£8.4 billion) UK-wide funding gap for local government that would immediately open up from the point we officially exited the EU, unless a viable domestic successor to EU structural funding was in place.

In its manifesto, the Government pledged to create a UK Shared Prosperity Fund to replace the money local areas currently receive from the European Union. This EU money has been vital to create jobs, support small and medium enterprises, deliver skills, and boost local growth across the country, in metropolitan and non-metropolitan areas. The successor arrangements for EU funding should be place-based to enable local areas to set their own priorities, and enhance their capacities to adapt to unknown challenges that will need to be addressed after Brexit. The LGA is consulting on options to inform the design and delivery of the UK Shared Prosperity Fund which will provide an important contribution to the Government's own analysis and deliberations.<sup>163</sup>

If you would like any further information I would be happy to supply more details in writing.

Yours sincerely,

Mark Hawthorne

Chair, LGA People and Places Board

*5 September 2017*

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<sup>163</sup> [Beyond Brexit: future of funding currently sourced from the EU](#), 2017

## **Mid & West Berks Local Access Forum – written evidence (NER0027)**

1. The Forum would like to make the following points with respect to questions 4-6 concerning Natural England (NE). These views come from those who have been members of the Forum since its inception in about 2005 and newer members who are actively trying to improve public access in the unitary authorities of Reading, West Berkshire and Wokingham.

Question 4: How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?

2. The Forum feels that NE is not supporting public access and Local Access Forums adequately. It is unclear to us whether this is because of its mandate, lack of powers or lack of resources due to reductions in Government spending throughout the last decade. Public access generally seems to be the cinderella within NE and does not seem to be fitting well within its mandate which focusses on protection of the environment. This is unsatisfactory when public access is accepted as contributing to human health & well-being, the rural economy and tourism and when resources to local authorities, who manage much public access, are being severely cut back.

3. NE appears to suffer from a fundamental dichotomy. Section 2 of NERC states that NE's general purpose is "to ensure that the natural environment is conserved, enhanced and managed". "Promoting access to the countryside and open spaces and encouraging open-air recreation" comes 4th in a list of 5 strands to its purpose in Section 2(2) of the Act. This, perhaps inadvertent ranking, seems to us to be how NE sees its priorities.

4. Examples of lack of support known to us are:

i. Notification of this consultation only via Huddle, a medium used poorly by Local Access Forums. An inquiry to NE revealed that Forum secretaries have not been contacted directly. A lack of response from local access forums may be because they are unaware of this consultation.

ii. Lack of the presence of a NE officer, even occasionally, at forum meetings. How is the flow of information between forums and NE to take place?

iii. Withdrawal of support for the national and regional forum structure. This means that many forums are working in isolation and at a time when, amongst other things, forums should be debating the role of public access in future farm

subsidies post Brexit in order to improve public access in consultation with land managers.

iv. No calls so far for contributions to the annual report. The report not only serves to inform central government of the work being done by forums but also helps to keep them in touch with each other.

v. Very late notification of the financial settlements to national trails and a severe reduction in the settlement to such an extent that it has threatened their viability.

vi. Removal of the funding for the part time secretary for the Rights of Way Review Committee, threatening its existence and loss of access to Ministers.

Question 5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?

5. Yes, changes within NE are required or, perhaps preferably, public access needs to be transferred to a public access department within Defra, to the Department of Transport or even a new body. Since the setting up of NE in 2006, public access seems to have become a low priority. Assuming that central government does recognize that public access has an important role in human health & well-being, the rural economy and tourism, either the priorities within NE need re-balancing or public access needs to be moved to an organization which can give it higher priority.

6. At a time when future agricultural subsidies will be being discussed, NE should be taking the initiative by consulting with Local Access Forums to gather ideas about how public benefit can be delivered with public money after Brexit by providing improved public access compatible with land use. There appears to be a vacuum.

7. Following the CROW Act 2000 when the 2026 deadline for recording paths was set, NE launched on an ambitious historic research project to meet the requirements of the CROW Act. However, the project proved expensive and unwieldy in NE's hands and was abandoned leaving a few volunteer organizations to pick up the pieces. These organizations are showing that there is much unrecorded access in some parts of the country which could contribute to a joined-up, much needed, off-road public rights of way network but NE is offering no support for this work.

Question 6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate?

8. No. We are not sure what NE's procedures are for managing access to the countryside but the wealth of expertise within local access forums is not being harnessed.

How effective have Natural England – and other partners – been in promoting better access?

9. There have been good initiatives but they vary in their effectiveness. It is debateable whether the vast resource going into development of the coastal national trail has been wise when support for public access generally has been withdrawn / reduced. But perhaps NE is just implementing central government policy? There needs to be serious debate about the future of national trails which NE could be leading rather than leaving it to the stakeholders, many of who are volunteers.

10. The Paths for Communities fund focussed on improving public access where it is needed. This was much welcomed but the project was short lived and expensive per metre of new path. This project needs to be permanent and NE needs to work more closely with Local Access Forums and landowners to achieve cost-effective results. Opportunities via Brexit need to be seized. Have NE got any plans?

11. The setting up of Suitable Alternative Natural Greenspace (SANGS) is providing access close to where people need access. However, some feel that, with better consultation with local access forums and user groups, better use of SANGs could have been made by providing safe, off-road access for a wider range of user groups. This is another example where NE does not appear to have given public access sufficient attention.

12. In conclusion, we feel strongly that there is an urgent need to set up a department or body whose prime purpose is to improve and promote public access for a full range of user groups in order to meet the proven health and economic benefits of outdoor exercise. This new organization needs to harness the considerable expertise within local access forums so that the current impediments to the improvement of public access can be addressed in an effective manner.

*8 September 2017*

## Dr Gordon Morris – written evidence (NER0018)

My submission is made in a personal capacity.

My comments address questions 1 and 2.

### **Question 1: Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC’s original functions of advocate, adviser and watchdog being fulfilled?**

- 1) The Rural Advocate, appointed by the then prime minister, and with a duty to report to the prime minister, “... *put the case for rural people at the highest levels of government, and ... [made] ... sure that rural people’s needs are properly understood.*”<sup>164</sup> The CRC, essentially a government advisory research organisation specialising in rural disadvantage, was chaired by, and supported, the rural advocate.<sup>165</sup>
- 2) Lord Gardiner, the Rural Ambassador, is, presumably, the closest we have to a Rural Advocate, but his brief is much wider. It includes animal health, biosecurity, landscape, and parliamentary business<sup>166</sup>. Although his responsibility for “rural life opportunities” includes aspects of disadvantage<sup>167</sup>, this is only one element of his job, and but a small part of Defra’s overall responsibilities; whereas it – disadvantage – was the CRC’s *raison d’être*. The ambassador has access to civil servants and others for advice, but lacks the **specialist** support of the Rural Communities Policy Unit, or information obtained from commissioned research<sup>168</sup>.
- 3) The ambassador’s job is not comparable with the advocate’s non-political supported advisory role. They are different in that the former has wide governmental responsibilities and is party political. The CRC’s role between 2005/6 and 2013 and Defra’s current responsibilities and priorities are also different, in that the latter’s are dominated by the natural environment and Brexit, with only one reference in the department’s 2016/17 report to rural proofing<sup>169</sup>, and no mention of, for example, poverty<sup>170</sup>. [I make this point, not to labour it, or to detract

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<sup>164</sup> Rural Advocate’s reports, 2006 and 2007.

<sup>165</sup> Defra’s Rural Strategy 2004, pp21-23.

<sup>166</sup> Ministerial role, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, <https://www.gov.uk/government/people/lord-gardiner-of-kimble>

<sup>167</sup> <http://www.ruralsussex.org.uk/wp-content/uploads/2016/10/ESRP-September-2016-Shirley-Trundle-Defra-Presentation.pdf>

<sup>168</sup> Shirley Trundle’s evidence to the committee, 18/07/2017, said, “We do not ... commission very large amounts of research these days.”

<sup>169</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630164/defra-annual-report-2016-2017-web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630164/defra-annual-report-2016-2017-web.pdf) (p16).

<sup>170</sup> Poverty statistics are provided as one of eleven indicators of rural living ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/597383/DefraRuralPovertyStats\\_March\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/597383/DefraRuralPovertyStats_March_2017.pdf)). These indicators fall within one of 20 policy areas.



from Defra’s good work, but to stress how wide-ranging Defra’s responsibilities are compared with the very specific tasks given to the rural advocate/CRC.]

- 4) Nevertheless, the rural advocate and the CRC’s specialist staff and the RCPU, have gone. The Defra family is smaller than it was in 2010<sup>171</sup>, and has an inevitable focus on Brexit. “Rural Communities” is only one of eight departmental research interests<sup>172</sup>, with the other seven being arguably more significant politically, and more tightly defined than “rural”, which is a broad concept, and “communities”, an abstract term.
- 5) It follows, therefore, that, with political and policy priorities mainly lying elsewhere, the loss of the rural advocate’s influence, and the CRC’s/RCPU’s research<sup>173</sup> means that the advocacy and advisory functions that were specific to the CRC are not being fulfilled. The watchdog function, considered to be the CRC’s least successful function<sup>174</sup>, may, however, be being fulfilled by Lord Gardiner in his “insider” ambassadorial role.

**Question 2: Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**

- 1) Lord Cameron’s 2015 review<sup>175</sup> stated that although Ministers wished to strengthen approaches to rural proofing, there was little to suggest that proofing was playing a uniformly central role in policy development. Following the review, Defra issued a rural proofing guidance document in 2017<sup>176</sup>, the contents of which suggest that Defra is, *de facto*, the lead on rural policy.
- 2) As Defra’s document makes clear, rural policy in relation to “communities” is an amorphous beast, widely dispersed across many departments, and with many stakeholders (twenty are listed). This represents obvious – and familiar – difficulties in terms of cross-government working and departmental prioritisation.

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<sup>171</sup> <https://www.instituteforgovernment.org.uk/blog/whitehall-prepares-brex-it-still-no-detail-civil-service-staff-numbers-q3-2016>

<sup>172</sup> The others are: natural environment, floods, food and farming, environmental quality, marine and fisheries, water, and animal health (see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/603116/defra-areas-of-research-interest-170322.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/603116/defra-areas-of-research-interest-170322.pdf)).

<sup>173</sup> Including the annual State of the Countryside Reports produced between 1999 and 2010; see <http://webarchive.nationalarchives.gov.uk/20110303154200/http://ruralcommunities.gov.uk/state-of-the-countryside/>

<sup>174</sup> <http://www.sqw.co.uk/insights-and-publications/ex-post-evaluation-of-the-commission-for-rural-communities/>

<sup>175</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400695/rural-proofing-imp-review-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400695/rural-proofing-imp-review-2015.pdf)

<sup>176</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/600450/rural-proofing-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600450/rural-proofing-guidance.pdf)

- 3) The loss of the CRC, coupled with reductions in Defra's and other departments' budgets and staff numbers, means that the knowledge-base in relation to rural policy development and implementation has reduced. New Brexit-orientated priorities are likely to exacerbate the situation, as more and more staff time is devoted to designing the post-CAP world. Consequently, although the agricultural/environmental policy direction will – must! – become clearer, there is likely to be less clarity about "CRC-type" policy interests, such as housing and disadvantage.
- 4) Indeed, my own recent research suggests a lack of clarity at the local (west Dorset) level<sup>177</sup> as to where influence over (non land) rural policy lies. The following snapshot summarises some of the findings:-
  - a. Nearly 20% of the 76 participants - including councillors and town/parish clerks – said they did not know where influence lies. In relation to "government" influence the majority of participants, when forced to choose, thought that in west Dorset the Conservative-dominated district and county councils, followed by central government have most influence. While this suggests clarity, the research participants' beliefs (when they were given free rein to choose) ranged well beyond government to include organizations such as NHS bodies, utilities, business/interest/lobby groups, and middle and farming/landed classes.
  - b. It was noted that cuts experienced by local - and central - government had adversely affected policy making.
  - c. The problems associated with rurality in west Dorset listed by the participants were (mainly) those that the CRC was most interested in (eg transport, service accessibility, affordable housing).
- 5) The above suggests that there is still a "CRC-type" job to do, and that, if rural "communities" policy is to be effectively defined and implemented, there needs to be a strong centrally-driven steer (presumably it was recognition of this that led to the appointment of the rural advocate?). Whether Defra is able to provide this is moot, and provokes the question, if not Defra, then ... who? Logically, Defra, given its responsibility for rural proofing, should be best placed to lead on policy development, but it can only do so if it has sufficient resources, and political commitment. It also needs a good knowledge/evidence base, and the wherewithal either to implement policy, or to enable others, eg local authorities, to do so.
- 6) It is ironic that, according to Defra's own commissioned evaluation, the CRC was considered to be strong in terms of evidence and analysis (source document, footnote 11 refers). Of course, counterfactuals are impossible. It cannot be proved that things would be different/better/worse if the CRC still existed. What is difficult to deny, however, is that, for example, its rural proofing advocacy, its *ad hoc* inquiries, publications such as the state of the countryside reports, and

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<sup>177</sup> [http://www.academia.edu/31846315/Rural\\_Policy\\_Rural\\_Quangos\\_-\\_Searching\\_for\\_Clarity\\_in\\_West\\_Dorset\\_preprint](http://www.academia.edu/31846315/Rural_Policy_Rural_Quangos_-_Searching_for_Clarity_in_West_Dorset_preprint) (pre-print, peer reviewed, awaiting publication Commonwealth Journal of Local Governance).

the work/influence of the rural advocate, were recognized and valued (*ibid*). It is for others to judge if the investment in the CRC represented value for money worthy of political support.

- 7) In conclusion, given the pressures on Defra and the machinery of government in general, it can be inferred that rural proofing measures are insufficient. Similarly, there appears to be a lack of clarity about where central leadership for “rural communities”-related policies, as understood by the CRC, lies.

Dr Gordon Morris<sup>178</sup>

*06 September 2017*

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<sup>178</sup> Declaration of interest: I worked for the Rural Development Commission and Countryside Agency, and on occasions, as a consultant for the CRC. I am currently an Honorary Research Associate at the University of Exeter (Centre for Rural Policy Research).

**Motoring Organisations' Land Access Recreation Association and Trail Riders Fellowship – oral evidence (QQ 143-148)**

Tuesday 21 November 2017

11.40 am

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Lord Bradshaw; Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 17

Heard in Public

Questions 143 - 148

## Examination of witnesses

Mario Costa-Sa and Alan Kind.

Q168 **The Chairman:** Good morning to you both. Thank you very much for coming to see us. It is very kind of you to come and give evidence to our Committee. You have in front of you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website and you will have the opportunity to make corrections to that transcript, where necessary. Would you introduce yourselves and say who you are and what you are about?

**Alan Kind:** I work for, though I am not an employee of, the motoring organisations' Land Access and Recreation Association, nominally known as LARA. We are an umbrella group, a forum, for other motoring organisations, so we do not have individual membership. We have as members most of the large and many of the medium and small organisations in England and Wales and, to a degree, Scotland. If you count all those organisations' own members, our membership is into hundreds of thousands of people, although obviously there is a degree of overlap with dual membership. We have if not a wide influence then a wide remit, and we deal with competition matters, rallying and motorcycle scrambling on tracks, and rights of way issues. We were set up in 1986. I would not say that we have gone from strength to strength, as like most organisations we have waxed and waned a bit, but we are still here and still fighting what we think is a good fight.

**The Chairman:** Thank you very much. Mr Costa-Sa?

**Mario Costa-Sa:** I am a company director involved in telecoms. As a volunteer, I am a director and chair of the Trail Riders Fellowship. We aim to represent the responsible trail-riders who use green roads in a sustainable way.

Q169 **The Chairman:** Thank you both very much. As you know, we are here to examine the NERC Act and its suitability for today. Did the approach adopted in the NERC Act strike an appropriate balance between the needs of motor vehicle-users and those of other groups who use public rights of way?

**Alan Kind:** I was involved in the run-up from the tail end of the Countryside and Rights of Way Act 2000 to what became the NERC Act with various Ministers, those being Alun Michael, Jim Knight and another one in between who I cannot now remember. We responded to the consultation with various ideas about how it should be done. In the end, it seemed to us that the Bill got a bit of a head of steam in the Commons. Alun Michael was the Minister at the time and had gone along with some of our suggestions, but was swamped when it came to the Commons.

The NERC Act has been effective and has done what it set out to do, but it was rather a blunt instrument in the end. It could have achieved the same with a degree of more fairness, balance and benefits to everybody.

**The Chairman:** So how would it have done that?

**Alan Kind:** We set this out in the evidence that we put in to this Committee. Ministers' fear at the time was that there was going to be a "deluge" of applications to record byways open to all traffic—Mr Knight used the word "deluge" at one point. This was triggered, because the Countryside and Rights of Way Act in 2000 imposed this cut-off date of 2026 for recording lost rights of way, which still has not been commenced. If the Deregulation Act sections ever commence, that will commence this cut-off date.

We proposed a sustainability assessment of unsealed roads to look at the ones that are more sustainable right through to some that arguably are not sustainable for motor vehicles and to trade off to get a network of reasonably sustainable roads. That was swept to one side, and Mr Michael had given that a degree of green light. The consequence of the NERC Act as it went through was that we have been left with a rather fractured network; you can have a road that is two miles long that is technically no longer a legal through-road because you have lost a small section because of a technicality engaged by the NERC Act. That seems to us counterproductive and unreasonable. We think it could be remedied even now in a form of sustainability assessment and trade-off.

**Mario Costa-Sa:** I certainly agree with everything that Alan has said. In addition, I would like to point out that we are left with a green road network that still allows an acceptable standard of green exercise and mental health benefits to trail-riders, which is obviously what we are interested in, and it is a usable network, so we are happy with that.

**Baroness Byford:** Both of you are here giving evidence on behalf of what I would call "responsible users", hopefully, in your various capacities. What do you do about those who are not responsible—something that is challenging this Committee—to divide between what is acceptable behaviour of both your organisations and what is not, because clearly that is a huge problem?

**Mario Costa-Sa:** Over a period of time, the TRF has realised that we cannot carry on saying, "It's somebody else's problem. We're the good guys and it's the irresponsible people who are causing the damage", so we reached out to, or in some cases were approached by, the police forces, the authorities, on what to do about it. I believe you are aware that we ride to a code of conduct, and one of the first things we did when I started to get involved with the TRF was to start to make it easier for motorcyclists to comply with the code of conduct and to get themselves into the tent and inside the TRF to ride responsibly, so we made ourselves welcoming. That increased the membership dramatically and raised the standard of riding.

With my family's equestrian interests, we were very interested in Share the Trail. Over three, four or five years, we have been reaching out to the equestrian community and extending the courtesies when riding that we should do on green roads. For equestrian users this means stopping, removing helmets, switching engines off and even, hopefully, offering Polo

mints to other horses and users on the trail, so really going the extra mile for these people. This is the standard of behaviour that we expect from every TRF member.

The police have approached us about the framework that they work to, which is about education, engineering and enforcement. We have started to move on to programmes where we ride with the police, and there are examples in south Yorkshire and south Wales. I am not talking about isolated examples; these are current programmes where we ride into areas lawfully, with the permission of the landowners, with high-vis vests on, and we encounter illegal users and give them information about where they can ride legally. It is an education initiative, and these are the types of approaches that have been welcomed by South Yorkshire Police and by South Wales Police partly because without them they cannot enforce these prohibitions and this illegal riding, so the aim is to bring everyone inside the tent and make them ride lawfully.

**Alan Kind:** The 4x4 organisations, GLASS for example, do the same. Given their smaller size proportionally, they do a lot of work on outreach to people. After the NERC Act when a lot of rights of way were lost to motorists—my area, the Cheviots, is a good example—it seemed that as soon as they became non-legal routes for motor vehicles, nobody cared any more. The cowboy motorcyclists are up there all the time. The routes are not legal, so we are not facing flak about it, but they are illegals, cowboys, and nobody does anything.

We feel that people are out to get rid of the legal rights, but they are not bothered about the degree of illegality that goes on afterward. It seems counterproductive to me, because in spatial terms motorcyclists in particular, which can obviously get through bridle gates while 4x4s cannot, go to places they never have any business to be in the first place, because bridleways are footpaths or open land and they are using routes that would have been legal for motor vehicles but which, since 2006, are not. If we are not there, we cannot do anything about it, but we feel that in many cases the authorities and other groups are washing their hands of this, and we catch the flak from it, obviously.

Q170 **Lord Cavendish of Furness:** That is interesting information about the culture of your two organisations. Going back to Part 6 of the NERC Act, some witnesses have told the Committee that Part 6 has had the unintended consequence of intensifying use by motor vehicles on these routes not covered by the provisions of the Act, leading to damage to such routes. Would you share this assessment? What has been the practical effect of Part 6 of the NERC Act on England's green lanes since it came into force?

**Alan Kind:** That information would be correct in places. In some places, arguably, I have seen intensification. I have driven a motorcycle on unsealed roads since 1968 in various places and the problems wax and wane and move around. A lot of it is also weather-dependent, and we have had five bad winters, so you tend to see the effect more. Yes, there are

places where intensification has happened, but it is not everywhere, as problems are not everywhere, and there are hotspots.

Part 6 stopped in its tracks the possibility of recording any byways that were not previously recorded. The only byways that are recorded now are already unclassified roads anyway, which is one of the NERC Act's exemptions, so it makes no net difference at all to vehicular use.

**Mario Costa-Sa:** In addition to the above, my concern has been about the disfranchisement and disengagement certainly of older responsible trail-riders who have done a lot of social good through their involvement in programmes for disabled riding and disabled access. These people have felt disengaged and that a loss of their pastime has been taken away from them. Some of these programmes have unfortunately been curtailed, as has a lot of the good will.

I am also concerned a bit more strategically, bearing in mind the trail-riders' and TRF's considerable expertise in 2026 recording rights, et cetera, about the abrupt cut-off date of 2026. The abruptness of the NERC Act effectively disengaged the TRF from the 2026 cut-off date, which has had an impact that has surprised authorities when they approach the TRF for their involvement in recording rights of way and the TRF say, "It's already happened for us".

**Lord Cavendish of Furness:** I want to press you on the substance of the question. Would you share the assessment of those witnesses who told the Committee that Part 6 of the NERC Act has had the unintended consequence of this intensification?

**Mario Costa-Sa:** Certainly from my point of view, the number of motorcycle licence holders as a whole has been falling. In recent times, the number of trailbikes and enduro-type bikes has fallen, and the government report from 2005 said that the average use of a byway was in the region of one vehicle movement per day. I see no evidence of that. If you look at how the NERC Act has been applied on a county basis, for instance, there are certain areas where rights have pretty much been taken away, apart from those in inequitable areas, such as Hertfordshire, where I ride quite a bit, and there has been no big increase in traffic or displacement or anything reported.

**Lord Cavendish of Furness:** You are straying with lots of interesting information, but do you share the assessment of the evidence we have heard of the unintended consequence of Part 6 of the NERC Act? You may not know, in which case that is a perfectly reasonable answer.

**Mario Costa-Sa:** There appears to be no evidence from the TRF's point of view.

**Baroness Scott of Needham Market:** Setting aside for a moment the question of potential conflict of use of routes and how we manage that and looking at the legislative framework for rights of way of all kinds, do you believe that it is possible to achieve certainty and clarity under the current



legal framework, or is there a case for almost starting again with a blank sheet of paper?

**Alan Kind:** I have been involved in the technical side of rights of way sitting on various committees, and I have come to Committees on this corridor over the years, and people often say, "The rights of way system is a mess. Let's tear it up and start again". It would be an absolute disaster; you cannot get it right. The Welsh are trying and are beginning to wish they had not started. It was easy in Scotland, but Scotland is different.

The rights of way legislative system is quite good, but it is starved of resources. You would be pressed to redraft the Wildlife and Countryside Act better. It could do with tweaking, but it is 40-something years old. The cut-off is ever closer, so there is a good chance that that 2025 cut-off will slide back to 2030 because the Minister has the power to slip it up to five years, hopefully, because there is supposed to be a test and assessment process before the cut-off comes.

One of the downsides in some ways—this is not about vehicular rights of way, because byways are out of the equation anyway—is that on all rights of way you will have a repeat of what happened after the 2000 Act with byways, when many people claimed footpaths and bridleways that need to be into the system before 2026. You will have a backlog which the councils, ever more starved of resources, will not be able to deal with very well. Under the Deregulation Act—I have been on the stakeholder group since 2007 that produced the report for the rights of way side—there are ways of streamlining the system. I would say that you are sandpapering off the rough edges and greasing it and you may be getting a 10% improvement. If your council's budget has been cut by 25%, where do you go? It is more a resource issue than a legal issue, I feel.

**Baroness Scott of Needham Market:** I chaired the rights of way committee in Suffolk for a decade, and it was my life for 10 years. The local authorities were not in such a bad state financially then, but resource was a significant issue. If it were possible to streamline some of these procedures, how could that be achieved?

**Alan Kind:** Definitive map orders are based either on historical evidence or on user evidence. If it is historical, it has been killed off pre-1949. Anything that deals with old documents is open to argument and debate. As soon as you are in a public inquiry scenario, time stretches out and the cost goes up. It is almost impossible to give everybody a fair crack of the whip to make them feel that they have had their say with a simpler, foreshortened process; people think they have been disfranchised.

My own view on user evidence, which I have suggested before, is that instead of having the legal fallacy that people have used a route for 20 years and therefore the landowner has dedicated it, user evidence should be used to demonstrate a need, and if there is a need a creation order should be used. There is potential compensation then, which would streamline the process dramatically.

Q171 **Viscount Chandos:** LARA's written evidence notes that Part 6 of the Act has had the unintended consequence of, as it were, breaking a number of routes used by motor vehicles. How big a problem do you think that is? What is the impact?

**Alan Kind:** It is a big problem in that it is widespread. It is in many counties. You could have a mile-long, unclassified road that is still legal for motors, where towards one end or in the middle a footpath approaches, reaches the road, runs along the road for 20 feet and then turns off. That 20 feet gap is now broken for vehicles. Vehicles lose the use of what is otherwise a legal road. That causes displacement and, arguably, intensification. The types of roads that happens on are very often sustainable roads. They are roads to look at. If anybody looked at it, they would say, "That is a road, not a path". If we could get those back by unwinding that part of NERC, and as I have said trade-off against some of the ones that are arguably unsustainable, at least for most of the year, you would improve the network in a lot of places and de-intensify the use as a consequence.

**The Countess of Mar:** My question will do for this part as well. BOATs are, by their nature, byways open to all traffic. One of the unintended consequences of this, and you have described it, is that the activities of your members will sometimes make those roads unpassable to horse riders, pedestrians and cyclists. Is there any way in which you can come to a compromise by looking after a road that is perhaps sustainable but needs some repair, or stopping your members from going on unsustainable roads so that other users can use them as they will?

**Alan Kind:** LARA has already proposed using the existing traffic regulation order process. A council can have a traffic order on a road or a number of roads but engage it only when the weather conditions are such that you need to prohibit people. The big problem with the TRO system is that it is not very flexible; it is a bit all or nothing. Over the years, I have proposed various schemes that give a council a better power to say, "That's very wet. It's very vulnerable. We'll put the barriers up". It can be done by what we call voluntary restraint, where we say to people, "Don't use this". That has a measure of success.

Reaching out to everybody is difficult. We are a very small organisation, and the TRF is not exactly huge. It is an information issue. You are absolutely right about a flexible system where if the road is dry, and therefore more sustainable, motor traffic uses it. You also have the difference between motorcycles, which are light, and 4x4s, which are heavy and which in the wrong hands can obviously do more damage in wet weather. You might have a differential system there. We have addressed this. I fear it has reached the stage where Defra is so shorn of resources that anything you suggest falls on deaf ears.

**The Countess of Mar:** You talk about using vehicles on dry roads, but is not part of the excitement of your sport going through the muddiest, wettest and deepest parts that you can with your vehicles?

**Alan Kind:** Not to me and not to the people I know. It is about passing through the countryside. With respect, it may seem alien to you and you might say, "Why do you want to do it on a motorcycle or in a Land Rover"? I might say, "Why do you want to do it on a horse"? We are also an equestrian family. Different people like different things. You see a lot more. On a mountain bike you see more than walkers do, because you pass over the hill to the next hill.

**The Countess of Mar:** I appreciate that. Normal road users would not expect to do so much damage to the countryside.

**Alan Kind:** Where there is too much damage, we do not support it. We cannot support it. In some places it is bad, but in many more places it is not.

**Lord Faulkner of Worcester:** I wonder if you could help me understand the point you made in response to Lord Chandos's point about Part 6 of the Act having the consequence of breaking routes. The example you gave was a road that your members can use which is then interrupted by a short length of footpath that renders that bit of the road unusable for your members. How do your members know that that footpath is there? Is there a barrier that says, "Don't go any further", or another sign that says, "You can resume your journey here"?

**Alan Kind:** The people I know who do this are very map-savvy and would look at a map before they went out. They understand the routes. They see this and it tends to be picked up. I can show examples. This is not hypothetical. A member of the public who knows that it is a public road but does not know there is a bit of footpath across it very often does not, because the footpath signs are not necessarily visible.

**Lord Faulkner of Worcester:** There will not be a fence, will there.

**Alan Kind:** No, there will not. There cannot be a fence.

**Mario Costa-Sa:** I believe I can add some information here. We do an awful lot with TRF members and obviously with GLASS members on rights of road education. Pretty much all our members are encouraged to come along, and OS maps are explained to them in a lot of detail, making it very clear where they can and cannot ride. We then move on to the next phase where we have GPX information from sat-navs and specialist sat-navs showing our members exactly where they can ride up to the meter and where they can go no further.

Q172 **Baroness Whitaker:** We seem to have moved on to traffic regulation orders. A number of witnesses have told the Committee that different local authorities and national park authorities have had very different attitudes towards the use of TROs. Why do you think this is? Do different authorities have different approaches to the needs of the groups that you represent?

**Alan Kind:** The national parks are quite disparate. There are differences between them. Northumberland has virtually no recorded vehicular rights of way in the national park, so it is a non-issue. The Yorkshire Dales has

effectively two clusters of these. One cluster was caught by a group traffic order eight or nine years ago now. Many of those would have been caught by the NERC Act anyway, so in that way it does not matter from our perspective. On the North York Moors, again there are two clusters of roads and there are problems in patches. North York Moors at least has had a dialogue with people, which other parks have not.

**Baroness Whitaker:** A dialogue. Could you elaborate?

**Alan Kind:** There are local groups and local access forums. Before the local access forums, most of the authorities, including the national parks, had rights of way committees or groups that invited people in annually or twice a year. There has always been dialogue. North York Moors, working with North Yorkshire County Council, has a programme of repairs on some, and they are making some traffic orders. It is not as if there are no traffic orders in the North York Moors or east of the A1.

**Baroness Whitaker:** Are you saying that they try to persuade people before proposing a TRO?

**Alan Kind:** I think they are looking for alternatives.

**Baroness Whitaker:** Alternatives to TROs?

**Alan Kind:** The answer to the question "Is it just a matter of drainage?" is that it very often is. Can we fix the drains at the bottom of the hill? The problem goes away. My perception is that, east of the A1, Yorkshire TROs are not necessarily being done dogmatically. Occasionally we feel a bit aggrieved by them. Further into Yorkshire, East Riding has done some group TROs with our blessing, because they are exactly what we want. They are seasonal and are keeping 4x4s off in the wet season. We are on side with the traffic orders, which we are now in more counties than we are not.

Going back to the national parks, it is a non-issue in the Broads, as far as we know. We have never heard anything from there. In the two in the West Country, there are certainly county roads but not, I think, that many, and again problems do not percolate back to me. I do not hear that there are problems. The area that has caused the issue, which is why we are here today, is Derbyshire and the Peak District.

**Baroness Whitaker:** I have to say that I walk along a coach road in Sussex and the muddy chalk comes up to my knees when the motorbikes have been there. I am not sure they are not your members, but there is a very real problem there.

**Alan Kind:** Sussex County Council has a programme of making traffic orders. Again, they seem to be tailored to the problem. They are not hitting it with a hammer.

**Baroness Whitaker:** I am glad to hear it.

**Alan Kind:** They are doing it. Do not think that Sussex county council is not doing anything. I am not sure what the arrangements are with the South Downs National Park and whether they make any traffic orders at all. I cannot remember seeing any, but I do not see everything. Derbyshire is surrounded by people. It has such a penetration of visitors that it must be the hardest nut to crack. The Lake District, which is the second busiest, has a trail management scheme called the hierarchy of trail routes, which has been going for getting on for 20 years. It was set up with the national park and the users—non-vehicular people as well—and has been very successful.

**Baroness Whitaker:** Are you saying that the varying authorities have different responses essentially because circumstances are different, and because they have different ways of going about hitting the same problem?

**Alan Kind:** That is a very fair way of putting it. We do not feel that we are treated very well in Derbyshire and the Peak District. In most of the other areas, we might have occasional gripes, but it is more occasional.

**The Chairman:** Mr Costa-Sa, did you want to come in on this one?

**Mario Costa-Sa:** No. I have checked the questions and the next one is possibly more relevant.

**Baroness Scott of Needham Market:** I would like you to help me to understand something. You have commented on your positive engagement with the TRO process. We have also had evidence that—I am paraphrasing—whenever a local authority tries to adopt a TRO the vehicular users look at every comma and produce a legal challenge. It is entirely at odds. How has that perception arisen, and how might that gap be bridged?

**Alan Kind:** There are challenges. LARA successfully challenged the Yorkshire Dales' TROs, but of course they went back and remade them, so the result was the same. LARA challenged one on the South Downs Way in about 1987, which has receded into history. Again, we won, but they went back and did it again. Authorities can do this, obviously. I know that the trail riders have successfully challenged some others outside the national parks, but very few. I do not think you need more than one hand to count them.

**Mario Costa-Sa:** We have to make it clear that the TRF will support TROs that are done with consultation and that are proportional to the number of issues that the TRO will solve. We will support them. There are examples of us doing so. We have an issue, of course, with ones that work unjustifiably against our members. There is an example not too far from the M25 towards Hemel Hempstead, where a TRO was put in place to avoid fly-tipping yet included motorcycles. Of course, fly-tipping on a motorcycle would be ridiculous.

**Baroness Scott of Needham Market:** What proportion of TROs would you agree with, and how many would you lodge an objection against?

**Alan Kind:** Over recent years, particularly if you leave the national parks out of it, which have a lot of vehicular routes, and deal with the counties, more counties make more what we would call proportionate TROs than anything else. It has reached the point where the eastern counties—Cambridgeshire, Suffolk, Rutland, I believe, and Lincolnshire to a degree—have made orders that we think are fine; they are seasonal and seem balanced. That has almost become the norm. It is happening in Kent and Sussex, but not quite so much in Hampshire. LARA's members or the TRF would in no way say no to all TROs. We do not even know that a lot of these are going on until they come out and we look at it and say, "Fine, that will do very well, thank you".

**Mario Costa-Sa:** I can give an example at Great Offley on the Icknield Way, where a TRO was put in place. There is an alternative, of course, which is a PSPO for some of the antisocial behaviour. These have been looked at. Herts County Council's rights of way department consulted with us, went through a full consultation process, we worked with them, discussed the concerns and the TRO went through completely unopposed by any of the vehicular groups. That is the way we would rather have it.

Q173 **The Countess of Mar:** You give the impression that there are a lot of TROs around, but evidence that we have had from local authorities has been that they have used them very rarely because they are so expensive. You have answered most of my question. Do you think TROs are the right approach for resolving these issues concerning green-laning or are new and different approaches required?

**Alan Kind:** In terms of legal orders, TROs work when they are done with a bit of thought and are not knee-jerk, if you like. They could be better. We think they could be better within the existing framework. You would not have to legislate. It is the way of applying—creative thinking.

There are other matters that are very like TROs. If, for example, a road opens up into a pothole, the council does not use a TRO; it uses a notice under the same legislation. It can have two 21-day notices back to back. Then it has to make a temporary order. We say that for an unsealed road the council could use notices for a longer time. If there is a deluge and it gets very wet, they do not have to make a temporary order; they can have a longer notice. It would be a very small statutory change, but it would be exactly the sort of temporary prohibition or restriction wanted until the problem goes—the wet dries up—at minimal cost with minimal signage. You need to put a barrier up and do not have to have a proper sign. Develop a doctrine on how to do this. That would require a small change to the law.

There are other things that could be done. Different signage could be used. We have explored this. As I say—and this is not a criticism—government departments are so strapped for money now, and finding an officer you can have continuity with over a period is very difficult.

**Mario Costa-Sa:** Although it is common belief that the TRF defeat TROs based on minor technicalities, that is not our view. Our view is that minor technicalities, or even a biased process, will not defeat a TRO, so we will

not go there. From our point of view, our internal test, before we spend a lot of money, is that it has to be full-on Wednesbury unreasonable before we will challenge a TRO. Back to the fly-tipping example.

**The Countess of Mar:** Could you comment on my comment that local authorities say that they very rarely use TROs because they are so expensive? You are giving the impression that there are lots of them.

**Alan Kind:** In some counties there are quite a lot of TROs. Cambridgeshire is the example I would give. Far more unsealed roads are TRO'd than are not. In Northumberland, where I live, there is a cluster of TROs in one particularly sensitive area.

**The Countess of Mar:** Can you give numbers?

**Alan Kind:** In that particular area there must be six different roads of TROs in a cluster. In the rest of the county, there are not many. By and large, that is because, certainly post the NERC Act, there is no need, because they are robust roads.

**Mario Costa-Sa:** I have to say that we were not prepared for that question today. It is part of our training to members. We check the maps and identify rights of way with motor vehicle rights, and each time every TRF member is indoctrinated to look for the TRO. They will move on.

**The Earl of Caithness:** You have talked about sustainable lanes and you have talked about proportionate TROs. Both those words can be argued about, and, doubtless, you are extremely good at doing that. You have also talked about your legal right. What about the legal right for those of us who would like to walk on green lanes, particularly the disabled who find it harder to walk, because, as Lady Mar said, there is considerable damage? I have faced this problem myself and was unable to proceed. Are you prepared to give up any of your so-called legal rights on the 3,200 miles of green lane?

**Alan Kind:** We give up rights to varying degrees. Sometimes it is imposed on us by traffic orders that we do not like. Increasingly, we acquiesce and very often welcome traffic orders that we think are proportionate. The TRF, GLASS and other organisations do voluntary work and repair all sorts of routes, not just vehicular routes. Considerable damage is done by agricultural vehicles, which was a major problem on the Ridgeway, going back.

I understand what you say about damage. All I would say, and this is not intended as a trite answer, is that there is quite a small mileage of vehicular unsealed roads but a very large mileage of footpaths and bridleways where vehicles other than the landowner's have no business being anyway. I am not sure, in the overall scheme of countryside access, that it blights the whole network. It does not. When it blights it it is a localised problem and needs sorting out locally.

**The Chairman:** Thank you both very much for coming to give evidence today. It is very kind of you. We will call it a draw there.

**Alan Kind:** Could I add one comment?

**The Chairman:** Of course.

**Alan Kind:** Do you know about the motoring stakeholder working group that is going on at the moment?

**The Chairman:** I think I heard about it earlier, yes.

**Alan Kind:** It was the then Minister's promise in the passage of the Deregulation Act to set this up to talk about everything you are talking about. It has been going on for a year. It will ultimately have a form of report to the Minister. He is talking about traffic orders, illegals and cowboys. It is suffering, because it does not have very many resources. There are two points that I would make. One is whether Defra can authorise Natural England to have sufficient resources to support it. Secondly, with the greatest respect, do not start another ball rolling until that one has reported, otherwise we will be running two parallel avenues.

**The Chairman:** Thank you very much for that advice.



## **Motoring Organisations' Land Access and Recreation Association (LARA) – written evidence (NER0024)**

The question before the select committee under which we submit this evidence is:

*'The changing context since 2006 [11] Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?'*

From The Motoring Organisations' Land Access and Recreation Association (LARA).

### **1. Overview.**

- 1.1. This submission of evidence concerns the operation and effect of parts of Section 67 of the Natural Environment and Rural Communities Act 2006: 'Ending of certain existing unrecorded public rights of way.'
- 1.2. While we cannot and do not seek to change Section 67 as a whole, there are two common outcomes of parts of Section 67 that cause disproportionate disruption to the public road network, which effects we believe were not the intention of Parliament.

### **2. Our 'Ask' of the Select Committee.**

- 2.1. To investigate and consider if these issues should be corrected by a minor amendment to the statute. Correction would not open the door to the use of previously unrecorded and unused roads, and would not undermine the overarching purpose of the Natural Environment and Rural Communities Act 2006.

### **3. What is LARA?**

- 3.1. LARA (the Motoring Organisations' Land Access and Recreation Association) is an umbrella organisation and forum that brings together the leading national associations in motor sport and recreation. LARA promotes and advocates responsible and sustainable motor sport and recreation, and offers advice and training on all aspects of land use.
- 3.2. Since its formation in 1986, LARA has actively participated in national, regional and local level committees and working groups, alongside all sorts of land management, conservation and recreation bodies, for example the *Rights of Way Review Committee* (chaired by Earl Lytton) and the *Motoring Stakeholder Working Group*, set up by the Minister for Rural Affairs.

3.3. Members of the Select Committee may recall that LARA gave written and oral evidence regarding unsealed public highways to the Scrutiny Committee for the Deregulation Bill.

#### **4. Background.**

4.1. The path from the Countryside and Rights of Way Act 2000, via the Natural Environment and Rural Communities Act 2006, to the not-yet-commenced rights of way provisions in the Deregulation Act 2015, has been complex and, with hindsight, not as fair and effective as it might have been. We believe that there is scope to make relatively minor changes, which would mend considerable harm.

4.2. The Countryside and Rights of Way Act 2000 was principally about introducing the 'right to roam' for walkers, but it also brought in some rights of way provisions, particularly the blanket reclassification of roads used as public paths (RUPP) to restricted byways, and the '2026 cut-off' after which no more historical-origin, unrecorded public rights of way can be recorded. This latter provision is finally set to be commenced by Deregulation Act regulations in due course.

4.3. After the commencement of the Countryside and Rights of Way Act 2000, there was something of a panic in the rights of way user organisations, which led in a few places to large numbers of applications for orders to record the 'lost ways'. This led to a furore about supposed huge numbers of 'new BOATs' (that is, byways open to all traffic), and that triggered what became the Natural Environment and Rural Communities Act 2006.

4.4. LARA engaged with the then Rural Affairs Minister, proposing a '*Pre-emptive Sustainability Assessment Process*' (P-SAP) and we believed that this scheme had some traction, but once the Natural Environment and Rural Communities Bill reached Parliament it got a head of steam, and the Act operated to extinguish almost all then-unrecorded public rights of way for mechanically propelled vehicles. It was, in our view based on experience now over eleven years, a blunt instrument.

#### **5. The Harm Done.**

5.1. As a consequence of the 2006 Act saving provisions for existing recorded public roads, we have ended up with hundreds of dead-end public roads.

5.2. Similarly, many roads are 'broken' as public rights of way for short distances, for historical reasons, or by recent drafting error.

5.3. As a result of provisions in the 2000 and 2006 Act we have, in places and pockets, loss of amenity for the responsible motoring public, degradation of routes for non-motor traffic, an increase in illegal 'cowboy' activity, and harm to the local rural economy.

## 6. The Provisions of the 2006 Act.

- 6.1. In the Natural Environment and Rural Communities Act 2006, Parliament provided that unrecorded public rights of way with mechanically propelled vehicles should be extinguished, with limited exceptions.
- 6.2. The principal exceptions (as regards unsealed public roads) were in Section 67(1) - that a road was on the date of commencement shown in the definitive map and statement as a byway open to all traffic (BOAT); and in Section 67(2)(b) - that a road was shown in a highway authority's Section 36(6) 'list of streets' (what is commonly called an 'unclassified road').
- 6.3. The Section 67(1) provides a saving for BOATs on the definitive map and statement at commencement. That is straightforward and we make no representation here.
- 6.4. The Section 67(2)(b) saving for roads on the Section 36(6) list is mostly straightforward, but there are cases across England and Wales where the interplay between the subsections has caused more extinguishment of public rights than was, we believe, intended. This is why:
- 6.5. Section 67(1)(b) operates to extinguish a public right of way for mechanically propelled vehicles where this, 'was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.' Where a public road with a vehicular right of way, shown in the Section 36(6) list of streets (per Section 67(2)(b)), is also shown on the definitive map as a footpath, bridleway, or restricted byway (per Section 67(1)(b)), then that definitive map status 'trumps' the list of streets status, and the public right of way for mechanically propelled vehicles is extinguished.
- 6.6. There are many cases (hundreds, scattered randomly, across the country) where just part (and often a very short part) of a road on the list of streets is also on the definitive map and statement as a footpath, bridleway or restricted byway. The outcome is that the public right of way for mechanically propelled vehicles is broken and rendered useless as a through-route.
- 6.7. In making saving provisions for existing recorded public roads, we respectfully submit that Parliament did not intend to create hundreds of dead-end roads by the contrary-recording of only just a part of those roads.
- 6.8. Similarly, in some roads that are on the list of streets, and not on the definitive map and statement at all, the road is 'broken' on the list of streets, for short distances, for historical reasons, or by recent drafting error. Again, we respectfully submit that Parliament did not intend to

destroy the integrity of the through-routes for a minor administrative matter of mis-recording.

6.9. We also ask the Committee please to consider the situation with former roads used as public path (RUPPs). Again, in many instances these roads were acknowledged public vehicular roads, statutorily renamed as restricted byway by the Countryside and Rights of Way Act 2000, and then extinguished as motor roads by the Natural Environment and Rural Communities Act 2006. These were not 'unrecorded' public rights of way: they were known and well used.

6.10. As with footpaths and bridleways, some RUPPs / restricted byways were and remain also recorded on the list of streets. In effect, these roads were doubly-recorded public vehicular highways, yet that double recording is the reason that public rights have been extinguished.

6.11. Further, the original pattern of the recording of RUPPs, and the tardiness of some councils in statutorily reclassifying these, has meant that the application of the Natural Environment and Rural Communities Act 2006 has been a 'postcode lottery' as regards how many, and where, public vehicular minor highways are left.

## **7. The Remedy.**

7.1. These issues could be corrected by a minor amendment to the statute. Correction would not open the door to the use of previously unrecorded and unused roads (which was the driving force for the Natural Environment and Rural Communities Act 2006) because these roads described in this submission, as through-routes, were previously recorded and in general use by the public before May 2006.

7.2. LARA would be pleased to send a representative to appear before the Committee to provide further supporting evidence and answer questions from Committee members.

Author: Alan Kind on behalf of the Motoring Organisations' Land Access and Recreation Association (LARA).

*8 September 2017*

## **Motoring Organisations' Land Access and Recreation Association (LARA) – supplementary written evidence (NER0087)**

The question before the select committee under which we submit this evidence is:

*'The changing context since 2006 [11] Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?'*

From The Motoring Organisations' Land Access and Recreation Association (LARA).

### **Additional Materials.**

#### **Index.**

1. The mileage of unsealed roads in England.
2. *Making Ways For Horses.*
3. The cost of maintenance of unsealed roads.
4. *LARA's Traffic Management Hierarchy. Good Practice in Traffic Management on Unsealed Public Roads.*
5. Proving the status of unsealed unclassified roads: a practical approach.

#### **1. The mileage of unsealed roads in England.**

- 1.1. At the Select Committee meeting I spoke briefly about the small mileage of unsealed public roads compared to footpaths, bridleways and restricted byways. There is no recent survey, but reliable and indicative figures for England are available from two surveys.
- 1.2. In 1974, as for every year thereabouts, the Society of County Treasurers and County Surveyors' Society collected and collated 'road mileage data' from highway authorities (then mainly county councils). This was from returns for the 'Standard Spending Assessment' of money from central government, and so one would expect reasonable accuracy and honesty. For "Green Lanes [which] are unsurfaced roads with rights of passage for vehicles", the mileage was 4,234 miles. That can only have reduced over the years since.
- 1.3. In 2000 the County Surveyors' Society collected data from 'all highway authorities' in England. This returned:

Footpaths: 91,000 miles.

Bridleways: 20,100 miles.

RUPPs: 3,705 miles.

BOATs: 2,327 miles.

- 1.4. The great majority of the RUPPs in 2000 then became restricted byways. A few ended up as BOATs, with probably a few more as bridleway. Of this total of 6,561 miles of unsealed road / BOAT, a significant portion is dead-end road (more so since NERCA 2006), and a significant portion are 'outliers': remote roads isolated from others. Yet more are already managed by traffic regulation order.
- 1.5. 'Repairing' some of the road broken by the NERCA provisions (as per our submission) would enhance the viable network, spread the load, and facilitate better 'trade off' management.

## 2. ***Making Ways For Horses.***

- 2.1. *Making Ways For Horses* is the primary report and policy document from the Equestrian Access Forum, a body with membership including the British Horse Society, the Byways and Bridleways Trust, the South Pennines Packhorse Trails Trust, and the British Driving Society.
- 2.2. This report advocates a '*single status for footpaths, bridleways and restricted byways.*'
- 2.3. We would welcome our equestrian friends gaining much-needed additional access for horses. Far better surely to give equestrians additional access than to take away from motorists the small mileage that they already share, generally perfectly happily, with horse riders.
- 2.4. Derbyshire and the Peak District are said to have relatively few miles of bridleway compared to the national average. It would be better to improve horse riders' access by finding a way to provide additional access for them, rather than take away the little shared access that recreational motorists now enjoy.

## 3. **The cost of maintenance of unsealed roads.**

- 3.1. Repairing roads and rights of way costs money. It is easy to demonise maintenance of unsealed roads as disproportionate. Generally it is not, and 'bad examples' are not restricted to vehicular highways. In 2015, at the request of the same horse riding community that now seeks to prohibit motorists in the Peak

District, Derbyshire County Council repaired Wigley Lane, a restricted byway with no motor vehicle rights, at a cost of £59,552 for about one-third of a mile. That is £180,000 a mile. Cyclists and walkers did not think that Wigley Lane was out of repair anyway.

4. **LARA's Traffic Management Hierarchy. Good Practice in Traffic Management on Unsealed Public Roads.**

- 4.1. In March 2013 LARA published the first edition of this report. LARA uses no weasel words and is clear that there are some unsealed roads where an all-motors traffic order is genuinely necessary, and lower-level management has been shown not to work. Equally, there are many - probably most - roads where the management needed is simply individual commonsense by the public.
- 4.2. The *Traffic Management Hierarchy* was well-received by land managers and user organisations. In the near-four years since publication, the use of traffic orders has continued to become more sophisticated and tailored to the actual problem in many authority areas. The use of 'blunt instrument' traffic orders has declined noticeably. LARA's report now needs updating to keep pace with the good practice coming out of highway authorities' own assessments.

5. **Proving the Status of Unsealed Unclassified Roads: A Practical Approach.**

- 5.1. LARA believes that some organisations seek to make the status of individual unsealed public roads into a much more complex and expensive issue than it is, or needs be. This is how we propose to deal with the matter. Simple, quick, cheap, and non-adversarial.
- 5.2. The question of the status of unsealed unclassified roads is not a new issue. It was been a live topic since (at least) the Cumbria Special Review in the early 1980s, and was considered and consulted in the processes that led to the Countryside and Rights of Way Act 2000. This was the Government's view then:
- 5.3. **Department of the Environment, Transport and the Regions. Improving Rights of Way in England and Wales 1999.**

*[2.10] The proposition that unclassified roads should be brought into the rights of way system would have advantages only if it could be achieved without a major increase in bureaucracy. Several practical problems would have to be overcome. Although section 36 of the Highways Act 1980 requires local authorities to maintain a list of highways maintainable at public expense, not all of these may be suitable for recording on definitive maps and it would be necessary to define more precisely which roads would qualify. Furthermore, the*

*Government believes that the recording of these roads on definitive maps would place an unacceptable burden on highway authorities if, as we believe, this would require individual definitive map orders to be made on a case by case basis. The effect would be to place a duty on highway authorities similar to that presently imposed by section 54 of the Wildlife and Countryside Act 1981 to reclassify RUPPs.*

**5.4. An Economic Appraisal of the Proposals: Improving Rights of Way in England and Wales 2000.**

*[49] We estimated that around 6,000 miles of unsealed unclassified roads that might be available in England and Wales for recording on the definitive map. The cost of recording unclassified roads on the definitive map would vary depending on the ease of establishing the rights over them. Our survey suggested authorities anticipated this to be a costly process, requiring expenditure of £19m. A further cost of £2.3m could be incurred by central government as a result of the need for public inquiries.*

**5.5. LARA says:**

5.5.1. This assessment of the scale of a blanket screening-by-order approach to unsealed unclassified roads remains valid.

5.5.2. It would be a massive administrative undertaking and would block the definitive map process for years.

5.5.3. Nobody rationally disputes that the very great majority of screened-by-order unclassified roads would be found to carry public vehicular rights: *"We are prepared to accept that the vast majority of unsealed rural routes shown in the list of streets held by most highway authorities are likely to be shown to be carriageways on investigation."* Dave Waterman, DEFRA, 11 June 2012.

**5.6. LARA proposes:**

5.6.1. Where any person sets out an evidence-based case that a specified unclassified road is either a footpath or a bridleway, then LARA's member organisations will carefully assess that evidence, carry out further research if necessary, and will present the evidence to the surveying authority under s.53(2)(b) of the Wildlife and Countryside Act 1981. If the evidence in the case points to the road's being a footpath or bridleway, then the surveying authority will make the appropriate order. It will be the surveying authority's decision.

5.6.2. This initial informal enquiry can be facilitated by the Local Access Forum if parties prefer.



5.6.3. Where there is persuasive evidence in any case, the motoring organisations will acquiesce in and publicise temporary traffic regulation provided there is no unreasonable delay in the process.

5.6.4. The 'very great [vehicular] majority' of unsealed unclassified roads are thereby kept out of the order process, avoiding needless expenditure of public and volunteer resources.

Author: Alan Kind on behalf of the Motoring Organisations' Land Access and Recreation Association (LARA).

*9 December 2017*

National Biodiversity Network and Chartered Institute of Ecology and Environmental Waste Management – oral evidence (QQ 89-94)

**National Biodiversity Network and Chartered Institute of Ecology and Environmental Waste Management – oral evidence (QQ 89-94)**

[Transcript to be found under Chartered Institute of Ecology and Environmental Waste Management](#)

National Farmers Union (NFU) and Country Land & Business Association (CLA) – oral evidence (QQ 48-58)

**National Farmers Union (NFU) and Country Land & Business Association (CLA) – oral evidence (QQ 48-58)**

[Transcript to be found under Country Land & Business Association \(CLA\)](#)

## **National Farmers' Union (NFU) – written evidence (NER0076)**

The National Farmers' Union (NFU) of England and Wales represents 55,000 members in England and Wales.

The NFU welcomes the opportunity to respond to the call for written evidence to the House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006.

Our interest in this call for evidence is broad: farming lies at the heart of our countryside and rural communities delivering for our economy, our wellbeing and our environment. British farming:

- Produces 61% of the nation's food, providing vital ingredients for the food sector, the UK's largest manufacturing sector, worth more than £108 billion and employing 3.9million people;
- Provides 475,000 jobs and in the rural economy hosts diverse businesses, generating renewable energy and promoting tourism;
- Provides assured, safe, trusted and affordable food for people, produced to high welfare and food safety standards; and
- Manages more than 70% of the UK landscape, protects wildlife, water and soils and helps achieve climate change targets.

In summary, our written evidence makes a number of points and recommendations including:

- The NFU considers that the functions originally provided by the Commission for Rural Communities are not being fulfilled and that rural priorities as a consequence are not being authoritatively represented across the Government's agenda.
- The NFU recommends that Defra acts to commission, collate and coordinate the evidence base needed to inform government policy making on rural issues. If this evidence had been in place, there could have been more informed and rural-focused solutions established to ensure that rural service needs, such as access to broadband, could be met.
- Notwithstanding Defra's advocacy role within Whitehall, all government departments should have responsibility for rural proofing their policies including; how they engage stakeholders and ensure that they have sufficient knowledge about rural economies and communities' interests; and how they monitor their policies to ensure rural considerations remain on the agenda.
- Natural England needs to make substantial improvements to the delivery of agri-environment schemes so that its commitments to agreement holders can be met.
- In using its powers, Natural England needs to give greater consideration to the economic and social impacts of its decisions, particularly where businesses are directly affected e.g. requiring a change in grazing regime on a SSSI.

- The statutory purposes and guidance issued to Natural England should be revised and updated to better reflect the needs of current and future priorities, including an explicit duty to contribute towards promoting sustainable food production.
- Provisions within the Natural Environment and Rural Communities Act need to be strengthened to reduce the impact of illegal, anti-social and environmentally damaging vehicular access to the countryside.
- That Natural England promotes responsible use of the countryside by revising and re-launching the Countryside Code and other guidance on responsible use.
- Our view is that the 2006 duty 'to have regard to biodiversity' is not well understood by those bodies to whom it applies and that a clearer understanding needs to be developed.
- It is too early to say whether the structures provided in the Natural Environment and Rural Communities Act are sufficient following Brexit to ensure appropriate protection for nature and environmental standards.
- Agriculture forms an integral part of the landscape of our National Parks and it may be the largest land user in National Parks, but it is not always adequately or well represented in National Park Authority governance arrangements. There have been a number of recent improvements in governance arrangements, but there is still a need for agriculture to be better represented.

### **Rural advocacy and the Commission for Rural Communities**

Government policy decisions have a direct and indirect impact on NFU members. Farmer and grower businesses and families are particularly impacted by the social, geographical and economic differences rural proofing is designed to take into account. For example they are on average older; live in more sparse locations; travel further to access services and find it more difficult and more expensive to access quality infrastructure. There are also specific rural challenges for employment and training.

#### **Question 1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?**

The NFU understands that the original purpose of the Commission for Rural Communities (CRC) was established by the 2006 Act as:

*"an independent advocate, watchdog and expert adviser for rural England, with a particular focus on people suffering from social disadvantage and areas suffering from economic under-performance. It will provide information, advice, monitoring and reporting to Government and others on issues and policies affecting rural needs (30<sup>th</sup> March 2006)<sup>179</sup>"*

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<sup>179</sup> [http://www.legislation.gov.uk/ukpga/2006/16/pdfs/ukpga\\_20060016\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/16/pdfs/ukpga_20060016_en.pdf)

The NFU considers that the functions originally provided by the Commission for Rural Communities are not being fulfilled and that rural priorities as a consequence are not being authoritatively represented across the Government's agenda. This has translated into a more urban focus on policy and potentially less of a voice for those in rural areas, as well as stifling the potential for rural businesses, including farming and farm diversification.

Defra does not appear to have the independence or the resource to provide the role of advocate, nor to undertake the research capacity or watchdog functions that were undertaken by the CRC. The evidence provided by Defra<sup>180</sup> to the Committee on the 18<sup>th</sup> July suggested that there is a small Defra team in place, but with some potential to recruit more staff and engage more widely across the department.

Independent rural groups such as the Rural Coalition<sup>181</sup>, a group of 12 national organisations, including the NFU, who share a vision for a living and working countryside, have come together with a common cause to help fill the gap left by the abolition of the CRC, and indeed the Rural Coalition does regularly meet with Defra. The NFU believes that such independent experts bring more expert opinion to the table, but that a higher profile as well as a larger resource still needs to be given to rural community policy within government.

The NFU is also aware that in some cases rural social and economic statistics and research are not adequate to inform decision making. There are gaps in information at national, regional and local levels, key trends are missing or evidence can be several years' out of date. The NFU recommends that Defra acts to commission, collate and coordinate the evidence base needed to inform government policy making on rural issues.

In addition, had there been a rural 'watchdog' in place, we may have seen different government decision making in relation to the recent delivery of digital infrastructure and also in the role function and decision making of the Department for Digital, Media and Sport's arm's length company, BDUK<sup>182</sup>.

**Question 2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**

The NFU welcomed the introduction and publication of the Rural Proofing<sup>183</sup> guidance and the fact that the NFU were included on the stakeholder list. As the

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<sup>180</sup> Defra Director Shirley Trundle stated in her evidence on 18<sup>th</sup> July that the unit had 14 staff and was looking to increase up to 24.

<sup>181</sup> <http://www.acre.org.uk/our-work/rural-coalition>

<sup>182</sup> *Would we have a buoyant rural broadband market rather than a proposed broadband Universal Service Obligation to offer 10Mbps by 2020 on request for some but not necessarily the most hard to connect ?*

*Would we have had a scheme to help fund ultrafast infrastructure for all as opposed to the Chancellor committing £1.5 billion to ultrafast fibre for predominantly urban areas?*

<sup>183</sup> <https://www.gov.uk/government/publications/rural-proofing>

formal guidance was only published in March this year, we understand that it is early days in its implementation and this is possibly the reason why key Government initiatives such as the Industrial Strategy initially did not give due consideration to farming or to the rural economy.

The NFU is also supportive of the role of the Rural Ambassador, Lord Gardiner of Kimble, the Parliamentary Under-Secretary (Department for Environment for Rural Affairs and Biosecurity), but is mindful that the importance of rural proofing should be shared more widely across Government.

Additional leadership is required on issues such as on rural crime, where there needs to be wider ownership across government of this problem. The NFU's Combatting Rural Crime report<sup>184</sup> sets out the extent of this problem and recommendations on how to address it. We would also like to see more cross government coordination on critical issues such as health and safety.

**Question 3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

Notwithstanding Defra's advocacy role within Whitehall, all government departments should have responsibility for rural proofing their policies including:

- how they evidence and develop their policies;
- how they engage stakeholders and ensure that they have sufficient knowledge about rural economies and communities interests; and
- how they monitor their policies to ensure rural considerations remain on the agenda.

The Government's Rural Proofing guidance provides a four stage process, which is a good start for this, but we would be concerned that the stakeholder engagement takes place effectively at stage four, after the policy has been formulated.

We would recommend all Government officials be required to undertake some rural proofing training and to take ownership of the need to rural proof their policies. Importantly, officials should go out to and speak to rural businesses and communities rather than developing policies and consulting through often online-only documents.

The NFU is concerned that many consultation documents are not accessible enough to broader audiences. These can be set a high level, be off putting and

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<sup>184</sup> <https://www.nfuonline.com/cross-sector/rural-affairs/rural-concerns/rural-concerns-must-read/nfu-report-lays-bare-true-costs-of-rural-crime/>

designed for a specific technical audience rather than wider stakeholders who may be directly impacted and whose voice needs to be heard.

Broadband access is often very poor across rural areas<sup>185</sup> so consideration needs to be given as to how best to engage these rural communities. We would be happy to advise the Committee further about the good practices that the NFU has developed. We are also aware that organisations such as the Big Lottery Fund are looking into improving their rural engagement practices and believe that good practice can be shared.

We would also be concerned that rural proofing could become a 'tick box' exercise if there was not ongoing monitoring and evaluation. Again, this role should be one that is integrated across all Government departments.

## **Natural England**

### **Question 4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

Natural England (NE) has a broad remit spanning its regulatory role through to the delivery of grants to improve the environment. To a large extent NE performs its duties well, although there performance has been faltered in the last couple of years.

#### Loss of Technical Guidance

NE's guidance, advice and scheme information is published on the Government's central website – [www.gov.uk](http://www.gov.uk). Gov.uk requires guidance to be rewritten in a particular style meeting central government standards. As a general rule it appears the guidance has to be non-technical so a member of the general public can read it and understand it. In some cases this has led to guidance being simplified to the point that it has become meaningless for the intended audience.

The guidance review prior to content being uploaded to Gov.uk was constructive as it removed duplicate and outdated guidance, ensuring it was up to date and relevant. However, helpful question and answer documents that explain scheme rules or guidance cannot be uploaded on Gov.uk. It also means NE has 'lost' technical habitat guidance that was previously published on their website. These documents did help NE deliver on their purpose of promoting nature conservation.

#### Countryside Stewardship Delivery

NE is the face of Countryside Stewardship delivery. Since the scheme was launched for applications in 2015 NE has not been in a position to deliver effectively. Even in 2017 NE has struggled to pay agri-environment agreement

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<sup>185</sup> In 2016, 6% of NFU members who could tell us their broadband speeds had superfast broadband and 15% had a mobile service across the farm. The [NFU Spotlight on Farm Broadband and Mobile Networks document](#)



holders on time, agreement offers have been sent out after the start date of the agreement and application packs have been delayed. These problems have been due to a combination of issues including a complex scheme for applicants, IT issues and lack of resources (financial and appropriately trained staff). In addition, NE has to compete with Rural Payments Agency delivering Basic Payment Scheme to secure necessary changes the IT to support agri-environmental delivery improvements. NE needs to make substantial improvements to the delivery of agri-environment schemes so that its commitments to agreement holders can be met.

### Protected Landscapes

NE is one of the agencies that have statutory duties under the Conservation of Habitats and Species Regulations and the Wildlife and Countryside Act 1981. NE uses its powers to improve the condition of these habitats. However, there are concerns that NE's decisions do not take in to account economic and social well-being. For example, NE is seeking to restore all upland deep peat (over 40cm) to blanket bog with no regard to whether the deep peat can become blanket bog or the costs of restoration for government and the land managers. This does not appear to be a good use of public money or NE's powers.

In addition, NE uses the SSSI consenting regime to improve environmental management. There is a need to recognise the economic impact this has on land managers and NE should not seek activities that change the business model without appropriate compensation. NE needs to take in to account long term change on land management, not just the initial five years.

When designating landscape as SSSIs NE needs to consider the economic impact as part of the designation process. To have no regard to economic impacts created by the designation is to ignore the land managers need to make an income from these landscapes. Without those land managers maintenance of SSSI becomes very difficult.

### Economic Well-being

When working with farmers NE needs to recognise that farmland is an asset that generates farm income. Management changes required by NE on farm for environmental benefit are likely to impact on the ability to generate an income. Where the actions reduces farm incomes then that will have a negative impact on local communities as the farmer will not be able to spend locally or employ as many staff. This goes against NE's general purpose to contribute to the 'social and economic well-being through management of the natural environment' (NERC Act).

### **Question 5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

NE has statutory purposes, functions and accompanying Ministerial guidance rooted in its formation. However, these have not been updated to reflect current

or anticipated priorities in respect to either the environment or the wider economy and society.

We believe that statutory purposes and guidance issued to NE requires revision and updating to better reflect the needs of current and future priorities, rather those set out in 2006. Updated mandates would enable NE to more confidently to deliver policy in partnership with farmers.

In particular, we note that that the NERC Act establishes NE as an active "champion" of the environment, but this is a role that we believe is incompatible with the role of a statutory agency. Just as the NFU regards itself as a champion of farming so we see environmental NGOs as champions of the environment. Instead we expect the agencies such as NE to have an objective role in policy delivery and statutory safeguard.

Earlier this year, the NFU welcomed the introduction of a 'Growth Duty' under Section 108 of the Deregulation Act 2015, requiring regulators, including NE, to "have regard to the desirability of promoting economic growth".

This reflects the current government's clear interest in promoting economic growth, but given the close relationship between farming, food production and environmental protection we believe that it is important for NE to have an explicit duty to contribute towards promoting sustainable food production. Currently, the NERC Act calls on NE to contribute to sustainable development through "protecting and enhancing the natural environment", but makes no reference to food production.

**Question 6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective has Natural England – and other partners – been in promoting better access?**

Provisions on access within the NERC Act can be summarised as follows:

- To extinguish vehicular rights of way which are not already recorded on the definitive map. Where historic evidence of vehicular rights of way is found, restricted byways may be added to the definitive map instead;
- To prevent the creation of new rights of way for mechanically propelled vehicles due to 20-years continuous use.

These provisions remain very appropriate to prevent an increase in mechanised vehicular access to the countryside and prevent situations where continuous, 20-year illegal access to land by mechanised vehicles lead to the creation of a new public right of way.

Rights of way in general can act as conduits for rural crime- for example 154,000 incidents of fly-tipping were recorded on rights of way in 2015/16 alone, therefore there are continued benefits to landowners and wider countryside users in preventing the future creation of rights of way for mechanised vehicles.

The provisions in the Act do not necessarily promote access, but restrict access which can have detrimental impacts to the countryside and to rural communities. Whilst the provisions can prevent the creation of new vehicular rights of way, these do not provide support to landowners who are the victim of rural crime caused by illegal access to agricultural land.

Therefore, to compliment the provisions in the Act to prevent the creation of new rights of way with vehicular access, provisions within need to be strengthened to reduce the impact of illegal, anti-social and environmentally damaging vehicular access to the countryside.

More broadly, NE has played an active role in many schemes to improve public access, including the creation of the English Coastal Footpath and adding historical rights of way to the definitive map.

However, it is essential that NE do more to promote how the general public can responsibly enjoy the countryside. In recent years NE and other bodies have done less to promote responsible use of the countryside, but we believe that this trend should be reversed and more should be done. We would advocate that NE promotes responsible use of the countryside by revising and re-launching the Countryside Code and other guidance on responsible use.

### **Sustainability and biodiversity**

**Question 7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

**Question 8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

**Question 9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

In answer to questions 7, 8 and 9, the 2006 duty to 'have regard to biodiversity' applies to public authorities, primarily other government departments, local authorities and local planning authorities.

The NFU is aware that some Local Nature Partnerships have used the duty as a means of encouraging engagement with local authorities and Local Enterprise Partnerships and there are examples of guidance being written on the 2006 duty for local council officials.

However, one of the main ways farmers and grower's encounter the 2006 duty at the local authority level is through the planning system, both through its incorporation in development plans and in the determination of planning applications. As local authorities cut back on resources and increasingly rely on external sources for expert information, NFU member evidence suggests that there is more disparity in how the 2006 duty is being applied.

When submitting a planning application, there is often a requirement to submit information to assess any implications of the development and set out any mitigation required (and hence ensure the local authority has adequately carried out its duty when assessing the application). The NFU has received evidence from its members that the 2006 duty is not always well understood or applied in a proportionate manner. In some cases, the scope of information required (and associated time delays and cost of surveying) can be excessive, particular for farm yard development to replace existing structures. This is particularly relevant to the potential impact on bats, birds, reptiles and invertebrates and whether or not there is evidence of these species being present. There have also been cases where the local authority has been initially satisfied that it has fulfilled its legal requirements, only for third parties to question and ask for additional information to be required and tested.

There is Planning Practice Guidance to assist the practical implementation of the 2006 duty, as well as National Planning Policy Framework policy (primarily in paragraph 118) which is due to be amended.

In summary, our view is that the 2006 duty 'to have regard to biodiversity' is not well understood by those bodies to whom it applies and that a clearer understanding needs to be developed. Changing the wording of the Act may not address any perceived weaknesses, particularly if the issue relates to a lack of understanding of how that duty applies and adding 'ecosystem services' to the duty will not overcome that issue. Further, the NFU would be against strengthening the duty as that would lead to potential duplication of roles between those public bodies required to undertake the duty and NE and Environment Agency.

### **The changing context since 2006**

#### **Question 10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

It is too early to say whether the structures provided in the NERC Act is sufficient following Brexit to ensure appropriate protection for nature and environmental standards.

The NERC Act is just one of our laws that contribute to the protection of nature and our environmental standards. There are many others, including a number of European Directives. Future arrangements on nature protection and environmental standards will need to be considered in the round and in light of the EU Withdrawal Bill and the move of European legislation into UK law.

The institutional arrangements required after Brexit will need to be based, in part, on a review of the gaps created by dis-engagement with Europe, such as reporting arrangements on biodiversity status for international commitments to which the UK is a signatory. Then it would be appropriate to review the role of NE and other bodies responsible for environmental delivery and rural affairs.

**Question 11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

The NERC Act amended the National Parks and Access to the Countryside Act 1949 on National Park governance and also amended the National Parks and Access to the Countryside Act 1949 regarding the criteria for designation of National Parks.

Agriculture forms an integral part of the landscapes of our National Parks providing many benefits to society, from high quality food to countryside rich in wildlife. National Park Authorities have a significant impact on farm businesses and rural communities within park boundaries, for example they set planning policy, manage rights of way and help deliver agri-environment agreements. Farmers and National Park Authorities share an interest in ensuring that these areas are sustained economically and environmentally.

As agriculture forms such an integral role, we believe that it is very important for Park Authorities to appoint people who are representative of agriculture and the rural economy. Although agriculture may be the largest land user in National Parks, it is not always adequately or well represented. There have been a number of recent improvements in governance arrangements in National Parks and the Broads, however there is still a need for agriculture to be better represented.

Clearly, good governance arrangements in the Parks are important in ensuring transparent decision-making but good engagement is also important to local accountability. Good engagement at the very top of the organisation and can set the approach, understanding and involvement of the Park in all issues. The Park Authority has a key role in helping facilitate engagement with the local community, businesses, farmers and landowners and good leadership is very important.

On the criteria used to designate a National Park, we strongly believe that NE should also consider the social and economic impacts of a designation. The effects can be positive and negative, but these should be looked at in the round and taken into consideration by NE, alongside other criteria such as natural beauty and the opportunities afforded for open-air recreation before a decision on designation is made.

*12 September 2017*

National Trust – oral evidence (QQ 31-36)

## **National Trust – oral evidence (QQ 31-36)**

Tuesday 10 October 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Earl of Caithness; Countess of Mar; Baroness Whitaker.

Evidence Session No. 5

Heard in Public

Questions 31 - 36

Natural England – oral evidence (QQ 1-11)

## **Natural England – oral evidence (QQ 1-11)**

[Transcript to be found under Department for Environment, Food and Rural Affairs](#)

Natural England – oral evidence (QQ 185-196)

## **Natural England – oral evidence (QQ 185-196)**

Tuesday 5 December 2017

11.50 am

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); The Earl of Arran; Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Lord Faulkner of Worcester; The Countess of Mar; Baroness Whitaker.

Evidence Session No. 22 Heard in Public Questions 185 – 196



## Examination of witnesses

Andrew Sells, Alan Law and Dr Andy Clements.

Q185 **The Chairman:** Good morning and welcome to all three of you. I have the usual words of warning. You have in front of you a list of interests which have been declared by Members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website, and you will have the opportunity to make corrections to that transcript, where necessary. Thank you for coming. Would it be a good idea to introduce yourselves and then we can make a start?

**Andrew Sells:** I am Andrew Sells. I am chairman of Natural England and have been in that job for four years.

**Dr Andy Clements:** I am Dr Andy Clements. I am a non-executive board member of Natural England. I also chair Natural England's Science Advisory Committee.

**Alan Law:** I am Alan Law. I am chief officer for strategy and reform, so I am a member of the executive senior leadership team.

**The Chairman:** We have met you before, Mr Law, have we not?

**Alan Law:** Yes.

**The Chairman:** Of your five core objectives—biodiversity, landscape, study and education, access, and socioeconomic well-being—how do you decide where to prioritise your now scarce resources and to what degree are each of these fields represented on your board? To what extent are those decisions guided by statutory duties where there are consequences for non-fulfilment?

**Andrew Sells:** Before we answer that, would you, Lord Chairman, be kind enough to let me make a few introductory remarks, which will not be very long?

**The Chairman:** Indeed.

**Andrew Sells:** Thank you all very much for the opportunity to appear before you today and for what is an immense amount of work and detail you have gone into already; I am grateful to you for showing such an interest in our work.

I have read the evidence you have heard from many other witnesses and was rather encouraged by the very many complimentary remarks you have heard about us so, if I may, through you, Lord Chairman, I would like to thank those people who have appeared before you and said nice things about us.

Most people, I hope, would agree that Natural England has been a force for good and I could list, but will not, our many achievements over the years, which you will find in our written evidence. We are acutely aware that much more must be done if we are to reverse biodiversity decline and leave the natural environment in a better place than we found it, as the Government rightly wish us to do. We want to change Natural England's whole approach to conservation, as set out in our conservation strategy. We want to work much more with people, be less prescriptive and work on a larger scale and in partnership with others.

To make this easier, as you have heard from the Environment Agency, we have moved away from a centralised national structure to one based on having 14 area teams with co-boundaries with the Environment Agency. I regard this as one of our most important practical reforms. We have completely restructured our board, and I have sought to bring the board and the executive much closer together, sharing expertise and experience. I believe the Government's 25-year plan will set out a path to a richer, healthier natural world, and we have been very closely involved in its formulation. I am sure we will come to many of the uncertainties facing us, the EU exit and finance being two, but they give us opportunities and I hope to demonstrate to you that we have the experience and enthusiasm to tackle these issues.

It is a very great honour, as well as a pleasure, to be the chairman of Natural England and I would like to take this opportunity, if I may, because it will be broadcast, to thank all our staff for all they do because they work very hard and have been under a lot of pressure in an era of continual change. Thank you, Lord Chairman. Alan will kick off answering your question, if he may.

**Alan Law:** If I take that from a delivery perspective, which I think is the line on which it is being posed, it is important to understand our role as part of the wider Defra group. Natural England is the delivery body and we have a model of trying to deliver integrated delivery. You have asked how we prioritise between these five areas, and our aim is to try to integrate our delivery work on the ground.

In planning terms, we go through a planning cycle each year with the department, which has a target operating model which looks at different areas of activity and prioritises spend in each of those areas and allocates spend to different organisations according to their contributions. Rather than a single budget that is handed to us with us advising on how we will spend it, we get a budget that is an aggregate of different chunks of money for different activities that have been allocated by the department.

We aggregate that up and deploy it on the ground through our 14 area teams, which Andrew has described. We will use the tools that we have available to us to best deliver the outcomes, because it is the outcomes that we are concerned about. Your question on whether the statutory purpose or a particular functional interest is most important to us misses the point; that is a clumsy way of articulating it. We try to draw that together on the ground and use the tools best available to us to deliver

outcomes on the ground, be that biodiversity or landscape, but in a place we try to deliver a combination of the two. We are not driven exhaustively by a statutory duty for one thing versus a non-statutory opportunity on the other; we are pursuing opportunities.

**The Chairman:** The part of my question you did not answer was the question of representation on the board.

**Andrew Sells:** I would like to think that the board represents and brings together the skills necessary across the breadth of our activities, to some extent enhanced by having them in the senior leadership team. The board has been chosen to represent and bring many skills, so I feel we have done that.

**The Chairman:** What is the process for choosing your board, as a matter of interest?

**Andrew Sells:** The Secretary of State makes the appointments, but the process is that we advertise, setting out the criteria we are looking for; people apply and have to go over those criteria to get an interview; and there is an interview panel—a process that is currently going on—constituted of myself, a director from Defra and an outsider, who this time is the chairman of Historic England, so we have quite a serious, heavyweight panel. We put up names to the Secretary of State of all the people over the line who meet the criteria and he or she, as it may be, makes that decision.

**The Chairman:** I want to pursue that angle of the independence a bit more. To what extent are you a non-departmental public body, which is what you are supposed to be?

**Andrew Sells:** It is quite a complicated question. There is an inherent contradiction in being a non-departmental body when you are wholly accountable to that department for the money and the way you spend it. Natural England is in quite a complicated position; we have about 500 statutory duties or responsibilities, many of which have an appeal to the Secretary of State and some straight to the High Court. On the other hand, we do a great deal of work for Defra under contract, effectively, as agent. You can understand that, if you are doing work for somebody else, they want to be very closely involved in how you do it. There is an inevitable tension. If you were to put the question slightly differently—how is the relationship with Defra?—the answer is that it is like a game of three-dimensional noughts and crosses; it goes crossways, upwards, sideways and diagonally, and each of us will have different relationships on different issues.

There is an inherent contradiction in that Cabinet Office guidelines on non-departmental bodies say that we are not part of any department, and we are not, but we work very closely with it. I think you heard evidence from Merrick Denton-Thompson last week, talking about how, in years gone by, we were very independent and, probably not very welcome, broadcasting from the north the views of Natural England. The pendulum has now swung

the other way and some people might say it has swung too far, but financial pressures and some common sense have brought the organisations, ourselves and the Environment Agency together. It makes very clear and obvious sense that we should share offices, but we do not yet share IT systems or even have the same maps as the RPA. There are a lot of ways we could be working much more closely, yet I have fought hard to make sure that we have our independence on matters where we are taking statutory decisions under the Act.

**Baroness Whitaker:** I understand Mr Law's exposition on the operational way in which prioritisation works, but what is the role of the board and yourself, as the chair, in prioritisation?

**Andrew Sells:** We spend a lot of time discussing where to focus our efforts and set the strategic direction which the executive carries out. At the level of how we should tackle, say, licensing reform, that is regularly discussed by the board and the executive would seek to execute what we set out.

Prioritisation of expenditure is done at the board level but also very much with Defra because, as Alan was saying, we get pools of money for specific things for specific teams. I can think of conversations I have had with civil servants where I have tried to argue that there should be more money for this or that and have been told that Ministers are not very interested in this or that, and I have gone to see the Ministers and found that that is not their position. You have ministerial priorities and then us working out how, at an operational level, we can best deliver what we are charged with delivering. It is a complex set of moving parts.

**Baroness Whitaker:** Does Defra have to approve your broad prioritisation?

**Andrew Sells:** Does it have to approve it or does it tell us? I am slightly at a loss.

**Alan Law:** Defra will agree allocations of funds for particular activities and agree key performance indicators with us for each of those areas. If we are able to aggregate the expenditure and the way we deliver those key performance indicators in ways that enable us to do more for the environment, that is all well and good, but it is not necessarily recorded within Defra. That is where we try to make the money go as far as it can.

Q186 **The Earl of Caithness:** You said that Natural England is a force for good, but biodiversity has continued to decline; songbirds are in deep decline and going downhill. Where have you and the NGOs failed that you are going to be able to put right with Conservation 21? Convince us that Conservation 21 is the right way forward and how you are going to put it through and monitor it.

**Andrew Sells:** There is a much greater awareness of the need to tackle the problem than there was 30 years ago. I heard David Attenborough talking recently at a conference and he said that 30 years ago the conference would be attended just by bearded, sandaled eco-warriors but now it is full of bankers, politicians and landowners wanting to do their bit.

There is a much greater sense of awareness. Everybody is talking about soils now, which we must do a great deal about, but only a very small group of people were talking about that 30 years ago. We can build on the awareness of where we have got to. To his great credit, the new Secretary of State is putting the environment on the agenda and saying, "We have got to try to tackle these issues". I think by working much more in partnership with all sorts of organisations over much larger landscapes and, with greater support, public opinion and awareness, we can reverse it. As the Environment Agency was saying, we need to move from no net loss to biodiversity to a net gain concept where we are improving things. There are lots of factors in the 25-year conservation plan, when it comes out, which give me cause for optimism.

**Dr Andy Clements:** Building on what Andrew has just said, Conservation 21 is very much about a new style of conservation that links with other paradigm shifts. We have heard a lot about the natural capital agenda and ecosystem services, and our approach is to ensure that those things that nature gives us for free are protected in a much more holistic way that looks at outcomes that people on the ground managing land—farmers and landowners—or indeed the NGOs also want. We have called this our "outcomes approach", and it is an evolution of the way in which nature conservation has been done for more than 50 years. We all recall what it was like in the 1960s and 1970s when it was confrontational and adversarial, in the 1980s and 1990s when it became about seeking to manage land better and using the protected areas in that way, and now the agenda is very much about restoration and recovery of landscapes, which requires us to work at a larger scale. That is one of the differences in the approach that Conservation 21 seeks to adopt.

The way we will measure whether or not we are doing a good job is to see if we can reverse those trends of decline in wildlife. We know, through evidence, that some of those things have begun to work. For example, we have evidence at the national level that the farmland bird decline has slowed. It has not turned around, but it has slowed and the evidence is that agri-environment schemes have helped with that, so we have opportunities there. There will be a new target-setting process for after Biodiversity 2020 where the Conservation 21 strategy will work, and we want to measure how landscapes deliver stewardship outcomes. The Secretary of State thinks that is very important, as do we.

**The Earl of Caithness:** Your agri-environment schemes have not worked terribly well in the past. Do you think that a conservation covenant would be a better way of going forward? Given all the evidence there now is that, in order to help wildlife, we need good habitat, extra feeding at certain times of the year, and predator control, should Natural England not follow the Scottish Government's approach and include predator control in agri-environment schemes?

**Andrew Sells:** To tackle the point about conservation covenants first, they are not an alternative to stewardship schemes; they would be an additional tool for us to use. I have written a bit about them and can send you more

material, if you are interested. I would like to see the Law Commission's recommendations put into force to give us that additional tool.

I would also like to make the point about the Countryside Stewardship Scheme, which is the latest environmental scheme, that it does not work anything like as well as it should and we are working extremely hard to make it work better, which is not all entirely within our gift, but we think that we will now have the opportunity to design good schemes which work for us, are relatively simple and with a greater switch of money for the environmental benefit from basic subsidies, which is an essential part of what we seek to do.

**Alan Law:** I probably ought to push back on the assertion that agri-environment schemes have not worked. If you look at the condition of designated sites, for example, where we now have 95% in a recovering condition and about 40% in a favourable condition, that has been achieved very much over the last 10 to 15 years on the back of agri-environment schemes. If you look at the flagship reserves of many of the conservation non-governmental organisations—the RSPB, the National Trust, et cetera—a lot of their best reserves have been delivered on the back of agri-environment scheme monies. Where you have those monies, the right advice and continuity of engagement, there is no question in my mind that agri-environment schemes deliver high-quality outcomes. What you cannot do is throw the money and leave the farmer simply to try to pick up that money and deliver something with it; you need the advice and support. That has been a lesson for us.

**The Chairman:** What about the other part of the question, predator control in Scotland?

**Dr Andy Clements:** At the moment, it is clear that generalist predators are having an impact on some of our biodiversity, and there are measures in place to ensure that that is one of the things taken into account when land is managed. For example, we work with the Game & Wildlife Conservation Trust on this issue and, from my perspective as the chair of the Science Advisory Committee, we are at the stage where we need to understand exactly what measures we would need to put into place to ensure that things such as the productivity of upland waders are improved as a result of generalist predator control. Natural England is not yet in the space to be able to recommend that the control of generalist predators is a measure to be included in agri-environment schemes.

**Andrew Sells:** I did not mean to imply that environment stewardships were not vital, it is just that the current ones are not working as well as we would like them to work. I agree with Alan: they are essential to success and have been.

**Alan Law:** The only thing I would add is that there are mechanisms, where the evidence exists on the impacts of predators, for those to be considered through the licensing regime, which is a lawful mechanism that we undertake. Where the evidence is lacking, we could not be in a position to promote that through an agri-environment scheme.

Q187 **The Countess of Mar:** How are you balancing the move from a more regulatory to a more relational approach and your statutory regulatory duties?

**Alan Law:** This question implies that it is a choice between one and the other—that you have to regulate or you engage in relationship work. It is more how you go about doing that. I have worked in this organisation's predecessor bodies for 25 years. There have probably been times when we undertook our role in a way that was perhaps more ivory tower and prescriptive in terms of actions to be undertaken by others. We have learned that that is not necessarily the best way to deliver outcomes, nor the best way for those outcomes to be sustained in the long term, so we try to work with people.

That does not mean to say that you do not do the regulation; it is about how you do the regulation. Andrew has referred to the work that we are doing around great crested newts. Under the old regulatory regime, we would have gone through a licensing procedure for every single development affecting, potentially, one newt. That was universally regarded as a pretty ineffectual approach; it was not good for the conservation of great crested newts, it was a very heavy burden on us in terms of administering the licensing regime and it certainly was not well received by those at the other end of the food chain.

What we are moving to is a system where we do the licensing regime, so we undertake our same regulatory role, but we do so at a landscape scale and at a plan scale with a local authority. It involves planning the habitat provision for those great crested newts up front and using a single licence with the local authority to enable development to proceed and contribute to paying for that habitat creation. Previously, 80%-odd of all the money spent on great crested newt licensing went into consultancy fees, plastic fencing, et cetera, and very little into newt conservation. We are doing the newt conservation and the regulation—we are fulfilling our role—but we are doing it in a smarter way that gets better outcomes for the environment off the back of what we do. That is what we started with newts and there is the potential for using the same approach with other species, and one would like to think more broadly around biodiversity generally at a plan scale through the planning system. We have had references to net gain, which we might come back to.

**Dr Andy Clements:** Perhaps I can also build on your question regarding regulation. One of our duties and responsibilities is to designate protected areas and, over the last year, we have designated two large landscape-scale SSSIs: the West Pennine Moors and the Mid Cornwall Moors. You may have noticed in the media that there was an announcement at the weekend about the designation of marine protected areas by the Government based on Natural England's advice. The point is that the way we designate those SSSIs is very much in line with those people who own and manage the land.

In the case of the West Pennine Moors, maybe 220 owner-occupiers needed to be notified, made aware of it and talked to, so that they could

understand what was going on, the nature of the designation and what they can and cannot do on the land. By the time it came to the board of Natural England for us to either confirm or withdraw that site, out of those 220 people, there were maybe four or five outstanding objections, most of which were then resolved by small changes to the boundary and that kind of thing. It is very much regulation working with the grain of what people would expect us to do in the sense of them being the owners and occupiers of the land.

**The Countess of Mar:** On Sunday, I watched “Countryfile”. It featured the Cleveland Way, and I found it very interesting that a group had adopted a stretch of it to maintain it. How much are you encouraging that sort of thing with public rights of way?

**Alan Law:** I will give a broader picture and then answer specifically. Our work on access, like much of our remit, we have had to contract as budgets have gone down, so we are focused at the moment on delivering that access infrastructure. We spend in the order of £1.8 million a year on maintenance of the existing access infrastructure, but we spend more on the development of the new England coastal path, which is the big flagship piece. We need to help the bodies that we work with on the ground in terms of maintaining existing infrastructure to move to a slightly different model. Those existing national trails are prime for sponsorship, and a model that is dependent simply on central government funding paying for that maintenance on the ground does not look sustainable in the current climate, so we need to work with those partnerships to get them into a different funding model.

**The Countess of Mar:** There are not any health and safety aspects that deter people from doing it, are there?

**Alan Law:** That depends.

Q188 **Baroness Whitaker:** Moving to the European context, to what extent does Natural England rely on the obligations in EU law in fulfilling its nature conservation objectives?

**Andrew Sells:** It is very important, as I am sure you understand, that all the European directives that affect us have been put into UK legislation and will remain there, but long before them we had the Bern, Bonn and Ramsar treaties, all of which will continue. So we may well have stronger environmental protections post our European exit than we have now. That is the short answer and I will hand over to the expert.

**Dr Andy Clements:** Yes, we rely on obligations in EU law and, as Andrew says, they are already transcribed into UK domestic law; for example, through the habitats regulations. When a development is proposed on a special area of conservation or special protection area for birds, we undertake those assessments under the habitats regulations now. Those regulations will remain in place after—if—we leave the European Union. There are a number of principles that are important to maintain—the precautionary principle and the polluter pays principle—and it is already



understood that those principles need to be looked after in any regime following leaving the European Union.

The issue that all of us would want us to respond to is that those EU obligations which, as we come to leave the European Union, may not apply to us directly in the future, can always be updated and improved at a European level and we would have to keep up with that and not lag behind. That would be our hope in those circumstances.

**Baroness Whitaker:** Why would we have to keep up with them?

**Dr Andy Clements:** Because this Government have enshrined the belief that those standards are high and we want to maintain those standards of environmental protection.

**Baroness Whitaker:** That is interesting. Have these obligations which, although now in our law, originated in the European Union—at least most of them—had a protective effect on the resourcing of your biodiversity work or have they been a limitation?

**Alan Law:** I would not say that they have been a limitation. Are you asking whether that has helped maintain our budgets or maintain budgets for the natural environment?

**Baroness Whitaker:** It is a good argument for them, is it not?

**Alan Law:** Absolutely, they have maintained a focus on the natural environment, so the reporting requirements in Europe on the state of protected sites and European species have driven a focus of expenditure through the department and other public bodies. I would be harder pressed to say that our budgets have been particularly protected on the back of European legislation, although clearly we are part of the picture in helping the Government deliver their obligations.

**The Chairman:** Mr Sells, you said that the Secretary of State is putting the environment on the agenda. What do you think of this new body that he is currently mooting which will adjudicate on the Government's role; in other words, it will replace the Commission as the possible prospecting agent?

**Andrew Sells:** When I said that he is putting it on the agenda, that is supported by the fact that he has talked about public money for public good rather than subsidising farmers without necessarily any real public good, so I see a swing in that pendulum financially. As to his new body, if it enables us to do our job better and for our job to seem more important, we will definitely welcome it and participate at the consultation stage. To pick up on what Andy said, if it incorporates, as we would expect it to, the European guidelines and the principles, we will be working with those. So long as it is supportive of what we do, it will be very welcome. Obviously, nobody wants a bureaucratic monster.

To make a slightly different point, I do not know whether or not we will report to it, but it does not feel as if Natural England is either not sufficiently

held to account or does not have sufficient reporting chains at the moment through Ministers to Parliament, through the Permanent Secretary's chief accounting officer role and to Efracom, the Environmental Audit Committee and whatever. It might add another level of reporting to us, but I do not know; we shall have to wait and see how it pans out.

**The Chairman:** Is this a role that you had expected Natural England to do—to be independent enough to hold the Government to account?

**Andrew Sells:** Most of our staff are interested in delivering outcomes in the field and are experts at that and highly qualified to do that. Holding the Government to account sounds more like a regulatory role and I would not expect it to have the 2,000 experts that we have, so it sounds a somewhat different role to me.

**Lord Cavendish of Furness:** Has there been any evidence to suggest that management from Europe has led to adverse effects or unintended consequences? I have in mind, for instance, the management of a peat bog where the person in charge would be a peat bog expert. Could the management of that peat bog destroy the habitat, for instance, of a nightjar or some other species? The specialism seems to be rather heavy-handed and someone could be on site without a broad feel. What is the oversight of such situations?

**Alan Law:** With a designated site, you identify the features of interest of that site at the time of designation and a description of the favourable condition of that site is set out, which describes attributes of habitats and, potentially, populations of species, and that informs the management advice that is given around that site. On some sites there may well be different interest features that you could favour more one way or the other and there is a judgment that needs to be applied. When that gets very contentious, in the most contentious situations we could even refer that issue to NESAC—our Scientific Advisory Committee—but we would expect to explore those choices with the landowner and come to a rounded view about the management prescriptions that we would set out.

**Lord Cavendish of Furness:** So as an avenue in which an ornithologist, for instance, could appeal through the Scientific Advisory Committee?

**Alan Law:** Absolutely. I would not refer you automatically to our Scientific Advisory Committee but if there is a tension on a particular site between one interest and another, I would expect that our staff would be willing to explore and engage with it on the ground, and there is a route through to our specialists.

Q189 **Lord Faulkner of Worcester:** Could I take you back to the biodiversity duty imposed on you by Section 40 of the 2006 Act? We have had a remarkable number of witnesses who say that the wording of the duty, as it affects Natural England, is far too passive and vague: you have to have regard to it, whereas, for example, in Scotland, they have a duty to further the conservation of biodiversity, and Section 6 of the Environment (Wales) Act places a duty on public authorities to seek to maintain and enhance

biodiversity. Would it not be better if a similar obligation were imposed on Natural England and some effective form of reporting were put in place?

**Alan Law:** When I last gave evidence, I described to the Committee how the evidence on the pros and cons of the different regimes is rather limited. It is absolutely clear that the provisions of the duty in England, where they have been tested in planning cases—there was a case in Essex involving Buglife—are very weak. There is a stronger duty in Scotland. However, when tested in the planning process, although the wording was stronger, it did not prove to have any more bite. There is stronger wording still in Wales, but that is, as yet, untested. The jury is out on whether stronger provisions would automatically be the best solution.

There is an issue here, going back to the broader context, that it is possible for a range of bodies to undertake their functions quite lawfully in a place to comply with environmental laws but for the aggregate effect of their activities to be damaging to biodiversity. That is the state of matters. There is a question of whether you address that through a stronger general duty, through tougher specific legislation, through the planning provisions or through additional resources for conservation, and there is a range of potential answers to that.

**Lord Faulkner of Worcester:** So what is your answer?

**Alan Law:** I would give a similar answer to my colleague from the Environment Agency on the reporting duty. Having a reporting duty is generally a good way of driving resource allocation, but I would be cautious if that reporting duty meant simply that there was an additional burden for reporting from the existing resources envelope that bodies such as Natural England have.

**The Countess of Mar:** What happens when the law itself is responsible for reducing biodiversity? I am thinking of protected species such as badgers and raptors. On our own farm, 30 years ago, we had a vast assortment of wildlife and we now have four sets of buzzards and three badger setts on 100 acres and very few ground-nesting birds. We used to have skylarks and my joy was to see the first skylark in the springtime, when the warm sun was on your neck, but we do not have them any more. We have no rabbits or squirrels, which I do not mind particularly, but the buzzards are now taking lambs because they are not getting enough food. What happens when the balance of nature is disrupted by the law?

**Alan Law:** I would welcome the opportunity for one of our advisers to come to your land and see whether there is anything that we could suggest to establish balance. The nature of things is that pyramid predators—animals at the top of the food chain—are dependent on there being a wide enough base to that food chain. If there is something out of kilter, I would look at what can be done to broaden that base rather than necessarily assume that it is the product of that at the top of the pyramid.

**The Countess of Mar:** Without any rabbits, how do you get more? I know rabbits breed well.

**Alan Law:** There are cases, which tend to be more isolated, where predators are shown to be having an effect and we operate a licensing regime to cater for those circumstances.

Q190 **Lord Cavendish of Furness:** The Committee is aware that Natural England sustained the funding cuts that we have talked about. How do you handle these and to what extent is Conservation 21 a response to them?

**Andrew Sells:** Conservation 21 is a response to the fact that what we have been seeking to achieve has not worked sufficiently, but it also represents a whole new way of working—partnerships, bringing in money and working on a larger scale. It is a big subject.

**Alan Law:** Our budget has gone from over £200 million in 2010 down to £80-odd million now, so a very significant reduction. We have gone through a series of steps to make savings along the way that do not impact on outcomes. We have consolidated our back-office functions into the core department, we have cut our number of offices and, as we have shrunk, we have moved a greater proportion of our staff on to front-line services, but you can do that for only so long. Conservation 21 is an attempt to say that if we still aim, as we must, to deliver our full purpose, which is about restoring biodiversity and healthy and resilient landscapes, we need to do it in a different way. It needs to involve greater reliance on partnerships and working with others and operating one-to-many and at a landscape scale rather than seeking to do one-to-one delivery on the ground across the piece.

**Dr Andy Clements:** To build on that, and to go back to what I said earlier in response to Lord Caithness, Conservation 21 also embraces the new approach to thinking about the environment for the future. Nowadays, the talk is about environment and economy together, and our colleagues in the Environment Agency spoke about this. We now know that a healthy economy is dependent on a healthy environment and Conservation 21 seeks to embrace that part of the paradigm, too. I talked about the natural capital agenda and ecosystem services. The ability to deliver benefit in those terms has to be at landscape scale.

In response to your previous question about nightjars and peat bogs, Alan spoke very well about the choices we have to make. One choice we want to make is to not try to garden for an individual species in this little bit here but to understand that protecting a landscape at a larger scale will deliver biodiversity on a broad front, and those ecosystem services. Public money for public goods is another element of that. Conservation 21 is not really a response to shrinking funds but is about embracing a new way of doing things.

**Lord Cavendish of Furness:** Perish the thought that I suggested Natural England was destroying the habitat of the nightjar. Mr Sells, I hope you were as pleased as I was at the CLA when Mr Gove described you as Natural England's "brilliant chairman".

**Andrew Sells:** I was very nervous when he said that about what was coming next.

**Lord Cavendish of Furness:** It was a speech packed with stuff. Our remit here is to look back, but even in that same sentence, he was talking about four new—hopefully—much more streamlined offers. Quite soon we will be looking forward much more than looking back, will we not?

**Andrew Sells:** We will. Those four schemes are options in the current scheme, not new schemes, and will be much simpler. I want to build on partnership working and give you a couple of examples. What happened for many years was that this scheme over here might be an RSPB scheme and this might be a Wildlife Trust scheme, and we now have organisations working much better together. For example, only two weeks ago, we launched the Back from the Brink scheme, trying to save 20 seriously endangered species and help another 80. There are 20 organisations in that, with the funding led by the Heritage Lottery Fund of about £7 million. We have recently announced a project, Dynamic Dunes, trying to save 7,000 hectares of sand dunes in nine areas, which is between ourselves, the National Trust and the Wildlife Trust. I genuinely believe that by bringing different sources of funding in and working together and on a much bigger scale, it will make Conservation 21 work. It is not a question solely about the money being cut which has driven us to this new scheme.

**The Earl of Caithness:** This is very interesting, but a lot of the evidence that we have had from the NGOs is that they do not like Conservation 21. Why do they not like it, if it can bring these benefits?

**Alan Law:** I have read with interest some of the submissions to the Committee. There is an instinctive—and I mean that word—reaction that is based on an assumption that Conservation 21 means less regulation and that cannot be good for the environment. I did zoology at university, I did environmental impact assessment as my master's, I have worked for the Wildfowl & Wetlands Trust, and I have been a conservationist throughout my life. I have been heavily involved in the development of that conservation strategy and I can tell you that it is not about doing less for the environment. But there is a level of distrust about it and we have yet to convince some of our NGO partners about the motives. I would challenge those who have made the statement about a lack of regulation to give examples of where that lack of regulation is borne out, because I have seen very few specifics referenced. We have regulatory powers and we use them to object in the planning system and to designate sites. There is a concern around that.

There is also perhaps a concern that the territory that we are stepping into—moving out of a simple focus on designated sites and protected species—may be territory already occupied by other organisations. We are not trying to take that over but to join up, as Andrew said. The Heritage Lottery Fund was quite clear that it wanted to put more money into biodiversity. It had the money and recognised that it was not able to put as much money into that part of heritage as it wished to, and came to us because it wanted us to join up the sector in terms of the submissions that

were being put in. The bids that Andrew referred to are for additional cash, so they are not taking money away from anybody else but are additional money into conservation.

**Dr Andy Clements:** To pick up on this point, the conservation sector as a whole—and I am part of it—is conservative with a small “c”. Change is a tricky thing for this sector and that is the nature of the beast. While some of our NGO partners are critical about Conservation 21, not all of them are. A good example would be the National Trust, which has been positive in its evidence to you about the National Nature Reserve Partnership, which is a good example of how Conservation 21 needs to work. National Nature Reserves have been too much about Natural England and not about the partnership as a whole and, working together, we can achieve much more. There are areas of the country where there are National Nature Reserves managed by Natural England, the Wildlife Trust or the RSPB more or less adjacent to one another—joining those up in the Lawton way and not being too worried about the brand, about them being Natural England’s. The National Nature Reserves are there for the nation, independent of who manages them. The National Trust has been very positive about our partnership approach to National Nature Reserves, which is part of Conservation 21.

Q191 **The Chairman:** To some extent, you have just answered the question I am about to ask about feet on the ground. When he was last with us, Mr Law indicated that you had an increase in front-line staff, yet we have heard a range of reports where Natural England has found it difficult to maintain relationships at a local level, not with planning committees, which we have looked into, but bodies such as local nature partnerships. How do these reports square with the intentions combined in the Conservation 21 agenda that we have been speaking about, the other statements and the positive glow you have been giving Natural England this morning?

**Andrew Sells:** Alan specifically talked of a proportion of our staff but not more numbers, just to be clear.

**Alan Law:** That is critical. When we were vested, we had around 3,000 staff and we now have around 2,000 staff.

**The Chairman:** We were specifically talking about front-line troops.

**Alan Law:** Absolutely. When we were vested, perhaps 60% of the organisation’s staff were in front-line roles. We went through a period of reorganisation where we drew back into the centre and perhaps over 50% of the organisation’s staff were in central roles. As we have contracted, we have put a greater proportion—80%-plus—of our staff in front-line roles, and those who are in national teams are directly supporting local delivery. In proportional terms, we have the most local customer-facing profile as an organisation than we have had since we were vested. In absolute terms, we have fewer feet on the ground than we did at the start.

In terms of engaging with local partnerships, we went through a period early in the organisation’s life when we were very driven by Defra’s key

performance indicators, so we were very focused on the number of agri-environment schemes that were delivered or the condition of SSSIs. That focus led to a reduction in work in partnership and we were much more driven by functional activity and, for reasons that are described in Conservation 21, we have put that into reverse; we cannot deliver everything through one-to-one activity. We have to work through partnership. The view that we are not as engaged in local partnerships as we once were is probably somewhat dated from a period of three, four or five years ago when that would have been very much the case. We are actively trying to put that into reverse.

**The Earl of Caithness:** Perhaps I might follow up on numbers. There seems to be some confusion in people's evidence to us about the number of staff. Am I right in thinking that you now have only about 200 fewer staff than you had in 2008-09?

**Alan Law:** No, we have significantly fewer than that.

**The Earl of Caithness:** The evidence that I got from your annual reports is that in 2008-09 you had 2,423 staff and in 2016-17 you had 2,257 staff.

**Alan Law:** What is masked in those figures is that we have a large body of temporary staff who are employed with the agri-environment processing work—the work associated with payments for countryside stewardship. We can get like-for-like figures for the Committee, if that would help, which show the staffing complement between 2007 and now.

**The Countess of Mar:** We heard earlier this morning that you are sharing some of the backroom work with the Environment Agency. Does this work well?

**Alan Law:** It does. We share offices and our scale is such that having a Defra family-type office means that you get much better facilities. There are cons as well: having fewer offices means that we have fewer physical premises, so sometimes distances of travel and the numbers of people homeworking are greater, but the offices, where we have them, work very well.

Q192 **The Countess of Mar:** The Committee has heard that Natural England has largely withdrawn from making bespoke comments—despite what you said just now—on the majority of consultations with local planning authorities. Have the budget reductions had an impact on your ability to comment upon and contribute to local plans? If so, what other means have you found to fulfil your objective of conserving and enhancing the landscape?

**Alan Law:** To give a bit of context, we have always delivered more “no comment” or general responses than we have bespoke advice. We get 20,000-odd applications a year. We try to filter out the “no comments”, then filter out those which are generic and can be picked up through generic advice, and then focus our time and effort on where there is the greatest added value and benefit from our providing a bespoke response.

What we used to get was local authorities consulting us on anything within a range; if it was within five miles of an SSSI, we got the planning application and it might have had nothing to do with it. We have provided local government with some GIS tools—we call them impact risk zones—which help them filter what they consult us on so that we can remove things and save time. We then have standardised processes for filtering out and doing the “no comments”.

We have managed the volume down at a time when economic growth has meant that there is more planning activity taking place and we are trying to keep the amount of bespoke advice that we issue as constant as we can. I would be misleading you if I suggested that we had been able to deal with reductions in budgets without any effect; we have done our very best to manage that.

We are also trying—and the opportunity is there on the back of combined authorities, mayoral authorities, et cetera—to get more engaged in the strategic planning up front and reduce the number of planning applications further on down the line which may be at odds with the environment.

The last thing I should say in this area is that we introduced our chargeable advisory system—discretionary advice. From having no powers to charge five years ago, we will now bring in between £3 million and £4 million this year. This is for advisory services where developers come to us to pay for that advice. They are not required to, but they get early advice on the planning system which helps them avoid applications later on that get mired in the planning processes, so it is good for them and for us. That also helps us manage down some of our demands.

**The Countess of Mar:** That makes good sense; it is like calling in the environmental health officer before you set up a food business so as not to get caught afterwards.

**Alan Law:** Absolutely right.

Q193 **The Earl of Arran:** Leading on from that question, since you have put in my mind the abolition of things such as the RDAs, how effectively are you able to contribute to the landscape across local authority boundaries, and have you noticed this becoming harder to influence? Does the current structure of the planning system allow you enough influence to deliver against your objective of conserving and enhancing the landscape?

**Alan Law:** All our advice is drawn against a framework of natural character areas. We have 159 character areas that describe the important features of the landscape. They are based on geology, land use and the biodiversity that becomes associated with those forms of land use. Those are physical, so they do not relate to administrative boundaries, and we use those to provide consistent advice across administrative boundaries. We have teams in place. Where there are multiple crossovers between our teams and administrative boundaries, we will have a lead team which is associated with the Cotswolds AONB, for example. We put those provisions in place.



We advise on landscape. When Natural England was formed, a lot of our landscape advice, which the Countryside Agency undertook, was undertaken at a regional level, whereas English Nature, as was, provided advice very much at the local level in the individual development plans. We have sought to bring those together, and the conservation strategy aspires to work more at a landscape scale, so we are doing more at the plan stage.

The abolition of regions has made it harder to undertake strategic planning for the environment. Regional assemblies were quite helpful when you needed to broker cross-local authority agreements. I would flag the Thames Basin Heaths in the south-east as the one policy that is remaining from the regional spatial strategy because it ran across 13 different local authorities but it related to one landscape-scale designation. Sorry, I am giving a slightly long answer.

We have the facility to engage around landscape, which we do through the strategic planning process. We have good provisions in the National Planning Policy Framework for landscape conservation in so far as they relate to protected landscapes, in particular, and the NPPF is up for review again shortly, and we will be engaging in that.

**The Chairman:** We have heard some reports that not only have you not given a higher priority to landscape—which you have more or less admitted to—but local planning authorities, because their budgets have been cut dramatically too, have abandoned landscapes, so the whole aspect of landscape within the UK political framework seems to have gone missing. Would you like to comment on that?

**Alan Law:** I do not think we have reduced our focus on landscape. We have less resource across the breadth of our remit, so there are fewer people in biodiversity and in landscape or access, so they are all affected. I would emphasise the prominence that landscape has been given in our conservation strategy. There is a challenge around pressures that we have felt at the same time as local government have been under funding pressures, so they have lost expertise. The combination of reductions within local government and within delivery bodies such as ourselves is a challenging one, but I do not think that is unique to landscape.

**Andrew Sells:** To broaden it a little, I have read somewhere that we have lost our landscape expertise. We have not; we have very good landscape expertise, but it is very limited and there are not enough people in it, for sure. I have discovered quite a considerable backlog of people wanting to designate their part of the countryside either as an AONB or as an extension to a national park. We did a little sum and, if we were to look at everything, at the current work rate it would take us 50 years to get through the backlog of people who have asked us simply if we would look at it. Ministers have latched on to this and we have set up a new working group, currently chaired by me, with members of the board and the executive, to see how we can shorten and simplify the process without causing any legal problems and how we can look at these requests for AONB/national park extensions because a 50-year timeline is clearly not acceptable.

**Dr Andy Clements:** The other thing I would say about expertise is that the Science Advisory Committee that I mentioned previously, which I chair, has academic experts from a very broad church, so all areas of Natural England's remit are covered by the committee's independent experts who come to help us, including landscape experts. Quite recently, a whole meeting of the Science Advisory Committee was given over to discussing the landscape remit and work of Natural England. That committee gives us a broader range of expertise to build on the expertise we have in-house with our staff.

Q194 **Lord Faulkner of Worcester:** We have heard some very warm tributes paid to Natural England in respect of your work on the English coastal path and the national trails, and you are impressing people, such as the county councils involved and so on. There is, however, a concern that while the funding is there to create the coastal path, there may not be the funding to sustain it once it is finished. Can you comment on that, please?

**Alan Law:** In terms of forward budget commitments, we are operating to quite short timescales at the moment. We are in the 2015 spending review period, so we have indicative budgets up to 2020, when the England coastal path will be completed. I described earlier that probably our priority right now is investing in access infrastructure, of which the England coastal path is the most important and most prominent, and working with the national trails community—the England coastal path will be one of those national trails—to look at better long-term funding models. In terms of what the Treasury funding is likely to look like post 2020, we are not in a position to judge.

**Lord Faulkner of Worcester:** Is it the case that you are now discouraged from promoting things such as the coastal path because you are seen as a body that is not allowed to go actively into promotion?

**Alan Law:** No, that is not the case. In so far as we are constrained, it is simply that we do not have programme budgets that would support that any more. Similarly, our communications folk, in the main, now rest within the wider Defra group rather than in-house, but we are not constrained in that.

**Andrew Sells:** On the contrary, I have been to three or four openings of significant stretches of it and there has been national press, regional press, telly—a lot of activity, which we have encouraged, and I do not think there has been any constraint at all.

**Lord Faulkner of Worcester:** What will you do when you have finished the coastal path? Where will your access work go next?

**The Chairman:** There is a hope among some of the access bodies that you will focus on some footpath work, which has been neglected.

**Alan Law:** All I can say is that we have one board member who is very interested in access and has asked us for a stock-take and to explore that question. In the executive, there is quite a lot of interest in extending some of the coastal work and, in principle, in the natural capital work, we ought

to be looking at access provision in urban and peri-urban areas. We will do a stock-take.

**Lord Faulkner of Worcester:** I am sure you will take account of the Lord Chairman's point.

Q195 **Baroness Whitaker:** You have not said very much so far about your social and economic well-being objective. Can you tell us how this is pursued and monitored, and what is its salience in your group of strategies and practice? Is it perhaps in tension with any of your other objectives?

**Andrew Sells:** I speak a lot about the evidence which is coming forward about the benefits of the open air and access to the countryside for the disabled, the mentally ill, for children and whoever, and I am extremely keen that we build on our work in it. We need to do a lot more, but we are aware of the point, for sure.

**Dr Andy Clements:** One of the key pieces of work that we fund is a periodic report, *Monitoring Engagement in the Natural Environment (MENE)*, which provides us with a wealth of evidence about who is accessing the environment, what is important to them, what they are able to do there and so forth. We know from that that society is not doing as well as it could to enable the widest group of British citizens to access and enjoy the natural environment. Topically, the next meeting of the Science Advisory Committee this Thursday is devoted to the socioeconomic programme that Natural England is working on. While I cannot go ahead of that meeting, I would be very happy if the Committee wanted to have a readout from that meeting about the nature of our discussion and where that is taking our socioeconomic work.

In response to the last part of your question, I do not think there is any contradiction between the engagement part of our work and all the other aspects that Natural England undertakes. Once again, I would refer to the Conservation 21 strategy, which seeks to improve the engagement of a wider part of society in the natural environment for the future.

**Baroness Whitaker:** The readout you have mentioned would certainly be very helpful. You have described a lot of outputs. Do you have any handle on outcomes? It may not be up to you to measure them, but do you have any awareness of outcomes?

**Dr Andy Clements:** The MENE report tells us about the nature of engagement of different parts of society with the natural environment. Some of the outcomes we want would be an increase in volunteering in the natural environment, footfall on National Nature Reserves and that kind of thing to indicate that more people are engaging in a better way. We have also been interested in the health and well-being agenda and encouraging more people to use the outdoors as a green gym. Over time, we have supported that kind of work.

**Alan Law:** There is a parallel here to earlier questions about the Section 40 NERC duty. The legal provisions on us are relatively weak and general. We have a general duty under NERC around contributing to socioeconomic

through the exercise of our functions rather than in specific term. Similarly, under the Countryside Act 1968, we have to have regard to agriculture, forestry and socioeconomic interests in rural areas. They are quite general. However, the importance of communities, business and people in the way we go about trying to deliver Conservation 21 is absolutely fundamental. On the conservation strategy, we have recently undertaken a staff survey, and the internal buy-in to that strategy is huge, given that we launched this only 18 months ago. We are getting 80%-plus buy-in to the delivery of this strategy. People are absolutely central to the implementation of it.

**Baroness Whitaker:** Would it help you if the duty were stronger and/or more specific?

**Alan Law:** I do not know. I would need to see in what way that was expressed.

**Dr Andy Clements:** It is an interesting question, whether engagement work is delivered better through there being some regulatory or duty function or whether it is about an approach we all adopt to engaging with people in a different and positive way. Natural England is very committed to that engagement work. I am not sure that another duty on us to do it differently would necessarily be the best way forward.

**Lord Cavendish of Furness:** I sense that Andrew Sells' opening remarks deserve re-reading in respect of a change of culture. I cannot remember a time when public bodies appeared to many members of the public to be very hostile; civil life has become very uncivil, in my view. Would you agree with me that you ought to put a high premium on this change of culture?

**Andrew Sells:** I would. We did have a reputation for seeking to protect every individual newt and every individual bat and telling people what to do all the time. I first encountered that 20-odd years ago when I was the chairman of a public company, a housebuilder, and realised what was going on. We can do better working with people to achieve outcomes and have found better ways for nature as well, so I want us to be less prescriptive and more working with people to achieve shared outcomes and—I believe we all believe this—it will be better for nature, for conservation and the environment as well. That is a signal change in what we are seeking to achieve.

Q196 **The Chairman:** That is nearly a very good note to end on, but, if you had to choose one particular recommendation for us to put in our report, what would it be?

**Andrew Sells:** I would like us to have a little more freedom to do what we think we should do and be allowed to get on with it.

**The Chairman:** A very good point. Thank you all very much for coming.

## **Natural England – written evidence (NER0082)**

### **1. Introduction**

- 1.1. Natural England was created by the Natural Environment and Rural Communities Act (2006) which merged most of the functions of 3 previous bodies: English Nature, The Countryside Agency and Defra's Rural Development Service. Natural England's general purpose is 'to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. This includes: promoting nature conservation and protecting biodiversity; conserving and enhancing the landscape; securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment; promoting access to the countryside and open spaces and encouraging open-air recreation; and contributing in other ways to social and economic well-being through management of the natural environment'. Our delivery of Countryside Stewardship is an example of our contribution to appropriate land management. Another major part of our role is providing evidence-based advice to inform decision making.
- 1.2. Part 4 of the NERC Act gives Natural England the power to provide advice to any public body on matters relating to its general purpose and requires Natural England to provide such advice when asked by a public body. It also has duties as a statutory consultee, for example under land use planning laws, the Conservation of Habitats and Species Regulations 2010 and the Wildlife and Countryside Act 1981.

### **2. Summary of evidence**

- 2.1. Natural England believes the NERC Act has successfully brought together previous legislation and has proved fit for purpose in helping Natural England achieve its current aims. We suggest a few practical developments in the legislation that would help our purpose going forward. Protection and enhancement of the natural environment also relies greatly on other legislation such as the Habitats and Birds Regulations, and land use planning law and policy.
- 2.2. The NERC Act has allowed Natural England to innovate. We have significantly reformed the way we work with business and regulatory customers, ensuring we provide pragmatic, proportionate advice, regularly liaising with industry sector groups, and changing the approach we take to protected species licensing. Our new approach to Great Crested Newt licensing reduces the burden on developers while securing improved conservation for protected species.
- 2.3. Natural England is developing its chargeable services to achieve cost recovery and is using other external funding sources to help improve the natural environment in a challenging context for government funding. The NERC Act powers have helped Natural England develop its new approach to

charging for discretionary advice services. Developing this strategy further would be aided greatly by minor changes to the NERC provisions should there be a legislative opportunity.

- 2.4. Building on a strong organisational inheritance, NERC has enabled Natural England to generate significant achievements within a significantly reduced resource base. These include more national protection designations for Sites of Special Scientific Interest (SSSIs) and National Parks; 95% of SSSI area now in favourable or recovering condition; enhanced populations of some of our most threatened species; better protection of marine wildlife; and the England Coast Path, targeted for completion by 2020.
- 2.5. Despite these achievements, the overall picture remains one of declining biodiversity. In order to help reverse this decline, Natural England is taking a new approach with its 'Conservation 21' strategy. Our ambition is for a healthy, resilient natural environment, benefitting people and the economy. Our strategy aims to deliver more effective conservation through a landscape-scale approach, taking people with us, and focussing on outcomes. Natural England has also championed the concepts of green infrastructure and net gain which are important approaches to improving the natural environment.

### **3. Responses to select committee questions**

#### **3.1. Questions 1-3: rural policy.**

Natural England does not have a remit for advising on wider rural policy issues other than those involving environmental impacts or environmental delivery programmes.

#### **3.2. Q4: How well has Natural England fulfilled the mandate that it currently has?**

- In the 11 years of Natural England's existence, it has led important achievements in the protection, enhancement and enjoyment of the natural environment. These outcomes have been achieved working with Defra group, other Government Departments, conservation partner organisations, the scientific community and industry. Working with partners has been an especially important aspect of our efforts to improve the natural environment.
- Natural England believes the NERC Act has helped it deliver these outcomes, with partners, especially in the following areas (details about these are in annex A):
  - Protecting and restoring terrestrial biodiversity;
  - Delivering the Environmental Stewardship programme and its predecessor, and the new the Countryside Stewardship programme;
  - Reducing agricultural pollution;

- Managing our National Nature Reserves;
- Advising Government to establish and manage Marine Protected Areas;
- Completing the England Coast Path by 2020; and
- National Park designation including extending the Lake District and Yorkshire Dales National Parks.

3.2.3 Despite the achievements of all conservation bodies in the past decade, there is much further progress needed before we can say that our wildlife is thriving. It is clear that we need to act to achieve the commitment to leave the environment in a better state for future generations. We have been working closely with Defra on their emerging 25 Year Plan. Our approach is encapsulated in our own conservation strategy, 'Conservation 21', which requires us to shift our focus to a larger scale - to create resilient landscapes and seas, moving beyond sites to think about ecological networks, landscapes and ecosystems, and to become more integrated in our delivery. Natural England's 'Conservation 21' strategy wants to put people at the heart of the environment - helping people recognise the relevance of the natural environment to their day to day lives and the choices they make, inspiring them to be more imaginative and ambitious for the natural world around them. Our ambition is for a healthy, resilient natural environment, benefitting people and the economy.

### 3.3. Q4: How well do its wide-ranging functions fit together?

3.3.1 Natural England's area teams are the main way we integrate wide ranging functions to make a difference in priority locations. In the past few years, recognising that with public sector resource constraints, we cannot treat all areas as a priority, we have developed the idea of focus areas for our proactive partnership engagement work. We have initiatives which integrate our different work programmes in area teams, so that for example the Coast Path also furthers nature conservation, and the Catchment Sensitive Farming programme contributes to a wide range of benefits like flood management. The present arrangements allow us to specialise appropriately in each area, maintaining a "sense of place", and to collaborate with other bodies.

### 3.4. Does Natural England have the appropriate powers and resources to perform these functions?

3.4.1 Natural England believes the NERC Act 2006 has been sufficient for the current Government policy goals for our natural environment. Other laws, such as the Marine and Coastal Access Act 2009, land use planning laws which give Natural England statutory consultee status, and international laws and treaties, have also been very important. The NERC Act provides a sufficiently flexible framework for the immediate future, including the Secretary of State's powers to give Guidance and Direction.

3.4.2 To illustrate how the NERC Act has enabled Natural England’s work to date:

- It has transferred effectively the previous environmental and organisational legislation.
- Section 4 on the powers and duties to advise others has been useful in reinforcing the key advisory role of Natural England.
- Section 41 has given greater status to the protection of priority species and habitats as part of our commitment to global biodiversity protection. The s41 list is a key source of information for decision-makers on habitats and species outside the SSSI series that are of conservation importance. It is of great importance to local planning authorities and the Environment Agency in helping to inform their decisions over development proposals or the permitting of activities that may have impacts on biodiversity.
- NERC has aided wildlife crime work through the powers to appoint wildlife inspectors and giving powers of entry to ensure wildlife licencing conditions are being put into effect properly.
- It widened the biodiversity duty to cover all public bodies.
- The powers for the Secretary of State to give direction or guidance have been very rarely used, but do offer clarity and transparency on government policy position if required.
- The delegation powers have been helpful for Defra to organise delivery in the most effective way. For example, Natural England now advises on marine renewables’ impacts right to the 200nm limit.

3.4.3 The NERC Act has facilitated our ability to charge for discretionary services such as providing more bespoke help with environmental assessments by developers. However, Natural England is likely to develop its charging base in future, for example charging for a wider range of activities on the land it manages or for its various statutory services. Wider, more flexible powers, would help. This would allow us to charge for more activities in our move away from reliance on government Grant in Aid (see also our response to question 5 below).

3.4.4 There are some anomalies in the way the NERC Act helps our species licencing work, compared with other protected species legislation. To be more flexible and proportionate in our enforcement of European Protected Species Licence breaches, we would welcome the ability to be able to serve Civil Sanctions. A further strengthening could be gained by making it an offence to breach a condition of a Wildlife and Countryside Act 1981 Section 16 Licence.

3.4.5 On resourcing, Natural England’s budget for 2017/18 (as at May 2017) was £112m, of which £90m is pay-related (2,060 full time equivalent staff) and £16m programme. Of the total budget, £86m is government grant in aid; the remainder is EU technical assistance funding, other external funding and income from discretionary services. This compares on a like for like basis with an overall budget of £177m (including a £76m programme allocation) in 2006/07. In addition Natural England manages and delivers part of the Rural Development Programme in England



through which £324m is being paid to land managers in 2017/18; at its peak (2013/14), Natural England managed about £443m of such funding. Natural England has, as with all public bodies, faced significant resourcing challenges in the recent financial climate. It has adapted by making efficiencies in programme delivery and, more recently, by broadening its income base.

3.5 Q5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?

3.5.1 These are not Brexit related but we have highlighted four areas where the NERC framework for Natural England may benefit from modification to meet Government's ambitions (see also the response to questions 9 and 11). Note that these recommendations may require primary legislation so there is a question of legislative opportunity:

- Consideration of strengthening the biodiversity responsibilities for public bodies to help restore ecosystems and ecosystem services over a broad scale.
- Consideration of minor but important changes to the NERC Act which would be worth considering to assist our charging strategy. For example, the definition of services (which we can charge for) in section 11 is potentially limiting given the wider range of activities we might pursue and get income for, consistent with our general purpose. It is now Treasury policy that charging schemes should be introduced by way of a Statutory Instrument; however the NERC Act does not contain broad, general powers for Statutory Instruments to be created for this purpose. We are also now increasingly using our powers under section 7 to create management agreements that are better tailored to biodiversity outcomes. However, the wording of section 7 agreements is not sufficiently broad to cover the range of activities Natural England would seek to engage in.
- Consideration of the introduction of conservation covenants as a broader, more permanent tool, to secure environmental outcomes alongside its current section 7 powers. This would give Natural England, as well as other bodies who might be included in the legislation for conservation covenants, the tools needed to better protect, restore and enhance areas of environmental quality outside of statutory protected sites and secure the value derived from ecosystem services. The Law Commission published a report (in 2014) recommending the introduction of a new statutory scheme of conservation covenants in England and Wales, [see \(1\)](#).
- Minor but important amendments to the NERC Act to improve our enforcement powers as described above.

3.6 Q6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?

(<sup>1</sup>) [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2015/03/lc349\\_conservation-covenants.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2015/03/lc349_conservation-covenants.pdf)

- 3.6.1 Since its creation in 2006 the number of legally secure public access rights has risen and Natural England has evolved new standards of good practice in managing public access both informally and legally, thereby minimising conflicts with other land use objectives. We have supported Defra in various national access initiatives – see below. Natural England has also been at the forefront of initiatives to promote local community access and engagement with nature, providing a range of health and
- 3.6.2 well-being benefits. These include green infrastructure initiatives, Walking for Health, Farm Care and promoting children’s engagement with nature.
- 3.6.3 *England Coast Path (ECP)* – Natural England was an early champion of the coast path idea and worked with Defra to enable this in the Marine and Coastal Access Act 2009. This path will create a walking route around the whole English coast, together with secure rights of access to beaches. To date 314 miles of the path is open, with a further 521 miles already approved or proposed for approval. All stretches around the country are now being worked on, and we plan to open the full 2,700 mile coast path by 2020, delivering significant health and economic benefits in the process. This new national trail will be the longest continuous coast path in the world.
- 3.6.4 *National Trails (NTs)* – Natural England launched a ‘New Deal’ with English NTs in 2013. It clarified future funding, given resourcing challenges, and gave local trail partnerships more responsibility. While setting national standards, it gave them more discretion on how to deliver the detail, and established the independent website [nationaltrail.co.uk](http://nationaltrail.co.uk) as a promotional platform for the NTs family. In 2012 we opened the Pennine Bridleway, the 13th English NT (we are working to complete the last 3 stretches). The local Trail Partnerships involve over 100 stakeholders.
- 3.6.5 *National Nature Reserve (NNR) Dedication* – Natural England has dedicated wholly or partly 64 of our NNRs. These dedications, together with the Public Forest Estate, have created public access rights to over 160,000ha of land.
- 3.6.6 *Rights of Way Law Reform* – The Deregulation Act 2015 streamlined the procedure for recording historical public rights of way not shown on the ‘definitive map’. Natural England’s Stakeholder Working Group continues to advise Defra on detailed associated reforms of secondary legislation and guidance.
- 3.7 Q7. Is the duty to ‘have regard’ to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

3.7.1 In a 2010 Defra-commissioned survey, there was wide variation in awareness of the duty and in the level of biodiversity action that had been taken by the public authorities that responded, [see \(2\)](#). Over 60% of responding local authorities were aware of the duty and over half reported that biodiversity had benefited through their activities. Outside of the government and local authority sector, awareness was lower and less than half reported taking action under the duty. Natural England’s experience tends to reflect the survey findings with widespread awareness principally among Government bodies and local authorities. But there is also good awareness among specific sectors such as Internal Drainage Boards and water companies acting in their role as statutory undertakers.

[\(2\)](http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=17445)<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=17445>

3.7.2 Since 2006, awareness of the duty has continued to be raised by Government and public conservation bodies. Subsequent biodiversity policy – such as the Natural Environment White Paper, Biodiversity 2020, the National Planning Policy Framework, and the National Pollinator Strategy – has provided the framework for action. Whilst not all public bodies are aware of the duty they do tend to be aware of the Biodiversity 2020 strategy and its objectives.

3.7.3 A number of initiatives that promote the incorporation of biodiversity considerations continue to have a beneficial effect. There are also a range of external tools that help public bodies take account of the value of biodiversity and the natural environment more widely, such as the biodiversity planning toolkit and the National Ecosystem Approach Decision Tree, which are published by third parties and are available to support Local Authorities. There are biodiversity Net Gain good practice principles for local authorities and developers – [see \(3\)](#). and UK guidance on biodiversity Net Gain is currently being developed by CIRIA, CIEEM and IEMA. The Government also issued guidance in October, 2014, [see \(4\)](#) that set out the broad scope of the duty.

3.8 Q8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

3.8.1 Defra’s review in 2010 demonstrated positive impacts of the duty across diverse public bodies. Types of actions undertaken by public bodies include biodiversity enhancements through managing land and buildings; improving the status and management of wildlife sites; contributing to local or national biodiversity target delivery; undertaking biodiversity surveys etc.

- 3.8.2 However, about half of the local authorities and around a quarter of all public bodies reported experiencing barriers to the implementation of the duty.
- 3.8.3 Natural England has championed the concept of ‘net gain’ and it may be that strengthening biodiversity duties, and related land use planning guidance, could aid the implementation of that approach. Utilising the ‘Defra biodiversity metric’, or variants of this, developers, local authorities and infrastructure companies are starting to go beyond ‘no-net-loss’ of biodiversity and exploring approaches to delivering measurable biodiversity net positive outcomes. Natural England has for example worked with Highways England to deliver big scale biodiversity creation projects including 3,500ha of species rich grassland. In 2013 the UK ecosystems market task force estimated that this could revolutionise conservation, creating and ensuring long term management of in excess of 300,000 ha of habitat over 20 years.
- 3.8.4 A number of publicly funded major infrastructure projects and increasing numbers of local authorities, including Warwickshire, Oxfordshire and Greater Manchester amongst others, plan to secure biodiversity net gain outcomes from infrastructure and housing development.
- 3.9 Q9: How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?

(<sup>3</sup>)[https://www.cieem.net/data/files/Publications/Biodiversity\\_Net\\_Gain\\_Principles.pdf](https://www.cieem.net/data/files/Publications/Biodiversity_Net_Gain_Principles.pdf) (<sup>4</sup>)<https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>

- 3.9.1 It is difficult to come to firm conclusions on the comparative merits of the three different duties given the limited evidence available. However, the 2010 review commissioned by Defra did note that the measures taken in Wales over and above those taken in England to promote the 2006 duty. The new duty on public bodies in Wales since 2016 seeks to maintain and enhance biodiversity and to promote the resilience of ecosystems. The 2010 review also noted that whilst the overall level of action for biodiversity was similar in Scotland, there were a number of actions where a greater proportion of Scottish authorities cited the duty as a driver for action than in England and Wales. There is no requirement in England for a public body to report on the activities it has taken to fulfil its biodiversity duty, but such a requirement does exist in both Scotland and Wales.
- 3.9.2 Given the significant challenges we face in halting the continuing decline in biodiversity, there could be merit in considering a strengthened duty on public bodies in England, in the context of the Government’s ambitions and also the emerging concept of ‘net gain’ for biodiversity as highlighted above.

#### **4 The changing context since 2006**

4.1Q10: Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?

4.1.1 Natural England has been contributing to Defra’s work on EU exit issues. On standards, Natural England’s main area of focus is to ensure that the Government and its agencies have sufficient powers to continue our commitment to the provisions of international treaties, including for example important environmental principles and monitoring processes. The UK government has a long history of environmental protection and we understand that its intention is to safeguard and improve on this record, and uphold all our obligations under international treaties.

4.2Q11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

4.2.1 We recommend further consideration of the Law Commission’s Wildlife Law report which might lead to further improvements to the provisions of the Wildlife and Countryside Act 1981, additional to those modified by NERC. There will be also minor modifications to SSSI legislation that could be made should such an opportunity arise.

Natural England  
September 2017

## **Annex A: Summary of main outcomes of Natural England’s main activities and outcomes to date**

### *Terrestrial biodiversity protection:*

- Natural England has continued to assess and where appropriate designate nationally important SSSIs. Since vesting in October 2006, Natural England has notified 50 SSSI cases resulting in a net increase of over 14,000 hectares (ha) in the SSSI series. In the last year, a total of 8,195 ha of SSSI has been newly notified, the highest total since Natural England was established. Natural England (and its predecessors) has now notified 4,126 SSSIs with a cumulative area of 1.1m ha.
- A priority has been the target to improve the condition of SSSIs. As a result of significant attention from 2006, 95% of the area of SSSIs were in favourable or recovering condition by 2010. A focus now is to increase the proportion of SSSI area that has reached the benchmark of favourable, as opposed to recovering, condition.
- Wildlife outside SSSIs is equally important. Natural England leads the delivery of terrestrial targets for Defra’s Biodiversity 2020 strategy. Just over 100,000 ha of priority habitat has been created to meet Biodiversity 2020 targets.
- Natural England’s species recovery programme works with partners and communities to help recover populations of threatened species, and there have been notable success stories for species like Bitterns, Large Blue Butterflies, and Cirl Buntings.

### *Stewardship*

- Natural England delivered the previous Environmental Stewardship scheme for land managers. By 2013 Natural England was managing nearly 50,000 ES agreements of different types, serving 45,000 customers and delivering a rural development programme of £477m per year. We removed 55% of the processing costs in the Higher Level Scheme and 75% in the Entry Level Scheme. The Entry Level Scheme delivered basic countryside features, for example to aid farmland bird recovery, and the Higher Level Scheme is the primary policy mechanism for restoration of priority habitats.
- We are now implementing the new Countryside Stewardship scheme, which is a more targeted and competitive scheme to maximise environmental outcomes from public funds. The scheme operates under a tightened EU control framework and its introduction was affected by these EU compliance requirements and delays in delivering full computing functionality, resulting in a poorer initial customer experience than the previous scheme.
- The scheme has been continuously improved in response to customer and industry feedback since it was launched in 2015. While the opportunities to

make significant changes are constrained by the lead in time required to make information technology changes, disallowance risks and wider CAP delivery dependencies, a programme is in place to make the scheme more straightforward to access and more efficient to process. This will also see a postponed move of the CS transactions hub to the RPA being implemented.

- We now have nearly 6,000 agreements under the new scheme. Interest in Countryside Stewardship continues to rise strongly, with a significant recent increase in applications. We have also developed the Countryside Stewardship Facilitation Fund, leading to 61 Groups working with 1,350 land managers, across 277,000 ha delivering improvement to their local environment. In 2016 we delivered advice to 2,000 land managers including 85 events and 1,200 personal advice clinics.

#### *Reducing agricultural pollution*

- The Catchment Sensitive Farming project was initiated in 2006. Diffuse pollution from agriculture has been reduced through working with 19,000 farms covering about 2.6 million ha. Our Capital Grant Scheme has contributed to approximately £89m of environmental improvement, match-funded by the recipient farmers. Overall 200,000 individual mitigation measures have been advised to farmers. 85% of farmers involved in CSF say they now give water pollution management a higher priority. CSF has contributed to a 50% reduction in pesticides in our rivers. This project has encouraged farmers to invest in reducing pollution with support from Natural England and the Environment Agency.

#### *Managing National Nature Reserves (NNRs)*

- Natural England has continued to work with local partners to deliver its strategy for England's 224 NNRs (covering 94,000 ha). These are the jewels in the crown for Natural England and include iconic places such as Holy island and the Great Fen. These sites have the highest proportion of area in favourable condition (54%), contain most of our rarest species, and host over 800 research programmes. They have 1,800 active volunteers and attract 4m visitors annually. Natural England is approaching the conservation of NNRs in new and exciting ways that rely on mature partnerships with approved bodies, delivering together at a landscape scale, and combining resources.

#### *Protecting marine wildlife*

- A major achievement over the past decade has been the advances in England's marine conservation. Working with regional stakeholder groups, Natural England supported Defra's development of the Marine and Coastal Access Act in 2009 and has since provided the scientific analysis and advice to enable Defra to designate 38 Marine Conservation Zones to date in inshore waters (ie wholly or partly in the 0-12nm area), covering about 330,000 ha of our marine waters.

- Marine Protected Areas need to be well managed to ensure they are properly protected from fishing and other impacts. We have worked with Defra and the fishing industry to help marine regulators implement 45 byelaws or other measures to manage fishing activity appropriately in sensitive habitats.

#### *England's coast path*

- We are working with local authorities and landowners across the country and aim to have the path fully open by 2020. The England Coast Path is the most exciting and ambitious footpath project for a generation - when completed in 2020 it will be the longest continuous coastal walking route in the world. The completed sections of coastal path are already providing a boost for local economies with small businesses and communities starting to provide services for walkers and visitors to the coast.

#### *Lake District & Yorkshire Dales National Park Extension*

- In 2012 Natural England submitted proposals to extend the Yorkshire Dales National Park by approximately 24% in area, and the Lake District National Park by approximately 3%. Both orders were confirmed by the Secretary of State in 2015. Yorkshire, Cumbria and Lancashire now share the largest area of almost continuous National Park in England. This will further boost tourism, support rural businesses and potentially add significantly to the £4 billion already generated by visitors to our National Parks each year.

*26 September 2017*



## **Natural England – supplementary written evidence (NER0092)**

### **ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE AT THE ORAL EVIDENCE SESSION HELD WITH NATURAL ENGLAND ON 5<sup>th</sup> DECEMBER 2017**

#### **QUESTION: The recent work of the Natural England Science Advisory Committee (NESAC) – Dr Andy Clements (Q.195)**

##### **NESAC Role and Responsibilities:**

NESAC is an advisory committee to the Natural England Board and has an important role providing independent advice, as well as challenging and reviewing our science and evidence. It also provides a link between the Board, our staff and the wider research community ensuring that Natural England is kept aware of current and emerging relevant issues in the natural and social sciences. More specifically NESAC:

- Provides advice to the Board on the integrity and relevance of Natural England's overall science and evidence programme; of our prospective research and monitoring programmes; and (on occasion) of our plans for particular pieces of work.
- Provides challenge on the rationale and methods for proposed studies; and to the emerging findings of specific pieces of research.
- Provides post hoc analysis, and comment, on the success of methodologies and approaches we have applied.
- Provides assurance that internal peer review and external QA processes adopted are robust.
- Identifies suitably qualified reviewers that might be approached to undertake external quality assurance or peer review.
- Acts as an external champion for Natural England's science and evidence; helping to forge links and partnerships with the wider scientific community; e.g. hosting a series of NESAC Science Seminars.

NESAC also may occasionally be asked to provide advice on issues relating to the natural environment across government, reflecting Natural England's role as the government's statutory adviser on the natural environment in England.

##### **Membership:**

NESAC aims to maintain expertise across the full breadth of relevant specialist areas including;

- Marine, coastal, freshwater, terrestrial, urban ecology, ecosystem structure, process and function
- Soil science, agriculture and land-use
- Economics, ecosystem services and natural capital
- Landscape, hydrology, geology and geomorphology
- Public dialogue, engagement and participation, behavioural sciences
- Social research methods and analysis, evaluation, futures studies
- Recreation and access
- Green infrastructure
- Public health and wellbeing
- New and emerging technologies and methodologies

**Examples of NESACs recent work:**

Major areas of work considered during 2016-17 included:

- Advice on the reform of protected sites monitoring and assessing favourable conservation status
- Advice on the development of new biodiversity indicators
- Advice to the Natural England Board on hen harrier brood management
- Considering how to make best use of practitioner evidence
- The publication of Natural England’s first Chief Scientist’s Report

**Brief Summary of the December 2017 NESAC meeting:**

- The NESAC meeting on December 7<sup>th</sup> focussed on the developing social science programme of work in Natural England and covered two substantive items. Firstly species recovery – progress and next steps. NESAC considered progress towards the Biodiversity2020 wildlife status outcome target and reporting of this and a future framework for species recovery.
- The second substantive discussion was devoted to consideration of the developing social science programme of work in Natural England.
- NESAC considered a number of aspects of this important area of work, noting its importance to the future direction of the organisation. NESAC offered advice on priorities for applying social science expertise and insights in delivering our Conservation Strategy.

- A wide range of activities were considered and priority areas highlighted such as:
  - evaluating interventions in the natural environment to understand what works,
  - drawing on behavioural insights work to improve engagement, and
  - developing the evidence base through development of our Monitoring Engagement with the Natural Environment survey.
- NESAC also advised on Natural England’s ‘Putting People at the Heart’ change programme concerned with maximising benefits from the environment, including understanding and addressing environmental inequalities.
- Please find further detail on the discussion at the December NESAC meeting in the attached **Annex 1**.

## **ANNEX 1 – Natural England Science Advisory Committee – December 2017**

### **1. Social Science work in Natural England**

1.1 The nature of social science work in Natural England was described, noting this area is crucial to the organisation's direction and that the business is investing accordingly in developing our capability. The resource - currently 5 social scientists - is being deployed in support of three core work areas;

- Transition, in particular supporting change associated with delivery of Conservation 21.
- Operational Delivery;
- Brexit and associated policy development.

1.2 Natural England's social science specialists currently operate in an interdisciplinary way to:

- Improve our understanding of people and stakeholder groups (their behaviour, motivations and decision making) to increase the effectiveness of our nature conservation efforts; and
- Improve our understanding of people's needs so we deliver interventions that deliver benefits for the widest range of people, from all parts of society.

1.3 Team members described their main work areas: supporting evaluation, advising on social science data and methods, farmer engagement, developing broad behavioural insights and summarising and communicating external research. The team saw the two key challenges for future work as:

- To mainstream social science evidence and insights into NE delivery;
- To invest in our own evidence base and research function.

1.4 NESAC was invited to comment on the development of the social science agenda in Natural England and in particular:

- To support Conservation 21, what priority areas of social science and research are crucial for us to understand, engage and build on?

- Which key partners in the academic community should we be working with to develop partnerships? What do NESAC think NE could bring to such partnerships as part of our offer?
- Could NESAC help promote and support this agenda?
- What are the priority building blocks related to social science that NE staff need most urgently to enable delivery of C21 and help us develop our approaches to partnership working?

1.5 Members were especially supportive of a strong focus being directed at behavioural insights, noting:

- The importance of demonstrating to internal stakeholders that social science is an effective process for delivering core Natural England goals.
- Prejudices can be deep-seated and understanding what would persuade key groups to behave differently is at the heart of Conservation 21; this may need more detailed segmentation of public views than we have traditionally sought.
- Social scientists have a key role bringing disparate views together, mediating and helping build acceptable solutions. Discourse analysis is a technique that could help isolate different perspectives.
- In developing behavioural insights, consider external factors and avoid oversimplified analysis. Land manager decisions can be complex, influenced by a range of factors, some clearly visible, others much less obvious. People may be sympathetic to environmental delivery but trapped in another paradigm with the barriers to change not obvious.

1.6 Members warned against Natural England spreading its social science resource too thinly:

- Dialogue with local delivery teams should help identify the evidence that they feel will have greatest impact on their work. This should help shape priorities for evidence gathering.
- Be clear and rigorous about how we use social science outcomes to address delivery questions; different techniques might be needed for understanding what people want and to be able to influence what they do. The outcomes of both strands must be brought together at the point of influence or delivery.

1.7 Social scientists and their evidence have a key role building confidence in Natural England's decision making, and hence its reputation:

- Sound social science helps us to avoid or respond to the challenge that Natural England is an enforcer that doesn't understand 'other' perspectives. It is important to make our expertise in this area more visible outside the organisation.
- This process of 'credential building' requires confidence around social science evidence and its application at all levels of delivery.
- To help develop this capability, a network of people with social science expertise could be established.

1.8 Members saw opportunities for NE social scientists to work more closely with academics to explore links between environment, biodiversity and wellbeing. They suggested Natural England's social science work should seek an appropriate balance between support for rural and urban delivery, noting how high quality, targeted delivery in urbanised situations could help address a range of issues arising from deprivation and contribute to wellbeing. The Monitoring Engagement with the Natural Environment (MENE) survey was highlighted as a core evidence resource to support this area.

1.9 Among other specific suggestions, members asked:

- How are directed vs non-directed interventions received by diverse stakeholder groups? Could NE social scientists develop case studies?
- What aspects of biodiversity conservation are best aligned with enhanced human wellbeing and in what ways does 'connection' with the environment relate to beneficial change? Understanding these issues better could provide a useful lever for Natural England;
- Are there opportunities to develop use of social media to support our social science work and disseminate knowledge?
- NE social scientists should work closely with strategy and environmental futures specialists, particularly to prioritise evidence gathering?
- Could we develop case studies demonstrating how our social science has positively impacted on environmental outcomes?

## **2. Science and Evidence to develop objectives and actions for 'Putting People at the Heart'**

2.1 NESAC was asked for views on the initial work done to develop evidence requirements for the 'Putting People at the Heart' objective of Conservation Strategy 21. The broad aims of this work are:

- More people understanding and valuing the relevance of the environment;
- More people, from a wider cross-section of society, benefiting directly from the environment;
- More people taking decisions and actions that favour the environment.

2.2 The second aim has been prioritised for science and evidence development, focusing on understanding who we mean when we say 'more people', defining where target communities are and which benefits and actions to prioritise for them. This paper was intended as an early opportunity to get input from NESAC prior to full scoping out of objectives and actions.

2.3 An initial evidence review has been undertaken, describing the current state of knowledge, areas of current research and key evidence gaps. This exposed a potential mismatch between Natural England's traditional delivery areas and some areas with high levels of deprivation; urban and coastal communities may have lower access to and benefit less from a range of ecosystem services. The aim to benefit 'more people from a wider cross-section of society', is a significant driver for Natural England to develop a more active role in these communities.

2.4 Ensuring provision of high quality green infrastructure is a key mechanism by which Natural England can benefit these communities and NESAC was asked about a series of potential research questions. These covered the broad principles and direction of the People at the Heart work, advice on potential methodologies and data requirements and advice around the partners who might be best positioned to help us develop our evidence base.

2.5 NESAC recognised this is a complex work area and one where Natural England is to some extent feeling its way, albeit with big potential to develop our role.

- Members cautioned against rushing in to commission research until we have greater clarity over our objectives and key delivery partners.
- One size fits all approaches may be inappropriate, as different communities may, spatially, generationally and culturally, have

different barriers to address, and this may require the development of diverse messages and strategies.

- Members agreed there was much latent potential for Natural England to deliver environmental enhancements and demonstrate public benefits and positive influence on wellbeing.
- Members observed that securing investment in high quality green infrastructure cuts across our Conservation 21 objectives.

2.6 Members highlighted the significance of improving links with local government to address these goals.

- At local scale, using science to underpin pro-active engagement with the planning system at the right time is key to delivering high quality green infrastructure in appropriate places;
- At a more strategic scale we need to use evidence to build opportunities to secure better consideration of environmental issues in structure/spatial planning exercises.

2.7 Among other specific points made by members:

- Members highlighted the importance of education, noting that engagement with the natural environment often falls away in the teenage years; social scientists could help develop strategies for raising the level of engagement throughout the educational period;
- NE should look for opportunities to develop case studies around urban and coastal deprivation, looking to compare and contrast the underlying issues and potential solutions and use to improve practice;
- We will need to build rigour and consistency into our evidence gathering; this will be critical to influencing local and regional partners and agendas;
- We need to understand who the 'influential' actors are in the communities we want to address; this may vary according to circumstance;
- We should look to identify and develop partnerships with bodies that are interested in supporting work to address intergenerational issues (e.g. charities and institutions);
- Are there opportunities to demonstrate that engagement in citizen science activities confers benefits to health and wellbeing;



**LORDS SELECT COMMITTEE ON POST LEGISLATIVE SCRUTINY OF NERC (2006)**

**ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE AT THE ORAL EVIDENCE SESSION HELD WITH NATURAL ENGLAND ON 5<sup>th</sup> DECEMBER 2017**

**QUESTION: Conservation Covenants (Q.186)**

**Conservation Covenants**

By way of further explanation, a conservation covenant is an agreement between a landowner and a conservation body to do or not to do something on their land for a conservation purpose. It is a private and voluntary agreement which continues to be effective even after the land changes hands. Conservation covenants operate in many other jurisdictions (including Scotland) but not yet in England and Wales. Covenants are a familiar concept in law and arise whenever people make promises to one another by deed. Conservation covenants would enable landowners to enter into agreements under which both positive and restrictive conservation obligations run with land in perpetuity. Currently, under English law, only restrictive covenants work this way, and future landowners cannot be bound by positive obligations.

Conservation covenants therefore allow landowners voluntarily to create a new, long-lasting and legally binding obligation on their land that will deliver conservation objectives for nature conservation. This may be in response to a desire to provide long-term safeguards to environmental assets, or could form part of a deal whereby local communities, organisations or business 'buy' long-term maintenance of environmental features such as woodland or wetland areas critical to flood or coastal risk management. As such conservation covenants provide a tool for delivering a broad range of natural capital benefits, such as flood alleviation and management, carbon storage and air quality improvements through the management of land.

Andrew Sells referenced the Law Commission's Report on Conservation Covenants during our session on 5<sup>th</sup> December and for information and further reference, The Law Conservation Covenants Report can be found at: <https://www.lawcom.gov.uk/project/conservation-covenants/>

**LORDS SELECT COMMITTEE ON POST LEGISLATIVE SCRUTINY OF NERC (2006)**

**ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE AT THE ORAL EVIDENCE SESSION HELD WITH NATURAL ENGLAND ON 5<sup>th</sup> DECEMBER 2017**

**QUESTION: Natural England Staffing Levels 2007-2018 (Q.191)**

<b>05/06</b>											
<b>Pre - vesting</b>	<b>06/07</b>	<b>07/08</b>	<b>08/09</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16</b>	<b>16/17</b>
2731	2323	2346	2423	2636	2705	2291	2336	2372	2241	2237	2237

The figures above show the staff complement of Natural England expressed as FTE by financial year since vesting in 2006/07. Natural England’s current permanent staff resource (17/18) is supplemented by about 200 temporary staff who are EU TA funded and there are also another 250 or so who are temporary agency staff. These are included in the most recent figures. These temporary staff address recent issues with Agri-environment systems and agreement processing experienced in 2017 which Alan Law mentioned during the oral evidence session with the Committee on 5<sup>th</sup> December where this point arose.

There is a background context to the figures provided above which Natural England feel it is important for the Committee to be aware of whilst considering them, namely;

- Natural England’s wider duties and responsibilities have changed since 2006. For example the Marine and Coastal Access Act in 2009 and duties in relation to Btb have led significant additional responsibilities for Natural England that were not present in 2006/07. For example, the Committee might like to note that we currently have around 200 staff working on Marine Protection Advice, Coastal Access and Bovine TB delivery programmes that were not in place at vesting.
- In line with these changes to responsibilities and duties, changes to how NE measures the allocation of staff resource were introduced in 2010/11.
- As our Chairman, Andrew Sells, noted during the oral evidence session on 5<sup>th</sup> December, Natural England’s funding has undergone a very significant reduction. Natural England’s budget for 2017/18 (as at May 2017) was

£112m, of which £90m is pay-related and £16m programme. This compares (on as near a like to like basis as we can track) with an overall budget of over £200m (including a £100m programme allocation) in 2006/07. During this time Natural England has sought wherever possible, to protect its ability to deliver front line services and staff so that it can continue to deliver its statutory duties, roles and responsibilities effectively.

Natural England have also been asked by the Earl of Caithness to provide some supplementary evidence on the proportionate impact of GIA cuts to the Committee, reflecting the spectrum of impact associated with varying levels of GIA dependence. Please find a table below containing relevant figures, from published Annual Report and Accounts.

Funding Stream	2016/17 (£'m)				2017/18 (£'m)
	Natural England	Environment Agency - EP	Environment Agency - Floods	Environment Agency TOTAL	Natural England
GIA (RDEL & CDEL)	<b>106</b>	97	703	<b>800</b>	<b>84</b>
Income & External/EU Funding	<b>17</b>	340	82	<b>422</b>	<b>37</b>
<b>Total Expenditure</b>	<b>123</b>	<b>437</b>	<b>785</b>	<b>1,222</b>	<b>121</b>
<b>GIA as a % of Total Expenditure</b>	<b>86%</b>	<b>22%</b>	<b>90%</b>	<b>65%</b>	<b>69%</b>

## Natural England – supplementary written evidence (NER0095)

Dear Ewen,

I would like to draw your attention to Schedule 4 of the Natural Environment and Rural Communities Act 2006 which considers the membership of the Joint Nature Conservation Committee, in particular 1(c). It reads as follows:

- (1) The joint committee is to consist of 14 members:
  - (a) a chairman appointed by the Secretary of State;
  - (b) 5 members appointed by the Secretary of State;
  - (c) the chairman or deputy chairman of each of the GB conservation bodies and one other member of each of those bodies appointed by the body in question;**
  - (d) the chairman of the Council for Nature Conservation and the Countryside and one other member of the Council appointed by the relevant Northern Ireland department.
- (2) The joint committee may appoint a member to be deputy chairman.

In reference to 1(c), my primary concern is ensuring I offer the JNCC Board relevant expertise and appropriate support from Natural England. The Act is limiting in terms of nominating just one other person from Natural England for membership and the Chairman or Deputy Chairman. I am not sufficiently qualified to attend and for the last 2 years we have not had a Deputy Chairman (a Secretary of State appointment). Therefore, I would like to recommend an amendment to this clause to allow greater flexibility and a less constrictive approach to membership of the JNCC. I recommend that we change 1(c) to:

- (c) two Board members from each of the GB conservation bodies appointed by the body in question;

I hope that you will consider this amendment in the spirit in which it is intended thereby ensuring the JNCC Board is well advised by all of its members.

Yours sincerely,

Andrew Sells  
Chairman

## Natural Environment Research Council (NERC) – written evidence (NER0029)

### Introduction

1. The Natural Environment Research Council (NERC) is one of the UK's seven Research Councils. We are the driving force of investment in environmental science. We advance the frontiers of knowledge by commissioning new research, infrastructure, innovation and training that delivers valuable scientific breakthroughs. Our science explores the physical, chemical and biological processes on which our planet, life and economy depends – from safe food and water to energy and minerals, from air quality and flooding to long-term changes in our environment and climate.
2. Understanding our changing planet is fundamental to our future wellbeing and economic prosperity. The environment we live in directly enables – and can limit – human health, productivity and economic growth. Every business and public service, every consumer benefits from natural resources (for example minerals, energy, water and food) while incurring the economic and health costs of environmental hazards, pollution and degradation.
3. We work in partnership with business, government and society to deliver solutions to UK and global challenges. Together we deliver new ways of living, doing business, escaping poverty and growing prosperity

#### **Example case study:**

NERC researchers helped South West Water to design and pioneer the UK's first 'valuing nature' auction, a Payments for Ecosystem Services (PES) scheme. SWW incentivised farmers to reduce pollution at source, eliminating the need to invest in expensive infrastructure and water treatment downstream. The win:win arrangement saved money for the taxpayer and the water customers, proved more efficient than previous schemes, and generated a benefit-to-cost ration of 65:1, and also improved local water quality<sup>186</sup>.

4. Our environmental science is world-leading and highly collaborative – harnessing the world's best scientists and knowledge to tackle complex environmental, economic and societal challenges. The benefits of NERC environmental science are felt right across the UK. Our science has

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<sup>186</sup> NERC. (2012) [Farmers bid to reduce river pollution and encourage wildlife](#)

delivered real benefits to people, economies and the environment in every UK region.

5. In this response, we focus on issues most relevant to NERC and to the environmental science domain (questions 2, 4 and 10).

### **Rural advocacy and the Commission for Rural Communities**

*Question 2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?*

6. NERC welcomes the formation of the ShARE<sup>187</sup> forum which has been set up by the UK agencies responsible for environmental regulation to coordinate mutually-beneficial projects and speak as one voice communicating cross-cutting evidence needs. This flexible framework for research and evidence collaboration on environmental issues between the five bodies in the UK and Ireland is to be commended. A holistic, systems-level approach is needed to recognise and realise the opportunities the environment presents for natural solutions if consideration is integrated across policy areas and organisational siloes.

### **Natural England**

*Question 4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?*

7. NERC has extremely positive and close working relationships with Natural England, both with Natural England representation on our governance boards, and strategic engagement on joint research and innovation priorities. The publication of Natural England's 'Conservation 21' strategy as a tool for engagement and stimulating innovative solutions to environmental problems is to be welcomed.

### **The changing context since 2006**

*Question 10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?*

8. Exiting the EU provides a once-in-a-generation opportunity. There are crucial challenges and exciting opportunities that present from the UK leaving the European Union, including optimising sustainable environmental management and ensuring the resilience of our ecosystems and the quality of our water and air. There is the need to look to the medium-long term (10-25+ years) to define, prioritise and address knowledge gaps in the environmental science evidence base; robust

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<sup>187</sup> Shared Agencies Regulatory Evidence Programme (<https://www.sepa.org.uk/about-us/how-we-work/our-research/share/>)

environmental research and interdisciplinary knowledge can address these challenges to inform decisions and pioneer innovative policies and solutions to simplify environmental regulation, provide joined-up incentives, enable resource efficiency and drive up productivity.

*8 September 2017*

## Examination of witnesses

Harry Bowell and Dr David Bullock.

Q197 **The Chairman:** Good morning, gentlemen. Thank you both very much for coming to see us to talk about the NERC Act. You should be aware that you have in front of you a list of interests that have been declared by Members of the Committee, and the meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website, and you will have the opportunity to make corrections to that transcript where necessary, in the future.

Perhaps I could ask the first question, which is quite general. What is your general experience of working with Natural England and to what extent have the recent budget cuts in NE affected its ability to engage or to work in partnership with others, particularly with you, as a major landowner? To what extent have the cuts helped or hindered your ability to deliver against your core objectives, in combination with theirs?

**Dr Bullock:** Good morning, David Bullock here. In terms of our cause, which is conservation, access and engagement, Natural England's new strategy, C21, is very closely aligned to it. It is quite easy to transpose elements of our cause alongside the strategy for Natural England, so we are pretty aligned in that respect. Yes, the cuts have had an effect on us dealing with Natural England, because we are part of a suite of environmental NGOs that are asked by Natural England to deliver on better nature, for example. Natural England is asked by Defra to deliver better nature, and sometimes the buck stops with us in terms of our resources. Sometimes we feel at one end that the budget is so cut that we are being asked to do stuff that Natural England would have done. That sits queerly with quite a lot of NGOs, including National Trust sometimes.

At the other end of the scale, we have a very good example of partnership working with Natural England through its national nature reserve strategy review, which works really well and is a genuine partnership. We benefit greatly from that, because we own or have land on a considerable number of national nature reserves in England, so the full spectrum is there.

We are looking carefully at Natural England's new discretionary advisory service, because, from our early experience of it, we do not think the business case has properly been made for Natural England staff to be asking for money for that discretionary advisory service. We see early products of it as having an opportunity cost for Natural England staff, and sometimes the skills involved are skills that we could have employed for that particular piece of advice, so it is a mixed bag. It is a curate's egg: good in parts.

**Harry Bowell:** I have nothing additional to say.

**The Earl of Caithness:** Natural England, as you know, has four objectives that seem, on the surface, to be contradictory in some cases. How do you think it handles its four objectives and is it giving the right level of priority to each of those objectives?



**Harry Bowell:** We think mostly well, but there is an inherent tension between regulation and effectively being a delivery arm of Defra. There is an inherent tension in that, which we think Natural England mostly balances well. There is a question going forward, which I am sure will come later, of how those functions are aligned to a new way of organising in a post-Brexit world. That feels like quite an important point to think through.

**Dr Bullock:** We have a concern about one of the functions of Natural England, which is the monitoring of sites of special scientific interest and how that is going to be delivered in the future, given cuts to that service. It sits between regulation and delivery and has a bearing on Biodiversity 2020, some of the outcomes of which we will not necessarily be able to report on very easily if we do not have a suitable monitoring service from Natural England.

Having said that, I have just praised Natural England for revising or refreshing what is called the Natural England field unit, which is now nearly 50-strong and is delivering a great service in terms of condition assessment and lots of related specialist advice. We simply hope that that service will continue, as without it we will be really stretched in terms of knowing the condition of our SSSIs in the future.

**The Earl of Caithness:** Given your first answer to the Lord Chairman's question, is too much being put on the partnership bodies? It is okay for the National Trust: you are a big beast, you are well funded and you can stand up for yourselves. Some of the smaller people who are affected by Natural England will not be in the position that you are. Is too much going to be put on their shoulders?

**Harry Bowell:** It is a concern. Absolutely, it is a concern. We have very little direct financial relationship, as you rightly say, in terms of our funding model, but other smaller NGOs do. I cannot report directly to you about the consequence of that and what the impact would be, but it would be a concern for us.

**The Earl of Caithness:** Could you fill that out a bit more in a letter to us, because that is quite an important point to pick up on?

**Harry Bowell:** Certainly. Can I say one thing in addition, in answer to both of the questions? I am director of the north for the National Trust, so I have a responsibility for all the trust's work in the north of England. One of the things that we are delighted to be involved in is the Defra Pioneer, which was set up in response to the Storm Desmond event in the Lake District. We have seen a close alignment of Natural England resources and purpose with the Environment Agency and other parts of the Defra family. In particular, something I am pleased to see, which seems to be a result, is that we are getting to one point of information, regardless of which of the agencies a particular officer works for. That could be a product of financial squeeze, but that particular way of working has some merit, we think. At the moment, it is the only one of the Pioneers that is focused specifically on water, for obvious reasons in the Lake District perhaps, but

we think that that points to something quite interesting as a way of organising delivery.

**The Chairman:** We have had quite a lot of correspondence about Natural England's lack of management of their national nature reserves and saying that the cuts seem to have badly affected them. I was just wondering whether you had any comment to make on that.

**Dr Bullock:** I represent the National Trust in the partnership, the national nature reserve strategy review, which Natural England provides the secretariat for, but it is a genuine, very inclusive working partnership. I have great confidence that the strategy we have produced collectively is making national nature reserves fit for the 21st century, in terms of conservation, science and engagement, bringing those together to make sure that national nature reserves are places where you can do experiments in the field, which are engaging and open access for people, but also the pillars of best conservation, in terms of species and habitats.

**The Chairman:** Are you saying that the complaints we have had are out of date?

**Dr Bullock:** I really think so. As major owners of national nature reserves, we have very good relationships with national nature reserve managers, whether they are from Natural England or are our own.

Q198 **The Countess of Mar:** Dr Stuart Burgess, when he was asked about the demise of the CRC, said, "Obviously, I was concerned about the loss of the rural voice, the loss of that great feeling of independent expert advice to government on rural issues and rural policy, and the loss of good evidence based reports . . . What has been lost is the emphasis on the more social and economic issues that I have identified, such as housing, broadband and transport. I can quite see how and why it has happened, but it has been a great loss". How do you feel that any gaps that have arisen as a result of the closure of the CRC and the rural communities policy unit should be addressed? As an add-on to that, to what extent has the loss of these two units affected the Government's ability to address key social and economic issues, such as rural housing and rural broadband?

**Harry Howell:** I would just preface my comments with a statement about what the National Trust is and potentially, in terms of answering this question, what it is not. We are a conservation organisation and an access organisation. What we are not is a rural campaigning organisation or a social housing organisation. We have houses and we have tenants, but that is not our primary purpose. Therefore, our observations are born out of having a large rural estate and being enmeshed in the communities, rather than speaking for the communities.

I have a few observations. One is that there has been a trend to more siloed government. Therefore, our actions when we are thinking about rural issues tend to be within silos. We might talk about farming and we might

talk about economy, but we very rarely find ourselves in a conversation about the whole of society and rural areas.

My second observation is that there is no specific agency, with the demise of the Countryside Agency a long time ago, for rural issues. Therefore, those issues have defaulted to local authorities. You asked earlier about the impact of cuts. Well, we really do see the impact of cuts in local authorities both generically and, in some places, specifically. What we are particularly concerned about there is the loss of some skill set from the staff base.

I will give you one example, again from my world. Is “institution” the right word? There are institutions and mechanisms that have filled that place. I will use the example of the LEP in Cumbria. The LEP in Cumbria, which is about economic activity in Cumbria, is almost primarily focused on large industry and energy on the coast. In terms of hard economics, you might think that that is sensible. The Lake District National Park has an annual turnover from the visitor economy of about £1.3 billion but, because the infrastructure is diffuse, the LEP is not well geared to making sensible investments in that way. I suppose my short answer is yes, for what it is worth.

**Q199 The Chairman:** I wanted to move on to the question of the section of the NERC Act that talks about the duty “to have regard to” biodiversity. It particularly refers to local authorities and other government organisations. I just wondered whether you feel that that particular section has had any affect at all on biodiversity in England. Has the protection or the monitoring of species improved as a result or not?

**Dr Bullock:** We are part of an active partnership in State of Nature, which is a collection of ENGOs that track a suite of species to look at how nature is doing. Its last report, in 2016, was similar to the report in 2013, stating that about 60% of the sample of species was in decline, and some of them dramatically so. The question can be asked: has the NERC Act 2006 duty to have regard to nature had any impact on halting and reversing decline in nature? The basic answer has to be probably not because of the Act itself.

Having said that, we know that there is some evidence that good agri-environment support in the countryside can help to halt and reverse declines in species. It has not happened for farmland birds yet; they are still declining, but the decline or the rate of decline is slowing down. We have attributed that to two things: first, good actions by farmers and other land stewards, in putting hedgerows back, for example; and, secondly, general agri-environment support. There is change, but it is not necessarily related to the NERC Act.

**The Chairman:** In your conversations with local authorities, have you ever heard them refer to their duty of care? Does it come up?

**Harry Bowell:** In my working life today, no, other than when we remind them. The language, particularly in the context of cuts, is a duty to have

regard, which is quite a passive duty. There is no proactive obligation, by way of contrast to the EU directives, which are much more proactive in what they require.

**The Chairman:** On National Trust land, what actions are you taking to conserve biodiversity? You say that nationally it is slowing down a lot. Is it increasing on National Trust land?

**Dr Bullock:** Not yet, but we have a big ambition for it to increase through our strategy, which was launched in 2015. It would see half of our land in “high nature” status, and would see us create 25,000 hectares of priority habitat and improve the condition of all our land for nature, all by 2025. That is five years after Biodiversity 2020 reports, and some of the outcomes of that will contribute, but we know that quite a few things will not be done by 2020. We are confident that, by 2025, we will have made a big difference in terms of our ordinary countryside, in terms of birds, bats, butterflies and wildflowers.

Q200 **Baroness Whitaker:** The National Trust is a pioneer of access to beautiful places and, as you say, you are also a conservation organisation. Is there any tension between promoting conservation and promoting public access? Do you think the current framework of environmental law, and the work of Natural England and its partners, strike an appropriate balance between these two objectives?

**Harry Bowell:** There is a tension, but we would frame it as a healthy tension. Our organisation, probably uniquely within the conservation of the natural environment, balances by Act of Parliament those two things: access and conservation. We have grown as an organisation quite profoundly. In fact, we have just announced our 5 millionth member. That growth has been on the back of a huge appetite, over the last decade and a half, to get out into the countryside. Visits to our houses are quite static and not growing massively, but visits to our countryside or our outdoors are growing incredibly profoundly, particularly on the edges of urban conurbations. One such place in my region, Dunham Massey, gets 750,000 visits a year of people coming from around Manchester. That inevitably causes some tension, but it is a manageable tension, if there is a good plan and adequate resources in place. On your question about whether the legislation helps, yes, the legislation does help. It helps particularly to understand the bits of real significance that we might want to manage people away from or put paths in, et cetera.

**Baroness Whitaker:** Before Dr Bullock answers, we heard evidence earlier today that, in some areas, there not only need not be a tension, but it is beneficial for the public to have access to places where conservation really matters, an experience worth having and educational.

**Harry Bowell:** I framed it as a tension because, with respect, you asked me whether there is a tension. In some places, yes, but our fundamental starting position is that people should be given access to beautiful places. We have an intergenerational part to our purpose, in that we hold this amazing collection of places for the nation for ever. We can only sustain

that if people are actively engaged in the care of such places. In extremis, there is tension, which is manageable, but for the most part it is absolutely to be applauded. Back to Natural England, we really applaud and are working strongly with Natural England on the England coast path, which we see will be a great achievement when it is finished. Their approach to managing that tension, which exists in some places, is really well thought through.

**The Chairman:** We have had complaints that, such is their focus on coastal access, they have abandoned any form of management of access that is not involved with the coast.

**Dr Bullock:** I would not say that is the case. We pioneered good-quality paths and footpaths in the uplands. For example, the Pennine Way was, at one time, a braided path going over lots of peatland and exposing that peatland to oxidation. We choppered in flagstones so that people and their dogs kept to that path.

**The Chairman:** That is you; I am talking about Natural England.

**Dr Bullock:** In its previous incarnation, Natural England supported that work.

**Harry Bowell:** Natural England's promotion of access is to be applauded. I think the specific issue that you might refer to is the lack of maintenance of some local footpath networks, which is a product of local authority cuts. That is a concern, but it is not a function of Natural England.

Q201 **The Countess of Mar:** We had evidence earlier that it is not the people who are the problem; it is their dogs. How do you control dogs on National Trust land?

**Dr Bullock:** We have 200 million visits to National Trust land each year. Half of those are by dog walkers, so that is people out twice a day, probably using the same paths. We think we can turn around what is considered the adverse impact of dogs into beneficial ones, and one of the obvious beneficial ones is perhaps fewer visits to the health service, because you are walking your dog. There is a benefit to the nation that we can provide from coastal connections, coastal paths and upland paths.

On a more ecological note, innovation is what we need to think about. We have increasing deer populations in woodlands, which are preventing those woodlands from achieving a favourable condition and causing declines in woodland birds in part. Can we engage dog walkers to reroute their walks through woodlands in places, to generate a landscape of fear for deer and allow some regeneration of those woodlands? I am actively thinking about those kinds of innovative ways of bringing the dog-walking community into true engagement with conservation, as opposed to being seen as enemies of conservation.

**The Countess of Mar:** You have a lot of farmland and presumably sheep grazing. How do your visitors cope with their dogs? Are they instructed to keep the dogs on a lead and is that firmly adhered to?

**Harry Bowell:** They are instructed or asked to keep dogs on leads, as part of the Countryside Code. Is it always adhered to? No. We are a very large landowner and of course there are issues occasionally with dogs and sheep, as there are across a lot of the uplands, but they are individual cases, rather than a systemic issue.

**The Earl of Caithness:** Following up your answer, Dr Bullock, do you have the powers, if necessary, to close off an existing right of way to preserve something of conservation value or would powers help you to do that? It is all very well when you have a voluntary right of way; you can divert the footpath. If you have a statutory right of way, but you need that closed off for a period of time, can you do that or would you like the powers to do that?

**Dr Bullock:** I do not believe we have the powers to do it, but we would seek local authority support for that. An existing parallel example is where we have common land and the common land has been very severely damaged—for example, bare, exposed peat in a blanket bog. We have the rights to allow that to be restored through temporary fencing to exclude what might be causing the bare peat. I think it is called restoring the damage to the turf or something like that. We have some powers like that to restrict access where conservation is clearly failing and we need to do something about it in terms of restoration—rescue really.

**Harry Bowell:** I cannot think of any specific cases where we have ever thought to stop access. There are some specific cases where we might want to restrict the type of access, in particular motor vehicles and road users on public paths or BOATs. There are a few cases in the Lake District and have been in the Peak District where that has been an issue but, through traffic regulation orders and working with user groups, we seem to have got to a sensible conclusion.

**The Chairman:** Picking up on that particular issue, we have had a huge amount of correspondence on this, the four-wheel drive brigade versus the walkers, horses and everybody else, not only ruining the quiet enjoyment of the countryside but, as you say, scarring the countryside with ruts and so on. You sound quite relaxed about the use of TROs, the effects and the influence you can have in making them work, but am I interpreting you correctly?

**Harry Bowell:** I did not quite understand the question.

**The Chairman:** Section 6 of the NERC Act involved a compromise between the four-wheel drive brigade and those who thought they were really damaging the countryside and interfering with the quiet enjoyment of the countryside. We have had a lot of correspondence saying that this situation has not been ameliorated at all by the NERC Act, the local authorities are terrified of using traffic regulation orders, because of the judicial review that they have been taken to, and the situation is as bad as it ever was. I am just wondering whether you want to comment on that. From what you said, you sound quite relaxed about it, but is that a misinterpretation by me?

**Harry Bowell:** I am always relaxed. I have a few specific issues in my region where I am less than relaxed.

**The Chairman:** Where is your region?

**Harry Bowell:** It is the north of England, and I have a specific live issue in the Lake District at the moment, which I am not relaxed about. The resolution is not obvious. The quiet enjoyment thing we are less relaxed about. I am not specifically bothered about the erosion impacts or the damage to the infrastructure. It is the user conflict and all that that brings that is tricky. Our starting point is that we are not an “anti” organisation. Our starting point is not to ban; it is to try to find a compromise where those different uses can be enjoyed. Generically, I am reasonably relaxed, but specifically not.

**Baroness Whitaker:** On this issue, is it a matter that people with disabilities could only have access by car to some of these places? Do those who make a frightful fuss about quiet enjoyment take that on board too? Is that something that you would take a view on?

**Harry Bowell:** It is something that we have not taken a view on so far. Access to the countryside is something that we are passionate about. Having equality of access is something that we would be passionate about. I have not heard the argument framed particularly around the use of BOATs as being access for all. It is more of a user-group conflict.

Q202 **The Earl of Arran:** How much do you worry about leaving the EU—or are you thrilled?

**Dr Bullock:** That was a nicely direct question.

**The Earl of Arran:** Do the opportunities outweigh the disadvantages?

**Dr Bullock:** I think that there are huge opportunities. Our DG over a year ago now, in response to Brexit, identified and set out how, for example in the countryside, this is an opportunity for our tenant farmers and others to receive benefits from the nation, but to deliver more targeted public goods: to produce not simply food, but a range of goods. Those could be environmental goods; they could be food; they could be flood risk alleviation; they could be good-quality soils that soak up carbon and so on. I think Brexit has given us an opportunity to see a new paradigm for farming, which is around delivery of public goods. It is absolutely a farming agenda. It is not against farming, but working for farmers into the 21st century. We see it as an opportunity.

**Harry Bowell:** Can I give a counter-voice to my very positive colleague? We see some risks as well. In particular, there is some underpinning regulation that has become fundamentally important to us. There are four directives: the birds, habitats, water framework and the bathing water directives. We are worried about any risk to those directives and the regulatory system that comes with them.

There is a second risk that we are concerned about, which is the failure to thrash out a deal and, in particular, the impact that that would have on the farming community and their ability to sell on a global commodities market. We are clear that, in order to further our purpose, we do not do that by ourselves; we do that in tandem with a farming community that needs to be economically viable.

One of the missing things in the lexicon of Natural England's duties is that there is very little farm business support for farmers. If you are a farmer in the dales, in my patch, you might well have someone from Natural England talking about the condition of your amazing limestone grassland, but where would you get help with thinking about how you transition your business in this world of absolute uncertainty where, as sure as eggs is eggs—if I am not mixing my metaphors—economically it will be a struggle for upland farms particularly? There does not seem to be any well thought through business advice.

**The Earl of Arran:** Do you not worry about the lack of the single farm payment and the possibility of farms and the land around them becoming derelict? That must be a large matter on your minds, I would have thought.

**Harry Howell:** Yes.

**The Earl of Arran:** Do you have discussion papers out privately, in the National Trust, about what may happen or the pros and cons of leaving the EU?

**Harry Howell:** They are out publicly as well. We can furnish the Committee with those.

**The Earl of Arran:** Are they very far advanced?

**Harry Howell:** They are fairly advanced, yes.

**The Earl of Arran:** Would they be in the public domain or not yet?

**Harry Howell:** Yes.

**The Earl of Arran:** Could we see copies of them, please?

**Harry Howell:** Yes.

**The Chairman:** For farmers, particularly upland farmers, there are going to be new opportunities, as Dr Bullock was saying, but they are going to get a double whammy of no single farm payment and virtually 90% of their commodity exports are to the EU, which will then have a 50% tariff. When we start doing deals with Canada and the United States, you can bet your bottom dollar that they will want to get to our food market and farmers. I was at a meeting the other day where they thought that most of the upland and west-country farmers will almost have to stop producing food, because they will not be able to make any money from it. This is a very scary thought. I do not think it is going to be quite that bad, but then you start working out how you are going to manage your uplands without young



farmers, with the underlying business—ie the agricultural production—being a loss-making business.

**Harry Bowell:** That is the opportunity for us: to align public money with public outcomes. At the moment, we are working on a new market in slow clean water with water companies in the north. We are thinking, as David said, about multiple benefits coming from land, particularly in the uplands, which might have some quality food production, might have some carbon storage, might have slow clean water and then might have some underlying public money support. That is quite exciting, but there is an attendant risk as well. How we navigate through the next 10 years is going to be really tricky. It comes back to this point of how we sustain an ageing upland hill-farming population through the transition to this glorious new world, which we are worried about.

**The Chairman:** I remember in the early 1990s the National Trust did a survey of upland tenant farmers. I think the figures were that they had a take-home pay of £8,500 on average and were receiving subsidies of £16,000. You have to ask the question of whether they should stop farming, just take the subsidies and manage the land, because they would make more money. I do not know whether you are going to repeat that exercise, but I think it was worth while. Anyway that is probably not in our subject matter today. Thank you very much for coming in. It has been a very good evidence session. Thank you for your information.

## **New Forest Access Forum – written evidence (NER0011)**

### **Response to the Select Committee on the Natural Environment and Rural Communities Act 2006 call for evidence**

1. The New Forest Access Forum is the statutory local access forum for the New Forest National Park and South West Hampshire (New Forest District Council area) as required under the Countryside and Rights of Way Act 2000. The appointing authorities are the [New Forest National Park Authority](#) and [Hampshire County Council](#). The Forum is an independent body and is not bound by the policies of its appointing authorities.
2. The New Forest Access Forum feels it is only well-placed to respond to question 6:

*Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?*

3. The Forum has had limited dealings with Natural England (NE) in recent years beyond the development of the England Coast Path (ECP). Representatives of NE attend national events for Local Access Forums, but rarely at a local level. We are aware that NE is highly engaged with statutory bodies locally (for example, the Forestry Commission, the New Forest National Park Authority, the Verderers of the New Forest and local authorities) in the protection of the New Forest Crown Lands Special Protection Area (SPA) and the Solent and Southampton Water SPA.
4. Since the transition from the Countryside Agency to Natural England through the NERC Act 2006, it has been our perception that it has been dominated by its conservation and biodiversity role at the expense of its countryside access and public engagement work. While this work is very important (particularly within the New Forest National Park), we feel that Natural England should play a far greater role in promoting both conservation and public access in all of their work rather than championing each in isolation. This could operate in a very similar way to the purposes of National Parks outlined in the Environment Act 1995. Perhaps this is a model which the committee could explore?
5. In the New Forest National Park, over 56% of land area is covered by designations for biodiversity (Special Areas of Conservation, Special Protection Areas, Sites of Special Scientific Interest and Ramsar sites). Our perception has been that Natural England has often acted purely in terms of conserving the ecology of these areas, viewing recreation and enjoyment often as a threat to the conservation of the Forest. Our view is that appropriate recreation is intrinsically beneficial and should be enabled

*through careful management* rather than attempting stop it happening for fear of harm to sensitive habitats and species.

6. For example, in combination with other measures, the development of improved or new access routes across these designated areas would help to focus recreation, safeguarding wider areas from erosion and disturbance of tranquility, enabling a better recreational experience for the public and helping people to better appreciate the value and potential vulnerabilities of the natural world. Yet we see little evidence of Natural England taking this wider 'landscape scale' view, focussing instead on localised features of the SPA which they perceive to be threatened by recreational 'pressure'. We would like to see more constructive engagement to help other statutory organisations find solutions, rather than simply retreating to a regulatory role.
7. It is our perception that there is little proactive action taking place in both Natural England and DEFRA's access teams beyond the development of the England Coast Path. The [NE corporate plan](#) 2014-19 for example, has simply one page on Access, with a small work programme. Rightly, a lot of energy has gone into the England Coast Path programme and the Forum has been pleased to engage with this, as it did with implementation of the CRoW Act in the 2000s. When the England Coast Path is completed around 2020, what is going to be the next big national access project? NE and DEFRA could be engaging with stakeholders about this now so that the skills and expertise developed through the ECP can be retained and applied to greater public benefit beyond 2020.

Yours sincerely

Ruth Croker

Chairman

*5 September 2017*

## **Norfolk County Council – written evidence (NER0042)**

### ***Norfolk County Council Response to Call for Evidence***

#### ***Select Committee on the Natural Environment and Rural Communities Act 2006***

### **Natural England**

#### *4.1 How well has Natural England fulfilled the mandate that it currently has?*

The role of Natural England (NE) in overseeing the application of the [biodiversity duty](#) within the NERC Act 2006 where a public authority has a duty to have regard to conserving biodiversity as part of their policy or decision making has been ineffective. This is largely because the duty is weak and not clearly defined and is therefore difficult to implement. It has not been able to halt the decline in species or habitats and the targets have been consistently postponed as the deadlines approach.

In March 2015 NE ended funding for Local Environmental Records Centres (LERCs) removing access to a third of the species data they were currently able to use for decision making, monitoring and reporting. This affects the ability of the organisation to actively monitor or report on the application of the NERC Act and on achievement of targets such as those under Biodiversity 2020. The termination of the funding was enacted against a stated aim to move to using only data that is Open. However there has been no action by NE to recognise the need to support collection of high quality data (in the way that organisations such as LERCs do) or how a move to Open Data can be maintained sustainably in the long-term.

NE does not adequately represent its landscape role within the planning process. Instead, it comments on biodiversity and refers applications to the AONB team for comments on landscape, using a standardised letter. However, NE is the statutory consultee so:

Our opinion can be seen to carry less weight than NE

If NE register no objection to impacts of development on biodiversity (only), then this is taken as NE approval of **all** aspects of the application. If we have problems with the landscape impacts, we're immediately fighting an uphill battle

#### *4.2 How well do its wide-ranging functions fit together?*

There is an understandable tension between encouraging people to enjoy the countryside and protecting sensitive sites and endangered species. NE has responsibilities for both which can create difficulties for organisations delivering services and projects on the ground. Whilst individuals give good advice and are helpful, there is not good communication between departments. Some examples of poor coordination are:

When establishing Stretch 2 of the England Coast Path in East Norfolk, agreement was made between NE and Norfolk County Council for the route to pass a designated site and NE responsible officers asked for mitigation measures to be introduced. NCC delivered the route but have had to apply 5 times for Habitat Regulations consent to NE to get this signed off. This has caused a delay of nearly 2 years in delivery and has proven to be very costly in staff time and resources. NE officers do not have an agreed criteria for Habitat Regulations that is applied to countryside access and consequently it varies from officer to officers, from area to area depending on officers discussed. Officers do not stick to the regulation and advertised Habitat Regulations guidelines and timescales. When delivering access improvements as part of the HLF Breaking New Ground landscape partnership project – there were unreasonable delays in getting a response from Natural England regarding environment permissions for work to be done. These were sometimes as much as 6 months before a reply was received. This put the project delivery under a high risk category as the funding was time limited – despite a staff member from Natural England being on the Breaking New Ground project board and it being on a Public Right of Way.

There is an inconsistency in approach and lack of coordination which affects the way Natural England works with partners such as Norfolk County Council. Recently the local office of Natural England in Norwich has been developing a State of the North Norfolk Coast report and the team responsible did **not** consult the Norfolk Coast Area of Outstanding Natural Beauty team or any other officer from the Environment Team during development of the project or its scope or to check if it duplicates existing work or if these local representatives might be better placed to deliver it than NE. However, it is noted that they are now involving the AONB team in the implementation.

NE does not adequately fulfil its landscape role within the planning process. Instead, it comments on biodiversity and refers applications to the AONB for comments on landscape, using a very standard phrase. However, NE is the statutory consultee so:

- Our opinion can be seen to carry less weight than theirs would
- If they register no objection to impacts of development on biodiversity (only), then this is taken as NE approval of **all** aspects of the application. If we have problems with the landscape impacts, we're immediately fighting an uphill battle.

We welcome the reintroduction of a local NE team which is a positive move and we already feel better connected with them than we have in many years. We are striving for more collaboration, particularly on planning issues – and **prior** to submission of any opinion. This contrasts with many years when we have felt very disconnected with NE.

Norfolk County Council has been working on a Recreational Impact project with all seven District Councils designed to address this issue and coordinate a more effective approach to managing access whilst protecting Natura 2000 and other designated sites particularly in the context of significant housing growth in the future. Natural England has been invited to participate but has taken no active part.

Natural England administers the Countryside Stewardship schemes locally which involve determining local priorities and working with the County Council biodiversity and environment teams. Commons and the management of common land is particularly important to Norfolk and on this issue we have been able to work effectively with the local office to ensure they continue to be well managed and protected.

Since the creation of Natural England, we have provided historic environment consultations for and detailed advice on agri-environment scheme applications (Higher Level Stewardship and more recently Countryside Stewardship). This cooperation has resulted in significant benefit for Norfolk's historic environment, including the repair and restoration of historic buildings, the removal of archaeological sites from cultivation, the effective management of archaeological earthworks and a number of designated heritage assets coming off the Heritage at Risk register. Overall, Natural England estimates our support has resulted in the investment of £6-7 million in the Norfolk's rural economy. However, more could have been achieved if Natural England's local team had not decided to delete their Historic Environment Adviser post in 2009. The loss of this post resulted in Natural England's agri-environment staff receiving less specialist input than before and reduced their ability to effectively meet the objectives of Environmental Stewardship. Since the introduction of Countryside Stewardship (a 'digital by default' scheme with annual application windows), limitations on Natural England's resources have resulted in the level of direct contact between Natural England staff and Norfolk County Council's historic environment team dropping, resulting in significantly reduced scope for setting-up successful capital works projects.

The decision by the NE Evidence Team to cease support for organisations such as LERCs and move to using only Open data has closed access to other teams that rely on access to

high quality data. New approaches to work such as Great Crested newt licencing are affected by this lack of access to data.

*4.3 Does it have the appropriate powers and resources to perform these functions?*

As financial resources are reduced it has become increasingly difficult for Natural England to perform effectively. Their assets appear to have been stripped down to a level where they are struggling to function.

An example was when notification was given to National Trails managers that their funding was to be significantly reduced with only a couple of months' notice. The Trails had already committed budgets for the year based on previous agreements including staff contracts in place and it was not possible for them to make such a drastic reduction at short notice. They appealed the notification but no-one in Natural England was able to make a decision to defer the reduction so it could be managed efficiently and it was referred to DEFRA creating considerable delays and uncertainty about the future.

In the past Natural England officers have commissioned good research and published valuable official guidance but much of it is no longer supported. For example the guidance on Green Infrastructure which was last updated in 2011 and the guidance on Habitat Assessment Plans which is out of date for England so authorities in England have to refer to the Welsh guidance.

*5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?*

NA

*6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective has Natural England – and other partners – been in promoting better access?*

Natural England resources to support Local Access Forums (LAFS) and the development of Rights of Way Improvement Plans (ROWIPs) have been cut, with the withdrawal of regional support and only one national meeting a year. Most LAF members are volunteers with a lot of enthusiasm and interest in access, but limited technical knowledge and they need good professional support. The County Council gives officer support for local issues but is also undergoing cuts in resources and needs good support and guidance from Natural England Access

officers on regional and national issues. The County Council is currently reviewing its ROWIP but there is no updated guidance for England and we are having to adapt the Welsh guidance.

The role of Natural England promoting better access is ambiguous – although described in the Act as “promoting access to the countryside and open spaces and encouraging open-air recreation”, it is not mentioned as part of their role on the [government rights of way and access website](#). In our experience they do not have the resources for promotion and therefore see their role as an enabling one – for example they have worked hard establishing the England Coast Path in Norfolk which is a complex task requiring difficult negotiations with land-owners and taking into account the impact on Sites of Special Scientific Interest. They have then negotiated an agreement with the County Council to establish the route on the ground – once established however they then hand over responsibility for promotion to the County Council. They have provided some resource for maintenance but there is none for promotion beyond the basic signage.

Natural England supports the England [National Trails](#) including the Peddars Way and North Norfolk Coast Path and the England Coast Path is part of this family of trails. Again there is some resource for maintenance but not promotion and the website is now managed by Walk England and paid for by the Trails. The National Trails are applying to Visit England and their Discover England Fund for support to promote the trails nationally and each Trail works with their tourism Destination Management Organisations to raise external funding for local promotion.

Natural England has however supported some excellent work to demonstrate the value of the natural environment called [The Monitor of Engagement with the Natural Environment \(MENE\)](#) – an annual survey funded by Natural England, with support from Defra and the Forestry Commission.



The survey collects information about the ways that people engage with the natural environment such as visiting the countryside, enjoying green spaces in towns and cities, watching wildlife and volunteering to help protect the natural environment. Data from the MENE survey is included in the Public Health Outcomes Framework indicator 1.16 results. This provides information on the percentage of people using outdoor places for health or exercise reasons and helps inform local government public health expenditure. The County Council finds this research invaluable particularly to demonstrate economic value and the health benefits of engaging with the natural environment and uses it in policy and strategy documents as well as supporting funding applications.

### **Sustainability and biodiversity**

Without access to all available high quality information on species, habitats and sites such as Local Wildlife Sites, NE are unable to effectively provide advice to developers or planners. They are also unable to monitor or report on the effectiveness of policies aimed at protecting and enhancing biodiversity. Principles such as [net gain](#) that are intended to be enacted through the National Planning Policy Framework (paragraph 109) will be pretty much impossible for NE to monitor without adequate access to information. If they are to rely on others to undertake this work on their behalf then their needs to be a recognition of the need to support the biodiversity data community.

Coordinated response on behalf of the Environment Team at Norfolk County Council (with a remit which includes biodiversity, access, the Norfolk Coast AONB, natural and historic environment).

John Jones

Head of Environment

*11 September 2017*

## **Norfolk Local Access Forum – written evidence (NER0041)**

### **Rural advocacy and the Commission for Rural Communities**

1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?

From the NLA Forum member with an Interest in Rural and Economic Affairs:

Norfolk Local Access Forum endorses the view of one of its members who has an interest in Rural and Economic Affairs. She greatly misses the contribution that the CRC (Commission for Rural Communities) made to rural policy, in particular the leadership and dedication that Stuart Burgess their Chair demonstrated and the many publications that were published under its name. It was a highly respected organisation, valued by the rural community and it was a great shame to close it down. The LAF shares her view that NE does not come anywhere near to fulfilling that role in any capacity neither does it make up for the closure of the DEFRA Rural Policies Unit, mainly because it doesn't appear to have much in the way of leadership and influence as well as being extremely under resourced.

2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?

NA

3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?

This review would be an appropriate time to consider the type of replacement programme required to protect rural economic and environmental issues following BREXIT when the Rural Development Programme for England will no longer be in place.

It would be sensible for the departments of BIS, DCLG and DEFRA to get together to look at how a programme of grants specifically aimed at rural areas for both economic and environmental protection could be devised - Natural England may be able to contribute, but we believe it should be specifically a Government political decision whereby Government Departments work together in both rural proofing and decision making on specific rural areas.

## **Natural England**

4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?

NA

5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?

We support the proposals for agricultural schemes post Brexit concerning Countryside Stewardship:

- Although some of the opportunities offered by the Higher Level Stewardship scheme managed by Natural England have been beneficial, the scheme has some fundamental flaws: the recreational opportunities it funds are only temporary; rules for publicising access opportunities are weak; the access provided did not have to link up to the wider, permanent access rights of way network (and therefore was often of little use to the public); and the quality of routes varied considerably.
- We would like to see a new subsidy system that supports and encourages farmers to deliver public access, ensuring the provision of both local economic benefits and population public health benefits. A major independent study concluded that spending farming subsidy funds on improving access to attractive countryside, protecting wildlife and cutting greenhouse gases could produce annual benefits of over £18billion, for a loss of less than £0.5billion in UK agricultural production.
- We also endorse the call for redevelopment of the subsidy system that provides an opportunity to fund permanent improvements to England's recreational access infrastructure, boosting rural growth and development and improving public health. Financial support for landowners and managers to both complement existing public access on foot and fund the development of new access could ensure long lasting economic benefits.
- Funding should be directed towards areas where there is clear demand, e.g. areas for improvement as identified through Rights of Way Improvement Plans or Local Community Plans.

- Investment should be made in existing rights of way and open access network, which may potentially provide more public benefit than providing new routes particularly as local government budget cuts impact on access.
  - Permanent access provision should be favoured over temporary, thereby providing maximum benefit for public subsidies as spending on infrastructure is not wasted when the temporary agreement ends.
6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?

Natural England has not provided support to the Norfolk LAF since the regional coordinator posts were disbanded. The main area where this would have been useful would have been in the preparation of the Rights of Way Improvement Plan (to be incorporated into our Norfolk Access Improvement Plan), and here there was nothing coming from NE to prompt or assist us including the absence of the funding which was available for the first version. When it did come to guidance, we have only the Defra guidance from 2002, plus the suggestion that we use the recently revised Welsh guidance, but ignore the bits that relate specifically to Wales. We accept that this is more Defra than NE, but saw nothing to suggest that NE was trying to assist LAFs by explaining the position, let alone challenging it or representing LAFs in any way.

Response Coordinated by Sarah Abercrombie NLAF Coordinator on behalf of Martin Sullivan, Chair of Norfolk Local Access Forum

*11 September 2017*

## **Norfolk Rural Strategy Steering Group – written evidence (NER0065)**

### **Response from Clarke Willis, MBE, Chair of the Norfolk Rural Development Strategy Steering Group, also incorporating comments on behalf of Norfolk Farming and Wildlife Advisory Group (FWAG)**

#### **Questions 1-3 in relation to rural advocacy, its importance and the effectiveness of its current delivery in Government.**

I am responding to the Natural Environment and Rural Communities Act consultation on behalf of the Norfolk Rural Development Strategy Steering Group, a public/ private sector partnership which came together in 2013 to develop a deliver a strategy to address rural issues and enable rural business growth in Norfolk. This response highlights the role our group has in delivering for rural areas in Norfolk to inform your discussion about the role and significance of rural advocacy at national level.

Since 2013, we have delivered –

- Over £10m EU funding into rural business growth and skills investment
- A highly successful Digital Divide group which worked with Ministers and technology providers to enable a highly effective broadband and mobile coverage initiative in rural Norfolk which has had a significant positive impact on businesses and rural residents.
- Delivered a major conference on the economic opportunities presented by the spending power of our older population – the ‘silver pound’. George Freeman MP addressed the conference, which showcased a number of inspiring businesses and projects.
- Brought together landowners, Councils and specialist advisers to consider the potential for Community Land Trusts to enable affordable housing in rural areas, an event which has generated a number of potential new projects.

We are about to launch **Strong Roots – New Growth, a Norfolk Rural Strategy for 2017-2020** with a new set of target actions to support a thriving rural economy in the context of significant economic and political change. Our consultation for the new strategy has emphasised that in every area of major policy, public investment or private sector enterprise, there are specific rural issues or opportunities which can be overlooked without high level rural advocates making the case. Examples include –

- The need to bring agencies and businesses together to develop environmental and tourism policy for our County which helps us to ensure a world class environment for work and play
- Specifically rural challenges around water management, and energy resources which without high level planning and advocacy can hamper rural business growth.

- The need to innovate and re-focus businesses in farming and agri-food to improve resilience and competitiveness.
- The need to move on from broadband delivery to imaginative use of technology in rural areas to grow high value businesses and to support the delivery of public services like social care which are especially high cost in rural areas.
- Advocacy in support of skills provision which fully enables those living in rural areas, with limited access to transport, childcare and other resources, to engage in the workforce.

In all of these areas we are proposing to deliver significant public/private/voluntary sector partnership groups to drive improvements and change. We believe this is vital and unique work, which should be reflected in central government with a voice for rural issues at the highest level in Government. It might be helpful to consider whether Defra, with an inevitable focus on the environment and agriculture, is able to fulfil this advocacy role across the full breadth of rural affairs, or whether a grouping of ministers from a variety of departments might be charged collectively with advocacy in the rural agenda.

#### **4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

Natural England (NE) has fulfilled the mandate that it currently has reasonably well given the budget constraints and staff challenges of recent years. The core functions of SSSI/ protected site management and agri-environment provision work extremely well together. What is less successful is the regulatory function being in a separate department at the Rural Payments Agency. This leaves no scope for flexibility and "intelligent" inspections, where farmers are judged on outcomes. It is the RPA that requires significant overhaul, rather than NE.

NE has not invested in its staff with many staff on short-term contracts and a high turnover. This is disliked by farmers and landowners who have no opportunity to build up a relationship with a single person which is necessary to deliver a successful agri-environment scheme over five or 10 years.

#### **5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

We believe Natural England's remit should be expanded to include regulatory function – see remarks under question 4 above. Their remit should also be expanded to include access to the countryside as part of a revived agri-environment scheme – see point below.

We also suggest their remit should be expanded to include a public health function to reduce obesity, drive forward proper green infrastructure provision as part of planning, and reconnect the public with farming and food production. Their remit should also be expanded to work outside protected sites to properly implement the Lawton Report – Making Space for Nature.

**6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

Access to the countryside has gone backwards in the past three years following the cessation of payments for permissive access in agri-environment. For example in Norfolk between 2016 and 2017, we will lose 157 miles of permissive access as HLS agreements come to an end. Significant cuts to local authority environment departments have also contributed to a cessation of most projects outside statutory rights of way.

*11 September 2017*

## **North Somerset Local Access Forum – written evidence (NER0012)**

Response to: SELECT COMMITTEE ON THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 CALL FOR EVIDENCE

As with any Local Access Forum, the North Somerset Local Access Forum has been set up to do the following:

*'..advise decision making organisations (such as local authorities) about making improvements to public access for outdoor recreation and sustainable travel.*

*LAFs can set their own priorities depending on local issues. They also respond to consultations and draft policy documents..'*

Therefore in response to the call for evidence for the Natural Environment and Rural Communities act, as Chairperson of the North Somerset Local Access Forum, I have one specific point that I would like to raise.

Although the act itself was quite light in relation to Rights of Way, as it was defining the role of Natural England:

*'Natural England's general purpose includes— (a) promoting nature conservation and protecting biodiversity, (b) conserving and enhancing the landscape, (c) securing the **provision and improvement of facilities for the study, understanding and enjoyment of the natural environment**, (d) **promoting access to the countryside and open spaces and encouraging open-air recreation**, and (e) **contributing in other ways to social and economic well-being through management of the natural environment**'*

It was clear that the general purpose was to include both the provision and improvement of existing rights of way.

This however must include a provision for all vulnerable road users and anyone who wish to enjoy the countryside and who use the rights of way network. One area of grey that we see as a Local Access Forum is that there is no specific definition of what is meant by a 'multi-user path', although there is a push to ensure that when new routes are created that they are multi user. Do to know specific definition, to some this may include horse riders, cyclists and pedestrians, however to others it may only include pedestrians and cyclists. As there is no conclusive wording for this, often in the end, routes are designated as cycleways or only include cyclists and pedestrians, leaving horse riders, an additional vulnerable road user group to be excluded, putting them at a distinct disadvantage. Clarification of this and the inclusion of horse riders into a definition of users of a multi-user path would significantly aid in providing an additional group with the benefit of protection from having to use roads and also



giving them access to enjoy the natural environment and to open up more spaces and ability for open-air recreation.

This is an area that currently I do not feel that Natural England has used their powers to aid with.

Yours Sincerely,

Miss Julie Main  
Chairperson, North Somerset Local Access Forum

*5 September 2017*

## **North York Moors Green Lanes Alliance – written evidence (NER0007)**

### **This is the response from the North York Moors Green Lanes Alliance.**

This alliance was formed by a group of horse riders in May 2015 to try to influence the North York Moors National Park Authority and North Yorkshire County Council to take a proactive stance on controlling inappropriate and unsustainable use by motor propelled vehicles on unsurfaced, unclassified roads which is compromising the rights of lawful non-motorised users. Our circulation list includes horse riders, livery yards, riding stables, residents, walkers, rambler groups, cyclists, farmers, gamekeepers, Parish Councils & the North York Moors Association,

Our response to Question 6 “Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? Our answer is No.

And Question 11 “Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006” Our answer is Yes.

There are two areas we would like to bring to your attention:

**A) It is our opinion that there are serious problems with the effect of section 67 (2) (b) particularly in relation to equestrians of which there are some 3 million regular horse riders. In our opinion all unsurfaced unclassified roads should be added, by legislation, to the definitive map as restricted byways.**

Our reasons are as follows:

- 1) The List of Streets contains both tarmacked minor roads and the unsurfaced unclassified roads (UURs) which are not tarmacked and have a stone, grass or earth surface. We consider that the UURs are not part of the “ordinary road network” as described by Defra because they cannot be used by ordinary vehicles. In most cases the UURs can only be used by 4x4 vehicles, off road motor bikes, tractors and quads.
- 2) Defra guidance is that each UUR should be looked at individually. In addition many highway authorities take the view that since the user rights are not recorded on the List of Streets, there can only be an assumption of a minimum of footpath rights and higher rights should be proven on a case by case basis. For a highway authority like North Yorkshire County Council where there are some 740 km of UURs and a large backlog of applications (some 137 as of October 2016) to amend the definitive map (DMMOs) this is completely impractical without a huge increase in resource but contrarily due to government cutbacks this area of work has already been seriously reduced.
- 3) Under current legislation a UUR can only be added to the Definitive Map as a public footpath, bridleway or byway open to all traffic (BOAT).

4) It is most likely that virtually all the UURs will meet the condition to be recorded on the Definitive Map as a BOAT. If they had met the condition to be recorded as a footpath or bridleway in the vast majority of cases this would have been done at the time of the preparation of the definitive map in the 50s and 60s.

5) In recent years there has been a large increase in recreational use by off-roading motor vehicles, motor bikes and quads, and the disproportionate amount of damage done on UURs by them many have become unusable for horse drawn vehicles and at best difficult for horse riders. Some UURs are so badly damaged by ruts that you cannot even walk on them.

6) Equestrians are particularly badly affected by the whole question of recording user rights on UURs. In many places the bridleway network is poor, fragmented and severed by major roads. UURs are really important off road routes and there are areas where there are more UURs than bridleways.

7) Equestrians do not want any UUR to be recorded on the definitive map as a footpath as there are no recorded rights for them to use such. As already stated it is most unlikely that many UURs will be bridleways and so it is better for the equestrian to have a UUR recorded as a BOAT than a footpath.

8) However as already stated many UURs are very badly damaged by ruts made by motor vehicles, motor bikes and quads and their use itself can affect both the enjoyment and safety of equestrians as well as other users and so in practice equestrians are "between a rock and a hard place".

9) The Highway Authority could keep these UURs in repair but they do not have the funding to do so. In addition they can make traffic regulation orders to control inappropriate and unsustainable use by off-roading motor vehicles but as discussed below are reluctant to do so.

10) The passing of legislation to record these UURs on the definitive map as restricted byways would save the Highway Authorities a considerable amount of time, effort and money. They would not have to make and process any applications to amend the definitive map and deal with objections, they would not have to make traffic regulation orders to prohibit motorised users and therefore would not have to deal with any objections via the High Court and the underlying maintenance responsibility would be curtailed. Basically the UURs would be maintained as a bridleway. We suggest that use by the occasional light horse drawn vehicle would have little or no effect on the maintenance responsibility.

**B) It is our opinion that section 72 of the NERC Act 2006 is not working as expected and there needs to be a much simpler way for the National Park Authorities and Highway Authorities to control the inappropriate use of unsurfaced unclassified roads often referred to as green lanes by recreational motor vehicles; 4x4s, motor bikes and quads. "Off-roading" has become increasingly popular and since there is no money to repair these green lanes to the required standard for use by**

**motor vehicles, their condition has seriously deteriorated which in itself is an attraction for off-roaders and a serious detriment to lawful non-motorised users.**

Our reasons are as follows:

- 11) Section 72 of the NERC Act 2006 enabling National Parks to implement traffic regulation orders under the Road Traffic Regulation Act 1984 was to be welcomed as it was hoped that this could be used by the North York Moors National Park Authority to deal with the increasing environmental problems being caused by inappropriate and often unsustainable use of the historic green lanes (unsurfaced unclassified roads) as off-roading courses by recreational 4x4s and scramble type motor bikes. On some routes the physical damage had become so extensive and severe that it was preventing their lawful use by walkers, cyclists and horse riders and was not being dealt with by the North Yorkshire County Council in whose considered opinion '**UURs are the lowest priority of highway management**' (NYCC BES report 21st July 2017).
- 12) In 2009 following extensive motor vehicle damage four green lanes (U2424, U618, U2334 & U569) to the east of the National Park were considered by North Yorkshire County Council to warrant permanent traffic regulation orders to prohibit abuse by recreational off-road motor vehicles but the County Council were unable to proceed with these orders because it '**was clearly going to require significant resources to pursue the necessary negotiations and reports required to complete the Traffic Regulation Order (TRO) process**' and the Area Highways Office was **unable 'to allocate sufficient resources to this issue'** (NYCC Improvement Manager 20<sup>th</sup> November 2009).
- 13) This shortage of resources led to no further permanent traffic regulation orders being attempted by the County Council until 2016 (see (16) below).
- 14) The growing problem led in 2012 to the North York Moors National Park carrying out a survey of its 201 green lanes (UURs) which includes scheduled ancient monuments and medieval pack horse routes and categorized 165 as being highly vulnerable. They identified the nine highest priority routes, not necessarily the most damaged, and an officer was assigned to carry out the necessary detailed route assessments and condition surveys each one some 40 pages long with supporting photographic evidence. Seven were completed recommending permanent traffic regulation orders banning all recreational motor vehicles but in 2014 funding cuts resulted in the officer being made redundant, the work ceased and no orders were made.
- 15) These nine route assessments on the National Park's highest priority routes were made available to the County Council but with different

priorities to date, some three years later, there are still no permanent TROs in place.

- 16) Because of the complexity of implementing permanent TROs they are open to challenge by off-roading groups regardless of their merits and the provisions of section 72 of the NERC Act are not being implemented to safeguard the National Park. In 2016 (see (13) above) the North Yorkshire County Council did try to implement their first traffic regulation order in the National Park for some 7 years but procedural errors led to the order on Seggimire Lane near Whitby (U2334) being challenged by the TRF (an off-roading motor bike group) and the order being quashed in the High Court with costs of £10,000 being awarded against the County Council. This is a major disincentive for the authorities especially with current funding reductions.
- 17) In over eight years no permanent TROs of any kind have been made by the National Park nor have any permanent TROs been made by the County Council despite overwhelming evidence of the inappropriate and unsustainable use of the National Park's historic green lanes by recreational 4x4 and motor bikes.
- 18) The desired and most practical solution was probably best put by David Bowe the Corporate Director of Business and Environmental Services at NYCC in a letter to Robert Goodwill MP on the 7<sup>th</sup> July 2014:  
  
***'the County Council would like to see new legislation introduced that would enable us to manage and maintain this network of unsurfaced roads on both a sustainable basis and modern context. For example this legislation would remove all (mechanically propelled) vehicular rights from these routes, at the same time it would prescribe the route status as being equivalent to those of a bridleway but would need to provide sufficient flexibility for local highway authorities to identify a 'higher' status based upon route capacity and competence'.***
- 19) The County Council does use temporary TROs of an 18 month duration which are both straight forward to implement and un-contestable but when these lapse the environmental, sustainability and nuisance problems caused by inappropriate MPV use return.
- 20) It is respectfully the opinion of the NYMGLA that section 72 of the NERC Act is not working as expected and there needs to be a much simpler way for National Park Authorities and/or Highways Authorities to control the inappropriate use of green lanes by recreational motor vehicles.

- 21) Troutsdale Brow green lane U7069 & U7071 August 2017 after 6 years of complaints - also see chronology attached.

The same lane on a section where it is inaccessible to off-roaders



- 22) Should the Select Committee require any further evidence as to the extent of the environmental and physical damage being done to the nation's historic green lanes by inappropriate off-roading motor vehicles we would be only too pleased to provide this either in the form of videos on CD or memory stick.

Yours sincerely

Clive Proctor  
Joint Chair  
North York Moors Green Lanes Alliance



In February 2011 the North York Moors National Park Authority referred local complainants to the County Council as the authority responsible.

PHOTOS TAKEN 2011- 12

On the 11th March 2011 North Yorkshire County Council made an 18 month Temporary Traffic Regulation Order prohibiting recreational motor vehicles this expired in September 2012.

These routes although badly damaged did not form part of the National Park Authority's nine highest priority routes.

PHOTOS TAKEN 2014 & 2015

No further traffic regulation orders or repairs have been forthcoming and although these once scenic green lanes were enjoyed for decades by local horse riders and walkers with little or no maintenance they are now only the province of off-roaders with the NPA and CC seemingly unable to bring an end to this unacceptable abuse of these historic lanes in one of the Country's National Parks.

*1 September 2017*



## **North Yorkshire County Council – written evidence (NER0081)**

The House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006 was appointed by the House on 29 June 2017. The remit of the Committee is “to consider and report on the Natural Environment and Rural Communities Act 2006”.

The Committee will explore the following key issues in detail and would welcome your views on **any or all** of the following questions. Please note that questions are not listed here in any particular order of importance.

**This is a public call for written evidence to be submitted to the Committee. The deadline is 4pm on Monday 11 September 2017.**

### **Rural advocacy and the Commission for Rural Communities**

1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC’s original functions of advocate, adviser and watchdog being fulfilled?

Within current structures the roles of advocate, watchdog and adviser for rural communities falls to existing organisations primarily Defra, Local Enterprise Partnerships and Local Authorities. While some of the organisations cover the CRC functions the overall coverage would be strengthened by more coordination to ensure consistent high level and local policy approach. The Government’s recent Industrial Strategy consultation included little direct reference to rural issues and opportunities. In addition, the Northern Powerhouse concept and the work of Transport for the North appears to be focussed on the 6 major Northern Cities and omits a rural strand despite the Independent Economic Review highlighting the overall environment and quality of life as key drivers of the North’s economy.

2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?

There is some local community engagement on local rural issues. DEFRA, the LEPs and rural Local Authorities appear to be the most suitable mechanisms for representing rural issues and there may be scope for a ‘rural forum’ in which predominantly rural LEPs and LAs can engage with DEFRA to ensure effective representation of strategic issues at a national and local level.

3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?

DEFRA and BEIS are important where rural economies are concerned. An effective structure between Local Government, LEPs and DEFRA can provide representation to central Government without creating additional organisations



or bureaucracies. The rural economy can be recognised and harnessed to assist in the success delivery of future economic growth throughout the Country. Future revision of the Common Agricultural Policy, developing communication and transport technologies which blur further the distinction between rural and urban, the dispersed but often significant potential of industrial activity in rural areas, future requirements for social care in isolated places, the housing crisis all mean that Defra and other Government Departments play a central role in the way rural areas play into economic and social development in rural areas particularly in the medium to long term. Looking at the future of rural communities and their contribution to growth and change, which focusses on agriculture, industry, communications and transport, social care and local resilience and housing need provides consistent position across Government.

### **Natural England**

4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?

Natural England has a wide ranging mandate. Roles within Natural England appear to have been centralised roles and advice, for example standing advice for development control, with more emphasis on local authority ecologists to lead on responses. This has been instead of local Natural England officers being involved with planning applications, which was the case ten years ago.

5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?

The remit and responsibility of Natural England is still necessary and relevant, but more resources are required to allow them to implement these, along with the authority to follow through.

6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?

### Coastal Access Project

Natural England is the driving force behind the development and establishment of the new Coastal Access rights, and the delivery of the England Coast Path. Working in partnership with local Authorities they have delivered detailed training to all staff involved in the delivery of the project. They have led site meetings with landowners as well as drop in sessions to address the concerns of all local people affected by the new legislation. The Coastal Access Project is a great example of how NE can promote better access for public good.

### National Trails

Natural England has been a great champion of the National Trails with a fantastic team supporting the various partnerships that manage each individual trail across the county.

### **Sustainability and biodiversity**

7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

The duty is often well referenced in local policies and local plans, but not necessarily well understood by the range of departments within the public bodies it refers to. It is well understood within the countryside departments of local authorities who publicise and try to implement the duty where possible. Recent polls by the Association of Local Government Ecologists (ALGE) have highlighted the continuing decline in Local Government ecologists.

The wording in Section 40 of the Act in that the duty only applies to the extent that it is consistent with the "proper exercise" of public authorities' functions. Therefore, the duty may not apply if it is perceived to be incompatible with other, more primary functions.

8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

The 2006 duty raised awareness of the wider list of species and habitats at risk, but it has been very reliant upon development impacts, with less focus on general activity of public bodies or knowledge of where the Section 41 species are present. It could be useful to link the Act with the findings of the Lawton Review to increase connectivity between sites, and make the Act more spatially relevant.

9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?

We do not have experience with the Scottish or Welsh Duty but a change to 'further' biodiversity, would be in line with the national move from 'No net loss' to 'net gain' in planning that is alluded to in the Natural Environment White Paper (2011) and National Planning Policy Framework (2012).

### **The changing context since 2006**

10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?

This is dependent on how EU Directives are transposed in the long term into UK law.

11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

The main area is accountability, and how public bodies can demonstrate that they are sufficiently having regard to or furthering biodiversity in their activities. How can public bodies measure their activities in this area meaningfully that is of benefit to local and national reporting on biodiversity?

Section 41 obligates the Secretary of State to publish lists, take “reasonably practicable” steps to “further the conservation” of the listed species/habitats and “promote the taking by others of such steps”.

*2 October 2017*

## **Open Spaces Society – written evidence (NER0074)**

### **Summary of Open Spaces Society’s recommendations to the committee**

- 1 Government should give clearer and more transparent guidance as to how Natural England should allocate its resources to ensure that its general purposes, as defined in the NERC Act, are not squeezed and effectively extinguished.
- 2 There should be greater integration of access, wildlife and landscape conservation, throughout Natural England.
- 3 Natural England’s independent voice should be reinstated.
- 4 The papers for Natural England’s board meetings should resume being published on the website and in advance of the meetings, in accordance with government’s promises of greater transparency and accountability.
- 5 Natural England needs more resources and more independence from government.
- 6 Natural England needs the staff and resources to enable it to secure public funding for public access post-Brexit.
- 7 Natural England’s field staff should be trained in public access.
- 8 The committee should hold a separate inquiry into part 6 of the Natural Environment and Rural Communities Act.
- 9 The committee should call on the Secretary of State to publish and keep up to date a list of functions which have been the subject of ‘flexible administrative arrangements’ under chapter 1 of part 8 of the NERC Act.

## Introduction

- 1 The Open Spaces Society is Britain's oldest national conservation body, founded in 1865. We campaign for the protection and management of common land, town and village greens, open spaces and public paths, in town and country, throughout England and Wales. Our members are individuals, organisations and local councils. We are a registered charity.
- 2 Questions 4-6, and question 11 are particularly relevant to our area of interest and knowledge.

## Natural England

**4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

- 3 Natural England is doing an excellent job in creating the coastal route and adjoining access land around England and has made great efforts to spend the money which government has provided for this project. It has scaled up its staff and put together an efficient and effective team to deliver this. This shows that, when Natural England is given a ring-fenced fund, it can use it to provide outstanding public benefit.
- 4 Natural England also demonstrates a clear commitment to common land, which it recognises provides a wide range of benefits to the public (including landscape, access, culture, history and wildlife habitats). It produces helpful responses to applications for works on common land, and we greatly appreciate the work of those staff who have a role on commons.
- 5 We are concerned that, as Natural England has increasingly been subsumed into Defra, there is a fundamental tension between undertaking its regulatory function and fulfilling its general purposes as laid down in the Natural Environment and Rural Communities Act 2006 (NERC Act). Limited resources are increasingly being re-directed to the former, leaving its wider functions wanting. Its general purposes of 'securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment, and promoting access to the countryside and open spaces and

encouraging open-air recreation’ have been sidelined so that resources can be focused on narrower regulatory obligations.

***Recommendation 1: Government should give clearer and more transparent guidance as to how Natural England should allocate its resources to ensure that its general purposes, as defined in the NERC Act, are not squeezed and effectively extinguished.***

- 6 We do not feel that, 11 years on, access and wildlife have been integrated throughout the organisation—instead, access appears to have been sidelined (apart from the work on coastal access, which is most welcome). Too often, we find that Natural England is actively supporting site-specific schemes to promote biodiversity (eg by promoting fencing of common land to facilitate conservation grazing) without any real consideration of its statutory general purposes (in s.2(2)(c) and (d)) to promote enjoyment of the natural environment and encourage open-air recreation.

***Recommendation 2: There should be greater integration of access, wildlife and landscape conservation, throughout Natural England.***

- 7 Natural England has regrettably been sucked into Defra. It no longer has its own website, nor does it issue its own press releases. It has no independent voice as the government’s adviser and champion on wildlife, landscape and access. We no longer hear from it beyond the odd blog—for instance, partners such as the Open Spaces Society were not informed that Defra was to celebrate the milestone on coastal access<sup>188</sup> on 1 September, so we could not help with publicity. This lack of independence causes us deep concern; government needs a critical friend.

***Recommendation 3: Natural England’s independent voice should be reinstated.***

- 8 Natural England’s board papers are not published, only the minutes, so the public is not encouraged to attend or take an interest in board meetings. Some board meetings are open to the public and one can register attendance, but if one does not know what is coming up, it is impossible to know whether one wishes to attend. The information, such as it is, appears [here](#). Consequently, while we are delighted that Natural England’s conservation strategy for the 21<sup>st</sup> century, Conservation 21, has as one of its three guiding principles ‘putting people at the heart of the environment’, we have seen no evidence of how this is

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<sup>188</sup> Natural England now working on every stretch of the coast.

being achieved. This is just one example of the difficulty of knowing what is going on in Natural England at board level.

- 9 We suspect that the failure to publish board papers online is a symptom of its being absorbed into the Government machine (see paragraph 7 above): Natural England no longer has control of 'its' website, and therefore has no power to demand that board papers be published. We note and recall that, for example in 2012, Natural England published its board agenda and papers on its own website<sup>189</sup>.

***Recommendation 4: The papers for Natural England's board meetings should resume being published on the website and in advance of the meetings, in accordance with government's promises of greater transparency and accountability.***

**5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

- 10 Since Natural England was established, local authorities have made severe cuts in resources devoted to public rights of way and public access. Natural England needs to help find innovative ways to ensure that rights of way are maintained and access is increased. It does not need a change to its remit, but it does need more resources and more independence from government.

***Recommendation 5: Natural England needs more resources and more independence from government.***

- 11 Natural England has an important role in ensuring that public funding for agriculture, post-Brexit, is directed to securing public benefit, in particular through the provision of public access. Government must provide Natural England with the staff and resources to ensure that this happens. To achieve this, Natural England must actively engage with stakeholders in gathering ideas and good practice. This would be an excellent investment since it will secure long-term public benefit.

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[http://webarchive.nationalarchives.gov.uk/20120821114428/http://www.naturalengland.gov.uk/about\\_us/ourpeople/neboard/meetings/default.aspx](http://webarchive.nationalarchives.gov.uk/20120821114428/http://www.naturalengland.gov.uk/about_us/ourpeople/neboard/meetings/default.aspx)

***Recommendation 6: Natural England needs the staff and resources to enable it to secure public funding for public access post-Brexit.***

**6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England—and other partners—been in promoting better access?**

- 12 Natural England needs a structure which enables it fully to integrate public access with wildlife and landscape protection and to employ staff who have the knowledge and expertise to advocate the importance of public access for health and well-being, to ensure that the law is followed, and to argue for public access to be at the heart of the organisation. All field staff should have training in public access, recreation and enjoyment of the countryside—and particularly those who have an English Nature background and may not be sufficiently aware of these aspects of Natural England’s general purposes and their importance to their day-to-day work.

***Recommendation 7: Natural England’s field staff should be trained in public access.***

### **The changing context since 2006**

**11 Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

- 13 We are disappointed that the committee has not invited views on part 6 of the Natural Environment and Rural Communities Act 2006 (rights of way) and, in particular, the provision to extinguish the rights of mechanically-propelled vehicles on many routes (with retrospective effect). This was a draconian measure, and while there are strong feelings on the benefits and disadvantages of part 6, there has been no attempt by Government to review the legislation and its efficacy. There may be important lessons here for the implementation of the 2026 closure of the definitive map under Part II of the Countryside and Rights of Way Act 2000 and amending measures in the Deregulation Act 2015—but if there are, no steps are being taken to ensure that they are learned, and employed to improve outcomes under the 2000 Act.

***Recommendation 8: The committee should hold a separate inquiry into part 6 of the Natural Environment and Rural Communities Act.***



- 14 We also wish to draw to the committee’s attention the absence of any meaningful information in the public domain about the implementation of part 8, chapter 1, of the NERC Act, ‘agreements with designated bodies’. Chapter 1 enables agreements between the Secretary of State for Environment, Food and Rural Affairs<sup>190</sup> and designated bodies (such as Natural England) to enable functions of the Secretary of State to be discharged instead by the designated body. It also enables agreements between designated bodies for similar purposes. Eligible designated bodies are listed in Schedule 7 to the NERC Act. Under section 85(2) ‘the Secretary of State must arrange for a copy of an agreement to be published in a way that the Secretary of State thinks is suitable for bringing it to the attention of persons likely to be affected by it.’
  
- 15 We understand that a number of functions have been delegated from the Secretary of State to Natural England under chapter 1, including for example the enforcement power relating to abuse of agricultural common land under section 46 of the Commons Act 2006. But, so far as we can establish, Defra does not publish an up-to-date list of delegated functions on [www.gov.uk](http://www.gov.uk), so that it is impossible for the public to understand which statutory functions conferred on the Secretary of State have been legally assigned to another body (whether Natural England or another), notwithstanding that the Secretary of State is statutorily obliged to publish such agreements. This means that the public does not know whether representations, enquiries, complaints and legal action about the exercise of such powers should be addressed to Defra or to any of a number of designated bodies, unless any online guidance happens to address the point.
  
- 16 We note that historical snapshots of agreements with Natural England are available on internet archive sites. But these are unacceptable substitutes for a currently-maintained list of delegated functions, as such snapshots are generally not visible to search engines (and therefore invisible other than to the well-informed) and are not updated, and the reader has no way of knowing whether they remain in force or have been amended or supplemented.
  
- 17 We note with dismay that, in his report to Parliament dated July 2017 on Post-legislative Scrutiny of the Natural Environment and Rural Communities Act 2006, the Secretary of State observes (para 63) that ‘Owing to the wide-ranging number and function of designated bodies described in Chapter 1 and the lack of a central record of agreements made, it has not been possible to provide more information about how these provisions have been used by the department.’ If even Defra cannot explain what agreements have been made by its own

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<sup>190</sup> Amendments have been made to Chapter 1 to enable certain other functions to be assigned. However, these functions are merely the former functions of the Secretary of State for EFRA, which have moved to other parts of Government in consequence of machinery of government changes.

department, how can the public and interested stakeholders be expected to know what arrangements have been made? It is unacceptable that Defra has failed to co-ordinate records of such agreements, and failed to discharge the Secretary of State's duty to publish such agreements under section 85(2) of the NERC Act.

***Recommendation 9: The committee should call on the Secretary of State to publish and keep up to date a list of functions which have been the subject of 'flexible administrative arrangements' under chapter 1 of part 8 of the NERC Act.***

Kate Ashbrook

General Secretary

The Open Spaces Society,

Registered charity no 1144840, limited company no 7846516

*11 September 2017*

## **Ove Arup and Partners Ltd – written evidence (NER0069)**

### **RESPONSE: SELECT COMMITTEE ON THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 CALL FOR EVIDENCE**

To whom it may concern:

The following written response is intended to comprise a concise summary of the collective response to the Call for Evidence from our UK network of Ecological Consultants:

#### **Natural England**

#### **4.0 - How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

4.1 - Natural England has appropriate powers to perform its functions, but as a result of poor decision making by previous government, cost cutting has ensured that Natural England has nowhere near the resources required to perform its functions.

4.2 - SSSIs continue to be lost or in decline in value with many continuing to be in unfavourable status with no improvements predicted in the near future. One of Natural England's other purposes is "conserving and enhancing the landscape", however outside of protected sites, there is no evidence that this duty is being enacted.

4.3 - Wildlife licencing for developments remain a major issue, particularly in terms of turnaround time (which can almost certainly be linked entirely to budget cuts), but more critically to interpretation of applications by Natural England case workers. Recent internal policy changes which were in part designed to appeal to developers have been poorly implemented, with little dissemination of their arrival, or any subsequent support in how to interpret and use them. The end result is a system where not only are the intended conservation outcomes not being achieved, but neither Natural England nor bodies producing the licencing documents are sure of how to interpret and present data to Natural England. As capacity is so low at Natural England, simple discussions to resolve these issues are often only able to take place after the (often exceeded) 30 working day review period, heaping more uncertainty onto projects.

4.4 - There has been a noticeable push in most communications with Natural England to encourage engagement with its paid Discretionary Advice Service. This may be impeding its ability to perform its non-paid duties adequately. Whilst this may be a financial success, a move towards a two-tier pay-to-play system should not be encouraged.

4.5 - Natural England's responses to planning applications have become noticeably more focussed, generally offering detailed comment only where higher value resources (SSSI, European protected sites) are likely to be impacted by development. However, it is generally noticeable that other charitable organisations and trusts (e.g. RSPB, Wildlife Trusts) are more vocal proponents about the environment and issues which impact biodiversity. Natural England are certainly not successful in appearing to stand up for the environment in any way, not are they successful at engendering public participation in responses. See for example the recent Lodge Hill development on a SSSI where Natural England were almost entirely absent from a discussion surrounding the loss of a SSSI for the development of housing.

4.6 - Whilst high performance should always be encouraged, Natural England must be responsive to the needs of the planning system as opposed to a bottleneck within it. Imposing funding cuts on a system which was already under pressure appears designed to induce failure in that system. Fundamentally, the vast majority of these problems come from a complete lack of funding and necessary support from central government; they continue to lose staff who are genuine experts in the field of biodiversity, whilst those who remain must operate in a permanent culture of uncertainty with little internal support.

4.7 - It should be noted that as environmental professionals, we absolutely support Natural England's remit and the need for such a body to exist to uphold legislation and direct conservation activities according to its current mandate. We also acknowledge that the organisation contains well trained staff, many of whom are genuine experts in their field. However due to the above-mentioned cuts, staff with little field or species experience themselves are expected to scrutinise and comment upon licence enquiries and the myriad complex issues which they contain. Without experience or support from experts, staff cannot reasonably be expected to apply best practice or pragmatism to situations surrounding a licence and must instead rely on rigid adherence to checklist based approach, which rarely results in mutually satisfactory outcomes. With better financial support, we believe that Natural England can function as they are supposed to, and that outcomes will be improved across Natural England's priority areas.

## **5.0 - Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

5.1 - Irrespective of the unpredictable impacts of Brexit, it is not the remit and responsibilities of Natural England which require change. As described in Section 4.6, Natural England's capacity to perform its mandate has been negatively impacted by loss of funding and unclear changes to policy.

5.2 - Natural England are an organisation which must respond to the demands of environmental protection. Savage cuts to budgets are not conducive to ensuring that Natural England's experts can continue to perform the body's remit in an appropriate and reactive manner.

## **Sustainability and biodiversity**

### **7.0 - Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

7.1 - The duty appears to be understood generally insofar as Local Planning Authorities include biodiversity-specific policies and occasionally provide Supplementary Planning Documents within their Local Plans/Development Plans describing priorities for biodiversity (species, habitats, ecosystems, etc.).

7.2 - However, Local Planning Authorities rarely agree on what constitutes "having regard" for biodiversity. For some (generally those with ecological capacity in-house), habitats and species of principal importance are also given consideration. For others, this means only a consideration of the potential for impact on species protected under the relevant EU legislation and/or Wildlife and Countryside Act (as amended), for instance bats and great crested newt, with no genuine regard for common toad or hedgehog (both species of principal importance under the act). Many Local Planning Authority documents come across as empty gestures in the direction of biodiversity. These mere tick box exercises come without any consideration of local biodiversity resources (e.g. Local Wildlife Sites/Sites of Importance for Nature Conservation, or provisional sites); considerations which would normally be overseen by a County/Authority Ecologist with detailed knowledge of the local area. Where ecological capacity is lacking, these decisions are left to the developer's discretion, with the consequences rarely positive for biodiversity. Guidance on the duty to have regard and the extent to which this applies would be welcome.

7.3 - Similarly, the National Planning Policy Framework states that the planning system should deliver net gains in biodiversity and recognise the wider benefits of ecosystem services. There has been little response to this requirement by Local Planning Authorities even in those producing updated Local Plans, which suggests that there is a lack of understanding of the terms, i.e. a lack of capacity within the Local Planning Authorities. Little regard is paid to these fundamental issues of biodiversity, how they are measured on a development by development basis, and how elements such as net gain will be achieved and implemented, or ecosystem services maintained or enhanced. Guidance on these issues would again be welcome, but fundamentally, the lack of capacity within Local Planning Authorities must be addressed before guidance can be expected to be understood and implemented.

7.4 - The lack of environmental capacity within Local Planning Authorities has been raised regularly by bodies including the All Party Parliamentary Group for Biodiversity, the Chartered Institute of Ecology and Environmental Management (CIEEM) (<https://www.cieem.net/news/204/ecological-capacity-in-local-planning-authorities#sthash.mXFrgNeS.dpuf> accessed 11/09/17),, and the London Environment Committee ([https://www.london.gov.uk/sites/default/files/gla\\_migrate\\_files\\_destination/Biodiversity%20letter%20to%20Mayor%2026.03.15\\_0.pdf](https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/Biodiversity%20letter%20to%20Mayor%2026.03.15_0.pdf) accessed 11/09/17),

discussions to which Arup contributed. There is general agreement within the planning industry that many Local Planning Authorities do not have either the capacity or the competence to undertake the effective assessment of planning applications where biodiversity is a material consideration. Lack of ecological expertise or even ecological literacy in Local Planning Authorities is reducing efficiency and slowing down the planning process, and could result in failure to fulfil statutory duties. In some cases, rigour is applied selectively, with some developers seen to be getting off lightly, and others experiencing inconsistency between authorities. "Raising awareness" among unqualified individuals is a futile task. Budget cuts are often cited as a cause of the loss of such expertise. The most critical issue impeding the ability of bodies to understand and enact their duty to "have regard" is the lack of capacity and understanding of ecological issues at Local Planning Authority level. This must be addressed be addressed in advance of any work to raise awareness.

**8.0 - What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

8.1 - There has been little to no practical impact of the duty due to the issues discussed in Section 7. In general, proponents of development are persuaded to consider biodiversity only through the legislation protecting particular sites and species in the majority of cases.

**The changing context since 2006**

**10.0 - Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

10.1 - Regardless of the impacts of Brexit, it is evident that the duty to conserve biodiversity can only succeed when there are suitably qualified personnel located within Local Planning Authorities who are developing robust policies and applying sufficient scrutiny to planning applications. Where environmental illiteracy prevails, developers will continue to submit substandard applications, and environmental protection and enhancement will remain insufficient and inconsistent.

10.2 - It is also evident that without sufficient funding, the capacity for Natural England to deliver its mandate will continue to decline. Any analysis of the sufficiency of the Act or any future amendment must address these two fundamental issues to have a hope of being effective.

If you require any further information or would like to discuss any of the points raised within this response, please get in touch using the means listed below.

Yours faithfully,

Tom Gray  
On behalf of Ove Arup and Partners Ltd.

*11 September 2017*

## Peak District Rural Green Lanes Alliance – written evidence (NER0036)

### Summary

- Our response has been arranged as follows:
  - Terminology used (paragraphs 2-6). Information about the Peak District Green Lanes Alliance (paragraphs 7-8). Background information about the Peak District National Park (paragraphs 9-14).
  - Response to question 4 describing our generally positive experience of Natural England (NE) and proposal that NE should be consulted on all Traffic Regulation Orders involving amenity and conservation issues on green lanes (paragraphs 15- 26).
  - Response to question 5 advocating NE be more assertive and proactive on countryside issues after Brexit (paragraphs 27-29).
  - Response to question 6 stating that NERCA was a missed opportunity to improve access to the countryside (paragraphs 30-31) and some economic consequences of this. The reasons for this are elaborated in our response to question 11.
  - Response to question 11 explaining why the List of Streets exemption in Section 67 (2) (b) failed to prevent more Byways Open to All Traffic being **created** (on the basis of historic “horse and carriage” rights) for a major class of green lane. This was the reverse of Parliament’s intention. At the same time, the number of recreational motor vehicle users has increased resulting in more damage to these routes and non-vehicle users being discouraged from using them. We believe that new legislation is needed to remedy the situation (paragraphs 32-37). There is also a problem with the **continued existence** of green lanes with rights to use mechanically propelled vehicles. The problem can be handled only by the imposition of Traffic Regulation Orders (paragraph 38). Although not directly related to NERCA, we believe that changes may also be needed to the Traffic Regulation Orders process and that DEFRA should give stronger guidance to those authorities able to make them (paragraphs 39-51)
  - Rebuttal of DEFRA’s apparent belief that generally the public are satisfied with NERCA (paragraphs 52-64)
  - Photographs illustrating matters referred to within the text.

### Terminology used in our response



- BOATs are Byways Open to All Traffic. Walkers, cyclists, horse riders, carriage drivers and motor vehicle users can legally use these routes (unless there is a TRO or TTRO on it).
- UUCRs are Unsealed and Unclassified County Roads generally shown as ORPAs (Other Routes with Public Access) on OS Maps. They are routes where it is believed there is a right of way for some users but exactly who can use the route has not been legally determined.
- “Green Lane” is a general term for a route which is not part of the normal communication system of sealed tarmac roads. It is primarily used for recreation and is characterised by having a surface not designed to sustain significant vehicle traffic. It may be genuinely green when it has a grass surface but is often superficially surfaced with loose stone. In terms of legal status it could be a footpath, bridleway, restricted byway, BOAT or UUCR.
- “Green laning” is a term used by participants to describe the recreational use of motor vehicles like trail motorcycles, 4 wheel drive vehicles and quad bikes on green lanes. It is legal only on BOATs. On UUCRs its legality is unknown until the status of the UUCR is determined.
- TRO is a Traffic Regulation Order – made by a Highway or National Park Authority.

## **Introduction and Background**

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- The Peak District Green Lanes Alliance (PDGLA) is an umbrella organisation co-ordinating the efforts of a number of local organisations and individuals worried about the damaging effect green laning is having on the natural environment and its diminution of the enjoyment of non-vehicle users of “green lanes”. This diminution results from the inability to appreciate nature and experience tranquillity away from the presence or expectation of vehicles. We focus mainly but not exclusively on the Peak District; members also draw on their experience of other areas of the country. Members are Friends of the Peak District (CPRE); The Peak and Northern Footpath Society; 14 Ramblers Association groups and one independent walking group; Peak Horse Power bridleway group; some local parish councils suffering acute problems from off-roading; and individuals.
- We have arranged our submission under the specific questions raised by the Committee and also from DEFRA’s summary and review of NERCA.

### **General points about the Peak District National Park**

- National Parks have two statutory purposes which have to be considered when discussing green laning in them:-
  - Conserve and enhance the natural beauty, wildlife and cultural heritage
  - Promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public

All of the National Parks list tranquillity as one of their special qualities. Green laners themselves claim they come to experience it, not apparently appreciating how their very presence destroys it.

14. The Peak District National Park (PDNP) is popular with walkers, cyclists, horse riders and green laners. Users can be local, day trippers from the surrounding conurbations, or longer staying tourists. Green laners also come to the Peak District from the EU.
11. The Peak District National Park Authority (PDNPA) estimate its green lanes network at approximately 220 green lanes. It includes both BOATs and UUCRs and is important to all the users listed in paragraph 10. However there is discord between green laners on the one hand and non-vehicle users, residents and landowners on the other. This discord is centred on the damage caused to lanes; danger due to the speed of vehicles and the width (Photograph 1), gradient, limited visibility and loose surface of the lanes; and the loss of tranquillity as well as the noise and fumes emitted by motor vehicles. These factors lead some non-vehicle users to stop going on lanes where vehicles may be present with consequent loss of amenity. Farmers suffer gates left open; damage to walls (Photograph 2) and dew-ponds; encroachment on to fields; loss of usable agricultural land; disturbance of stock and in some cases actual intimidation.
12. Many of the routes have a long and documented history as ancient trackways and all pass through attractive countryside where field patterns, dry stone walls, buildings and land usage reflect the history of the area and the special qualities of the National Park.
13. PDNPA's approach to managing the problems caused by green laning has been to identify priority routes and ban recreational vehicle use on them through TROs where it believes other measures are inadequate. There are currently 27 priority routes and PDNPA has implemented on average about 1 TRO per year. At this rate it will be nearly the middle of the century before all priority routes have been addressed **assuming nothing changes**. We know however that continuing green laning results in new lanes becoming priorities. A UUCR near Wetton in the Manifold Valley, Staffordshire is a prime example of how quickly a route can deteriorate. (Photographs 3,4 and 5)

14. A number of Highway Authorities cover the National Park. Derbyshire County Council is the only one currently processing Definitive Map Modification Order (DMMO) applications which seek to add UUCRs as BOATs to the definitive map.

**Question 4: How well has Natural England fulfilled the mandate it currently has? How well do its wide ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

16. Natural England's (NE) statutory purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development (NERC Act s1.2). The responsibilities of Natural England (NE) include inter alia:-
  - promoting nature conservation and protecting biodiversity
  - conserving and enhancing the landscape
  - securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment
  - promoting access to the countryside and open spaces and encouraging open-air recreation
17. These **countrywide** responsibilities reflect very closely the statutory purposes of National Parks. However with respect to discharging them, we consider NE's performance to be variable as described in paragraphs below.
18. PDNPA's TROs have been based on conservation and amenity grounds, again issues very relevant to NE's responsibilities. However NE is a statutory consultee only for TROs where the route concerned is within or partly within a Site of Special Scientific Interest (SSSI) and the TRO is proposed by a National Park Authority. This may be a deficiency in the process and perhaps it should be asked to comment on all TRO consultations grounded on conservation and amenity. If this is too onerous, it should at least be consulted on ones on green lanes applying to the National Parks, Areas of Outstanding Natural Beauty and for National Trails whether proposed by a National Park Authority or a Highway Authority.
19. NE has responded to all but one of the consultations where it has been asked. It has supported the TRO where SSSIs are involved, even where the road is adjacent to the SSSI rather than traversing it. It has quoted other relevant land designations (Special Area of Conservation SAC, Special Protection Area SPA) and protected species where relevant. It has even quoted scheduled monuments where it has knowledge although these are the responsibility of English Heritage (who are not a statutory consultee).

20. We were surprised and disappointed that NE did not respond to the latest TRO consultation on the route near Wetton in Staffordshire which passes through the Hamps and Manifold Valleys SSSI and whose lower section is also in the Peak District Dales SAC (Photographs 3,4,5). We cannot believe that NE would be unconcerned about the damage being caused by recreational vehicles and if the lack of response is due to inadequate resources, it is clearly no longer able to discharge its responsibilities.
21. NE's consultation responses have been particularly good where it has detailed knowledge and has been involved in conservation efforts (eg fencing, gully repairs), as on Long Causeway, or major expenditure, as on that part of the Pennine Bridleway national trail known as the Roych, which had been badly damaged by motor vehicles.
22. However its knowledge appears patchy and we wonder if its responses are sometimes written from map information rather than from detailed local knowledge. For example it offered no view on the TRO for Brushfield because the adjacent SSSI was separated by a boundary wall/fence and appeared unaware of the damaging "off-piste" motor vehicle activity over the scheduled ancient monument on Putwell Hill.
23. Similarly on Chertpit/Leys Lane, Great Longstone it was largely neutral because the nearest SSSI was on Longstone Edge away from the lane. It knew of the presence of Great Crested Newts (a protected species) in the vicinity but had no evidence of impact. It noted that the lane did not form part of a recognised long distance trail but did not appear to understand its importance as an amenity for local residents. Finally it seemed unaware of the destruction of dry stone walls flanking the lane, which are not a scheduled monument but contribute to the special qualities of the Peak District National Park. (Photograph 6)
24. In the recent consultation on a TRO over the route known as Washgate, NE supported the initial consultation because of an adjacent SSSI but did not contribute to the subsequent consultation considering an exemption for two historic motor vehicle trials. The possible presence of native crayfish (an endangered species) in the River Dove had been identified as an issue in the exemption. Historically the two motor cycle trials had test stages actually in the River Dove. In 2017, before the TRO came into effect, PDNPA persuaded both trials to omit the river stages but entrants had still to cross it through the ford. We would have expected NE to have had a view on this because contamination, damage to habitat and transmission of the eggs of the invasive American species are recognised dangers to native crayfish. However the fault may lie with PDNPA for not involving NE again.
25. Another well established vehicle trial (Northern Experts) has stages on the Leek Moors SSSI and entrants drive across the moor at one point to reach

a stage on a stream feeding the Cumberland Brook. Competitors ride up the stream, jumping over small waterfalls. We were told by one of the marshals that experienced competitors prefer to go last “when vegetation has been stripped off the stones in the stream”. There is a further stage climbing a steep gulley cut into the peat moorland near the watershed. We do not know whether NE has made any attempt to discourage the landowner from allowing this use of the SSSI.

26. Overall we feel NE is generally good on designated areas like SSSIs, SACs and SPAs but has less interest in non-science protected areas within National Parks and Areas of Outstanding Natural Beauty let alone the countryside generally. We are not able to comment on whether these deficiencies result from lack of powers or resource constraints but we suspect both.
27. In 2015, the coalition government promised the establishment of a stakeholder working group on motor vehicle use of green lanes, mandated to produce majority and minority recommendations if necessary, followed by public consultation. This promise has not been fulfilled. Instead DEFRA convened a one day forum, chaired by NE. This forum is continuing on a voluntary basis, mainly because participants such as PDGLA feel unable to withdraw and leave the field to the opposition, rather than in expectation of any meaningful result. NE’s chairing has been characterised by a desire for unanimity rather than concern for the responsibilities noted in paragraph 15.

**Question 5: Are there any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

28. If Brexit takes place, we foresee the following developments:-
  - There will be increased numbers of green laners coming from Europe to take advantage of falls in the value of Sterling.
  - Some food production will move to Eastern Europe to capitalise on cheap labour.
  - There will be increased financial and social stress as the economy declines (at least in the short to medium term).
  - There will be pressure to water down the high EU standards for managing the environment.
29. The above developments will increase the importance of the countryside as a resource for exercise, recuperation and finding tranquillity as described in paragraph 30.
30. We consider it crucial for Natural England to become much more assertive and proactive in its advocacy of environmental issues.

**Question 6: Do the provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England and other partners been in promoting better access?**

31. The importance of access to the countryside was underlined by a 2011 command paper to parliament from the Secretary of State for Environment, Food and Rural Affairs entitled "The Natural Choice". The paper emphasised the importance of protecting and improving the natural environment and re-connecting people to nature and the importance this had for improving mental and physical health. There is general recognition of the benefits of providing green spaces in urban areas but there seems much less effort being devoted to protecting the largest green space of all – the countryside at large. NERCA was a missed opportunity to improve people's enjoyment of the countryside by eliminating recreational vehicle use of green lanes and stop the insidious creep of urban characteristics into the countryside. Since then we and other environmental organisations have been struggling with DEFRA and NE to remedy the situation but without success.
  
32. If people are discouraged from using the countryside for exercise and finding tranquillity there then not only will there be increased health costs but a loss of revenue in the economy. It seems likely that individual walkers and off-roaders spend similar amounts (on clothing, equipment, refreshment, accommodation, fuel etc) but the greater number of walkers means their aggregate contribution to the economy is much greater. A Ramblers Association report in 2008 "Economic and Social Value of Walking in England" estimated this aggregate expenditure at between £5-6 billion.

**Questions 11: Are there any parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

There are three problems with the operation of NERCA:-

The Problem of UUCRs

33. One of the objectives of NERCA was to prevent the creation of motorised vehicle rights on green lanes simply because the public had rights to use a horse and cart. This objective was undermined by the exemption in Section 67 (2) (b) of routes on the List of Streets. The List of Streets is a list of routes maintained at public expense. It includes the "ordinary tarmac road network", UUCRs and BOATs. According to DEFRA this exemption was made to avoid possible disruption of rights on the ordinary tarmac road network. However the effect has been to leave UUCRs open to use by green laners and liable for conversion to BOATs because of the existence of historic horse and cart rights ie a **whole class** of green lanes has been excluded from protection. In many counties and in the Peak

District this class comprises a large percentage of the BOAT and UUCR green lanes.

34. Most UUCRs are unsuitable for recreational motor vehicles because the surface is unable to sustain such use without frequent expensive repairs. In addition width, gradient, loose surfaces and restricted visibility often lead to danger for non-vehicle users and make passing difficult without one party reversing or climbing the sides (Photograph 7).
35. The increase in popularity of recreational motor vehicle activities on unsealed routes means use of these routes is heavier than in 2006 and many are deteriorating. We suspect some routes within the Peak District National Park are beyond economic repair now. For example, the two Hollinsclough Rakes in Staffordshire, where local people can remember one of them being grassy and suitable for use with a push chair, are now unusable by any but the agile because of recreational vehicle damage to the surface, drainage and flanking walls. In fact the county council has now closed the Rakes by a temporary TRO on safety grounds. (Photographs 8 and 9)
36. Under the Countryside and Rights of Way Act 2000, Highway Authorities were originally supposed to have completed the legal determination of the public rights on UUCRs and other potential BOATs by 2026. However there seems no chance of the date being met since most Highway Authorities are not processing DMMO applications or determining public rights under their duty to keep the Definitive Map under continuous review. Presumably this is because of resource constraints. DEFRA has now said this legislation will not be commenced for UUCRs. Green laners made some DMMO applications for UUCRs before the NERC Act in 2006 but are not making any more because they fear that some will **not** become BOATs and prefer to leave them unclassified and undetermined forever. Similarly non-motorised users are not making applications because they fear the UUCRs **will** become BOATs because of the section 67(2)(b) exemption in NERCA.
37. There are three ways of resolving this unsatisfactory situation:-
  - The determinations could continue until completion (which would result in most UUCRs becoming BOATs inappropriately).
  - A blanket determination could be enforced by further legislation. Such a blanket determination could define UUCRs as any of the rights of way on the Definitive Map ie footpath, bridleway, restricted byway or BOAT.
  - The as yet **unproven** vehicle rights could be extinguished by further legislation.
38. We would favour:-
  - either extinguishing unproven vehicle rights with specific exemption for "invalid carriages" (an archaic term but defined in legislation). This

would allow them to be used by disabled people using mobility scooters.

- or completing the determinations but with additional legislation to restrict the highest category allowed to restricted byway ie extinguishing motorised vehicle rights but again with specific exemption for invalid carriages.

#### The Problem with BOATS

39. Many of these routes are unsuitable for use by recreational motor vehicles for either same reasons as given for UUCRs above. The legal definition of BOAT emphasises that the main use is **not** for vehicle traffic. However we believe Parliament is unlikely to remove proven motor vehicle rights on these routes and the only way to protect them is through TROs. (Photograph 10 showing the condition of a BOAT near Holmfirth). Whilst deriving from different legislation than NERCA, we feel compelled to offer some observations on TROs because the problems with them are inextricably linked to the deficiencies revealed in NERCA.

#### The Problem with TROs

40. PDNPA is the only authority currently using permanent TROs to protect UUCRs and BOATs within the Peak District National Park. The main users of TROs within local authorities are Highway departments who think primarily in traffic terms and are reluctant to use grounds like conservation and amenity.
41. Local Authority Rights of Way departments seem reluctant to get involved at all. In spite of support from councillors (including cabinet members for highways) Derbyshire County Council rights of way officers have prevaricated for 23 years over repeated requests for a TRO on Jacob's Ladder, Stoney Middleton. (Photograph 11)
42. Currently there is no redress available to communities who are meeting institutional intransigence of this magnitude. The local government ombudsman will only get involved in cases of maladministration affecting individuals and refuses to take up cases involving groups. We believe communities should have the right to appeal to the Planning Inspectorate but there would need to be a formal process to avoid claims with no foundation.
43. In spite of their statutory duty to support National Parks purposes, we believe Highway Authorities are reluctant to use permanent TROs on BOATs and UUCRs because of the cumbersome, resource intensive process and the fear of legal challenge.



44. PDNPA has struggled to handle the replies to some TRO consultations and we know green laning groups use this as a tactic to frustrate the process.
45. The resource constraint was discussed extensively at the May 2017 meeting of PDNPA's Audit, Resources and Performance Committee when responding to requests from the public to implement more than one TRO per year. We understand that similar problems with resources and the fear of legal challenge occur elsewhere in the country.
46. There is a strong case for new legislation extending the grounds for a TRO. The most obvious one is "sustainability" in the sense of avoiding continual repairs because the green lane is subject to traffic which really needs solid foundations and a sealed surface. We understand why cost is not allowed to be an issue in avoiding repairs to the normal road network but believe it should be an issue for a recreational route particularly where less extensive repair would meet the needs of non-vehicle users.
47. Further additional grounds for TROs could be to prevent off-piste activity especially that threatening ancient monuments or SSIs (Photograph 12) and to protect other routes. An example of the latter would be a TRO on Brough Lane, Shatton, Derbyshire where the desire of green laners for a round route causes them to illegally use a restricted byway as a connection.
48. The protection of ancient monuments would be further enhanced by making English Heritage a statutory consultee.
49. Most importantly the TRO process needs **streamlining**.
50. DEFRA needs to publish stronger guidance to **encourage** National Park Authorities and Highway Authorities and to make TROs. This guidance should emphasise grounds outside conventional traffic considerations, for example conservation, amenity and preserving character. However without streamlining such encouragement is unlikely to be effective.
51. In particular authorities need to be encouraged to initiate TROs at an **early stage** when problems are still remediable and **before repairs** are carried out because the requirements may be less onerous once vehicles are excluded.
52. The guidance should also **assist** authorities to make TROs difficult to challenge by drawing on the experience of those National Park Authorities (Yorkshire Dales and the Peak District) and Highway Authorities who have experienced legal challenges and those who have successfully made TROs to protect UUCRs and BOATs.

### **Comments on DEFRA’s assessment of the NERC ACT in paragraph 117**

53. The sub-text of paragraph 117 seems to be “the fanatics on both sides are equally unhappy, ergo all reasonable people must be content ergo nothing further needs to be done.” The logic is erroneous and reasonable people are not content (as we show below). In spite of its responsibilities for the environment DEFRA seems to be treating the concerns of green laners and non-vehicle users as equivalent and making no attempt to consider damage to the environment or the inappropriateness of certain leisure activities in the countryside. Particularly with regard to the National Parks, DEFRA is ignoring its own advice in its “Guidance for National Park Authorities making Traffic Regulation Orders under Section 22BB Road Traffic Regulation Act 1984”:-
- “The Government considers that in many cases a level of recreational vehicle use that may be acceptable in other areas will be inappropriate within National Parks and incompatible with their purposes.”
  - “The reference in legislation to understanding and enjoyment of special qualities [of the National Parks] suggests a focus on quiet outdoor countryside recreation, associated with the wide open spaces, wildness and tranquillity to be found within the National Parks.”
54. We disagree that Part 6 of Act has achieved its primary aim which was to limit recreational vehicle use of green lanes by reducing the opportunities to create vehicle rights on them. A major class of green lane was exempted; the use of off-road vehicles has increased; and nothing has been done to improve the ability of Highway Authorities and National Park Authorities to manage this use through TROs.
55. The wording in paragraph 117 implies **all** use of mechanically propelled vehicles on rights of way is contentious. The use of rights of way by farmers and others involved in land management; for access to residential property; and by the emergency services is not, in our opinion, contentious. Nor is the use by “invalid carriages”. PDNPA has made an exemption for “invalid carriages” in all their TROs. We support such an exemption but would not wish to see it extended to allow disabled people to use such routes with the type of vehicles normally associated with green laning. This is both because most green lanes cannot sustain such use; and because invalid carriages users, wheelchair users, and people with impaired sight and hearing should not be expected to share such lanes with 4x4s and trail motorcycles.
56. We agree the majority of stakeholders and the public broadly support the measures of the Act (although probably few understand it). However we believe they want control of recreational off-road vehicles to go further. Our experience is that there is much opposition to the use of BOATS and

UUCRs by green laners. Examples of this opposition are given in paragraphs 56 to 64.

57. Parish councils and individuals have approached PDGLA for advice on how to oppose effectively a claim for BOAT status on a UUCR. Where it is feasible to challenge BOAT status on historical evidence, residents and landowners have, on our advice, compiled and submitted user evidence to counter that from green laners. They have followed this up by giving evidence in person and subjecting themselves to cross-examination at public inquiries held by the Planning Inspectorate. This significant local effort has meant that the user evidence of recreational motor vehicle users has been successfully challenged on a number of routes. It has at the same time revealed the extent of the stress and anger in local communities about what is happening to their local lanes.
58. Residents of Great Longstone, Derbyshire fought a public inquiry against Leys/Chertpit Lanes becoming BOATs. Having lost, and in the face of indifference from the parish council, they then ran a successful campaign to encourage PDNPA to impose a TRO on the lanes.
59. The above effort has been surpassed by Stoney Middleton Parish Council and residents who has been seeking a TRO **for 23 years** on the route known as Jacob's Ladder. They submitted another formal written request for one in December 2013 to Derbyshire County Council. The council subsequently held a superfluous consultation canvassing views but outside any formal TRO process. No results from the consultation have been released and the request remains unanswered.
60. Residents of Pilsley on the Chatsworth Estate pressed Derbyshire County Council for 20 years for a TRO on the route known as Bradley Lane because motor vehicles were destroying the route and putting residents in danger. Despite overwhelmingly clear evidence of damage and danger gathered by local residents no action was taken by the Highway Authority. (This route is now a bridleway following Public Inquiries.)
61. We know of two other Peak District parish councils, supported by local residents, actively seeking permanent TROs banning recreational motor vehicles on BOATs in their parishes. Residents, landowners, disabled users, parish and district councillors have submitted petitions to PDNPA and attended meetings of its Audit, Resources and Performance Committee for a number of years asking for a TRO on Hurst Clough Lane, Derbyshire. Great Hucklow Parish Council wants a TRO on School Lane, Derbyshire to protect children using the village primary school from speeding green laners.

62. Fifteen walking groups (14 belonging to the Ramblers Association) have joined PDGLA because they are concerned about the use of UUCRs and BOATs by off-road motor vehicles.
63. Around 2010, Derbyshire Constabulary responded to public concern about green laning by launching an initiative called Operation Blackbrook. This had a number of strands. Police worked with responsible green laner groups to repair damaged routes and offer “information and education” to casual green laners on illegal routes. The police had a number of checks of casual green laners on the normal road network and of white vans bringing groups of green laners to known meeting points. These checks revealed a number of uninsured off-road vehicles and ones not meeting requirements to be on the public highway (licence plates, silencers etc). The police also organised a number of public meetings in Bakewell town hall to discuss the problems associated with green laning. The panel assisting the police had representatives from PDNPA, Derbyshire County Council and local and national green laner groups. The meetings were animated and increasingly well attended by the public (eventually becoming almost standing room only). No-one who attended them could be in any doubt about the strength of feeling against green laning by local residents and their frustration at the perceived impotence of the authorities. Local farmers were particularly vociferous and were offering to repair routes themselves if only TROs were put on them.
64. The only national opinion poll on the issue (ICM 2004, carried out for the Ramblers Association prior to NERCA) found that 79% of respondents thought that 4x4s and trail bikes using rights of way in the countryside meant increased danger for walkers, cyclists and horse riders and that these vehicles were affecting the environment by introducing noise and pollution into the countryside and damaging habitats. 87% said that off-roading should be banned in the national parks and areas of outstanding natural beauty.
65. The evidence covered in this section does **not** indicate a public at ease with off-roading and content to leave NERCA unfinished. We believe that new rights of way legislation to address the problem of UUCRs and guidance to Highway Authorities and National Park Authorities on making TROs is urgently needed.

Christopher and Susan Woods for Peak District Green Lanes Alliance

*10 September 2017*

## Photographs



*Photograph 1: Charity Lane, Cheshire: A UUCR where a narrow sunken lane without refuges shows the problem of meeting a green laning vehicle. March 2015*



Photograph 2: Beeley Hilltop, a BOAT in Derbyshire where coping stones were removed from the wall by green laners to fill ruts in the route. September 2013



*Photograph 3: Wetton, Staffordshire in November 2011 showing little sign of green laning.*



*Photograph 4: Wetton, Staffordshire in February 2014 showing the effects of increased green laning.*



*Photograph 5: Wetton, Staffordshire in February 2017. Markedly more damage although PDNPA vehicle monitoring shows relatively light use of this route.*



*Photograph 6: Leys Lane, Derbyshire in February 2013 after DCC repairs. The dry stone wall was destroyed by green laners. Lane now protected by a TRO.*



*Photograph 7: Three Shires Head, Staffordshire. A UUCR with an historic TRO so only used by motor cycles. But still a poor surface and narrow width. June 2015*



*Photograph 8: Limer Rake, Staffordshire. Closed by a temporary TRO because of fears of walls collapsing. These have been undermined by green laning and subsequent water erosion. July 2015*



*Photograph 9: Limer Rake, Staffordshire. Once a grassy path, the surface now makes the UUCR unusable for many non vehicle users. July 2015*



*Photograph 10: Ramsden Road Kirklees. A BOAT where green laners have created an alternative route to avoid the "step". April 2016*

## Peak Horsepower – written evidence (NER0016)

### Response to the call for evidence by the House of Lords Select Committee on the NERC Act

#### Introduction

1 Peak Horsepower is a British Horse Society-affiliated bridleway group. It has over 350 individual members and all the riding clubs and bridleway groups in the Peak District are organisational members. At its founding meeting in 2011 it was clear that the overriding issue of concern which had brought riders together to create the new bridleway group was the serious impact which recreational motor vehicle use of off-road riding routes in the Peak District is having on rider access and safety. It is this concern which prompted our response to



*Photograph 11: Jacob's Ladder December 2016. Local people have been asking for a TRO for 23 years*



*Photograph 12: Off-piste damage on How Grove Lead Mine, Castleton, a scheduled monument beside Pindale, a UUCR. August 2017*

the Committee and our comments on the working of S67 of the Act. We have also taken the opportunity to comment on the effectiveness of Natural England in promoting access to the countryside.

#### Summary

2 Natural England's current methodology for allocating capitals funds has prevented completion of the Pennine Bridleway.

3 Natural England needs to take a stronger lead in developing and improving the bridleway network.

4 Section 67 of the Natural Environment and Rural Affairs Act 2006 sought to address widespread public concern about the growing use of unsealed highways by recreational motor vehicles. The exemption under S67 2(b) of the Act from the extinguishment of motor vehicle rights over routes on the List of Streets has defeated the original intention of the Act and has led to extensive



and growing motor vehicle use and damage to the country's 3000 miles of Unsealed Unclassified Roads (UUCRs). Use of these unsealed routes is excluding horse riders from previously safe off-road riding routes and putting them in danger. New legislation is required to exclude motor vehicles from these routes. In addition, Defra should give firmer and clearer guidance to Authorities on the need to use Traffic Regulation Orders to manage recreational motor vehicle use of the 2700 miles of Byways Open to All Traffic.

### **Question 6 - How effective have NE and other partners been in promoting better access to the countryside?**

#### **Promoting better access: the Pennine Bridleway National Trail remains incomplete**

5 Natural England (NE) has responsibility for promoting access to the countryside and open spaces, for encouraging open-air recreation and for securing the provision and improvement of facilities for enjoyment of the natural environment. The 13 English National Trails are now managed by the new Trails Partnerships but NE remains their main funder and the Trails play an important part in NE meeting its statutory responsibilities.

6 The Pennine Bridleway was approved in 1995. Funding of £1,841,876 was allocated by Sport England and the project team was appointed by the Countryside Agency, which became part of Natural England. Work began on the Trail in 1999. It was opened in stages and the 'completed' route was formally opened by Martin Clunes, President of the British Horse Society, in 2012.

7 In fact, the Trail has not been completed. This is despite new NE funding to complete it having been agreed in principle and despite the importance of the Trail to horse riders from all over the country and to local riders, walkers and cyclists. Five years on from the formal opening there is a crucial 5-6 mile gap in the Trail around Glossop. The gap means riders have to face and use busy roads through and around Glossop. These include a section of the A626 and narrow unclassified roads which are popular 'rat runs' with high volumes of traffic. The advice to riders from the National Trails is to use a horse box to avoid this part of the route. For the many hundreds of local riders in the area who would like access to safer riding this isn't much help. And if you're a long distance rider you don't have a horse box with you.

8 Peak Horsepower has been exploring the 'Glossop gap' with both NE and the partner funder and commissioning authority for this part of the Trail, Derbyshire County Council (DCC). We have discovered that the reason why this final part of the Pennine Bridleway has not been built lies in the way NE allocates capital funds.

9 NE has only an annual budget for capital works. DCC says that this funding method does not give them sufficient time to do in one year both the necessary preparatory work and the construction work on the ground, which they can do only between the end of August and the end of October. Work on the ground is restricted to this period because the 'gap' in the Trail is on an

ecologically sensitive sight (ground nesting birds) and high exposed ground where engineering work cannot be done during the winter months.

10 DCC is unwilling to take the risk of allocating resources to start the necessary preparatory work before it receives NE funding. NE will not make a capital funding commitment beyond one year, despite longer term funding clearly being needed for this particular project.

11 It is clear that NE needs a more flexible method of managing its capital funds in order for the Pennine Bridleway to be completed. We therefore ask the Committee to recommend a change in the NE capital funding methodology. The methodology needs to be sufficiently flexible to allow NE to commit capital funds for more than one year.

### **Promoting better access - the bridleway network remains fragmented and disconnected**

12 There is a clear need for an extensive and well-connected bridleway network to provide safe off-road horse riding. The existing network is fragmented, disconnected and unevenly distributed.

13 In 2012 NE introduced an initiative to create new rights of way delivered as community projects. This initiative operated as the Paths for Communities scheme and it ran until 2014 with total funds of £2m. The scheme was modest in scale but an effective model for partnership working and in many areas of the country it made a significant contribution to improving the bridleway network. But it was quickly oversubscribed.

14 We believe that if NE is to be able to continue to deliver on its remit of improving access it should be funded to re-introduce the Paths for Communities Scheme and to run it on a bigger scale. We invite the committee to make a recommendation along these lines

15 Many rights of way currently classified as footpaths could easily be upgraded to bridleways, enabling them to be used by cyclists and horse riders and by people with disabilities who used the rugged type of mobility scooters designed for use in the countryside. The Welsh Assembly is currently consulting on such a proposal for Wales. We would like to see NE and Defra begin to take the lead on this issue in England and work together to develop a proposal for the upgrading of footpaths to bridleway in England wherever suitable.

### **Question 11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

#### **Section 67 of the NERC Act**

16 Section 67 of the Act came about because of increasing and widespread public concern about the use of unsealed highways by recreational motor vehicles. The issues were the damage this use was doing to the countryside, the impact it was having on local communities and non-motor vehicle users, and the growing number of unsealed routes which were becoming Byways Open to All Traffic

(BOATs), ie rights of way proven in law to carry legal rights for mechanically propelled motor vehicles as well as for pedestrians and equestrians. (Defra consultation document 'Use of Mechanically Propelled Vehicles on Rights of Way', December 2003)

17 The effect of S67 was to extinguish any recorded public motor vehicle rights on the vast majority of footpaths and bridleways which were on the Definitive Map of Rights of way as at 2006. Prior to the extinguishment many of these routes would have become BOATs because they carried historic public rights for horse-drawn vehicles.

18 S67 was a welcome development but it has not prevented an exponential growth in the use by 4x4s and motor bikes either of existing BOATs or of the 3000 plus miles of unsealed unclassified county roads (UUCRs) on the List of Streets.

19 This growth has come about because 'off-roading' has become a more popular leisure activity since 2006 when the Act was passed, but crucially because NERC exempted from the extinguishment of motor vehicle rights all routes on the List of Streets (Section 67 2b). This exemption included the entire network of UUCRs. The exemption was on the grounds that extinguishing motor vehicle rights on the UUCRs would interfere with the ordinary road network. (Defra guide to highway authorities on interpreting S67 of the Act, May 2008). We return to the impact of this exemption and the notion of UUCRs as part of the ordinary road network in paragraphs 29 to 34.

### **The issues**

20 Horses and riders need off-road routes away from motor vehicle traffic. According to the latest statistics from the British Horse Society there has been a 29% increase in on-tarmac incidents involving riders the last year alone. Since 2012, riders have been involved in over 2000 reported on-tarmac incidents involving motor vehicles and 180 horses and 36 riders have died in road accidents. (See <http://www.bhs.org.uk/our-charity/press-centre/news/jan-to-jun-2016/riding-and-road-safety-campaign> )

21 To get away from the tarmac roads, horses and riders depend not just on bridleways and restricted byways but on safe access to BOATs and UUCRs. They depend on BOATs and UUCRs because bridleways and restricted byways are very unevenly distributed, both across the country and within different parts of each English county. Within the Peak District for instance, only 10% of public rights of way in Derbyshire are bridleway compared with 17% nationally. 1.2% are restricted byways compared with 3% nationally (Derbyshire Rights of Way Improvement Plan). The position is even worse in Staffordshire. According to that county's Rights of Way Improvement Plan, in over 54% of the county there is no access to any off-road right of way for horse riders.

22 The surfaces of BOATs and UUCRs become severely damaged if they are used regularly by powerful modern motor vehicles. As horses cannot safely use a severely damaged surface, riders are increasingly being excluded from both BOATs and UUCRs.

23 Many BOATs UUCRs are inherently unsafe for equestrians regardless of surface issues because they have features such as very narrow width, blind bends and nowhere to pass or be passed safely by motor vehicles.

24 Horses are flight animals, most of them are frightened by the sound of revving motor bike engines and they tend to panic if they can hear one of these vehicles approaching.

### **Is the problem is nationwide?**

25 These issues are so severe in the Peak District, particularly within the National Park, that Peak Horsepower decided to find out whether or not the problems being faced by our members are nationwide. In the autumn of 2016 we therefore carried out the first ever national survey on the impact which motor vehicle use of off-road riding routes is having on riders. The survey was sent to over 1000 bridleway groups, riding clubs and other types of equestrian organisation in England. The survey questions are reproduced for information at the end of this submission. Full details of the survey and its findings are at [file:///C:/Users/Patricia/Downloads/Offroading%20survey%20finalapr17%20\(4\).pdf](file:///C:/Users/Patricia/Downloads/Offroading%20survey%20finalapr17%20(4).pdf)

26 Three quarters of the organisations which responded to the survey said that their off-road horse riding routes are being used by 4x4s and motor bikes. Ninety per cent of these respondents said that these vehicles are creating problems on one or more of their off-road riding routes. Over a third of them said it is causing problems on many or most of their off-road riding routes.

27 Respondents who reported problems were asked what kinds of problems they are facing.

- 79% said that 4x4s and motor bikes have damaged the surface of their off-road riding routes
- 72% said that the noise of off-road motor vehicles is frightening horses
- 54% said that vehicle speed is a problem
- 54% said their riding routes are too narrow to be passed by a motor vehicle easily or safely on a horse
- 51% said there was nowhere to get out of the way of motor vehicles
- 35% said that blind bends are a problem.

28 The most severe problems appeared to be in Berkshire, Devon, Kent, Lancashire, North Yorkshire, Somerset and Surrey but the survey found that riders in all English counties are being adversely affected and that use of BOATs and UUCRs by recreational motor vehicles is indeed a nationwide problem for equestrians.

### **Unsealed unclassified roads and S67 2 (b) of the Act**

29 Section 67 2 (b) of the Act exempted routes on the List of Streets (ie the UUCRs) from the extinguishment of motor vehicle rights because at that time Defra regarded routes on the List of Streets as part of what it called 'the ordinary road network' and feared that extinguishment would have unforeseen adverse effects on the network. This has proved a mistake. The unforeseen adverse effects have been not on the ordinary road network but on the non-motor vehicle users of the UUCRs.

30 The exemption of routes on the List of Streets has meant that the NERC Act has not achieved its aim of curtailing growth in recreational motor vehicle use in

the countryside. Contrary to expectations at the time the Act was passed, and despite the intentions of the Act, 'off-roading' today is having an ever wider and deeper impact on the countryside, on local communities, farmers and non-vehicle users, with equestrians being particularly disadvantaged. Highway Authorities meanwhile cannot keep pace with the scale of the damage being done to the surfaces of their unsealed routes and have insufficient funds to repair them. Repair costs are reported to be up to £75k a mile.

31 UUCRs are not 'ordinary roads'. They are unsealed and, like BOATs, they were designed for horses and carts and are unable to withstand use by powerful modern motor vehicles. The rights of way on all of them are unknown, unlike BOATS and other categories of route on the Definitive Map of rights of way. The only certainty about UUCRs is that they carry rights for pedestrians.

32 The following photographs illustrate the type and scale of damage which recreational motor vehicles are doing to the UUCRs. All the UUCRs illustrated used to be easily and safely used on horseback. What the photographs show is typical, not exceptional, and they illustrate the absurdity of continuing to regard the country's UUCRs as 'ordinary roads'.

*Swan Rake Peak District National Park*



*Minninglow Peak District National Park*



*Near Buxton Peak District National Park*



*Back Lane, Darley Dale, Matlock*



*Limer Rake, Peak District National Park*

### **The solution: UUCRs and the List of Streets**

33 The solution for UUCRs is to either to amend S67 of the NERC Act to extinguish unrecorded motor vehicle rights on unsealed routes on the List of Streets, or add unsealed routes on the List of Streets to the Definitive Map of Rights of way by statute as Restricted Byways. Either solution would allow UUCRs to be used by walkers, cyclists, horse riders and carriage drivers but not by recreational motor vehicles. Under either option, the duty of the highway authorities to maintain all these routes would not be affected.

34 As the creation of new rights of way across their land by statute is unlikely to be acceptable to landowners, we believe that the simplest option and the one widely acceptable to local communities and all non-vehicle user interests, including landowners, is the extinguishment of recorded motor vehicle rights on the UUCRs, with exemptions for residents, landowners and emergency service vehicles. We urge the Committee to make recommendations along these lines.

### **Byways open to all traffic (BOATs)**

35 The position with regard to BOATs as far the NERC Act is concerned is different from the position as regards the UUCRs. Whereas the public rights of way on all UUCRs remain unknown, the BOATs have known and proven legal rights for motor vehicle users, in most cases simply because these routes were used in the past by horses and carts. The only bearing which the NERC Act had on BOATs was



to prevent the great majority of footpaths and bridleways from becoming BOATs after 2006. However, recreational motor vehicle use of BOATs creates exactly the same problems for equestrians, other non-vehicle users, local communities and farmers as those produced by recreational motor vehicle use of the UUCRs, as the following photographs of some of the damaged BOATs in the Peak District National Park illustrate.

*Hurstclough Lane Hathersage*



*Jacob's Ladder Stoney Middleton*



*Moscar Cross Road, Sheffield*



36 The scale of the damage being done to BOATs (and to UUCRs) is placing a heavy financial burden on Highway Authorities. The burden far outstrips Highway Authority resources and the repairs which Authorities do manage to do eventually

fail because unsealed surfaces cannot withstand use by powerful modern motor vehicles.

37 Parliament is usually reluctant to take away rights which already exist, in this case the legal right to use all BOATs with a motor vehicle. Unless this right is removed by Parliament, the only way to limit or curtail motor vehicle use of any BOAT will remain through the use of a Traffic Regulation Order (TRO). These Orders can be made by the Highway Authorities or, if a BOAT is inside a National Park, by a National Park Authority.

38 There are difficulties in relying on the TRO regime to exclude or restrict motor vehicle use of unsealed highways. TROs can only be made one by one, ie route by route, they are resource intensive and they are frequently contested in the courts by the motor vehicle user groups. The latter difficulty is compounded by a worrying history of Authorities making errors in the TRO process which have led to Orders being quashed in the courts and high legal costs for the Authorities concerned (see <http://www.gleam-uk.org/guidance/the-use-of-traffic-regulation-orders-to-restrict-motor-vehicle-use-of-green-lanes> ).

39 The result is that most Authorities are very reluctant to use TROs either to prevent damage to their unsealed highways or on any of the other legal grounds for making TROs which are open to them under the Road Traffic Act 1984 Section 1 (namely: to avoid danger; to facilitate the passage of other users; because the route is unsuitable for use by motor vehicles; because the route is specially suitable for walkers or horse riders; for preserving the amenities of the area; for reasons of air quality; or to conserve the natural beauty or amenities of the area ).

40 In the Peak District, for example, although the Peak District National Park Authority has in recent years made a small number of TROs on grounds of natural beauty and amenity, the main highway authority, Derbyshire County Council, has yet to make a single TRO and has told us that it has no intention of doing so. They have told us in meetings that the reason they will not use TROs is because they are afraid of legal challenge and of the high costs they would incur if they were to lose. This refusal to use TROs has allowed extensive damage to unsealed routes throughout the Derbyshire Dales part of the National Park and across the whole county. The damage is growing and is on a scale that far outstrips DCC repair budget. We understand that this is the position in which most highway authorities find themselves. Meanwhile there is no means of redress for the villages, parishes and individuals badly affected by a highway authority's refusal to use or even to consider a TRO.

### **The solution for BOATs**

41 Assuming that Parliament would not wish to remove the existing right to drive on BOATs with a motor vehicle, it is essential that Defra:

a) give clearer and firmer guidance to Highway and National Park Authorities that they should make TROs wherever there is evidence that any one of the eight the legal grounds for a TRO is met; and

b) point out to Highway Authorities that making a TRO on the legal grounds of

preventing damage to the road is likely to be a more effective and responsible use of public funds than incurring large and often repeated repair costs.

## **Conclusion**

42 The NERC Act has failed in its intention to protect unsealed highways from use and damage by recreational motor vehicles. As a result equestrians are being put in danger and excluded from off-tarmac riding routes. Other non-vehicle users are also badly affected. To achieve the original aims of the Act new legislation is needed which will protect the network of unsealed, unclassified roads. Defra should take a stronger line on the need for Traffic Regulation Orders on Byways Open to All Traffic.

## **Peak Horsepower September 2017**

**The annex, 'The Use of Off-road Riding Routes by Recreational Motor Vehicles, Survey Questions' is on the following page**

### **Annex : The Use of Off-road Riding Routes by Recreational Motor Vehicles Survey questions**

- 1 Name of riding establishment or organisation  
.....
- 2 Which of the following best describes your establishment or organisation:
  - a) bridleway group
  - b) riding club
  - c) riding school/ equestrian centre with no hacking out
  - d) riding school/equestrian centre with hacking out
  - e) trekking centre
  - f) hunt
  - g) TREC group
  - h) equestrian college
- 2 Which county are you in?
- 4 Do recreational motor vehicles (4x4s, motor bikes or quad bikes) use any of the off-road riding routes in your area?  
Yes/No/Don't know  
If No or Don't know, please go straight to Question 8
- 5 Thinking of the off-road riding routes in your area which are used by recreational motor vehicles, are they: (choose one only):
  - a) bridleways or restricted byways (ie routes on which driving recreational motor vehicles is illegal)
  - b) Byways open to all traffic or other unsealed routes (ie other routes with no tarmac)

- c) both
- d) don't know

6 If off-road riding routes in your area are used by recreational motor vehicles: (choose one)

- a) This is not a problem for horse riders on any of these routes
- b) This is a problem for horse riders on one or more of these routes
- c) This is a problem for horse riders on many of these routes
- d) This is a problem for horse riders on most of these routes

7 If use of off-road riding routes by recreational motor vehicles is causing problems for riders in your area, what are the problems? Please indicate all that apply

- a) surface damage by motor vehicles
- b) route too narrow to pass motor vehicle easily on a horse
- c) blind bends
- d) nowhere to get out of the way of motor vehicles
- e) vehicle speed
- f) vehicle noise frightens horses
- g) other

8 Please use this space for any comments you may wish to make about use of off-road riding routes by recreational motor vehicles.....

*6 September 2017*

## **Peak and Northern Footpaths Society – written evidence (NER0005)**

### **Question 6: Arrangements and provisions for enabling and managing access to the countryside:**

- 1 The provisions with respect to public rights of way have been partially effective in reducing the adverse effects on walkers of the legal use of unsealed routes by recreational motorised vehicles. However, there is a major defect in the Act, as described below in response to Question 11.

### **Question 6: how effective has Natural England been in promoting better access:**

- 2 Generally effective with respect to access for walkers on open access land, but much less so on access using public rights of way (PRoW). The actions by the former Countryside Agency in providing advice and financial support to local authorities in the management of their PRoW networks seems to have almost ceased. For example, when Natural England responds to consultations on planning applications which affect PRoW, the potential effects and possible mitigation measures on wildlife conservation interests are extensively described, but the effects on current and future public access are not mentioned.

### **Question 11: Re-consideration of provisions in the Act as a result of developments since 2006:**

- 3 Section 67(2)(b) excepted the extensive network of unsealed routes which are included on local authorities' Lists of Streets from the extinguishment of public motorised vehicular rights. This has resulted in many of these routes retaining such rights, with the inevitable result of continued damage to the surfaces of the routes and the spoiling of the enjoyment of walkers with noise and visual intrusion. In many cases, walkers are simply unable to use the routes, and local authorities have proved to be very reluctant to use the powers they have to prevent use by motorised vehicles. The government wishes to promote countryside recreation for health and well-being, and the use of non-vehicular routes for safe, sustainable transport, but retaining the public rights for use by motorised vehicles acts directly against these laudable aims. It would be a simple legislative change for the exemption from the extinguishment of these rights on unsealed, unclassified routes on the Lists of Streets, which are not part of what Defra calls the "ordinary roads network", to be removed.

4 The phrase "ordinary roads network" is from Defra's guidance on the implementation of the NERC Act (paragraph 30, Version 5, 2008). The quotation marks around the phrase used by Defra show that Defra did not quite know what it meant by it; however, it is plain that the paragraph in which it appears, and the subsequent paragraph, are attempting to make a distinction between, on one hand, those roads upon which the use of motors is both essential, uncontroversial, and taken-for-granted, and, on the other, those unsealed ways we know generally as green lanes.

5 The Road Traffic Regulation Act (1984) defines an unsealed way as one whose "surface, or most of whose surface, does not consist of concrete, tarmac, coated roadstone or other prescribed material" (s22BB (1)(b)(ii)). This definition provides the basis for the development of a distinction between unsealed routes and "the ordinary roads network" as defined by Defra.

6 All unsealed, unclassified county roads (UCRs), which are not part of the "ordinary roads network", should be automatically reclassified, by means of an amendment to current legislation, as restricted byways, which do not carry public motorised vehicular rights. This would protect the enjoyment of the routes by non-motorised users: walkers, cyclists and horse-riders.

7 It should also be noted that the implementation of s67 NERC Act 2006 has resulted in many routes being recorded as part Byway Open to All Traffic (BOAT) and part restricted byway, sometimes changing from one to the other several times along their lengths. This is obviously a ridiculous situation, both legally and in practical terms, and legislation should be enacted such that any such routes are reclassified as restricted byways along their entire lengths.

8 Also, following on from the introduction by NERC of powers for National Park Authorities to make traffic regulation orders (TROs) to restrict the use of vulnerable routes by motorised vehicles, Natural England should provide guidance to National Park and other authorities on the making of such TROs.

Rhoda Barnett, Courts and Inquiries Officer (Derbyshire), Peak and Northern Footpaths Society

*28 August 2017*

## **Pennine National Trails Partnership – written evidence (NER0013)**

Response to the Select Committee on the NERC Act 2006 on behalf of the Pennine National Trails Partnership

This response primarily relates to the role of Natural England in managing and promoting National Trails as a means of accessing the countryside.

### The Issue

1. There are 13 National Trails across the UK, stretching over 2,600 miles providing opportunities for visitors to walk, cycle and horse ride through some of the UK's finest landscapes. The England Coast Path will be the newest National Trail and when completed in 2020 will be one of the longest coastal walking routes in the world.
2. The trails pass through national parks, Areas of Outstanding Natural Beauty (AONB), world heritage sites, nature reserves and even ten cities attracting over 83 million visits each year. Visitors to the trails spend over £533 million a year, supporting local economies and communities. Teams of dedicated experts look after the trails ensuring all can enjoy them.
3. However, the future of our existing 13 National Trails is currently uncertain. A commitment made by Natural England in 2013 to a three-year funding cycle has not been forthcoming and although Defra has committed funding until 2017-2018, future funding past this date is currently unclear. This means that whilst the trails have managed a 30% cut in budget, and have been able to raise £2.2 million to meet the shortfall, the question over their longer term future means stakeholders and external funders are reluctant to commit further funds.
4. At a local level the lack of certainty of budget means that National Trails are not able to plan or make long-term decisions. This has the potential to impact on local economies as it not only inhibits new investments, it also means that existing businesses dependent on the trails are hesitant to invest, or in some cases, will be at risk of closure.
5. Maintenance of the trails is also under threat. Local highways authorities carry out the maintenance works on the trails along with landowners and volunteers. In a climate where there are funding pressures, local authorities are having to make budget cuts which has the potential to impact on the maintenance of the National Trails.



6. If further cuts are made or decisions on funding continue to come at short notice, the trails face no option but undertake redundancies and potentially let the paths fall into disrepair. This will have a wider impact on the tourism sector as well as welfare and environmental management. It will further compound the difficulties rural and coastal communities whose economies rely heavily on tourism are facing, creating deprivation and dependency.
7. The trails are national assets, improving the health, wellbeing and prosperity of the UK as well as inspiring people to value our natural environment. Usage of the trails has been increasing and with funding there will be opportunities for growth.
8. Natural England has been very restricted in its role of 'promoting' access to the countryside. No allowance is made for promotional activities within the annual maintenance grant that is awarded to each National Trail. Whilst Natural England does have a 'Promotion Partner' in the form of Walk Unlimited, it does not fund this relationship but relies on the website and activities to be self financing. Unfortunately it has not been possible for Walk Unlimited to achieve this, and so Trail Partnerships have been required to divert attention from trail maintenance in order to raise funds for promotional work, including the ongoing maintenance of a central website.

What do National Trails require?

9. To ensure the future of the National Trails is safeguarded, The Pennine National Trails Partnership urges the Government to:
  - 9.1. Request DEFRA upholds the Natural England agreement and commits to a three year funding cycle for trail maintenance
  - 9.2. Maintain the total investment of £1.69 million each year for the maintenance of the 13 existing National Trails until 2021
  - 9.3. Provide staged maintenance funding for the England Coast Path as it opens: (2017/18 £0.13 million; 2018/19 £0.89 million; 2019/20 £1.39 million; 2020/21 £1.49 million)
  - 9.4. Ensure that grant offers are made in good time to allow Partnerships to plan in advance. Preferably, grant offers should be for more than 1 year at a time.
  - 9.5. Secure funding and political commitment for the completion of trails which have been opened but which are not yet completed on the ground e.g. the Pennine Bridleway.
  - 9.6. A stronger commitment from Natural England to the promotion of National Trails.

## Key Facts

- There are 14 National Trails in England including the new England Coast Path due to be complete in 2020
- The England Coast Path will be the longest walking trail in Europe
- The trails pass through 2,600 miles / 4,160 KM of the finest landscapes
- The National Trails pass through 6 National Parks, 15 AONB, 2 UNESCO Biosphere Reserves, 7 UNESCO World Heritage Sites, 10 English Cities and 33 National Nature Reserves
- 83 million people visit the trails each year
- Visitor spend is worth £533 million each year to the economy
- Volunteers spend 3,000 working days per year on the trail, which has been valued at £300,000
- The National Trails website has 2.6 million visitors per year which support 4,260 businesses
- Walking and riding on the National Trails could save the NHS £167 million through improved health and well being
- 93 % of visitors left calm and relaxed after a trip to one of the National Trails
- Usage of the trails has been rising significantly, for example there has been a 36% increase in visitors to the Norfolk Coast Path
- The National Trails are award winning with the South West Coast Path being awarded Outstanding Contribution to Tourism and the South Downs Way being recognised as one of the top 10 mountain bike routes in the world
- Government spending on National Trails is 3p per person
- £1.6 million Government funding levers in additional funds, doubling spend

## The Trails

Cleveland Way	Spanning 109 miles, this trail starts at Helmsley, North Yorkshire and ends at Filey, North Yorkshire – taking an average of 9 days to complete.
Cotswold Way	Spanning 102 miles, this trail starts at Chipping Campden, Gloucestershire and ends at Bath, Somerset – taking an average of 7-10 days to complete.
Hadrian's Wall Path	Spanning 84 miles, this trail starts at Wallsend, Tyne and Wear and ends at Bowness on Solway, Cumbria – taking an average of 6-7 days to complete.

- North Downs Way Spanning 153 miles, this trail starts at Farnham, Surrey and ends at Dover, Kent – taking an average of 12 days to complete.
- Offa's Dyke Path Spanning 177 miles, this trail starts at Chepstow, Monmouthshire and ends at Prestatyn, Denbighshire – taking an average of 14 days to complete.
- Pedders Way and Norfolk Coast Path Spanning 90 miles, this trail starts at Knettishall, Suffolk and ends at Cromer, Norfolk – taking an average of 7 days to complete.
- Pennine Bridleway Spanning 205 miles, this trail starts at White Peak area, Derbyshire and ends at Howgill Fells, Cumbria – taking an average of 1-14+ days to complete by bike or variable times by horse.
- Pennine Way Spanning 268 miles, this trail starts at Edale, Derbyshire and ends at Kirk Yethholm, Scottish Border – taking an average of 16-19 days to complete.
- South Downs Way Spanning 100 miles, this trail starts at Winchester, Hampshire and ends at Eastbourne, East Sussex – taking an average of 8-9 days to complete walking and 2-3 days by bike.
- South West Coast Path Spanning 630 miles, this trail starts at Minehead, Somerset and ends at Poole, Dorset taking an average of 30 days to complete walking fast or 7-8 weeks at a leisurely pace.
- Thames Path Spanning 184 miles, this trail starts at Near Cricklade, Wiltshire and ends at Thames Barrier, Greenwich, London – taking an average of 14 days to complete.

The Ridgeway      Spanning 87 miles, this trail starts at Avebury, Wiltshire and ends at Ashridge Estate, Buckinghamshire – taking an average of 6 days to complete.

Yorkshire Wolds Way      Spanning 79 miles, this trail starts at Hessel, East Riding of Yorkshire and ends at Filey Brigg, North Yorkshire – taking an average of 5-6 days to complete.

*5 September 2017*

Ramblers – oral evidence (QQ 149-157)

## **Ramblers – oral evidence (QQ 149-157)**

Tuesday 21 November 2017

12.25 pm

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Lord Bradshaw; Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 18

Heard in Public

Questions 149 – 157

## Examination of witnesses

Alison Hallas and Stephen Russell.

Q149 **The Chairman:** Thank you both very much for coming to see us. It is very kind of you. You have in front of you a list of interests declared by members of the Committee. The meeting is being broadcast live via the parliamentary website, a transcript will be taken and published on the Committee website, and you have the opportunity to make corrections to that transcript where necessary. It would probably be helpful if you could introduce yourselves.

**Alison Hallas:** I am a member of the Ramblers policy and advocacy team and the police officer for open access and countryside protection. In terms of open access, a lot of my time at the moment is spent assisting Natural England and our volunteers on the England Coast Path project.

**Stephen Russell:** I am policy and advocacy officer for paths and rights of ways. The focus for my work at the moment is the future of agricultural payments and the shared use of routes with cyclists. I will say a little about the Ramblers. We are Britain's largest walking organisation and have over 100,000 members. Ultimately, our aim is to assist everyone to enjoy the outdoors on foot. We are looking to protect and expand the places that people enjoy to walk and we have a very active network of about 25,000 volunteers who help make that possible through led walks, path maintenance and local campaigning and promotion of routes.

Q150 **The Chairman:** Great. Thank you both very much for those introductory remarks. Perhaps I could ask the first question. Do you believe that the current legal framework strikes the right balance between countryside access and nature conservation? Which aspects of that balance work well and which do not? How could it be done better?

**Alison Hallas:** To start off with, we would say the countryside is a multifunctional landscape, primarily agricultural but with very important benefits for nature conservation, access recreation and health and well-being. Drawing the balance between these is essential. We also see the two functions of access and conservation as complementary, because access gives the mechanism for people to go out, experience and understand the countryside and the conservation happening within in. We would say that the legislation gets this balance about right at the moment.

On the NERC Act more specifically, Natural England has five core functions under the Act. Two are to do with landscape and conservation, one is to do with education and two are about managing people in the natural environment. That in particular is well balanced.

Recently, Natural England has brought out its latest strategy, Conservation 21. One of three pillars of that strategy is putting people at the heart of the environment. This strikes the right balance between the two responsibilities, the environment and access, and draws them together, so that access and habitat are properly managed throughout our landscape. We will support Natural England with that aim wherever we can. We find it

particularly helpful to have the two functions in one body, Natural England, and from our experience that has been working particularly well in the England Coast Path project.

You asked about the aspects that are not working as well—the imbalances. That is less a problem of the legislative framework and more a problem of resource, and you may touch more on that later.

On the things that are working well, we would like to see the methodology that is being used in relation to the England Coast Path, which is coupling together the resources in Natural England for conservation and access as there are particular conservation issues on the coast, being used for all sorts of projects within Natural England, where possible.

**The Chairman:** Thank you very much.

Q151 **Baroness Scott of Needham Market:** I want to press you a little on this question of the resources available to Natural England. We have had a lot of evidence not just on the question of access but across the piece about the impact of reduced resources available to them. What have you observed about the way it approaches this?

I would also be quite interested in hearing about the relationship between the access efforts on the part of Natural England and the legal, definitive map questions, which I guess are led by Defra and which are strongly linked but not quite the same thing. Would you like to say a little about how those work together?

**Alison Hallas:** I will start with talking about what Natural England can prioritise and resource well and the areas where perhaps we are seeing more problems. We see their work on projects such as the England Coast Path and the dedication of open access in national nature reserves working really well at the moment—very strong progress is being made—in a climate in which resources are tight. We are supportive of that.

Another core function is research. Natural England has a background of producing good, statistically robust, independent research. In particular, I would like to highlight the monitor of engagement with the natural environment, which is a survey called MENE. That survey has been going for some years now and has brought together several years' worth of comparable data on how people interact with the natural environment, how often they visit it and what they do when they visit it. It is important for us and for government agencies, such as Natural England and the Forestry Commission, to have the evidence to show what impact the interventions are having. We were concerned recently to find the cost of that coming under scrutiny and it potentially being reduced.

The prime area where perhaps less resource has been available in recent years is for promotional activity in relation to responsible access in the countryside. We understand that this has arisen because government withdrew promotional functions from all arm's-length bodies some years ago. Although Natural England can do a certain amount of promotion, such as putting out press releases on the opening of stretches of the England

Coast Path, it is quite limited. We suspect that another related issue might have been the move on to the Government website; website space is at a premium and they have not perhaps been able to put out the message on responsible access as strongly as we would have liked in recent years. We are working with Natural England to try to amplify its message on responsible access, but we would like it to have the resources to help there.

**Baroness Scott of Needham Market:** On that specific point, we have just been talking about the clash between walkers and riders on one hand and vehicular users on the other. Does that mean that the onus for promoting responsible access by vehicle users is entirely on the user groups? There is nothing in Natural England. Is that correct?

**Stephen Russell:** That is our impression. I think it falls to individual interest groups to fill that space. There is an absence of a central voice that can bring those people together through consensus. Ultimately, people will end up with the ultimate objectives of their organisations, and perhaps that is where that conflict may lie.

**Lord Cavendish of Furness:** I have a supplementary question for Ms Hallas. You said in answer to the first question that people should be at the heart of the environment, which sounds very virtuous, although you could say the environment should be at the heart of the environment, and that you liked Natural England's double role. I put it to you that for those of us who live in the countryside, people and wildlife are in conflict. A lot of us accept that a balance has to be struck. Rather than the same organisation being at the centre of this, which you approve of, should there not be a method whereby someone is sticking up for wildlife, somebody is sticking up for people having access to it, and someone in the middle has to make a decision? I find something rather muddled intellectually about both roles being in one organisation.

**Alison Hallas:** We have found with the coast path project that they work very well as independent voices but within the same organisation. The conservation side of Natural England can undertake all the responsibilities in the habitat directive—those types of things—for European protected species on the coast. They can look at their access colleagues' proposals and critically assess them. They do a very transparent assessment and publish that along with the access proposals. The communication between those teams is very good. They can do these things in a smooth project flow, if you like, rather than having to transfer information between organisations.

**Lord Cavendish of Furness:** Is it part of your expertise to understand the impact of people on wildlife?

**Alison Hallas:** It is not within my expertise, but it is certainly within theirs, and I appreciate the work that they are doing on it.

Q152 **Viscount Chandos:** What has been the impact of government funding reductions and the continuing funding uncertainty on England's national trails network? How does this uncertainty affect Natural England's ability



to fulfil its objective of “promoting access to the countryside and open spaces and encouraging open-air recreation”?

**Alison Hallas:** We have been pleased that Natural England has been able to keep the level of funding for national trails in particular at a steady level when there have been widespread cuts. Indeed, we did a survey last year on rights of way condition called Pathwatch, and we found that the national trails were among the best-kept rights of way in England and Wales. However, our understanding from talking to the trail partnerships is that the current level of funding enables them to do day-to-day maintenance but not major works that come up.

On the question of the uncertainty, and in particular the impact on the national trails and the trail partnerships, we see that impact as being on their ability to plan, resource and invest in what are particularly important rights of way. They are sometimes called the jewels in the crown of the rights of way network. The decisions for funding have sometimes come so late in their financial years that this causes them problems with things like staff security. We consider that the spending needed on the national trails is very small compared to the wider economic benefits that they give.

We are also pleased that the England Coast Path is being turned into a national trail as it is being completed. This is keeping national trails at the top of the agenda. We would like to see some certainty on the management and maintenance of the England Coast Path in the longer term. We think there is probably a need for a more sustainable, long-term funding model for this. We have been supportive of the outsourcing of some of the promotional functions from Natural England on national trails. We think that the promotion of the trail network could be a lot stronger than it is at the moment. There could be an issue there. We think that any future model is likely to need support from across the sector. We would certainly be open to being a part of that long-term solution. As Stephen said in our introduction, we have a very large volunteer base with very dedicated volunteers who do many different functions, including practical maintenance, and I am sure they would be up to the challenge, if needed.

**Stephen Russell:** We have heard in conversations with some of the trail partnerships of the knock-on effect on securing match funding when decisions about future funding are made quite late in the day. Inevitably, that hampers a partnership’s ability to plan and be prepared to deliver what it needs to do.

Q153 **Baroness Whitaker:** The Committee has received written evidence that praises Natural England’s work to promote the England Coast Path project, and I think that everything Ms Hallas says would confirm that. I think she has already answered my question on whether the experience supports this assessment. To what extent might the focus on the coast path have come at the expense of other work done by Natural England to promote access? Also, once the coast path is done, where should Natural England focus its energies, bearing in mind the resources question that you also referred to?

**Alison Hallas:** As you said, we would absolutely echo the positive assessment of Natural England’s management of the coast path project. We have a very good relationship with them, both nationally between staff members and regionally with our volunteers. I would like to highlight one particular part, which is their very professional and rigorous approach to the negotiations on the coast path, which are very tricky. There are lots of legal interests and lots of complications on the coast, and they are doing an excellent job there.

On the reductions, we have talked about some areas of Natural England’s work which they might not be able to resource as well as they have been. Our perception is that the reductions have not come as a result of the coast path project. We have talked about the withdrawal of the function for promotion, which we do not think has helped that process. Our understanding is that the workload in some of the teams working on the Countryside and Rights of Way Act processes—the long-term restrictions, dedications and determinations; those sorts of things—had dipped because the long-term restrictions are fairly well balanced now. Not too many more are being applied for. Some are being extinguished, but not a huge number, so it is relatively stable. We understand that the coast path project was able to take up the capacity and the expertise from those teams. In some areas, it has enabled those teams to recruit one or two new members. We are pleased that Natural England has been able to retain that experience.

**Baroness Whitaker:** You would say that nothing has suffered because of the big focus on the coastal path, which is of course very exciting?

**Alison Hallas:** It is a very exciting project. It is fair to say that we have not seen anything suffer as a result of it. There are some things that do not have a huge amount of resource at the moment, but we do not think that is linked to the coast path.

Moving on to your last point, which was about what they could focus on afterwards, we would like to see more promotion of rights and responsibilities, and we are helping Natural England with that at the moment. We are putting more information on our website about rights and responsibilities.

**Baroness Whitaker:** More educational work?

**Alison Hallas:** Yes, educating people who are not confident in the countryside, people who are not well versed on their CROW rights and responsibilities. There was an excellent and large campaign on the Countryside Code, but that was some years ago now. We think from the research we are starting to put together now that perhaps the younger generation do not realise what the Countryside Code is and how they should be applying it when they are out in rural areas.

**Baroness Whitaker:** Dogs, perhaps?

**Alison Hallas:** Dogs are an issue that has come up quite a lot recently. I have been working with the All-Party Parliamentary Group for Animal Welfare, which has been looking particularly into the issue of livestock worrying. We were very pleased with the report they have now published, which is focusing on the responsibilities of dog owners, education and helping them to understand the problem and the danger their dog could pose to livestock before it goes wrong.

Q154 **The Countess of Mar:** Have the provisions in the NERC Act resolved the tensions regarding the use of paths and green lanes by motor vehicles? Are any further measures required to protect paths from potential damage and danger caused by motor vehicles?

**Stephen Russell:** It is fair to say that we believe that NERC alleviated the problem to an extent, but obviously the problem is not entirely solved. We have heard quite a lot already today about that. It is also fair to say that this is not a core area of work for us at the moment. We are well aware that there are a number of issues across the country and it is a particular problem in particular hotspots in national parks, AONBs and on some national trails. Ultimately, it is right that our position is that the use of motor vehicles on unsealed routes is incompatible with a quiet enjoyment of the countryside. The damage done on routes and the repairs needed to bring them back into a maintainable state may fundamentally alter the character of the network too. It is not something that we support.

It is clear to us that the ordinary road network is sealed for a reason. Motor vehicles damage highways and the cost of repairs for authorities can be significant. There has been a lot of research into that by other organisations. It is an issue that has been going on for some time now. Ultimately, we feel that tinkering with legislation here and there perhaps is not the way the go and perhaps it would be wise to have some kind of review undertaken by the Law Commission, so that when the time comes when more legislation is needed that work has already been undertaken at a time when obviously there is not the capacity in the parliamentary calendar to be dealing with that.

**The Countess of Mar:** We heard from our previous witnesses that there are other measures, such as ASBOs, for example, where antisocial behaviour is causing trouble, or orders preventing people from going on for a short period of time. Do you think those would be effective if they were used more?

**Stephen Russell:** Yes. The traffic regulation orders are an example. We have heard from some of our volunteers that there is a sense that some authorities are reluctant to use them because of the cost involved—the resource-intensiveness of the process—and concerns about court challenges and the like, which we heard about earlier. There is a sense that although on paper they serve a purpose and are quite a powerful tool, the reality is that a more streamlined system would be wiser. Ultimately, perhaps, a better-resourced local authority rights of way team to be able to deal with that would be helpful. Guidance to help authorities navigate the process and perhaps learn from one another would be very helpful. We

are aware of examples where they have been employed effectively, based upon hard evidence and data. I am happy to share those with the Committee afterwards.

Q155 **Baroness Byford:** I would like to make an observation and then ask my question. I am glad you mentioned the Countryside Code, because so many more people are walking now. As you have quite rightly said, I suspect most of my colleagues would nod and say that there is a great need, also for those of us who happen to be farmers. There is a lack of understanding. The number of horses killed recently, for example, is dreadful, and the number of individuals killed through walking through fields that are not suitable cattle because they have cattle in them, not just bulls but the young with their mums, is a huge problem. I am glad you mentioned that.

Can I return to your comment about the amount of work that your volunteers do to help with maintenance? Do you keep any register or does it just happen in certain areas? Obviously, if you are looking to maintain something long term it would be enormously helpful to know what goes on, where it goes on, who is funding it and how it is happening before you plan for the future. I would be grateful for greater information on this.

**Alison Hallas:** Our groups and areas work in different ways in different situations. They have different local priorities, so they do not all work in the same way. We hear more from some of them than others, which you might expect in an organisation of our size. They certainly are active on the path network in undertaking maintenance. In certain parts of the country we are reaching the point where the local authority rights of way team does not have the resource to oversee what they are doing. We now have at least one or two teams that we know of that cannot go into the countryside and help. They are there, ready with their secateurs, but they cannot go out on the path network and do those maintenance hours, because they need the oversight and approval of the local highways authority.

**Baroness Byford:** Can that not be gained without having formal negotiations? What happens now?

**Alison Hallas:** It is not my specialist area, but I believe they need that oversight legally.

**Stephen Russell:** Yes, they do, and we have a delivery team that focuses on engagement with the work of our volunteers. We record the work they do on a success ground. As Alison has said, we are increasingly hearing concerns that they cannot do the work that they could be doing to help to support local authorities. We need to work better with local authorities and understand how we can better support them to enable those groups to take the actions they want to take.

**Baroness Byford:** Rather like on the rivers. You both sat in on the earlier evidence, I think.

**Stephen Russell:** Yes.

Q156 **Baroness Byford:** You obviously heard the view from the responsible motorbike users. This question relates to the maverick ones. Do you think that the process for implementing these TROs is satisfactory? If not, do you have any suggestions to give guidance on how we might approach this in a different way?

**Stephen Russell:** As I think I mentioned earlier, it certainly feels to us that on paper they are useful and could help to resolve the issue. There are a number of grounds for making a TRO, which is extremely helpful. Ultimately, perhaps, it comes back to the issue of resources so that authorities can put them in place in the first place. We have heard from our volunteers that they are resource-intensive and require considerable research and extensive consultation. While that is right, because you want to give everybody a chance to hear about the proposals and to comment, even when they are made, policing TROs can be extremely difficult.

On the question of solutions, as I mentioned previously we are aware of a few examples of TROs being put in place through thorough evidence gathering and research so that they are made for the right reasons and in the right place. I would be happy to share those with you afterwards.

**Baroness Byford:** That would be helpful. Clearly, you have members who are walking all over the country, so you are very likely to be the people who see where this informal abuse is taking place and damaging the very things that we all care about so much, which are the environment and the open ways. Thank you very much.

**The Countess of Mar:** I have a supplementary question that goes back to the question about the remediation of the route. Can you not negotiate directly with the landowner, or is that too confrontational?

**Alison Hallas:** It can be done in some circumstances, but normally it is much easier for the local authority to identify the areas. Our members also report on problems with the rights of way network. In previous years, that two-way flow of information has worked quite well, but in some areas it now seems to be breaking down a little due to a lack of resources.

**Stephen Russell:** Yes.

Q157 **Lord Faulkner of Worcester:** Before I ask my question, my Lord Chairman, I should declare an interest as vice-president of the Campaign for Better Transport and the fact I have been a member of that organisation I think as long as the Ramblers.

My question is about the common agricultural policy and what may happen to the payments to farmers in the event that the United Kingdom leaves the European Union. In your evidence, you indicate that it could be used in a more environmentally friendly way in future and should not be regarded as a way of supplementing farmers' income. Can you elaborate a little on that?

**Stephen Russell:** Of course. Fundamentally, the decision to leave the EU and have a new domestic agricultural policy has the potential to improve opportunities for access. At the same time, it is important to make clear

that we recognise the role of farmers and landowners as stewards of the countryside. There is a need for them to meet their own business needs, but at the same time they are delivering a whole host of benefits for society, the environment and wider rural economies. Government has given undertakings that some form of public support will continue, at least in the near future, and we feel that this right.

At the same time, we feel that there is a need for some public return on that investment. It feels to us that improving access through improved maintenance and enhancement of the path network is a very clear public benefit and will enable people to reconnect with the countryside and perhaps better understand the role of farmers and landowners in acting as stewards of the countryside. At a very high level, that is what we are thinking at the moment.

More specifically, we feel that any future payment regime needs to have at its heart the concept of cross-compliance so that landowners need to abide by the existing legal duties relating to rights of way, which will remain in place once we leave the EU, and where they are in breach there should be penalties, as there are right now.

In terms of enhancement of the path network, we feel there should be some rewards where landowners/farmers make additions to the network but where they are most needed, not as part of a scattergun approach but through identification of where these additions will be of most benefit to the public. That may already have been identified through rights of way improvement plans prepared by local authorities, through local plans, through green belt policy—that kind of thing. We feel that those additions should be well promoted so that they are well used.

The other side of enhancements could be widening paths, removing access infrastructure if that is appropriate for land management purposes, and putting field edge paths in place for example so that walkers are not forced on to dangerous country roads. There are two sides to it: improved maintenance through this new regime and enhancements that could be made.

**Lord Faulkner of Worcester:** Have you had any discussions with the NFU about that?

**Stephen Russell:** I have had initial discussions with them, yes. I understand that the NFU has a whole host of concerns about the future of this country, if and when we leave the EU. We have touched on the subject and it is aware of our position. Certainly so far it seems that its priorities lie elsewhere at the moment.

**Lord Faulkner of Worcester:** Keeping up farmers' incomes, you mean.

**Stephen Russell:** Potentially, yes, but this is a way of doing that.

**The Earl of Caithness:** You touched on this in that answer. Do you think the existing rights of way network is adequate for the country, or would you like to see it enhanced? If so, by how much?

**Stephen Russell:** Enhanced through additions to the network increased?

**The Earl of Caithness:** Yes.

**Stephen Russell:** I could not put a figure on how much. The Ramblers are always looking to protect and expand where people can walk. I would not like to put a figure on how much we would like to expand that by.

**Alison Hallas:** As we said, it would need to be focused on the areas where it is needed. There are a lot of mechanisms that have already looked at that, so we would like to see the limited resources—resources are under strain—focused where they are most needed.

**Stephen Russell:** Absolutely. There are issues such as housing shortages, those kinds of things, and there will need to be significant housebuilding. We need to think about where people live and how they access the countryside. That is why I mentioned local plans and green-belt policies. It is sensible to look at the resources that we have and the strategies that are already in place that identify those shortfalls. I would not like to put a number on how far we would like to extend it by.

**The Earl of Caithness:** Are you taking into account the damage to the environment and reduction in biodiversity as a result of greater access?

**Alison Hallas:** As I said at the start, we see a balance between access and conservation, and they can be balanced. Both need resources, but both need to be managed throughout our landscape. Natural England's Conservation 21 strategy is looking to address that and to make sure that biodiversity is managed everywhere in the countryside, not just in the designated sites, and that people can access areas with good biodiversity in a responsible manner so that they learn more about it.

**Lord Cavendish of Furness:** It is a great credit to the cultural side of your organisation that I have never heard of ramblers behaving badly in the countryside.

**Alison Hallas:** I am glad to hear that.

**Lord Cavendish of Furness:** Would you accept that vastly fewer people work in agriculture and forestry? In my first job in the forestry, many years ago, we went out every morning with a gang of 13. Your responsible access, of course, does open the way to vandals. Do you have a code for reporting and helping landowners with the sometimes hugely expensive damage that can be done by the rogue who is not your member?

**Alison Hallas:** We do not have a central process for that, but we know that our groups and areas work locally. A lot of them are very active on the local access forums, as are the landowners. They work together on particular issues to find local solutions. You are right that in any walk of life there will be people who do not abide by the rules.

Going back to what we said about promotion, we would like to see resources put back into promotion of responsible access in the countryside,

because we feel that that younger generation has not had the opportunity to absorb that message.

**The Chairman:** Thank you both very much for coming and talking to us this morning. It has been a very helpful session. That ends our public evidence session.



## **Rotherham Metropolitan Borough Council – written evidence (NER0072)**

Evidence provided by Andy Godfrey, Ecological Development Officer, Rotherham Metropolitan Borough Council

### **Rural Advocacy and the Commission for Rural Communities**

*1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?*

*2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?*

*3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?*

I personally have no experience of the Commission for Rural Communities and consequently cannot reply here. The social and economic interests of rural parts of the Borough will be dealt with by other sections of the Council.

### **Natural England**

*4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?*

I have been unable to find what Natural England's current mandate is. Internet searches of websites such as [www.gov.uk](http://www.gov.uk) drew a blank. However, according to the latter, Natural England does have a range of current Responsibilities and Priorities and these have been copied below.

### **Responsibilities**

Within England, we're responsible for:

- promoting nature conservation and protecting biodiversity
- conserving and enhancing the landscape
- securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment

- promoting access to the countryside and open spaces and encouraging open-air recreation
- contributing in other ways to social and economic well-being through management of the natural environment, eg changes to wildlife licensing to improve flexibility for developers

## **Priorities**

From 2014 to 2019, our priorities are:

- terrestrial biodiversity
- marine biodiversity
- landscape and geodiversity
- access and engagement
- environmental land management
- National Nature Reserves
- support to the planning system
- wildlife management
- evidence
- corporate services

Rotherham Metropolitan Borough Council supports Natural England in all its responsibilities and priorities. Like other government departments, Natural England has seen a reduction in funding in recent years and a concomitant reduction in what it is able to do. Ideally, we would like to see a strong and vibrant Natural England, fully funded and resourced (as we would other government departments). Protection of the natural environment is vital for our planet and species and it is up to us to show good stewardship for future generations. This works on a regional and local level as well as a national and global one. The natural environment has benefits for human health (physical and mental), creates an attractive environment in which to live and work, can be a major contributor to tourism, etc. It is often the case that the most attractive places to live and work are often the greenest and this is reflected in land and property values and in the economic wealth of these areas. Towns and cities that have incorporated green issues are amongst the most attractive (and expensive) to live whilst those purely focused on economic need (such as the former steel and coal mining areas of northern England and Wales during the last two centuries) have suffered but have improved as we have appreciated the importance of clean air, access to public open spaces, the importance of tackling pollution in rivers, better hygiene, etc. Natural England is a major force for good and an important driver in protecting and improving our natural environment and should receive our full support, whether that is from a local, national or international level.

*5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?*

Natural England should take over the environmental regulations and safeguarding currently undertaken by the EU. There should be no loss in terms of environmental regulations including the protection and management of species, sites and habitats. There should be a renewed commitment of research and monitoring.

*6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?*

Access to the countryside is an important aim of Natural England but perhaps a subsidiary one. Many sites, species and habitats are sensitive and so public access may need to be restricted or reduced and this should be recognised. There are plenty of sites that can sustain higher visitor pressure but these are typically less sensitive sites such as public parks and country parks. Organisations such as local and county councils along with the Environment Agency and Forest Enterprise are perhaps equally as important at promoting access to the countryside and the sites they own or manage.

### **Sustainability and biodiversity**

*7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?*

It probably isn't clear what 'biodiversity duty' is or what councils need to do in order to have regard for biodiversity. The guidance is somewhat vague and fragmentary and it is left up to planning departments to interpret this as it sees fit.

Further work at raising the profile of biodiversity duty would be useful.

*8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?*

The increasing lack of funds for local government means that it is increasingly difficult to have regard to biodiversity. It would be helpful if Defra could encourage local authorities to embrace biodiversity within economic development policy, as otherwise there is the potential for the two priorities to be in conflict with each other. At the moment, biodiversity duty appears to be optional so a tightening of the legislation and increased funding is necessary to secure benefits for wildlife.

*9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?*

I can't answer this question.

### **The changing context since 2006**

*10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?*

The Act should be strengthened because sites, habitats and species are being lost nationally. The need to protect and manage for biodiversity needs to be increased through stricter legislation ensuring that polluters pay, that designated sites such as SSSIs are seen as sacrosanct from development, that developers are forced to consider biodiversity in planning applications and build in adequate buffers, provide monies for impacts on adjacent wildlife sites, provide adequate mitigation, etc.

*11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?*

Some of the Species of Principal Importance need revising. Species that are on the list are often cuddly or charismatic species or species supported by strong lobby groups or with high interest amongst naturalists. Many less obvious taxonomic groups such as mosses, lichens, fungi and invertebrates include many rare species and these do not have Principal Species status. Protection of these relies on their habitats or protected species which share their habitat being protected.

*11 September 2017*

## **Royal Botanic Gardens Kew – written evidence (NER0052)**

### **Question 11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

1. Schedule 12 of the Act repeals two Sections (Section 24(7) and (8)) of the Natural Heritage Act 1983 relating to Royal Botanic Gardens, Kew (RBG Kew). These two sections originally gave authority over entry times and prices to the Gardens to the Secretary of State. By repealing these two sections, authority over entry times and prices now sits with the Board of Trustees of RBG Kew.
2. In the 11 years since 2006/07 the headline entry price to Kew Gardens has risen from £11.80 for an adult to £15.00 (increase of 27%). Eleven years earlier (1995/96) it had been £4.00 (increase of 195%), indicating that RBG Kew's Trustees have been highly prudent in the increases in price faced by our visitors. Opening hours have been flexed responsively by RBG Kew's Trustees in recent times, for example with the introduction of early morning summer entry for Members, late evening openings for all visitors and the introduction of special ticketed events in the Gardens. In 2016/17, total visits to Kew Gardens was at 1.82m, compared to 1.05m in 2006/07 (73% increase).
3. There can be no doubt that the increased decision-making flexibility that has been given to the Board of Trustees has allowed for more nimble and commercially-minded decision-making to be taken. This has then led to increases in the number of visitors able to enjoy the Gardens and to learn about the importance of plants, and the science of plant diversity, to their lives.
4. The Board of Trustees of Royal Botanic Gardens, Kew is continuing to focus on achieving long-term financial sustainability in order to deliver their mission to be the global resource for plant and fungal knowledge, building an understanding of the world's plants and fungi upon which all our lives depend.
5. The Board of Trustees is currently appealing for increased operational and strategic flexibility over the management of the land on which Kew Gardens sits. A Bill has been drafted in association with Defra, which would provide that the Secretary of State's powers in relation to the management of the Royal Botanic Gardens, Kew, include the power to grant a lease in respect of land for a period of up to 150 years. This land, Crown Land, is governed by the Crown Lands Act 1702 and currently restricts leases to a maximum of 31 years. The Kew Gardens (Leases) Bill is a two clause Bill introduced to the House of Commons as a Private Member's Bill by Mr. Ian Liddell-Grainger in the 2016-17 session, but did not proceed past the report stage due Parliamentary time constraints. It has been introduced into the House of

Lords in a similar fashion in the 2017-19 session by Lord True, but it is unlikely to move past first reading stage due to Lord True's position in the ballot (60 out of 61).

6. The NERC Act 2006 was used as a vehicle for amending legislation that has led to improvements in achieving the mission of RBG Kew, extending these legislative amendments and the Crown Lands Act 1702 would create further opportunities to raise non-government investment in the infrastructure of RBG Kew.

David Cope, Director of Strategy & External Affairs

*11 September 2017*

## **RSPB England and The Wildlife Trusts – oral evidence (QQ 78-88)**

Tuesday 31 October 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 10

Heard in Public

Questions 78 - 88

## Examination of witnesses

Chris Corrigan, Stephen Trotter.

Q78 **The Chairman:** Good morning to you all and, in particular, to Mr Corrigan and Mr Trotter. Thank you very much for coming; it is very kind of you to spare us your time. You have in front of you a list of interests which have been declared by Members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be published on the Committee website and you will have the opportunity to make corrections to that transcript where necessary. I do not know whether either of you want to introduce yourselves and make any introductory remarks or whether you would rather we just asked the questions. Perhaps a good start would be to say who you are.

**Chris Corrigan:** Thank you very much for giving us the opportunity to come along and give evidence, which is great and, hopefully, will be helpful. I am the director for England for the RSPB. I have worked for the RSPB since 1990 and have a long background in nature conservation.

**Stephen Trotter:** Could I echo those comments? Thank you very much indeed for inviting us. I am the director for England and living landscapes for the Wildlife Trusts, which is a network of 37 independent conservation bodies across England.

Q79 **The Chairman:** Thank you very much. Do you think that Natural England fulfils its core objectives? If there are objectives that it fails to meet, why do you think that is? Which of the objectives do you think are the most important and are its core objectives the right ones?

**Stephen Trotter:** It is important to state from the beginning that there are many very good, dedicated members of staff in Natural England who do some very good work for wildlife and conservation. There are many areas that we have covered in our written evidence where Natural England does very good work for conservation, but there are also areas where the performance could be significantly improved.

On the question of some of the good work, I would quote the monitor of engagement with the natural environment and the NIA process that Natural England has delivered. Some of the agri-environment programmes that Natural England has delivered have been good, but there are some poor areas. We would highlight the lack of clarity of role that Natural England has over engagement in the planning system in defending nature and particularly key conservation sites, so in its role as regulator, in our view, there could be some improvements made. Over the last seven years in particular there has been a major reduction in the amount of good proactive work that Natural England has been doing, and there seems to be less value placed on species and habitats and conservation work in the organisation than perhaps we had previously.

**The Chairman:** How does the lack of focus on habitats show itself?



**Stephen Trotter:** For example, we are very concerned about a network of undesignated sites, which we now call local wildlife sites, of which there are many throughout England, but they are important because they are where most of our wildlife resides. We have many examples where, under the NERC Act duties that it has, we would expect Natural England to stand up and become more engaged in its management and protection, but because it is not designated as part of the SSSI network it seems to step back from taking them as significant parts of our natural fabric across England.

On the question of potential wider objectives, the NERC Act covers pretty much everything reasonably well, so the objectives and the goals are there. The key reasons that we have identified for the problems, issues and failures are mostly related to funding cuts in Natural England's budget; it has less capacity to do and achieve things. It is not just down to funding cuts; there has also been a change in direction as a result of political pressure to become much more focused on promoting growth and economic development, which is good, but there has been less engagement with the process of negotiating a better deal and net gain for nature and development.

**Chris Corrigan:** I would echo many of Mr Trotter's comments. Natural England is working well in partnership and collaboration with others. That aspect of its work is good, such as its "Action for Birds in England", which has delivered real benefits. Cirl buntings in south-west England have directly benefited as a result of that programme. Those positive, collaborative areas of work are good and strong.

On the things that Natural England is struggling with, Natural England staff have the skills and the experience, albeit from a different perspective, that many in our sector have, so they are not different types of individuals. I observe, and our experience is, that the resource cuts that Mr Trotter alluded to have been the real issue that has hampered Natural England. There are surveys, such as the SCARABBS surveys, which unfortunately Natural England has been unable to contribute to because of some of the resource cuts, which is impacting on its capability.

The other aspect is the move away from regulation that they have signalled. That is certainly a fear on our side. One of the important things for us is Natural England's regulatory role. It is the only organisation that can perform that role. We cannot do it. That, in essence, is where Natural England is perhaps struggling.

**The Chairman:** Would you have made these comments a few years back before the resource cuts were made? In other words, was it a good organisation in 2011, doing all the things that you have been saying are where the weaknesses lie?

**Chris Corrigan:** One example of that collaborative and partnership working is the Nature Improvement Areas programme, which was a good programme that ran for three years and generated some good collaborative partnerships in places such as the South Downs. We saw real

benefits from different individuals coming together. That programme, unfortunately, has come to an end. The SCARABBS surveys are another area where it has not had the necessary resources to participate. The intent is there, but the difference with the organisation now is that it does not have the resource or the capability to deliver it. The regulatory signals that we have seen have only emerged in its recent strategy, and Conservation 21 is where that signal is.

**The Chairman:** You seem to be indicating that it is all to do with resources, basically.

**Chris Corrigan:** There are two things; one is in large part to do with resource, but there is also this move away from regulation, and behind that comes things such as its need to take economic activities into account.

Q80 **Lord Faulkner of Worcester:** Would you say, therefore, that there is an inherent contradiction between its role as a regulator and as a body that works with others to promote major conservation? If so, is there any way in which the conflict can be reconciled?

**Stephen Trotter:** I do not think there is necessarily a contradiction in those two roles. It depends on how Natural England approaches them. They can go well together and there are many things that good regulators can do. Clearly, being proactive, building relationships and collaborative working has to be the preferable way of working and approach. Carrots will only work if you also have sticks and regulation. In order to build a reputation and the respect among partners that an organisation needs to be a good regulator, you need to have both. You need to be prepared to have proportionate and appropriate regulation and the sticks, but you also need to work with the carrots and to work collaboratively on the big vision stuff and in helping people to find solutions. Natural England has a critical role to play in helping to facilitate and catalyse better ways of doing things. For us, conservation is not about saying no and it is not about no change, as none of us can stop change from taking place; it is about identifying the things that we need to look after and take with us into the future and to challenge everybody to find the best solutions for both nature and development.

**Chris Corrigan:** An example of where you can combine the two is, in my experience, the Environment Agency, which does this. The Environment Agency takes enforcement action. It is a regulator, particularly when it comes to the water environment, but it will also work in partnership in a collaborative way. I have sat on Environment Agency committees and seen how it has worked with anglers, for example, to get disabled fishermen out on to rivers, so it can do that positive stuff. It has done positive habitat work with us and local communities, but it can and does take enforcement action when needed.

**Lord Faulkner of Worcester:** What about the discretionary advice service for developers? If it is being starved of national funds, will there not be a temptation for it to concentrate on being a planning consultant rather than a regulator?

**Chris Corrigan:** At the moment, because of the way it is approaching it, that discretionary advice service is about recouping, and I can understand that in the current climate it needs to go down that route. There is some move, as its grant in aid falls away further, towards looking for more innovative ways of generating income. If you start moving towards generating more innovative ways of raising income, you can lose mission; you can follow the money rather than your purpose. In the voluntary sector, that is a risk that we are acutely aware of; you can see pots of money, which provide opportunities to do things and recoup some core costs but are not necessarily the things that you were primarily set up to do. That is probably more of a risk for the future than a real issue at the moment. There are issues with the advice service, but at the moment that planning consultant issue is not necessarily one.

**Lord Cavendish of Furness:** I have to say that I read your written evidence as pursuing non-compliance, enforcement and punishment rather than collaboration. I have always remembered the Wildlife Trusts being on the side of people who want to collaborate rather more than your organisation. Do you think that level of enforcement, punishment and chasing the malefactor is possibly too exaggerated in this balance that you are trying to strike?

**Chris Corrigan:** No, because it is the ability and the preparedness to use that regulatory stick. For us, an independent regulator is an important part of the conservation toolkit. We know, for example, that biodiversity is in decline, and one thing for sure is that biodiversity is not declining because there has been too much regulation. That has not been an issue. Of course, we want that collaboration, and as we have described there are many examples of the positive working, but you have to have the stick to back that up when that approach fails.

**Baroness Byford:** I apologise to the Committee. I went to get the written evidence, which I left on my desk, because I would like to follow up on that. In your written evidence, one gets the feeling that Natural England is not able to do what it was set up to do, and your comments reflected that. Looking forward rather than where we are now, and reflecting on the Act as it is, do you think that the regulatory bit should be taken away from the advice that is being given? You mentioned the Environment Agency. If you had a clean bill of health and started from a blank sheet, would you put in what is there now?

**Chris Corrigan:** There are different ways in which you could approach this. You could, as you say, separate the two out so that you have a separate regulatory function, if I have understood that point correctly, or you could enshrine the two together. For us as an organisation, it is not how you assemble those things but the fact that the function is provided. My experience is that you can have the two functions combined in the same organisation, but in future and with Brexit, when we may have to have different institutions, you may find that it is better to set up a separate regulatory body to deal with those regulatory issues. But we need that independent regulatory function somewhere.

**Stephen Trotter:** Of course, the regulatory framework is much broader than just Natural England. There is also the Environment Agency, the Forestry Commission and the Marine Management Organisation, which are all working in environmental regulation. It is a very complicated structure that has evolved rather than been designed.

**The Chairman:** So the phrase is, “We’re from Natural England and we’re here to help, but if you do not do what we say we will punish you”? It may work.

**Stephen Trotter:** Clearly, we need to go about it with some diplomacy, but there are other good examples. The example that we were very impressed by, which Natural England has overseen and delivered, was for an extension of Abberton reservoir in Essex, which has a long list of designations as a European site for birds. Because of the population pressure in the south, the water company was under pressure to increase the capacity of the reservoir, which it did in partnership with Natural England and Essex Wildlife Trust to create a solution. It was very hard work and a challenging process, but in the end an outcome was achieved whereby there was no need to go to public inquiry, there were no objections, and everybody is happy with the result. It was opened by Sir David Attenborough just a year or two ago. It is possible and you can achieve it. It is about negotiating a good deal for everybody, and if you do that you can get win-win solutions.

Q81 **The Earl of Caithness:** As a follow-on on Natural England, both your organisations have expressed concern about Section 108 of the Deregulation Act of 2015. Why should Natural England not take into account the economic situation to increase growth?

**Stephen Trotter:** As I indicated, that is fine, but Natural England’s role is to achieve the objectives of the NERC Act, so it is not necessarily about rolling over and saying that anything is okay but about striking the best possible deal. There are very few situations where there is an absolute red line. There are some very high-profile cases where it is hard to see how development can coexist with the value of a natural environment habitat, for example, but in the vast majority of cases negotiation is possible for seeking the best possible deal. In our view, Natural England’s role should be about striking the best deal within the trade-offs that any individual planning application will involve, so it is about getting the best for the natural environment and working hard to get net gain. It is not about saying, “Yes, any proposal is okay”, but saying, “What is the best way of dealing with this for society, for people, for the environment and for growth?” In that way, we will have more sustainable growth.

**Chris Corrigan:** Natural England’s general purpose is about ensuring that the natural environment is managed, sustained and enhanced for present and future generations. It then refers to sustainable development, which is a good purpose for it. We know that biodiversity is in decline, and the only agency that makes the case for biodiversity in nature conservation is Natural England. Of course, as Mr Trotter says, there are occasions when you can get win-win situations, but, as we know, it will not always be

possible to marry up economic interests and environmental interests. At times, political balances need to be struck and decisions made, but Natural England is the body that should hold true and keep to that nature conversation case, because that is its job, and nobody else does that.

**The Earl of Caithness:** Looking at the current situation for Natural England, what should its budget be? Looking ahead, assuming that the Secretary of State follows your advice, how much more should farmers get than they do under the current CAP arrangements in order to remain viable? Have you done that exercise?

**Chris Corrigan:** Are you asking how much Natural England should get?

**The Earl of Caithness:** Looking at Natural England's duties now, what should be its budget? If you were the Secretary of State, how much would you give it to fulfil its duties to the standard that you would expect?

**Chris Corrigan:** Its budget now is half of what it was in 2010. If I were the Secretary of State and had a magic wand, if it needed that budget in 2010 it would need at least that budget now, but I suspect I will not be given that magic wand.

**Stephen Trotter:** On the wider question of farming and land management, it is vital that we retain the current budget that we have through the CAP. We may need to spend it in different ways, perhaps to enable the wider recovery of nature and sustainability issues, but it is quite critical for land management that we retain the current budget in the future. We appreciate the demands that come from other calls on the taxpayer, such as the NHS and social care, but the natural environment is the basis for our society and we need to invest in it to make sure that it keeps on providing the things that we need from it, whether that is wildlife, food, clean water, flood attenuation, tourism or recreation, which are all critical. UK plc and the devolved countries need to invest in the future if we are not to take our natural environment for granted, and there is a strong case for us spending a lot more. When you look at the problems we have with soils, pollinators and the cleanliness of water, there is a very strong case.

**The Earl of Caithness:** How much more should we spend?

**Stephen Trotter:** There is work going on at the moment, which has not yet been published but is about to be published in the near future, which goes to this very question, so I would not want to prejudge that work. Certainly, if you compare it to the NHS and to other big expenditure items, it is not a great deal of money. We might be talking about £3 billion, £4 billion, £5 billion per year, something of that order, but I cannot be precise about it.

**Chris Corrigan:** I would be very happy to come back to the Committee with more detail, if that would be helpful.

**The Chairman:** Yes, that would be helpful. Thank you.

**Q82 The Countess of Mar:** We have heard a lot of evidence that when planning proposals are sent to Natural England it tends to exercise a tick-box mentality, mainly because it does not have the feet on the ground or the local knowledge that is required. Are you finding that this is so?

**Stephen Trotter:** Yes, we do experience that issue. Natural England is focusing its interventions on planning around particularly protected sites and European protected species. Even though beyond that there may be some very important habitats or species, particularly locally and sometimes even nationally, it tends not to get involved because it does not have the capacity to do so, which can create problems. We respond to large numbers of planning applications a year across the country and regularly encounter the problem of Natural England submitting no comment to applications, which is interpreted by the planning authority and by its elders as being fine when it is not necessarily so. That has been an issue, and we would be very keen for Natural England to admit that it does not have the resources to engage properly in those cases and to say, "There is a bigger picture and you need to look to local and community organisations and individuals to give you the advice because we can't".

**Lord Cavendish of Furness:** Mr Trotter, you talked about the need for investment by public bodies in nature. Would you accept that an alternative to public bodies investing is for the land managers to invest? Is there not a case for helping them to make a framework under which they invest more?

**Stephen Trotter:** Yes, I agree absolutely, as do a lot of my managers. Certainly, the RSPB and the Wildlife Trusts are significant land managers, and we invest hugely in our places and sites. Yes, we have to help farmers, landowners and farm managers to invest in their own sites. I know that you have spoken to Dieter Helm of the Natural Capital Committee, and we need to explore some of the ideas which that committee has produced on how we can find new income streams for land management.

**Q83 The Countess of Mar:** This question is primarily for Mr Trotter. Both the Wildlife Trusts and Natural England have recommended that Natural England should be empowered to enter into "conservation covenants". What are these and what positive impact could they have?

**Stephen Trotter:** Conservation covenants are a development of the current covenants that any landowner with an interest in an adjacent holding can take out on some land which they sell or pass on. It is a legal document that would go with the title of land, and would be specifically about making sure that the conservation interests of that land were protected and looked after. One of the key issues at the moment is that you have to have adjacent land or the land benefiting from the covenant needs to be part of the legal process of establishing the covenant, so a separate organisation, apart from the Natural Trust on landscape grounds, is unable to have a long-term, in perpetuity monitoring role in that piece of land once it is disposed of or sold or passed on. Therefore, covenants will not solve all of nature conservation's problems, but they are a useful tool in the armoury of Natural England and other bodies to establish long-

term ongoing management of a site that is important for wildlife, if it starts off with recognising that that site is important.

I talked about local wildlife sites earlier, but they have no legal protection, except as material considerations in the planning process. These would give a landowner who loves their local wildlife site, as many of them do, the opportunity to say, "As a legacy, this site can be looked after for the common good or for private good, but the wildlife in trust will be looked after in perpetuity", once they have moved on. The covenant could rest with a public body, a local authority or a local conservation organisation that is approved. It is a way of securing the interests and wishes of a landowner when they leave. I have been involved in several. I was the chief exec of the Warwickshire Wildlife Trust, and we had several individuals approach us with land that they loved and cherished and wanted to look after and be secure in the knowledge that it was going to be looked after. We had problems in finding a mechanism to give them the security that their land will be looked after. This is one way of doing it. As I say, it will not solve everything, but it is useful.

**The Countess of Mar:** That is helpful. Do you trust that Natural England would have the will and the resources to enforce covenants, if granted?

**Stephen Trotter:** It depends who the covenant is with. If it were with a local authority or an NGO locally, the responsibility of monitoring would fall on whoever is holding the covenant, so it would not necessarily be Natural England, but there are circumstances. For example, if public money has been invested in a site to restore it or to look after it, it would only seem right that the public could be assured that their investment was going to be looked after in perpetuity.

**The Countess of Mar:** Do you think Natural England has the will and the money?

**Stephen Trotter:** That is a question for Natural England, but clearly it is under significant pressure. I would hope that it could. If it were set up right it could share it so that others might do it on their behalf.

**The Chairman:** It is more likely to be a listing of a building, is it not, where the local authority gets involved?

**Stephen Trotter:** The thing to stress is that it is an agreement that is entered into voluntarily by the landowner rather than anything that is imposed, and it can be set up in a way that is flexible so that it can respond and adapt to changing needs.

**Baroness Byford:** I would like to ask both of you whether you think there is a halfway house between Lady Mar's questioning of you on long-term legacy and the way in which the NFU and several farmers are coming together with cluster farms to help promote for the benefit of wildlife particularly, which you are both so interested in. This, surely, is yet another way in which Natural England might help to support such a scheme that gives valleys or areas joined together than individual farms spaced out over

different areas. I would be grateful for your comments.

**Chris Corrigan:** Again, it is an excellent idea. If you think about the whole principle of landscapes, scale and conservation, it is the right thing to do. Very often it is farmers working with farmers where you can get many of the benefits. If Natural England is able to play that enabling or facilitative role, and there have been small pots of funding available to set these things up, you can get some real value. They are not—and I do not think it was suggested that they are—an alternative to covenants, but working with landowners is a different way of achieving outcomes for nature, which has to be a good thing.

**Stephen Trotter:** We would support the principle of farm clusters, and we see some emerging around the country which work very well. The principle is a great one. For far too long, agencies, government and to some extent NGOs have been too prescriptive in telling farmers and landowners what they should be doing, so the principle of farmers being set a problem by society and solving it is great, because in my experience farmers are incredibly creative and inventive if you give them the encouragement and the funding goes with that. In the future, post the CAP, if land management payments are linked to clear objectives that we need farmers to deliver, whether that is pollinators, trees or soil restoration, it is incredibly powerful to say, "Right, that's the goal. You work out how you deliver it". It could be really effective.

**Chris Corrigan:** The approaches can be very different and may be different from the way we would do things, but you will get more biodiversity. A good example in Sussex might be Charlie Burrell's Knepp estate. He is taking a rewilding approach that is producing great benefits for biodiversity. Not far away on the South Downs you have a much more conventionally farmed approach by the Duke of Norfolk to generate a great partridge shoot, but again he is generating fantastic value for wildlife. It is a different value and they are going about it in different ways, but both are good examples of where you can get real wildlife benefits from working with landowners.

Q84 **Baroness Scott of Needham Market:** In a couple of replies, you have referred to the fact that biodiversity is declining, so that assumes that we are counting it and we know what we have. I have been very struck by the concerns that have been raised with us about Natural England's decision to end its link with the local environmental record centres. I wonder if you could explain how you see it being possible to maintain the same standards so that you can say with surety that something is in decline or not. Rather than focusing on whether it was a terrible decision, are there some mitigations that could be made, or does it have to rethink it?

**Chris Corrigan:** Mr Trotter can probably talk about the record centres. If you look at the *State of Nature* report in 2016, for which about 50 organisations came together, you can see that a lot of the monitoring is done by organisations other than Natural England, for example bird and butterfly monitoring. The challenge comes with the access to some of that



information and other survey information that is done through the record centre. The Wildlife Trusts have more experience of the record centre work.

**Stephen Trotter:** The big-picture issue is that all the decisions that we take in conservation and the natural environment are based on information and data, and we need good data, which is the point you make in your question. Traditionally, the vast majority of the data that we have in the UK has come from the efforts of volunteer recorders, who are people who go out on the weekend and record whatever it might be from very obscure species groups right the way through to relatively common and obvious things, such as birds, beetles, spiders and plants. The base of the conservation pyramid is reliant on the efforts of these volunteers. Volunteer data has been fed into local environmental record centres and into public policy-making, so breaking that link is a key concern for us, because it means that in the future certainly some short-term decisions and some medium to long-term decisions could be less well-informed with precise information, so the quality of decision-making could be at risk in the future.

**Baroness Scott of Needham Market:** You will have to help me, because I am trying to understand whether the problem is that the breaking of this relationship means that there is less funding so that the research will not take place. We all know that even with volunteers you need some infrastructure. Is it because the funding is not available locally or because the mechanisms for sharing the data have changed if there is not a contractual relationship?

**Stephen Trotter:** It is a bit of both and it is about the relationships. Clearly, most of these record centres run on a shoestring, so their business model is quite tricky and they need all the income they can get. That said, it is not really the lack of funding from Natural England that has caused the real concern but the breaking of the volunteer flow of information that is the bigger issue. The centres collate, bring together and interpret the data that the volunteers produce so that it is in a usable format, which is the key area where, without the validation that those groups can bring, the quality of the data going forward is at risk. Certainly it feels, through the 11 or so LERCs that we are involved in, as though Natural England has snubbed the volunteers and is not interested in this data and that it is moving on to the internet of things, new technology and IT, which is fantastic. We are not Luddites, and it is exciting and important for the future, but we still need that basic flow of information about species and habitats, because you cannot, at least currently, get that from remote sensing or any other way. We need to work together to find new business models and ways of getting the best possible data to inform conservation decision-making. The fear is that the disruption has been such that flow of information and the willingness to find better solutions are not quite as good as we would like, so we are very focused on trying to bring some of the centres together with Natural England to find a better way forward, and we are still hopeful that that can be achieved.

**Baroness Scott of Needham Market:** If some of your worst fears are

recognised and this new open sourcing is not producing the results that in your mind lead to properly informed decisions by Natural England, what sort of redress do you have under current governance systems if you think that Natural England is making decisions on the basis of either erroneous or partial information?

**Chris Corrigan:** The only redress that we have at the moment is things like judicial review, depending on how significant the issue is. We would have no redress otherwise. Natural England has a science advisory committee, about which I know a little, but that group could be one way of helping Natural England with things like data and monitoring, and I hope it will.

**Stephen Trotter:** Obviously, judicial review is a potential down the line, but there are many things that you would want to try to do before you got to that stage, and that would happen only in extreme cases. We have spent a lot of time working to highlight some of the discrepancies and inconsistencies in decisions that might be apparent, so we try to provide the information and highlight it in decision-making as and when it goes on. For example, in the targeting of stewardship a year or two ago, national datasets were used that did not use local data. We had some very bizarre recommendations about what should be done with certain local wildlife sites, such as important grasslands being recommended for tree planting. The most bizarre example I remember was a proposal for tree planting on the top of Helvellyn, which might be appropriate in the long term with rewilding, but not given the rock and lack of soil that is there at the moment. The national datasets are important, but they need to be informed from local data. It is about finding a way of matching the two.

Q85 **Baroness Byford:** Both your written statements, for which I thank you—they were very full statements and it was good to have so many answers to the questions we posed—were about the decline in biodiversity, and you have both highlighted the duty as weak. Are there any specific areas of weakness that you would like to raise with the Committee?

**Stephen Trotter:** In terms of the biodiversity duty?

**Baroness Byford:** The decline under the biodiversity duty.

**Stephen Trotter:** In terms of the duty on all public authorities, our view is that it is a weak duty. It is quite hard to assess how many local authorities, for example, are conscious of their duty or are actively pursuing it, but we suspect that it is largely seen as being weak and put to one side in respect of other decisions that local authorities have to take. We would be very keen to see a tightening of the words used in the legislation to make it more effective, and in Wales and Scotland some of that has happened in their own legislation. It would be good to see the wording tightened. The weakness of the duty and how easily it is sidestepped reveals that we probably need more visionary and ambitious legislation for the natural environment than we currently have. We need to make sure that decision-makers at all levels in government, whether national Governments, departments or at the local level, are taking into

account the value of nature in their decision-making. We have to deliver the net gain for wildlife that the Government have outlined in their policies, saying, “We are very supportive of the ambition to leave the natural environment in a better state than we found it”, but it has to become a statutory proactive duty that local authorities have to deliver.

**Baroness Byford:** Mr Corrigan, do you think that local authorities do not understand or appreciate or that there is not enough money for them to be able to do what they are supposed to be doing?

**Chris Corrigan:** That is part of the key. We would look at the duty and say that, yes, it is weak. You could make the wording stronger, and the Welsh and Scottish examples are good examples of that. I would say that is necessary but not enough. Buglife took a legal case on the West Thurrock Marshes against the developer, who had taken a decision. Their challenge was that the developer had not taken account of this duty. One of the comments of the judge in the case was that this is a very weak duty and Buglife’s case failed, which is probably indicative of that weakness.

On the question of the local authorities and other public bodies, looking at local authorities in particular, some of their challenges are the capabilities and understanding. Some of that comes from their own budget cuts, which mean that they do not have the in-house expertise to advise them on some of these ecological matters. It is not that they are wilfully not taking account of it; it is, as you say, that they do not know or do not have the capability. Our view is that you need to strengthen the wording. You would also need to ensure that the local authorities have the capabilities. That includes looking at the mechanisms for how you report against the biodiversity duty and the financial incentives or penalties—mechanisms—that you can put in place to enable this to be used. It has the potential to be another very powerful tool in the toolkit to arrest some of the biodiversity decline we are seeing.

**Lord Cavendish of Furness:** Before we leave that, for the sake of clarity is there any hard evidence yet that the stronger wording as applied to Scotland and Wales is having an effect?

**Chris Corrigan:** My understanding is that it is limited at the moment. That probably reflects the other point that the wording in itself is necessary but is not enough if you do not have the capabilities and knowledge to deliver it.

Q86 **Lord Cavendish of Furness:** How might it be possible to raise awareness, unless or until you get a stronger duty, of the biodiversity duty and its importance across the public sector more broadly?

**Stephen Trotter:** In the interim, until there is any strengthening, it is about encouraging Natural England and all those with an interest in the natural environment to remind local authorities and others of their duties at every opportunity, which we certainly try to do. Defra produced some guidance in 2007, which I think was withdrawn in 2015, which helped. Defra had been advocating that each local authority should have a

biodiversity ambassador, for example. I am not sure to what extent that has been adopted; to very little extent, I think. We could go back to some of those very good ideas about how we ratchet up the level of awareness and enthusiasm.

**Lord Cavendish of Furness:** There is nothing to stop you two pointing it out, is there?

**Stephen Trotter:** No, absolutely, and we do, constantly.

**Chris Corrigan:** That policy and guidance point is a really good one. I do not know why that was later withdrawn. That is the sort of thing that would be very helpful. If I was in a local authority, I would see my resources and expertise cut in the form of my ecologists. Of course, in the statutory sector, people such as Natural England are also undergoing cuts, so there are fewer available resources for the advice and expertise that they need and in many cases, I am sure, want.

Q87 **Baroness Whitaker:** Your evidence gives some indication of your approach to when we leave the jurisdiction of the European Court of Justice. Mr Corrigan says that further action should be taken, and Mr Trotter would like a framework environment Act. I would be interested if you could both flesh these out. For instance, what body would enforce any legislation that we have, and what kinds of sanctions? You have both touched on the kind of regime that you would like to see, but can we have the full utopian picture?

**Chris Corrigan:** Goodness me. Some things are clear post Brexit and a lot of things are not. Two things are clear. It is about much more than just the ECJ. That is one dimension of the governance that we will need to address post Brexit. At the moment, if you look at what we have in place, we see and our analysis suggests that there will be a governance gap post Brexit if we do not do anything. There are existing mechanisms which will be lost. We have talked about judicial review, for example, which clearly has a role in some post-Brexit matters, but judicial review in itself is limited in scope. Generally—and you probably know this much more than I—it tends to focus on due process, for example. That constrains how valuable it is. It does have a role but, again, it is not enough. You need to look at what the institution will be. How will we reflect what we currently have at a European level in the UK and with the devolved countries? The latter is an added complication. England certainly needs some mechanism, some institution, that can do some or all of the things that we see coming from Europe at the moment.

**Baroness Whitaker:** Are you talking about an independent, arm's-length body that would nevertheless have powers of sanction and prosecution?

**Chris Corrigan:** It would have to be independent. That is self-evident. If you think about some of the functions that we have, clearly there is an ECJ function. How would we reflect that? What would that look like, coming down? Equally, there are things like the overseer of governance. At the moment, the Commission performs a role in overseeing how directives, for

example, are being applied. What will the mechanism be for that? We will need something that can perform that type of role.

**The Chairman:** Are we talking about a new organisation, or are we talking about an enhanced Natural England/Environment Agency? How do you see this?

**Chris Corrigan:** You could go about it either way. To an extent, the scale of the change seems very significant. Whether you can do it by evolving what you have now I do not know. Clearly, those will be the two options. Do we set something new or do we evolve and grow what we have at the moment? The thing we would always say is that there are existing functions which need to be replicated somehow. We need to make sure we have those arrangements in place. We will not be saying, "And here is the model that is needed".

**Baroness Whitaker:** Mr Trotter, how about your framework environment Act? How is that going to work?

**Stephen Trotter:** From our perspective, an independent, impartial, adequately-resourced monitoring and enforcement authority is needed to undertake this role. We must not forget that while the European Commission has not been perfect, it has been vital in safeguarding some European standards and approaches that we have in the UK. To add to what Mr Corrigan said, there are gaps in our administrative capability at the moment. As well as the lack of an independent watchdog, the UK is also subject to a wide range of reporting obligations to the Commission, which we need to replace so that we can assess progress and analyse how we are performing on the environment. It is unclear how the UK would still participate in such reporting when we leave the European Union.

The other issue is that currently European policy provides continuity across parliamentary cycles in the UK. If Government are challenged, they could simply avoid some of the requirements of international legislation by changing UK legislation. We need to find some mechanism for having continuity across five-year parliamentary terms and having longer-term stability for the environment. The key elements are that there has to be transparency around this, there has to be an independent monitoring and enforcement mechanism, and we need access to justice for individuals and other organisations. There are key concerns not only about the breadth but about the cost.

**Baroness Whitaker:** Are you suggesting that we would need a new body to enforce legislation?

**Stephen Trotter:** Yes, I think so.

**Baroness Whitaker:** Do you think we have the right range of sanctions now? Do you think we could have better ones?

**Stephen Trotter:** We can have better ones. There is a need for a powerful, independent, science-led body; something along the lines of an office for environmental responsibility, perhaps, or something akin to the climate

change committee. Perhaps a natural capital committee could perform this function, which essentially helps government to set targets and keep to them, and to take effective action at all levels.

On the wider question about what we would like to see, we think there is an absolute need for a bold and visionary new piece of legislation that provides the drivers for the recovery of nature in our country. We have to restore the natural environment. There is the massive issue of loss of biodiversity and the things that our environment provides. As we leave the European Union we need an ambitious piece of legislation that provides that drive and the mechanisms to make recovery a possibility. That has to speak to the UK's place in the world. It has to link into international agreements that we are still signed up to, even though we are leaving Europe. In our view it has to be expressed spatially and locally. In our terms, we need to have mapped plans at a local level that show where we need our green infrastructure and habitats in the future, and where we can restore the natural environment.

We have not talked about it this morning, but there is a massive need to reconnect society with the natural environment. People, particularly in urban areas, have lost touch with nature. We need to put that back. People need to understand where their food comes from. They need to understand what wildlife does for them and the role that it plays in their lives. It needs to cover ambitions for air, water, chemicals and pesticides across the board, because as we leave Europe we will lose a lot of those things. We need this high-level framework legislation that puts the drivers and mechanisms in place to recover our natural environment and, importantly, help us to get over the issue of five-year parliamentary cycles. We need cross-party, long-term ambition that provides a driver for departments to work together in delivering consistent policy and the natural environment.

**Lord Cavendish of Furness:** Is there a suggestion here that because so much environmental legislation has come from Europe, much of it very good indeed, our courts would not be capable of handling it once we have repatriated?

**Chris Corrigan:** That is correct, because the judicial review process is much narrower than it may be in the ECJ, for example. I do not know what the mechanism will be, but they are the functions and there are differences that we need to bring down. For example, we risk losing the precautionary principle as we move to a post-Brexit age. There is a whole raft of things like that. In all my career in nature conservation, the European directives and some the regulations that stem from those have been some of the most important tools in the conservation toolbox for protecting wildlife, and we need to make sure that we can transpose those effectively. Something that has the kind of remit and capabilities of the ECJ has to be part of that post-Brexit arrangement.

Q88 **Viscount Chandos:** You talked about governance post Brexit and you flagged some of the issues that concern you. How concerned are you about the vulnerability of key environmental protections, and what other examples would you give?

**Stephen Trotter:** The first issue is making sure that we bring the existing environmental legislation across from Europe, and that we do that to the spirit of that legislation. We welcome the Government's commitment to leaving the environment in a better state than we found it. The withdrawal Bill has to be the first step in achieving that. The key is that we transfer it properly. Everybody accepts that a number of technical amendments are required, but anything of substance or of a non-technical nature needs to have proper scrutiny so that we do not, inadvertently or deliberately, lose elements of the environmental protections that have stood us in such good stead for several decades.

**Chris Corrigan:** There are perhaps three areas where there is risk. The first one is making sure that the principles enshrined in European legislation are transposed. That includes things like the polluter pays and the precautionary principle. They are, at the moment, at risk of being lost. That is the first area.

The second area is that the withdrawal Bill is framed in a way that gives the Executive wide powers to make some changes when it lands on day one of a post-Brexit world. It will be important to make sure that the only changes made are those that are necessary to keep the legislation alive and viable, and that those powers are not abused to make wider-ranging changes.

The final area where I think there is a risk is if the environmental legislation is transposed via secondary legislation rather than primary legislation. That, again, makes it easier to change some of the environmental legislation without, perhaps, the same sort of scrutiny and rigour as there would be if it was primary legislation. That is one of the areas where, post Brexit, we would like to see environmental regulations properly enshrined in primary legislation.

**The Chairman:** Thank you both very much. You have done over an hour's work here this morning. Thank you very much for that very good evidence session.

## **Royal Society for the Protection of Birds (RSPB) – written evidence (NER0051)**

### **Introduction**

1. The RSPB is the largest nature conservation charity in the UK. Our mission is to promote the conservation of nature and the natural environment and to that end we manage 214 nature reserves covering 152,791 hectares (377,546 acres).
2. In line with our expertise and charitable objects, our response will focus on the questions related to Natural England, sustainability and biodiversity, and the changing context since 2006.

### **Summary**

#### **Natural England**

3. Natural England's (NE) statutory purpose under the Natural Environment and Rural Communities Act ("NERC Act") gives the agency a critical role to play in conserving and enhancing the natural environment (e.g. protecting sites, recovering species and habitats, administering agri-environment schemes and monitoring the state of nature).
4. Since 2006, the state of nature in England has declined, below an already poor baseline. The area of Sites of Special Scientific Interest (SSSI) in favourable condition has fallen and NE has made very limited progress in implementing the recommendations of a National Audit Office report into its role in improving the condition of SSSIs. While NE has, in places, established positive strategic solutions to avoid damage to sensitive ecological areas (e.g. Natura 2000 sites), the RSPB has witnessed a significant weakening in its approach to development proposals and their possible damage to protected sites and species. There has been a substantial increase in the number and extent of protected sites at sea, nonetheless the network is far from complete, and these sites are still not subject to effective management or regular monitoring.
5. Despite the important role NE has provided in securing funding, research and advice for species recovery, it has been unduly reticent to use regulatory powers to address issues such as persecution. The RSPB has long supported the range and quality of monitoring initiatives run by NE. However in recent years NE has had to cancel programmed monitoring work due to a lack of available resources.
6. The key barriers to the effective delivery of NE's critical role, functions and duties have been: significant cuts in their budget, staff and expertise; a loss of independence; political interference; the impacts of the



deregulation agenda; and the imposition of competing duties (e.g. growth duty<sup>191</sup>).

## **Sustainability and Biodiversity**

7. The key 'biodiversity duty' as set out in sections 40 and 41 of the NERC Act is not well understood and has failed to deliver tangible results. The efficacy of this duty has been further eroded by the introduction of the 'growth duty' and measures to incentivise regulators, such as NE to reduce the regulatory burden on business. These new measures inappropriately alter the weight that regulators are required to give to narrowly defined economic considerations and risk undermining the proper exercise of their other statutory functions. We believe these measures should be subject to review.

## **The Changing Context since 2006**

8. The main reasons for the NERC Act and the structures it established were to implement key aspects of the Government's Rural Strategy and address a range of issues relating to the natural environment. The NERC Act was created in the context of the UK's membership of the EU. The UK has long-relied not only on EU law, but also on EU governance arrangements and institutions to secure compliance with, and enforcement of environmental laws. Although arrangements remain unclear, it is likely that 'Brexit' will result in a significant environmental 'governance gap' and require a fundamental review of the roles and responsibilities of all UK environmental regulators and institutions. It is our view that NE does not have the resources, expertise, power, independence or accountability at present, to take on additional responsibilities and fill the 'governance gap'.

## **Detailed Response**

### **Natural England**

#### **Question 4. How well has Natural England fulfilled the mandate that it currently has?**

#### **How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

9. Natural England (NE) was established under the NERC Act, as an independent body with the mandate "*to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*". NE is responsible for the delivery of a vast range of functions including protecting and enhancing biodiversity and landscape, promoting access and recreation whilst promoting social and economic wellbeing. The UK economy depends on natural capital, and a failure to

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<sup>191</sup> Section 108 of the Deregulation Act 2015 please see below for further commentary on this duty

protect this will undermine the country's economic prospects. Therefore a clear focus on conserving and enhancing the natural environment, and ensuring that environmental limits are not exceeded is the best way to ensure NE makes a meaningful contribution to sustainable development.

**10. To secure delivery of NE's duties, functions and requirements the agency needs to be sufficiently resourced, independent, expert and empowered (i.e. to use its powers to regulate, provide advice, take practical action and use incentives).**

Natural England's Key Functions:

Protecting sites

11. Statutory protected sites<sup>192</sup> represent the very best of England's natural heritage on land and sea, and when subject to appropriate management, play a fundamental role in conserving and reversing declines of priority habitats and species. NE has a crucial role to play in designating protected sites and ensuring they are delivered into favourable condition, through the provision of advice and the use of its regulatory powers.

12. In 2008, the National Audit Office<sup>193</sup> (NAO) undertook an analysis of NE's role in improving the condition of Sites of Special Scientific Interest<sup>194</sup> (SSSIs) and made a series of recommendations, most of which have yet to be implemented. The Government has set a two part target<sup>195</sup> for the condition of SSSIs by 2020 (50% favourable and 95% favourable/unfavourable recovering). Since 2006 the area of SSSI in favourable condition has declined by 6.8% from 45.3% to 38.5%<sup>196</sup> and NE's own analysis<sup>197</sup> suggests this target will be missed by between 3.5-10.5%. The area of SSSI in unfavourable recovering condition has also declined below the 95% target<sup>198</sup>.

13. NE has failed to use its enforcement powers to secure compliance where landowners persistently do not secure positive management. The 2008 NAO report concluded that NE had yet to make adequate use of its

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<sup>192</sup> Including nationally important Sites of Special Scientific Interest (SSSIs) and internationally important Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites.

<sup>193</sup> National Audit Office (2008) NE's Role in Improving Sites of Special Scientific Interest, LONDON: The Stationery Office

<sup>194</sup> SSSIs are nationally important wildlife sites notified under the Wildlife and Countryside Act 1981. These sites also underpin the UK's network of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) designated under the EU Birds and Habitats Directives.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf)

<sup>196</sup> Defra (2017). The Extent and Condition of Protected Sites, [online]

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/635184/1\\_Protected\\_Sites\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635184/1_Protected_Sites_2017.pdf)

<sup>197</sup> NE (2014). Analysis of progress and challenges in meeting the Biodiversity 2020 Outcomes 1A and 1B, present on 8 July 2014 to Defra Biodiversity Programme Board (unpublished)

<sup>198</sup> NE (2017) Designated Sites System [ONLINE] 16/08/2017

<https://designatedsites.naturalengland.org.uk/ReportConditionSummary.aspx?SiteType=ALL>

powers. We are concerned that NE’s new strategy “Conservation 21”<sup>199</sup>, signals a further reduction in the use of their regulatory powers in favour of voluntary approaches, which are frequently less effective at delivering results<sup>200</sup>.

14.55.8% of SSSIs have been assessed as being in a ‘recovering’ condition, without a clearly defined and effective mechanism to make this judgement. To date it has been assumed that once a remedy to unfavourable condition has been identified and agreed that a) it is being implemented and b) it is having the desired effect. NE’s present site inspection neither sets milestones for – nor provides any effective means to monitor ecological recovery<sup>201</sup>. This poses unacceptable risks to the SSSIs (and the species and habitats for which they are notified) as it presents an over-optimistic assessment of site condition.

15. We note that in setting SSSI management objectives (e.g. upland management plans), NE are beginning to refer to the delivery of “good” rather than “favourable” condition. Given that good condition has no set definition, this shift could lower the ambition of species and habitat targets across the site network or led to inconsistent standards. **Natural England must uphold robust and consistent standards to secure the sites network in to favourable condition. Terminology must also be consistent for clarity and to avoid confusion.**

16. NE is increasingly seeking to build positive relationships with land managers to encourage the protection of SSSIs, a step which is to be highly commended. However, NE’s **relationships with landowners must be based on a clear focus on the delivery of meaningful biodiversity outcomes.**

#### Marine protected sites

17. The area of UK seas designated for nature has increased by 250% in the last 5 years<sup>202</sup>. We welcome the recent efforts to achieve this significant increase, although we note that there is still an ongoing need to complete the network. Under the Marine and Coastal Access Act 2009 Natural England was made responsible for classifying Marine Conservation Zones (nationally important marine sites). To date 50 sites have been designated within English waters<sup>203</sup>, out of the 127 that were originally

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<sup>199</sup> Nature England (2016) Conservation 21: NE’s conservation strategy for the 21st century, NE [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/562046/conservation-21.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562046/conservation-21.pdf)

<sup>200</sup> McCarthy, D. & Morling, P. (2015). Using Regulation as a Last Resort: Assessing the Performance of Voluntary Approaches. Royal Society for the Protection of Birds: Sandy, Bedfordshire.

<sup>201</sup> National Audit Office (2008) NE’s Role in Improving Sites of Special Scientific Interest, LONDON: The Stationery Office

<sup>202</sup> Defra (2017). Protected Local Sites, [online] [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/635184/1\\_Protected\\_Sites\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635184/1_Protected_Sites_2017.pdf)

<sup>203</sup> JNCC (2017) Marine Conservation Zone, [online] <http://jncc.defra.gov.uk/page-4525>

identified. Defra has been resistant to the inclusion of mobile species (e.g. birds and cetaceans); as such mobile features are having to be considered retrospectively and are not currently protected.

18. We welcome the effort NE has made to develop quantified conservation objectives for marine protected sites and improve the quality of supplementary advice to inform Appropriate Assessments of proposed activities within these sites. We remain concerned however, that marine protected sites are not subject to regular monitoring or effective active management. **NE must quickly and decisively complete the network of marine protected sites and ensure appropriate management and monitoring measures are in place.**

#### NE's role in consenting processes

19. NE has a crucial role in providing expertise on the natural environment to decision making bodies, including providing nature conservation advice to local planning authorities, to ensure that the planning system delivers the country's needs in a sustainable way which does not damage the environment<sup>204</sup>. NE has an increasingly important role in providing advice to both the Marine Management Organisation (MMO) and the Inshore Fisheries and Conservation Authorities (IFCAs) who are responsible for regulating activities at sea (both established under the Marine and Coastal Access Act 2009).

20. NE has, in places, established positive strategic solutions to avoid damage to sensitive areas such as England's Natura 2000 sites; a good example is the crucial role NE played in establishing the Thames Basin Heath Delivery Framework<sup>205</sup>.

21. However, the RSPB has witnessed a significant weakening in NE's approach to casework in recent years, including

- a frequent failure to apply a detailed and robust scientific approach to its advice,
- retraction from its own guidance and policy standards,
- an increasing reluctance to raise objections, and
- a seeming reticence to appear at public inquiries to support those objections that they do submit.

22. We have also experienced a change in our once open and collaborative relationship, finding ourselves and other stakeholders closed out of NE's Discretionary Advice Service discussions with developers during the earliest and most important stages of planning proposals. Previously input

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<sup>204</sup> As was specifically recognised within the NERC Act that NE will work in close partnership with other organisations and bodies that have a major role in relation to the natural environment, in particular the Environment Agency, the Forestry Commission, English Heritage and local authorities including the provision of expert nature conservation advice.

<sup>205</sup> Thames Basin Heaths Joint Strategic Partnership Board (2009). Thames Basin Heaths Special Protection Area Delivery Framework, [https://files.bracknell-forest.gov.uk/sites/bracknell/documents/thames-basin-heaths-spa-delivery-framework.pdf?KADyi\\_MGnYwwLBzm4Ky\\_sEelO2HzCJVK](https://files.bracknell-forest.gov.uk/sites/bracknell/documents/thames-basin-heaths-spa-delivery-framework.pdf?KADyi_MGnYwwLBzm4Ky_sEelO2HzCJVK)

was welcomed to help identify potential problems and identify solutions before applications were finalised and submitted. In 2016/17 NE generated £3.2 million of commercial income from its Discretionary Advice service by charging for its advice, a 40% increase on the previous year<sup>206</sup>. NE has suggested they wish to increase their commercial income to £12 million per year by 2020. Whilst we recognise the desire to supplement reductions in grant in aid funding, paid consultancy work must not be allowed to distract from their core function “*to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*”. **NE must improve their approach to casework; for example applying robust scientific methods, adherence to their own guidance and policy and upholding objections were necessary to ensure sustainable development in line with their statutory purpose.**

#### Improving the status of species

23. NE also plays a fundamental role in providing specialist advice on the needs of species (particularly those listed under section 41 of the NERC Act) and the actions required for their conservation. NE has lead and supported a large range of species recovery projects, including for example the short-haired bumblebee reintroduction project. We particularly commend NEs role in the Action for Birds in England programme (AfBie) which has helped deliver successes such as the recovery of the Cirl Bunting. NE’ has also recently provided an important leadership role in securing £4.6 million from the Heritage Lottery Fund for the “Back from the Brink” initiative. This initiative, which NE are undertaking in partnership with 7 conservation NGOs, aims to prevent the extinction of 20 species (including the Pasque flower and Duke of Burgundy butterfly) whilst furthering the conservation of another 118 species considered to be under threat.

24. It is important to note however that much more effort is required to reverse current trends in species and habitats<sup>207</sup>. Based on the latest Defra statistics many priority species continue to decline and with no signs of recovery. For example, the index of relative abundance of priority species has declined by 18% between 2010 and 2015<sup>208</sup>. NE must also be prepared to use its enforcement powers to protect those species that are being prevented from recovering (even in protected areas) or occupying their natural range due to widespread illegality and poor habitat management. Persecution of raptors remains an issue in England. In

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<sup>206</sup> NE (2017) Natural England Annual Report and Accounts 1 April 2016 to 31 March 2017, [online]

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630001/natural-england-annual-report-accounts-2016-17-print.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630001/natural-england-annual-report-accounts-2016-17-print.pdf)

<sup>207</sup> Hayhow, D. et al. (2016) The State of Nature Report 2016, [online]

[https://www.rspb.org.uk/Images/State%20of%20Nature%20UK%20report\\_%2020%20Sept\\_tcm\\_9-424984.pdf](https://www.rspb.org.uk/Images/State%20of%20Nature%20UK%20report_%2020%20Sept_tcm_9-424984.pdf)

<sup>208</sup> Defra (2017). UK Priority Species, [online]

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/635205/4a\\_Relative\\_abundance\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635205/4a_Relative_abundance_2017.pdf)

2015, 61% of reported incidence of bird of prey persecution in the UK occurred in England<sup>209</sup>. For Hen Harrier, persecution is a very serious issue. The breeding population of Hen Harriers in England has declined from 15 pairs in 2007 (already a much reduced population level) to just four pairs in 2016 (<73%)<sup>210</sup>.

#### Agri-environmental schemes

25. Agri-environment schemes are currently the primary means of delivering the Government's nature conservation objectives, and NE's specialist advice is central to ensuring they fulfil their potential. NE and Defra have invested in developing a sound evidence base to improve the effectiveness and operation of agri-environment schemes<sup>211</sup>.
26. Given this ongoing challenge, **the Government must set out how and when they intend to meet the Conservative manifesto commitment to "...help NE to expand their provision of technical expertise to farmers to deliver environmental improvements..."**<sup>212</sup>. However, given the importance of NE advice it is alarming that they have significantly reduced the number of advisors in recent years, and the state of farmland biodiversity continues to decline. Between 2009 and 2015, the England farmland bird index decreased by 8% and the farmland butterfly index had fallen by 37% since 2005 highlighting the need for increased effort.

#### Monitoring the state of the natural environment

27. NE has a vital and central role in monitoring the state of the natural environment to inform advice, the use of incentives, practical actions, and regulation, in addition to determining progress against Government set targets (e.g. Biodiversity 2020). Poor data availability has implications for every stage of the decision-making process, with uncertainty around evidence requirements and interpretation increasing the risk of delays and higher costs to business.
28. The RSPB has long supported the range and quality of monitoring initiatives run by NE, for example, The National Bat Monitoring Programme and *Statutory Conservation Agencies & RSPB Annual Breeding Birds Scheme (SCARABBS)*. However in recent years NE has cancelled programmed monitoring work due to a lack of available resources. No SCARABBS surveys have been undertaken in 2017, despite the need for

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<sup>209</sup> RSPB (2015) Bird Crime [online]

<http://rspb.maps.arcgis.com/apps/Cascade/index.html?appid=4e5f691ca72048479b94f6fddd92a80d>

<sup>210</sup> Hayhow, D. et al. (2013) The status of the Hen Harrier, *Circus cyaneus*, in the UK and Isle of Man in 2010, *Bird Study*, 4 pp 446-458

<sup>211</sup> Mountford, J.O. & Cooke, A.I. (editors), Amy, S.R., Baker, A., Carey, P.D., Dean, H.J., Kirby, V.G., Nisbet, A., Peyton, J.M., Pywell, R.F., Redhead, J.W. & Smart, S.M. 2013. Monitoring the outcomes of Higher Level Stewardship: Results of a 3-year agreement monitoring programme. Natural England Commissioned Reports, Number 114.

<sup>212</sup> The conservative and unionist party manifesto 2017 [online] <https://s3.eu-west-2.amazonaws.com/manifesto2017/Manifesto2017.pdf>

monitoring data to implement the 2016 SPA Review recommendations<sup>213</sup>. In 2016, the RSPB undertook a national survey of curlew bunting, a species whose recovery is one of the outstanding success stories of agri-environment schemes. The survey was undertaken in partnership, but NE was unable to contribute.

29. Monitoring effort for priority habitats remains poor with NE unable to report on their status. **The gap in monitoring, particularly for habitats needs to be addressed to a) enable an assessment of progress against the delivery of Biodiversity 2020 targets to be made, b) to inform ongoing conservation effort and c) to prevent delay to developments and increased cost for businesses.**

#### Barriers

30. The RSPB has identified a number of barriers to NE performing against its mandate, these are highlighted below

#### Resources

31. As a result of the Government's Spending Review, NE's budget has been cut from £251 million in 2009/10 to £106 million in 2016/17, with a further £30 million of savings to be found by 2020. This has resulted in a reduction in staff (particular experienced staff), reduced budgets for monitoring and research and limited the agency's ability to undertake practical actions (e.g. in the management and staffing of National Nature Reserves, NNRs). The NNR budget has fallen from £2.38 m in 2010/11 to £1.24m in 2016/17, with NE spending an estimated £19 per hectare. Currently 50% of SSSI managed by Natural England is in favourable condition, compared with 58% of SSSI managed by the RSPB in England.

#### Independence / Political interference

32. NE was intended to be an independent champion for wildlife; however the structures under which it was established restrict its independence. The agency is reliant on government for its funding and reports to government rather than parliament, this already raises the potential for NE to be influenced by political priorities. On top of that, there is evidence of political interference in even low level decision-making. For example, NE consented the application of fertiliser on Bentley Grange an areas of semi-natural grassland, just after they had undertaken an emergency SSSI notification of the site to protect it from just such activity. The SSSI is now recorded as being in an unfavourable declining state and NE had since had to take steps to modify the consent.

#### Deregulation

33. Changes since 2006 have eroded NE's independence, in particular, government initiatives to reduce the cost of regulatory burden with

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<sup>213</sup> Stroud, D.A., Bainbridge, I.P., Maddock, A., Anthony, S., Baker, H., Buxton, N., Chambers, D., Enlander, I., Hearn, R.D., Jennings, K.R., Mavor, R., Whitehead, S. & Wilson, J.D. - on behalf of the UK SPA & Ramsar Scientific Working Group (eds.) 2016. The status of UK SPAs in the 2000s: the Third Network Review. [c.1,108] pp. JNCC, Peterborough.

deregulation targets<sup>214</sup>. From an environmental perspective, this has been extremely concerning given numerous reviews<sup>215</sup> have demonstrated the vital role that regulations play in underpinning effective nature conservation and delivering sustainable development in harmony with nature, without placing unnecessary costs on business<sup>216</sup>.

34. An NAO inquiry in 2016<sup>217</sup> concluded that the pressure on departments and regulators to minimise narrowly defined business costs in line with such targets was leading to trade-offs with their other policy objectives. The inquiry found that the wider social and environmental impacts of such efforts were consistently being overlooked and that regulators were concerned about the resource implications and the impacts on their independence.
35. As well as the use of overarching deregulation targets, a range of other initiatives have been introduced in recent years with the aim of incentivising regulators to place greater a much focus on minimising the costs to business associated with their regulatory activities. For example, section 108 of the Deregulation Act 2015 introduced a duty on regulators to *"have regard to the desirability of promoting economic growth"* in exercising their regulatory functions. This was described in 2014 by the then Business Minister as being about *"getting regulators to put growth first"*.<sup>218</sup> Although regulators still have to comply with their other statutory duties, the 'growth duty' nevertheless has the potential to undermine the proper exercise of their other regulatory duties by having an overriding effect in certain circumstances. In particular, it risks putting disproportionate pressure on regulators to take into account economic considerations in situations where to do so would not be appropriate or in keeping with their primary statutory duties.
36. This duty has been introduced at the same time as a revised regulators' code of practice under Section 22 of the Legislative and Regulatory Reform Act 2006. One of the arguments used by the then Government in favour of the introducing a revised code in 2013 was the finding from the post-implementation review of the old code that *"regulators consistently see their role as primarily to protect consumers, citizens, and the environment"* with supporting economic growth sometimes *"seen as a*

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<sup>214</sup> Business, Skills and Innovation (2016) Business Impact Target: First Annual Report 2015-2016 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/530683/bis-16-182-bit-annual-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530683/bis-16-182-bit-annual-report.pdf)

<sup>215</sup> Defra (2010) Report of the habitats and wild birds directives implementation review, Defra [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>216</sup> Defra (2015) Emerging Findings from Defra's Regulation Assessment First update covering 2012, Defra [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406225/defra-regulation-assessment-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406225/defra-regulation-assessment-2015.pdf)

<sup>217</sup> NAO (2016) The Business Impact Target: cutting the cost of regulation, [online] <https://www.nao.org.uk/wp-content/uploads/2016/06/The-Business-Impact-Target-cutting-the-cost-of-regulation.pdf>

<sup>218</sup> Department for Business, Innovation & Skills. (2014, 27 January). [\*3,000 regulations to be reformed or slashed\*](#). Press Release.



*secondary function*".<sup>219</sup> We would argue that in many cases, the protection of consumers, citizens, and the environment is the primary role of regulators.

37. The clearest indication of these initiatives impacting on NE has been the "Outcomes Approach" which according to CEO James Cross, is about achieving "*the best outcomes for everybody, at the right pace*" ... "*radically reducing the need for regulation*". The RSPB has raised concerns that NE are using the Outcomes Approach for expediency rather than delivering the outcomes nature needs. This is an issue first raised publically by Mary Creagh MP<sup>220</sup>, speaking at a committee hearing of the Enterprise bill in 2016; she said "*there will often be situations where the objectives of businesses will conflict with the proper exercise of Natural England's regulatory functions and its statutory purpose.*" Under the NERC Act Natural England is already obliged to consider (or have regard to) sustainable development in carrying out its statutory duties, and that it's most meaningful contribution to sustainable development is the protection, enhancement and management of the natural environment.  
**We feel that it is inappropriate for Natural England to have economic objectives, as primary objectives.**

**Question 5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

38. Robust, independent and expert institutions are of vital importance to ensure effect implementation of legislation. At present, the European Union (EU) and its institutions play a critical role in ensuring effective and robust implementation of UK environmental legislation (including the production of guidance, coordinating monitoring and reporting, oversight as well as ensuring compliance with and implementation of environmental law). The precise future role of the EU and its institutions will depend on the outcome of the exit negotiations; however it is likely that the UK will have to replace key oversight functions with new domestic arrangements. Therefore, there is potential for the remit and responsibilities of Natural England to change, to replace existing governance mechanisms currently provided by the EU institutions to prevent a 'governance gap'<sup>221</sup>.
39. We are concerned at the UK Governments repeated statement that relying on existing domestic institutions, parliamentary process and our domestic court system, will be sufficient in the absence of those to replace the functions currently provided by our membership of the EU. It is our view that this fails to recognise the breadth of functions that the EU institutions perform and the ability (and appropriateness) of domestic institutions including Natural England to take these on.

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<sup>219</sup> <https://www.gov.uk/government/consultations/non-economic-regulators-duty-to-have-regard-to-growth>

<sup>220</sup> **Session 2015-16** [Publications on the internet](#) [Enterprise Bill \[Lords\]](#)

<sup>221</sup> Greener UK (2017). The governance gap: why Brexit could weaken environmental protections, Greener UK [http://greeneruk.org/resources/Greener\\_UK\\_Governance\\_Gap.pdf](http://greeneruk.org/resources/Greener_UK_Governance_Gap.pdf)

40. NE already plays an important role in relation to some of these tasks. However it is our view that NE and other domestic institutions do not have the resources, expertise, power or independence needed to effectively take on additional functions. NE has been significantly eroded in terms of resource, expertise, powers and independence in recent years as mentioned above. In its current form, we have concerns about the ability of the agency to take on additional responsibilities or remit, in particular as they may be outside of the scope of the agency as it is currently set up. More fundamentally, NE needs to be accountable for its actions, at present, as a regulator of various laws, there is a risk that NE could end up as both policeman and judge of its activities and powers. initiatives such as the 'growth duty' and the extension of the business impact (deregulation) target to cover the activities of such regulators risk having a cumulatively undermining influence on their independence and their ability to effectively discharge their statutory duties. **Additional safeguards are urgently required to prevent conflict between the two duties.**
41. Ultimately, there is a need for independent and transparent institutions to stand up for the health and well-being of people and nature and to support the vital role that citizens and public interest organisations have in environmental decision making and environmental protection.
42. At present, we are reliant on EU institutions and processes to achieve this, and the ability of citizens and public interest organisations to challenge implementation or breaches of environmental legislation is vital. For example, for a number of years, the UK authorities have allowed the damaging practice of burning blanket bogs within English SACs, without the appropriate assessment required by the Habitats Directive. The European Commission is now taking steps to require appropriate action by UK authorities to address this issue<sup>222</sup>, following a complaint made initially by the RSPB.
43. The UK government has recently asserted that Judicial Review can adequately provide the sole mechanism for civil society to challenge the application of environmental legislation post-Brexit<sup>223</sup>. However, this misunderstands both the breadth of functions currently performed by EU institutions and the limitations of judicial review. A judicial review into blanket bog burning could only have considered consent for one site due to the strict time limits, whereas the European Commission is requiring action to be taken across the UK. **The UK must give proper consideration to develop or enhance existing mechanisms to**

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<sup>222</sup> RSPB (2017). Walshaw Moor and Northern England's protected blanket bogs, [online] <https://ww2.rspb.org.uk/our-work/our-positions-and-casework/casework/cases/walshaw-moor/>

<sup>223</sup> Department for Exiting the European Union, 'The Repeal Bill, Factsheet 8: Environmental protections' p2.

**replace the role the role and oversight of the ECJ, as failure to do so will result in an environmental 'governance gap'.**

**Question 6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

44. NE's work to promote access and public engagement is crucial in helping to connect people with nature. We consider people's growing disconnection with nature as significant threat to its conservation. Enhanced access to the countryside, and clarity of access provision, is important in increasing people's enjoyment of nature.
45. Given the often controversial nature of the programmes it has been charged with, we believe that NE has generally done a sound job in implementing the legislation on the ground, to the extent that most fears and predictions as to the adverse impacts of access have proved groundless. We have also been supportive of the work that NE has done to help find solutions to long standing problems, such as addressing those arising from unrecorded rights of way. NE has also sponsored important programmes which have helped a range of organisations, including the RSPB, to increase engagement of socially excluded communities with nature. These programmes represent excellent value and help to deliver social and subsequent environmental benefits.
46. At present the NE-funded Monitoring of Engagement with the Natural Environment (MENE) survey is under review. We believe the MENE is a critical evidence gathering tool that can be used across the sector and by Government to better understand people's engagement with the natural environment and inform decisions. As the Government is currently working on its 25yr plan for the Natural Environment and as we prepare for the UK to leave the European Union, there must be monitoring and evaluation to assess changes in people's behaviours and relationships with nature. The success of the 25yr Plan in connecting people with nature can only be demonstrated if adequate levels of evaluation and monitoring are in place.
47. We note that following the Marine and Coastal Access Act 2009, Natural England is responsible for establishing a long distance walking trail around the coast of England to improve access and promote engagement. The RSPB has been concerned at the lack of Appropriate Assessments<sup>224</sup> undertaken to determine the potential impact of coastal access on Natura 2000<sup>225</sup> sites and the need for mitigation or compensation. **Steps taken to improving access should complement efforts to conserve and enhance the natural environment.**

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<sup>224</sup> Under article 6(3) of the EU Habitats Directive

<sup>225</sup> Designated under the EU Birds and Habitats Directives

## **Sustainability and Biodiversity**

### **Question 7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

48. In 2010, Entec completed a review of the duty for Defra looking at awareness and impact across a range of Public Authorities in England and Wales.<sup>226</sup> Awareness varied between different types of Public Authorities. Only 43% of Community Councils (Community, Parish and Town Councils) that responded were aware of the duty, the response rate was only 1% for this group and the self-selecting nature of the survey may have biased the response to Councils that were aware. The review recommended that Defra investigated the best way of promoting the duty to Community Councils.
49. The 2011 Natural Environment White Paper<sup>227</sup> included the following reference to the biodiversity duty:  
'We will provide new tools and guidance for key groups of public bodies, including local authorities, to support local action for nature. We will also raise the profile of this duty among parish councils, to address low awareness of the duty within this group.'
50. However, this was not included in the commitments at the end of the white paper and has not been reported on in subsequent updates. Reference to this statement in the NEWP is the sole reference to the duty in the England Biodiversity Strategy.<sup>228</sup>
51. Detailed guidance for Public and Local Authorities was published in 2007 but withdrawn in December 2015.<sup>229</sup> It has not been adequately replaced; guidance on the Government website is now very brief, high level and, in our view, not very helpful.<sup>230</sup> Planning Practice Guidance (which accompanies the National Planning Policy Framework [NPPF]), does reference the duty<sup>231</sup>.
- 52. Further work is required to raise awareness of the duty but even more pressing is the need for a stronger duty with more explicit**

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<sup>226</sup> Entec (2010) CTX0811: Review of the Biodiversity Duty contained in Section 40 of the NERC Act 2006. Final report to DEFRA.

<http://www.biodiversitysouthwest.org.uk/docs/BiodiversityDutyReviewFullReport.pdf>

<sup>227</sup> The Natural Choice: Securing the Value of Nature (2011)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228842/8082.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf)

<sup>228</sup> Biodiversity 2020: A strategy for England's wildlife and ecosystem services. (2011)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf)

<sup>229</sup> <https://www.gov.uk/government/publications/guidance-for-public-authorities-on-implementing-the-biodiversity-duty>

<sup>230</sup> <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>

<sup>231</sup> DCLG (2016) Planning Policy Guidance, [online] <https://www.gov.uk/guidance/natural-environment>

**commitments, proper reporting and, particularly for Local Authorities, more resources for implementation** (see below).

**Question 8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

53. We are not aware of any specific assessment of the impact of the duty since the 2010 Entec review. This review suggested that the duty had limited impact. For example, only 27% of responding Local Authorities (County, District and Borough Councils) reported actions directly as a result of the duty (this included Welsh Local Authorities). Whilst only 11% of responding Community Councils (Community, Parish and Town Councils) reported undertaking projects with the specific aim of conserving or enhancing biodiversity due to the duty. (NB a minority of Councils responded and it is quite possible that the assessment was biased towards those public authorities that had done most to implement the duty).
54. The review highlighted that the duty did provide local authority staff responsible for biodiversity with an opportunity to contact/influence colleagues from other departments and senior staff. It is therefore important, for this reason alone, that the duty is retained.
55. However, the review also highlighted that there were other key drivers for biodiversity conservation in Local Authorities: development control, Local Biodiversity Action Plans and the national BAP targets, and National Indicator 197 on local site condition. It is therefore of considerable concern that most of these drivers have either been significantly weakened (reporting on NI197 is now optional) or are no longer in place (national BAP targets were abandoned after 2010). It is now considerably less clear what is expected of Public Authorities and what we are collectively trying to deliver for biodiversity.
56. The Entec review highlighted lack of money/resources as the key barrier to implementing the duty. Its recommendations included encouragement for Local Authorities to employ sufficient, suitably qualified ecologists to meet their responsibilities under the duty. We are concerned that this vitally important source of expertise has diminished rather than grown since 2010 and implementation of the duty will have suffered as a result. As previously stated a review in 2011<sup>232</sup> showed that only one third of planning authorities in England had access to their own 'in house' ecologist and that these and other biodiversity services were being cut. An average 19% budget cut was reported in 2011/12 and 44% of respondents were expecting to lose at least one member of biodiversity staff during the year. Further reductions in capacity were predicted and

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<sup>232</sup> Oxford M (2011) Implications of the Comprehensive Spending Review on biodiversity work within Local Government. Main Findings Financial Year 2011 to 2012. Report for the Association of Local Government Ecologists

anecdotal evidence suggests they have occurred. A situation aptly summarised in the report as ‘never before, have so few, been expected to do so much, with so little!’

57. The lack of technical expertise within Local Authorities is also regularly cited by developers as an issue impacting on their ability to get on site and build. The Housing White Paper<sup>233</sup> published in February 2017, acknowledged this issue and made commitments to begin to address the capacity and capabilities of local authorities, although the provision of additional ecologists was not specifically mentioned.

58. As mentioned above the RSPB is concerned about the potentially perverse impact associated with a number of new initiatives including the ‘Growth duty’ and the ‘business impact target’, in terms of the pressure this may place on regulators to narrow economic considerations, which could further undermine the weight given to the ‘biodiversity duty’ in decision making. There is a risk that the role of regulators is shifting further towards facilitators of economic growth rather than safeguarding the natural environment or human wellbeing in line with their primary statutory purpose.

59. We would suggest that **the need for a strong and effective biodiversity duty has never been greater** due to the combination of pressures e.g. from development (demand for housing is particularly acute in parts of England and the government has restated its commitment to building more homes in its Housing White Paper and Manifesto), accelerating threats from climate change, and the state of biodiversity in England. The State of Nature 2016 England report<sup>234</sup> highlighted that, of over 6000 species that occurred in England and were assessed against modern Red List criteria, 728 (12%) are at risk of extinction from Great Britain.

60. **Additional safeguards are urgently required to ensure the ‘growth duty’ and other initiatives introduced to reduce regulatory burden do not undermine the ‘biodiversity duty’ or the proper exercise of NE against its statutory purpose.**

**Question 9. How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales?**

61. The wording of English duty is clearly weaker than the Scottish ‘to further’ duty and the new Welsh duty that Public Authorities ‘must seek to

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<sup>233</sup> DCLG (2017) Fixing our broken housing market [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/590464/Fixing\\_our\\_broken\\_housing\\_market\\_-\\_print\\_ready\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590464/Fixing_our_broken_housing_market_-_print_ready_version.pdf)

<sup>234</sup> Hayhow DB, Burns F, Eaton MA, Bacon L, Al-Fulajj N, Brereton T, Brookman E, Burke O, Butler J, Davis J, De Massimi S, Gambling P, Lewis S, Macadam CR, Mathews F, Meredith C, Newson SE, Noble DG, O’Hara D, Pearson J, Stevenson K, Tansley D, Winder F, Wynde RM and Gregory RD (2016) State of Nature 2016: England. The State of Nature partnership.

maintain and enhance biodiversity’. Although we note that that Entec survey in 2010 did not detect a significant difference in impact between Scottish and English and Welsh duties at that time. This suggests that factors other than the wording of the duty, such as lack of resources or the absence of consequences for non-compliance, may have been more significant.

62. We believe it is too early to assess the impact of the duty of the Environment (Wales) Act 2016.
63. One significant advantage that the Scottish legislation (following amendments introduced under the Wildlife and Natural Environment (Scotland) Act 2011) and the new Welsh legislation have over the NERC Act duty is the reporting requirements.
64. **We believe that three things are required if the English ‘have regard’ to biodiversity duty is to be effective:**
- a. **much clearer and comprehensive biodiversity targets and guidance from Government on what is expected from Public Authorities with regard to the duty.**
  - b. **a requirement for each public authority to produce a plan on how they will fulfil the duty and regular reporting on progress to Government, this should be summarised and reported to Parliament.**
  - c. **financial incentives (or penalties) for Public Authorities should be related to performance against the duty.**

### **The Changing Context since 2006**

#### **Question 10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? And Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

65. The structures established by the NERC Act, have been created in the context of the UK’s membership of the EU, and the existence of EU legislation and institutions. Whilst the UK’s future relationship with the EU, and the extent to which the EU’s institutions and legislation will still directly apply, remains uncertain, any changes could have implications for the structures established by the NERC Act.
66. Existing domestic accountability mechanisms, through regulators, courts and legislatures of the four nations of the UK, have worked alongside EU mechanisms to give substance and impetus to environmental law. These national arrangements are essential, but without reinforcement will result in a ‘governance gap’, post-Brexit.

67. The UK government has suggested that Judicial Review and parliamentary process could act as a suitable mechanism for UK citizens and civil society organisations to challenge the application of environmental legislation post-Brexit<sup>235236</sup>. Nonetheless, this undervalues both the range of functions undertaken by EU institutions and the limitations of judicial review and the ability of the public to directly and quickly influence parliamentary processes. Even if domestic regulators, government departments and legislatures were to take on additional functions and the current environmental ‘governance gap’ will develop unless further action is taken. Environmental protection is dependent on robust governance, but existing domestic institutions do not have the resources, expertise, powers or independence needed. Neither the UK government nor any devolved government has made any firm commitments to addressing these issues in the context of Brexit.

**68. Action is needed to create governance arrangements that do the following<sup>237</sup>:**

- **Monitor and measure** the state of the environment transparently
- **Ensure proper implementation of environmental law and policy.** For example, by supervising plans that give effect to environmental law, overseeing permitting regimes (including responsibility for granting exemptions), and ensuring robust and consistent application of the law.
- **Check compliance** with environmental law and policy by government, business and other actors. This includes reviewing progress against plans, assessing the legality of decisions and scrutinising whether targets, conditions and requirements are being adhered to.
- **Enforce environmental law** by initiating investigations into possible breaches and responding to complaints from citizens and civil society organisations. Breaches must be identified and acted on, with the application of appropriate remedies and sanctions.
- **Review and report information** regarding both the state of the natural world and performance against policy objectives.
- **Publish environmental information** fully and transparently.

**69. The NERC Act is an important component of the framework of legislation established to conserve nature and ensure good environmental standards in the UK. The structures established by the Act will not in themselves be sufficient to ensure appropriate protection for nature and environmental standards following Brexit.**

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<sup>235</sup> Department for Exiting the European Union, ‘The Repeal Bill, Factsheet 8: Environmental protections’ p2.

<sup>236</sup> Government response to the House of Lords EU Committee report on Brexit: Environment and Climate Change.

[online] <https://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/Brexit-environment-climate-change/Gov-response-Brexit-env-climate.pdf>

<sup>237</sup> Greener UK (2017) The governance gap: why Brexit could weaken environmental protections, [online] [http://greeneruk.org/resources/Greener\\_UK\\_Governance\\_Gap.pdf](http://greeneruk.org/resources/Greener_UK_Governance_Gap.pdf)



*11 September 2017*

## Royal Society for the Protection of Birds (RSPB) – supplementary written evidence (NER0091)

Chris Corrigan, Director of RSPB England, gave evidence to the committee on 31<sup>st</sup> October 2016. Below is further evidence for the committee.

### Funding

During the evidence session Mr Corrigan was asked by the Earl of Caithness to comment how much money farmers should receive under new funding arrangements 'in order to remain viable'.

RSPB published a report with National Trust and the Wildlife Trusts, on the level of investment needed in UK land management in December 2017.

We have not estimated the funding that farm businesses would need in order to remain viable, as such a figure would be determined by market conditions, and individual business performance, amongst other factors.

The work we have done instead focuses on the overall funding need associated with environmental land management interventions needed to meet a range of environmental objectives across the UK. The overall estimate is £2.3 billion per year, although this figure would vary depending upon the level of ambition, whether costs were based on high or average yields, and commodity prices, alongside a range of other factors. For example, basing costs on high, rather than average yields increases costs from £2.3 billion to £2.6 billion per year.

**Table 5.9: Summary of overall annual costs of meeting environmental land management priorities, based on adjusted costs (£m)**

	England	Northern Ireland	Scotland	Wales	UK
Priority habitats	493	40	383	113	1029
Boundary features	226	44	63	42	375
Historic environment	41	3	33	7	84
Arable land	379	14	38	4	436
Grassland	170	75	73	39	358
Organic	17	0.5	3	5	26
<b>Total</b>	<b>1,326</b>	<b>177</b>	<b>594</b>	<b>210</b>	<b>2,307</b>

These costs only look at environmental land management, and not at a range of other costs associated with future farming and land management policies. They do though provide a strong evidence base to support a budget for policies to replace a Common Agricultural Policy that at least matches the approximately £3 billion currently spent, given the non-environmental costs associated with a future policy, such as advice, knowledge exchange and research and development.

The full report, '*Assessing the costs of Environmental Land Management in the UK*', can be read [here](#).

## **Conservation Covenants**

During the session the Countess of Mar asked a question on conservation covenants. The question was primarily answered by Mr. Steve Trotter, however the RSPB would like to submit the following comments in the hope it will be of use to the committee:

Conservation covenants could be useful in addressing the lack of protection given to the vast majority of the English and Welsh countryside that does not enjoy statutory nature conservation designation.

The mechanism of conservation covenants must be additional to statutory nature conservation mechanisms - for example SSSIs. Conservation covenants are not an alternative to establishing a robust SSSI series that represents biodiversity interest, and cannot alone create an ecologically coherent network of sites.

Currently, conservation covenants could be of use to:

- Philanthropic landowners considering the legacy that they leave to future generations.
- Conservation organisations and other statutory undertakers, introducing the option to purchase land, transform the land into wildlife rich habitat and then sell the land with a Conservation Covenant, thereby achieving a sustainable conservation outcome and recouping some of the initial outlay.

Strictly after the mitigation hierarchy has been adopted, conservation covenants could be a useful addition to the methods available to deliver biodiversity offsetting to ensure a site is protected in perpetuity. It could provide a legal mechanism that ensures a developer has to provide, and maintain, an agreed level of commitment. Offsetting must be managed long term to enable the new habitats to develop to a satisfactory level.

The public benefit delivered by a conservation covenant is likely to be far outweighed by the costs of delivery. These costs, and those involved in managing and auditing covenant delivery, would need to be fully supported. Their implementation should also include:

- Provision for public participation to ensure the system is fully accountable and stakeholder engagement is encouraged.
- Limits on 'responsible bodies' who can hold Conservation Covenants to those governed primarily by clear, conservation objectives. This may preclude some statutory bodies whose duties may be in conflict with the duty to conserve wildlife.

*10 January 2018*

Rural Coalition and Action with Communities in Rural England – oral evidence (QQ 117-126)

## **Rural Coalition and Action with Communities in Rural England – oral evidence (QQ 117-126)**

[Transcript to be found under Action with Communities in Rural Communities](#)

## **Rural Coalition – written evidence (NER0037)**

### **Introduction**

1. The Rural Coalition is a group of 12 national organisations who share a vision for a living and working countryside. Each member organisation has its own independent perspective and constituency, but, given many shared values, we seek to be more influential by joining in common cause.
2. The Coalition first began in September 2008, when 6 leading national bodies concerned about the future of rural communities in England came together with the support of the Commission for Rural Communities. The CRC provided support and technical expertise to the Coalition.
3. In July 2017, the Coalition published a statement, setting out four policy principles, which it believes should underpin policy making:
  - Brexit discussions must recognise 'rural' is more than agriculture and the natural environment
  - All Brexit negotiations and post-Brexit policies must be rural proofed
  - Policies and funding must deliver a fair deal for rural communities
  - Decision-making, funding and delivery must be devolved and involve rural communities
4. Given the Coalition's focus and background, our evidence to the Select Committee concentrates on the issues relating to the first section on *Rural Advocacy and the Commission for Rural Communities*

### **Demise of the CRC**

5. In our view, the closure of the CRC has led to a vacuum in the commissioning and provision of independent research, policy advice and analysis of good practice in rural issues. Several organisations and groupings, including the Coalition itself, have attempted to fill the gap, but they do not have the same purpose, funding or status of the CRC. As a result, the rural voice has become fragmented and is in danger of being undervalued and overlooked. The role of Rural Advocate has been wound up (although the Rural Affairs Minister in Defra has the responsibility to act as rural ambassador) and there is no one body able to act as a focus for rural advocacy. The role of watchdog has virtually disappeared.
6. One of the major impacts of the demise of the CRC has been the loss of rural research and data analysis, such as the work previously carried out on rural services, the wider rural economy and rural disadvantage. Although its remit was subject to Ministerial agreement, the CRC was also able to take a longer-term view and look at future issues, not necessarily driven by immediate political priorities.

### **Role of Defra**

7. Whilst Defra has made some attempt to undertake the CRC's work, it has suffered from turnover in personnel and shifts in priorities. Initially, there were some positive developments, such as the production of the rural

productivity plan, but these have lapsed, as staff with rural expertise (in particular, those transferred from the CRC) have moved on and other changes have meant that from time to time there has been a vacuum within Defra itself. In addition, the very nature of its position as a mainstream Government Department, whilst, on the one hand, potentially giving it more political clout across Whitehall, means that Defra cannot be independent and must be subject to Government and Ministerial priorities. This has been highlighted by Brexit, where the focus within Government and Defra has been primarily on agriculture and the natural environment. Although the current Minister for Rural Affairs is strongly committed to the rural agenda, it is not clear that the wider rural voice is being heard across Whitehall.

8. The problems are compounded by the changes in the way that research is now commissioned generally which means that it is more difficult for Defra to fund research and analysis, although we understand it is currently seeking to improve rural data collection and analysis.

### **Rural proofing**

9. Focussing the role of rural advocacy within Defra, rather than a separate agency sitting alongside government or even a regulatory body, carries the risk that other Government Departments see 'rural' as primarily Defra's role and not theirs. Defra does take the lead across Whitehall and has secured some successes, but the process is not transparent and it is not always clear how the priorities are set. To work effectively, rural proofing needs to happen at the start of the policy process, as policies and programmes are being formulated, and not as an add-on.
10. The Coalition made clear in its recent statement that rural proofing across Government was a key priority. This is particularly relevant in the context of the current negotiations for the UK to leave the EU. Brexit – and post Brexit policies – must work for rural communities as well as more generally. This means that all Whitehall departments must test policy proposals and future funding programmes to ensure they are designed to suit rural circumstances.
11. Our experience is that currently rural proofing is piecemeal and that key policies do not take sufficient account of the particular needs and challenges in rural areas. For example, there is a severe and growing shortage of affordable housing in rural areas, which is not being properly addressed; funding formulae do not recognise the challenges and additional costs of rural service delivery (adult social care and bus services have been particularly hard hit by public sector austerity and private sector cost-cutting and efficiency savings); and business support, including mobile and broadband connectivity, are patchy. The last Government's industrial strategy green paper said little about the rural dimension.
12. There needs to be more positive action to encourage rural proofing at national and local levels, including among agencies, such as Local Enterprise Partnerships. In order to ensure this happens, there should be a requirement to report annually on rural proofing activity by government departments, agencies and those receiving government funds or carrying out functions on

behalf of government. Defra, or an independent body, should have the role of producing an overview annually reporting on rural proofing activity.

### **Rural policy co-ordination**

13. Clearly, within government, Defra has the lead role to play in co-ordinating rural policy, but it needs more teeth and to be more transparent. There needs to be a better flow of information and a proper dialogue between Defra, OGDs and rural interests. The Coalition has a good working relationship with Defra and is pleased to meet its officials and the Minister regularly. But it could do more to assist the process of formulating and monitoring policies affecting rural areas. It could:

- help to identify solutions to rural policy and delivery challenges
- act as a sounding board, with rural proofing advice when developing policies and programmes
- use its networks to find examples of good rural practice and innovation

### **The changing context**

14. Membership of the European Union has had an impact on rural communities and businesses through trade, regulations, funding programmes and migrant labour. Many rural businesses and projects have benefited from funding from the LEADER and EAFRD programmes, in particular, which will cease after the exit from the EU. It is essential that the structures and funding which are put in their place take full account of the needs of rural businesses and communities and ensure their future sustainability.

### **Members of the Rural Coalition:**

*Action with Communities in Rural England, Campaign to Protect Rural England, Country Land and Business Association, Germinate: The Arthur Rank Centre, National Association of Local Councils, National Farmers Union, National Housing Federation, Plunkett Foundation, Royal Institution of Chartered Surveyors, Royal Town Planning Institute, Rural Services Network, Town and Country Planning Association*

**President:** Rt Revd Dr Alan Smith, Bishop of St Albans

**Chair:** Margaret Clark CBE

*10 September 2017*



## Rural England CIC – written evidence (NER0006)

1. Rural England CIC is pleased to have the opportunity to submit evidence to this House of Lords Select Committee inquiry. Our submission focuses on the first three questions posed by the call for evidence, which are those under the heading, rural advocacy and the Commission for Rural Communities.
2. Rural England is a Community Interest Company. Its aim is to inform and engender better policy making by undertaking independent research, supporting information exchange and building networks among those concerned with the well-being of rural communities. It was established because of a perceived gap which has opened up in rural research and evidence, which it hoped to try and partially address, whilst recognising this was highly dependent upon available resources.
3. Rural England CIC has a Stakeholders Group, which informs its work programme and priorities. This Group includes some former Commissioners of the Commission for Rural Communities (CRC), including Lord Cameron of Dillington. It also includes representatives from a wide range of rural interest groups, such as the National Farmers Union, Country Land & Business Association, Rural Services Network, Action with Communities in Rural England, National Association of Local Councils, National Trust, Council for the Protection of Rural England, Plunkett Foundation, Women in Rural Enterprise, National Association of Women's Institutes and Age UK. Some of these organisations may respond to the call for evidence and this submission does not pretend to speak for any of them. Rather, this submission has been written by the Directors of Rural England CIC.

*Q1 Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC's original functions of advocate, adviser and watchdog being fulfilled?*

4. **Adviser:** this former CRC role is in large part about the use of rural evidence. As noted above, Rural England CIC is concerned that the rural evidence base has deteriorated and narrowed. The CRC had a significant research and statistical output. We acknowledge that Defra produced a Statistical Digest of Rural England report, which it updates on a fairly regular basis. However, Defra does not appear to undertake or commission other rural affairs research i.e. about social and economic issues affecting rural communities and rural economies. Added to which, rural university departments have reduced their output on rural affairs

topics and focussed their effort on environmental and land management research, because that is where there is still funding available. There are two particular issues we would highlight.

5. First, there are some specific gaps in the evidence base. One example is a lack of information about the use and uptake of online services by rural communities. This seems surprising given the rapid growth of online shopping, online banking and online booking, plus the scope this has for reducing rural communities' need to access service outlets in person. Another example is that there are now fewer statistics about rural people's access to services. The Department for Transport accessibility statistics cover only eight service types. The broader dataset, produced by the CRC, were discontinued after 2010.
6. Second, more fundamentally, there is a real dearth of exploratory research, which seeks to understand the rural implications of social and economic trends or the rural implications of public policy developments. Whilst statistics, such as the Statistical Digest of Rural England, are certainly valuable, it is equally important to get behind those statistics and to explore why trends come about, how they play out in local areas for rural residents and businesses, whether policy responses are having the desired effects in rural areas and what good rural practice is being developed.
7. We understand from oral evidence given to your Select Committee by Defra officials that the department now largely looks to external organisations, like the Research Councils, to commission rural projects and, to that end, has produced some rural policy questions it would like to see researched. We would welcome sight of that list and would be pleased to hear of any rural research that is happening as a result of engagement with bodies such as Research Councils.
8. The Select Committee may wish to know that the main evidence-based outputs from Rural England CIC, to-date, has been:
  - The State of Rural Services 2016 report, reporting trends across nine service areas;
  - A rural residents' survey, which will lead to the establishment of a Rural Panel; and
  - Research on vulnerability as it affects older people living in rural areas. The organisation is also undertaking a project on domiciliary care in rural areas and commissioned research on the digital potential of businesses in rural areas. Results from completed projects are all in the public domain and we would be pleased to say a bit more about our ongoing work if that was helpful for the Select Committee.

9. **Watchdog:** this former CRC role was in large part about the application of rural proofing. We recognise that the Rural Team within Defra produces rural proofing guidance (recently updated) and that it engages with other departments to input rural thinking to their policy making. We also understand the Defra Rural Team has run some rural proofing workshops for other departments.
10. This activity is welcome, though the practice of rural proofing and, in some respects, the approach to rural proofing continues to be problematic. We expand on this in our answer to question two. It may be that some rural proofing functions work well when carried out within Whitehall, for example because Defra has easier access to or more of an inside track to civil servants in other departments. Equally, some functions may work better from an independent position outside Whitehall, such as the monitoring of rural proofing, not least on those occasions where rural proofing raises fundamental questions about a policy direction.
11. **Advocate:** this former CRC role was largely the function of its Chairman, who was the Government's Rural Advocate. Advocacy falls outside the remit of Rural England CIC, which seeks to inform the policy debate with sound and independent evidence, but which does not engage in campaigning or lobbying activity. We will, therefore, leave it to other organisations to pass comment.

*Q2 Are sufficient measures being taken to ensure that policies are rural proofed at national and local levels? Who is taking the lead on policy for rural areas and who should be taking the lead on such matters?*

12. It would seem fair to conclude that the extent of rural proofing and its impact on policy making remains a concern for many rural stakeholder organisations. A number of points can be made:
  - a. Extent of rural proofing: the independent review, which was led by Lord Cameron of Dillington on behalf of Defra, found that rural proofing by other Whitehall departments was very patchy. This disappointing conclusion was similar to the earlier assessments made by the CRC in its annual rural proofing reports.
  - b. Capacity within Defra: inevitably, the Rural Team within Defra can only engage with other Whitehall policy making teams to the extent it has the staff resources to do so. The hope has always been that other departments would - if given workshops, guidance and other resources - undertake rural proofing of their own accord and without the need for

Defra input. However, the evidence indicates that some (ongoing) prompt, if not some assistance, is typically required. Rural interest organisations may sometimes feel that they are plugging gaps e.g. on the Community Rights agenda and with the BIG Lottery Fund.

- c. External assessment: there is no longer any regular, external monitoring of rural proofing by Whitehall. The annual reports produced by the CRC, despite their limitations, gave a snapshot of progress and provided an external perspective. It should be possible to produce a fairly meaningful independent assessment, largely based upon monitoring departmental Annual Reports and policy Impact Statements.
  - d. Buy-in to rural proofing: the independent rural proofing review recognised that it is more likely to be taken seriously in departments where there is buy-in to the process at senior levels, including at Ministerial level. In short, when it is known that rural proofing is an expectation, it is likely to happen.
  - e. Timeliness of rural proofing: too often any rural proofing would appear to take place late in the policy making process, once most of the parameters have been decided. Whilst that is certainly better than nothing, rural proofing will have greater impact if it is embedded in policy making processes and considered early on. This requires higher awareness of rural issues and rural proofing.
  - f. Engagement with rural stakeholders: there does not appear to be much engagement with rural stakeholder organisations during the policy making process. Often rural concerns arise at the point when a policy proposal is formally consulted upon and those concerns might have been averted had there been earlier engagement with relevant representative organisations. This could also help to ground rural proofing in the experience of policy and project delivery at the local level. The CRC often used its networks with practitioner organisations to inform its rural proofing advice, alongside using its research and statistical evidence.
13. Rural proofing can be just as relevant at the local level. Whilst some local administrative areas are essentially rural, making it hard for them not to 'think rural', there may still be challenges in reaching the most isolated communities. Moreover, there are other administrative areas which are mainly urban, but which have rural parts, where the need for rural proofing may be more obvious. What is clear is that any rural proofing resource needs adapting to make it relevant to local policy making processes and service delivery issues. Whitehall resources will not be suited.

14. A set of local rural proofing resources were developed in 2012 using Defra funding. This set out eighteen 'underlying principles'. These were facets of local policy making and delivery that were frequently and repeatedly found in rural good practice, and which could therefore usefully be considered when designing local policies, strategies and service plans. The resources are still available on the previous (archived) Defra website and can be found on the Rural Services Network website – see this link: <http://www.rsnonline.org.uk/best-practice/local-level-rural-proofing> Whilst there may be other effective ways of approaching local level rural proofing, these resources still appear very relevant.

*Q3 What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests – of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?*

15. We will make just one practical comment on the representation of rural communities, since that topic strays into advocacy. Rural England CIC, working with the University of Gloucestershire, has recently run a substantial survey of rural residents (over 2,600 responses). We plan to create a Rural Panel from a sub-set of representative respondents, spread across the country, who have said they are willing to join it. This will give us scope to test the views of rural people on a fairly regular basis.

16. Building upon our comments about the rural adviser and watchdog roles from the NERC Act, we consider that the Defra co-ordination role could usefully include:

- a. Developing the evidence base, both by creating a rural cut on the data sets of Whitehall departments and by commissioning rural research in order to understand emerging policy issues. Where possible, rural data sets should also be capable of disaggregation to local levels, so they can inform local rural proofing;
- b. Identifying the economic, social and environmental priorities for rural communities and businesses that most need attention across Whitehall i.e. rural strategy;
- c. Raising awareness of rural issues and needs across Whitehall departments, both at political and policy team (civil servant) levels;
- d. Ensuring policy teams in Whitehall departments understand rural proofing, recognise the commitment to it and have access to appropriate guidance so they can apply it;
- e. Liaising with rural stakeholder (or interest) groups and helping ensure that their policy evidence and experience feeds in to Whitehall policy making processes;

- f. Engaging, more intensively, with Whitehall departments on the policy development topics, where there is likely to be a strong rural dimension or interest.

17. The Directors of Rural England CIC hope that this submission is of interest to the House of Lords inquiry. It reflects our experience of work with the former CRC and with Defra. Although Rural England CIC is a relatively new venture and one with a modest budget, it seeks to contribute evidence itself to the policy debate and thus to (what in NERC terminology is) the adviser role. By way of illustration, this link is to our webpage on the State of Rural Services 2016 report: <https://ruralengland.org/the-state-of-rural-services-2016-report/>

*31 August 2017*

Rural Services Network and Hastoe Housing Association– oral evidence (QQ 127-136)

**Rural Services Network and Hastoe Housing Association– oral evidence (QQ 127-136)**

[Transcript to be found under Hastoe Housing Association](#)

## **Mr Peter Schofield – written evidence (NER0009)**

### **NATIONAL NATURE RESERVES AND THEIR CONTRIBUTION TO THE WIDER CONSERVATION OBJECTIVES (*paragraph 4, Call for Evidence*)**

1. In the report of the Wildlife Conservation Special Committee (England and Wales) cmd 7122, and the Acts following on from this, the National Parks and Access to the Countryside Act, 1949 to the 2006 Act and documents such as Natural England's (NE), National Nature Reserves Joint Strategy (2017), and Natural England Annual Report and Accounts, 1 April 2016 to 31 March 2017 (HC 131), paragraph 38 of the 1949 Act stresses that "there is a positive need for reserves ... in pursuit of an active policy, which will make best use of the nation's heritage, not only for the advance of pure knowledge ... but for the application of that knowledge to the greater benefit of man". The concept of wider use embraces the aesthetic, recreational, scientific, advisory, demonstration, and educational uses. These wide-ranging functions should fit together and illustrate provisions for managing land and access to the countryside for the public benefit, at the same time as helping to safeguard and enhance land for economic uses and, where appropriate, improve biodiversity and sustainable development of land and resources. These aims have not always been achieved in practice.

2. Some of the NNR owned and managed by NE, particularly some grasslands (such as Wylze, Martin and Parsonage Downs), and some of those sites such as rare dead-wood habitats and heathlands, which have been designed by the former Nature Conservancy (NC) and NE (for example, Windsor) are not being used to their full potential and many are deteriorating. Only one NNR, Parsonage Down in Wiltshire, has been designated as an "operational heritage asset". NE should designate and manage further NNR and ensure that existing NNR are used fully for educational, demonstrational and scientific purposes for the benefit of land use planners, economic activity and for nature conservation and use by the general public.

3. NE statements in "Our purpose and activities" (2017); "Future plans" (2017); and the "National Nature Reserves Joint Strategy" (July 2017) support their intentions but in view of the government's financial policies during the past decade, and leading up to Brexit, NE does not have the appropriate resources (financial, manpower and scientific back-up) or the ability to put into effect its statements or to give them sufficient priority. The lack of resources requires urgent attention if further deterioration in NNR quality, loss in biodiversity and their use in encouraging more extensive access are to be avoided. Without the resources and the ability to put actions into effect they will remain "just words".



4. Some aspects of NE objectives could be taken in-house with the help of better alliances with other ministerial sectors, other organisations, or NGOs. There needs to be more effective agreements with other land managers and with those who already have agreements with NE.

5. The Minister for Defra, or a new central government body, could be established to monitor and police all ministries in their effectiveness to undertake government environmental policies.

### **THE FUTURE, FOLLOWING BREXIT (*paragraph 15, Call for Evidence*)**

6. There must be a seamless transmission from European environmental laws into British law (England and Wales), including provision for British Acts and the various Schedules incorporated in them. Of particular importance are the provisions of the Habitats Directive and the Birds Directive.

7. Penalties for non-compliance with existing laws, especially those dealing with vulnerable species, such as the hen harrier and other predatory species of fauna, should be enhanced.

8. Legislation needs to be addressed for protecting vulnerable species of native flora and fauna from introduced species (such as grey squirrel, mink, American signal crayfish).

### **BIODIVERSITY AND SUSTAINABLE DEVELOPMENT (*paragraph 7, Call for Evidence*)**

9. With the continuing loss of biodiversity in England (loss of meadows, heathland, and ancient woodlands) before and since the 2006 Act some adjustments need to be made. The effective management of NNR, together with additional NNR, needs to demonstrate what is involved in the giving of advice on habitat creation and improvement, the enhancement of biodiversity outside NNR and to improve public enjoyment and the benefits for health and enjoyment of visitors to the rural environment. Many of the local authorities and NGOs have developed and provide facilities for improved and extended access and this is an area for better co-ordination between providers including NE. There is also a need for better understanding and co-operation between the economic and social providers of facilities for improved access.

10. The Common Agricultural Policies (CAP) has not been generally effective in maintaining and enhancing biodiversity. There are many good examples but often the payments are poorly directed and do not lead to positive results in better biodiversity or access. There should be even closer partnership with the agricultural sector to steward biodiversity to increase agricultural productivity and to develop new farming practices such as the introduction of suitable biogenetically modified crops.

11. Parts of Defra, other departments and some local authorities, although they have a duty to "have regard" to biodiversity, there appears to have been a lack of understanding or will to implement this duty. NE should possibly undertake more "education" of policy makers and managers of this duty in departments throughout local and national government. Further resources will be needed to do this.

**THE CHANGING CONTEXT SINCE 2006 (*paragraphs 10 and 11, Call for Evidence*)**

12. After seventy years of "Conservation of Nature in England and Wales" cmd 7122 July 1947, and many changes in the structure and legislation appropriate to this function, I would hope that the Select Committee would recommend that the future would be considered in three stages:

\* The immediate issues, which include improving some NNR and the more appropriate design and application of CAP, and some urgent requirements identified by NE in their "Our purpose and activities".

\* The continued development of medium-term strategic plans from the 21<sup>st</sup> century (CS 21) together with the establishment of an effective ongoing and annual monitoring and policing review of policies affecting biodiversity, nature conservation and access. (This includes global warming, climate change, the widespread introduction of biogenetically modified crops, and better coordination of issues around pollution of air and sea.

\* To establish a review by experts of the effectiveness of the past seventy years of advice and action in nature conservation with a review of the direction and structure of nature conservation over the next fifty to seventy years.

## **BACKGROUND TO AUTHOR**

Environmentalist and nature conservationist with governmental bodies and NGOs in the UK and Europe including the OECD, Paris OECD (1986-1988) as part of their team on the environmental policies in Finland; head of the reorganization unit, which included strategic planning, structure and preparation of the first and second budgets for the Countryside Council for Wales; Vice President of Eurosite, a French government initiative for the better management of natural sites in Europe; A Winston Churchill Travelling Fellowship to examine the management of National Parks and Nature Reserves in Poland, Hungary and Czechoslovakia; and involved on a contract basis in site management planning in countries such as the Baltic States, the Balearics, Bulgaria, the Republic of Ireland, Russia, etc.

*4 September 2017*

## Sheffield City Council – written evidence (NER0054)

### CALL FOR EVIDENCE

**Response provided by Richard Harris, Ecology Manager on behalf of Sheffield City Council.**

#### **Natural England**

#### **Question 4.**

How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?

- 4.1 Natural England's (NE) mandate is taken to be advising government on the natural environment in England, helping to protect England's nature and landscapes for people to enjoy and for the services they provide.
- 4.2 There appears to be overall a lack of communication and lack of clear guidance between Natural England and Local Authorities. For example the new Conservation 21: Natural England's conservation strategy for the 21st century was produced recently but Local Authorities were, largely, not made aware of it.
- 4.3 If an issue is raised with the enquiries helpline the response is good. However, there is too much reliance on Standing Advice, which is open to interpretation. Clarification is often sought from NE on points made in the Standing Advice.
- 4.4 In the past seminars/workshops were held by NE on key issues. It would be beneficial if these could be reinstated.
- 4.5 Guidance/Guidance notes are not up to date. For example:
  - 4.5.1 Explanatory Note Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 - Habitats and Species of Principal Importance in England. This should be revised and updated (See response to 7. below).
  - 4.5.2 Under NE Guidance Ancient woodland and veteran trees: protecting them from development
    - Protection for ancient woodland through planning appeal decisions. Only one example is given post NPPF so the value ascribed to this is limited.
    - 'Keepers of time' policy statement. This is still a live document but refers to Government Policy in 2005. It is open to question the weight that should be afforded to this. Is this still in sync with existing policy?

- 4.5.3 Although a DEFRA document - e.g. *'The Habitats and Wild Birds Directives in England and its seas Core guidance for developers, regulators & land/marine managers December 2012 (draft for public consultation)'*; Natural England are a consultee in the Habitats Regulation Assessment process and have advised that this is the relevant guidance to be used, however, this document is still in draft form (2012).
- 4.5.4 Responsibilities need to be clarified and established for each organisation in relation to each other i.e. JNCC, Natural England, Defra.
- 4.5.6 It is still unclear about the implications of Natural England's new European Protected Species licencing policies, particularly with respect to Great Crested Newts (Protected species). Clarification needs to be provided on how they should be applied by Local Authorities.

## **Sustainability and biodiversity**

### **Question 7.**

Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

- 7.1 No, the Act is unclear and the guidance on interpretation on how to have regard is equally unclear on how it should be applied in practice. Direction needs to be provided by NE on what Local Authorities must do to meet their requirements under the NERC Act.
- 7.2 The Explanatory Note Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 - Habitats and Species of Principal Importance in England is difficult to interpret. Only a limited number of 943 priority species and habitats are specifically mentioned by name. A significant number of priority species are not mentioned and the impression is that not equal weight/consideration is given to all S41 species equally. And yet under Section 40 Duty to conserve biodiversity, Part (3) states *'Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'*. This refers to the entire S41 list. This needs to be revisited and clarified.
- 7.3 Would it be reasonable and proportionate to identify all priority species on a site?
- 7.4 In certain sectors referenced in the Explanatory note e.g. Forestry and Freshwater, no mention is made of Local authorities but we do have involvement in these areas e.g. flood and water management and forestry operations.
- 7.5 Specifically in relation to Question 7. In our view awareness raising generally falls to Ecology service to raise the profile of the Duty. Within

Local Authorities without Ecologists how it is envisaged that the Duty is communicated? This is particularly relevant in a climate of local government staff and resource reduction. Direction needs to be provided by NE on what Local Authorities must do to meet their requirements under the NERC Act.

7.6 In relation to Question 7. Part ii above, further guidance on implementation of the Duty to Local Authorities and a recommendation/directive from NE to incorporate Biodiversity consideration into Committee reports.

7.7 From NE's website under the heading Section 41 Species - Priority Actions Needed (B2020-008) it states:

In England many of our rarest and most threatened species are listed under Section 41 (S41) of the 2006 Natural Environment and Rural Communities (NERC) Act. Outcome 3 of the Government's Biodiversity 2020 strategy contains an ambition to ensure that 'By 2020, we will see an overall improvement in the status of our wildlife and will have prevented further human-induced extinctions of known threatened species.' Protecting and enhancing England's S41 species is key to delivering this outcome.

and provides a list of actions to support the recovery of England's s41 species.

It goes on to state:

PLEASE NOTE – the actions highlighted represent the considered view of species experts from a range of organisations. They do not replace or necessarily reflect any existing Government policy nor that of its agencies.

This last statement does not encourage commitment to practical actions to support the recovery of England's s41 species.

8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

8.1 Limited practical impact.

9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?

9.1 Strictly 'have regard' is to the purpose of conserving biodiversity which includes restoring or enhancing a population or habitat. However, using the term 'further' biodiversity feels stronger, as this would set in the mind of public bodies that they must reduce any negative effects on biodiversity, and look for ways of helping biodiversity in their day-to-day

business. However, reference to restoring or enhancing a population or habitat should be retained.

9.2 The Wildlife and Natural Environment (Scotland) Act 2011 external site came into force on 01 January 2012 and introduced a requirement for all public bodies to make publicly available a report on their compliance with biodiversity duty. We would welcome a reporting mechanism providing it was taken notice of. For example there is the SDL160 but this is only reported on by a proportion of local authorities despite this being an obligation on local authorities.

ENDS

*11 September 2017*

## **Shropshire Council – written evidence (NER0055)**

### **1.0 Shropshire: Contributions to National Policy and Local Context**

- 1.1 Shropshire Council seeks timely opportunities to respond proactively to national calls for evidence from Parliamentary Select Committees, Government Departments, and national bodies such as the National Infrastructure Commission and the Office of National Statistics. Our aim is always to share our local perspective and to help to shape national and local policy to achieve mutual outcomes for communities.
- 1.2 We welcome this opportunity to submit evidence to the Lords Select Committee, and to highlight the importance of equity and fairness to ensure that rural communities receive a fair deal on a par with urban communities. We also seek to ensure that our natural assets are clearly accounted for, and that their related ecosystem services are fully assessed. We believe this will result in better protection of these assets and the ability to maximise the societal benefits these resources provide. In so doing, we wish to advise that in our view the potential of rural proofing and ecosystems accounting tools to assist in policy and strategy has been under used. We also perceive there to be gaps around objective and up-to-date research and evidence into the needs of rural communities and businesses and their experiences of access to goods and services and household and family pursuits. Our contention would be that these gaps are not adequately acknowledged at present in national policy approaches including towards encouraging social inclusion.
- 1.3 Most recently, the Council made a detailed response to Government with regard to the Industrial Strategy Green Paper, in which we made specific commentary with regard to the natural environment and to rural communities. We linked this to strategic activity underway in Shropshire and the wider Marches LEP subregion to facilitate economic growth whilst protecting and enhancing natural assets of the area, including development of our Economic Growth Strategy. In our commentary, we articulated concerns that natural capital was neither mentioned nor accounted for within the Industrial Strategy in current form, or indeed within the companion Midlands Engine Strategy, and that rural evidence did not appear adequately factored in to proposed policy intentions, eg assumptions made about broadband and mobile connectivity do not account for current realities for rural communities.
- 1.4 We have accordingly recommended that the Industrial Strategy be adequately rural proofed. We previously contributed to development of local rural proofing guidance that Defra issued in 2012, and as a large rural authority remain acutely aware of the impact of rural realities on



service commissioning and provision, as well as on creating the right conditions for economic growth.

- 1.5 Rural proofing will in our view provide opportunity for demonstrable utilisation of evidence about rural realities in developing national policies such as the Industrial Strategy, including use of ecosystems accounting and biodiversity data. It will also enable gaps in evidence to be identified and steps taken to update existing datasets, such as through timely research into specific topics, and effective use of longitudinal surveys including the ONS Census. The proviso is that it involve liaison between all Government Departments, coordinated by Defra and supported by the Treasury.
- 1.6 We would additionally want to see more funding opportunities through further and higher education for exploratory research to be commissioned into likely impacts of national policy on rural communities. Scanning of such evidence as may emerge from academia, to which Shirley Trundle of Defra has referred in oral evidence to the Committee, is not the same as commissioning said research. We see this as enabling recognition of rural and urban interdependencies as well as linking to topics of particular resonance for rural communities, such as demographical trends and impact on adult social care costs and access to services.
- 1.7 By way of context, Shropshire is a predominantly rural large county, with just under one person per hectare (0.98 persons; 313,400 population; source ONS mid year estimates 2016), for a terrain covering 319,736 hectares. The county size is approximately ten times that of all Inner London Boroughs (31,929 hectares; source ONS Census 2011). Around 34% of Shropshire’s population lives in villages, hamlets and dwellings dispersed throughout the countryside. The remainder live in one of the 17 market towns and key centres of varying size, including Ludlow in the south and Oswestry in the north, or in Shrewsbury, the central county town.

**Evidence Table to show Shropshire Population Dispersal**

<b>Rural Classification</b>	<b>Population All Ages MYE 2015</b>
Rural town and fringe	74,307
Rural town and fringe in a sparse setting	4,449
Rural village and dispersed	87,083
Rural village and dispersed in a sparse setting	12,796

Urban city and town in a sparse setting	10,979
Urban city and town	12,1766
<b>Total Population Shropshire MYE 2015</b>	<b>311,380</b>
<b>% living in rural - highlighted yellow</b>	<b>34%</b>

Source: Mid Year Estimates 2015, Office for National Statistics, © Crown Copyright 2017.

1.8 Shropshire Council liaises on policy lines across local institutions as well as with Government agencies and departments and with the devolved Welsh administration and Welsh authorities across our borders to the west, and with authorities across the Midlands and to the north. We work within the Marches LEP and with neighbouring authorities for mutual benefit, and continue to exploit opportunities to do so, including those that arise around transport, housing and digital infrastructure, and around land assets and natural capital, including water quality and supply.

1.9 Given the policy ramifications of Brexit around devolution of powers, and the challenge to ensure that UK legislation is appropriately updated to protect our country’s biodiversity, fulfil our international obligations and achieve Government commitments to halt biodiversity loss, we would like to place on record our offer to contribute further in these matters at national level. In so doing, we would also recommend a formal recognition by Government of the role of the Rural Services Network (RSN) as a primary channel to inform national rural policy development.

**2.0 Key Line of Enquiry: Rural advocacy and the Commission for Rural Communities (CRC)**

2.1 Question Area

**Q1. Since the closure of the CRC, and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC’s original functions of advocate, adviser and watchdog being fulfilled?**

2.2 Shropshire Council response

2.2.1 We see a clear imperative for a comprehensive and up-to-date rural policy brief to be fulfilled at national level, and an equally clear paucity of robust and up-to-date evidence at the present time, which in our view is hindering such efforts. This is notwithstanding recognition of the efforts that Defra rural policy colleagues continue to make at operational level, and the benefits to be accrued from usage of the Defra Statistical Digest of Rural England report, which is updated on a fairly regular basis.

- 2.2.2 This Council's response is about successor bodies that may pick up on CRC functions as adviser and advocate, looking in particular at activity by Defra, and at use made of organisations including the Rural Services Network (RSN), in order to complement such activity. The RSN offers advice to Government about a range of rural issues, including usage of a range of consultation channels to obtain evidence and share such advice. It also campaigns in an advocacy role for rural communities in liaison with bodies such as Action with Communities in Rural England (ACRE); the Country Land and Business Association (CLA); and the National Farmers Union (NFU), as well as through the SPARSE Special Interest Group of the LGA and the All Party Parliamentary Group (APPG) on Rural Services.
- 2.2.3 We would recommend a formal recognition by Government of the role of the RSN as a primary channel to inform national rural policy development, given the extensive and inclusive membership of the RSN and its representation of rural interests, along with the research, intelligence and knowledge sharing that the RSN undertakes. This includes statistical profiles of local authority members, policy briefings, and robust evidence gathered for campaigns such as around fairer funding for rural authorities.
- 2.2.4 In so doing, we would wish noted that the strategic reach of the RSN includes involvement with Rural England, an independent policy think tank. We are aware that Rural England has a Stakeholders Group, which informs its work programme and priorities, and that this Group includes not only the CLA and the NFU, amongst other organisations, but also some former Commissioners of the Commission for Rural Communities (CRC), including Lord Cameron of Dillington.
- 2.2.5 We concur with the views expressed by Rural England in its "State Of Rural Services (SORS) Report 2016", published January 2017, about the widening gaps discerned in the rural evidence base, notably in terms of access to service outlets and facilities. We also share concerns about an apparent lack of solid evidence about the take up of online services amongst rural communities. We understand that Rural England is making its views known via this call for evidence, including concerns that Defra does not appear to undertake or commission rural affairs research i.e. about social and economic issues affecting rural communities and rural economies.
- 2.2.6 For Defra, Shirley Trundle has already told the Committee that: *"We do not as a department commission very large amounts of research these days. There has been quite a shift in the way government approaches research and certainly the way Defra approaches research, which is much more about working in partnership with people outside the organisation"*. The Shropshire Council view would be that, whilst this partnership approach is welcomed, a more strategic approach that not only involves partners such as Rural England and the RSN and ACRE, but also activates

Lord Cameron recommendations to work closely with other Government Departments at Cabinet level, would facilitate a comprehensive high-level approach towards commissioning of research into needs of rural communities and businesses. This would mitigate against the risks of such evidence gaps extending or new gaps appearing, as well as providing for local evidence to also feed through. For example, our recently gathered evidence on Accessible Natural Greenspace provision also indicates that rural areas are, perhaps counter intuitively, less well provided for than urban areas. This could have significant impacts on mental and physical health of rural residents.

2.2.7 We would additionally want to see more funding opportunities through further and higher education for exploratory research to be commissioned into likely impacts of national policy on rural communities. Scanning of such evidence as may emerge from academia, to which Shirley Trundle has referred, is not the same as commissioning said research. We see this as enabling recognition of rural and urban interdependencies as well as linking to topics of particular resonance for rural communities, such as demographical trends and impact on adult social care costs and access to services. It also complements the ongoing need for environmental and land management research eg agri-tech innovation: evidence garnered will be equally vital for use in long term planning around infrastructure and land use needs of rural communities and businesses.

2.2.8 We noted that the Earl of Arran asked Shirley Trundle via oral evidence if Defra is: "suffering from a lack of research". The response was: "*I am not aware of anything that has been problematic in the near past, no.*" However, we would recommend that what is being experienced by our rural communities warrants a consistent and transparent methodology for feeding issues through to senior Defra officials and ministers to then raise awareness across Whitehall, in order for objectivity to be applied rather than a subjective view of what may be seen as problematic, and for whom. This would then sit alongside a rural research approach that considers social, environmental and economic matters.

2.2.9 By way of illustration, in relation to benefits and the needs of low income households, the Shropshire view is that intelligence gathering needs to be ongoing into issues such as fuel poverty and lack of internet access, which affect opportunities to access health and leisure as well as education and skills and employment. The Voluntary and Community Sector Assembly (VCSA) here can be a useful vehicle for feeding through changing demand and community concerns. For example, there are real concerns about the impact of welfare reform at the moment among the VCS. The impact on individuals and then, as a result of that rising demand for support, then impacts on VCSE organisations. In Shropshire, this is something that the local authority is trying to encourage a closer look at through an information sharing event for the VCSA.

## 2.3 Question Areas

**Q2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**

**Q3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

## 2.4 Shropshire Council response

- 2.4.1 We do not believe that sufficient measures are currently being taken at national level to rural proof national policy, either at development stage or at impact and review stage. This is despite our own efforts and those of others to influence this, for example through active membership of the Defra LEP Round Table, to which the Lord Cameron of Dillington review was brought, and through the rural perspectives we and others seek to highlight to Government. We utilise means such as responses to parliamentary committees inquiries eg on the Digital Economy, and calls for evidence by Government Departments, eg the CLG/Defra Rural Planning Review, as well as mechanisms such as the Round Table, and briefings for local MPs. We also hosted Greg Clark MP in 2016 in order to really visibly illustrate the challenges faced by a rural local authority such as ourselves, as well as our own local initiatives, but we are not clear how for example this involvement with a then-minister within CLG was shared with Defra ministerial colleagues.
- 2.4.2 The 2012 Rural Statement does not appear to have extended further in reality than a statement of policy intent by a now departed administration. The recommendations made by Lord Cameron of Dillington in his subsequent review, published January 2015, were ones that we very much welcomed, as was the statement by then Secretary of State Liz Truss that: *"For rural proofing to work effectively, it is for all government departments to make rural issues a routine policy consideration."*
- 2.4.3 We particularly welcomed the recommendation for Defra to run rural proofing workshops with other Government departments, in order to provide a very practical steer and to share what evidence was available that could be analysed on an urban/rural basis to help and inform policy development. *[Lord Cameron Review Recommendation 1: Defra Ministers should work with Cabinet Office to strengthen and improve rural proofing guidance when the impact of policies is being assessed, to ensure that rural policy impacts are given clear and robust attention. Rural proofing*

*must be applied more systematically in Departments and described more openly and transparently.] Lord Cameron had found that take up of the offer of workshops was “patchy”. It is therefore disappointing to discern from the evidence given by Shirley Trundle of Defra to this Committee for this Inquiry that this may remain the case.*

- 2.4.4 We noted the further comments made by Shirley Trundle in relation to the Defra rural policy team that: *“The rural policy team has a big network of contacts across government, so it works with other departments that are developing policy to bring the rural perspective into those discussions. A large part of the way it does that is drawing on the data and evidence that we have access to. We have done a lot of work to develop our ability to use and analyse statistical information right across government.”* We know anecdotally from Defra officials that genuine efforts have been made by civil servants to alert those in other departments to rural realities. However, without implementation of something akin to the other recommendations that Lord Cameron made about Cabinet level commitment to rural proofing, we rather fear that we will continue to see critical policy commitments such as the Industrial Strategy looking more than light on recognition of rural/urban interdependencies and on demonstrable use of evidence about rural need.
- 2.4.5 By way of example with regard to digital connectivity, the full fibre networks terminology currently used as Government parlance is very unhelpful. It suggests that this is the way forward, when for rural counties it oversets expectations and raises hopes that all premises can be connected by fibre cables. Mobile signals continues to lag behind. There are statistics that show us well behind the curve on this. Whilst our view, and that of the Marches LEP, is that 5G is only realistic in urbanised environments, we would still be saying to Government, show us how this can work in a rural county. The willingness is there at this local level to pilot, depend upon willingness of Government to likewise work with us on the challenge, given the rural geographies and the sparsity of the population.
- 2.4.6 We also made comments to Defra in contribution to a rural stakeholder event held on 21<sup>st</sup> March 2017, which involved some 30 people including LEP and local authority representation, community councils, and the CLA and NFU. The substance of our comments, regarding lack of reference in the Industrial Strategy Green Paper to natural capital, to land use and to land supply, were strengthened by others at the event. We agreed with the tenor of the overall points made, and said as much in our response to the Green Paper, including the following:
- All ten existing pillars of the Industrial Strategy have to be effectively rural proofed, notably support for start-ups and growth, given high percentage of SMEs in rural areas, as otherwise organisations at the local level are playing catch-up.

- Natural Capital not mentioned or accounted for within the strategy. Rural asset base includes natural assets.

2.4.7 The following case study on our Local Plan sets out to explain how we look to make use of rural proofing at local level.

- i.) Shropshire Council has worked hard to deliver a distinctive planning approach which complies with national planning policy objectives whilst also responding positively to the principles of Localism. Shropshire Council is one of the first authorities nationally to have completed both the strategic and site related elements of its **Local Plan (2016-2026)**. This provides for 27,500 houses to be built, of which 35% has already been delivered.
- ii.) The Shropshire Core Strategy, adopted back in February 2011, was itself rural proofed as well as undergoing a complementary equality impact assessment. The Council has since contributed at national level to the production through Defra of local level rural proofing resources, introduced in 2012, which resulted from research commissioned by Defra and featured our approach towards place-based planning policy. This research study by Defra, together with its outputs, was in our opinion a piece of work that demonstrates the usefulness of national research and has helped in the coordinated and structured collation of evidence about likely rural impacts of service policy changes and decisions at local level.
- iii.) The learning from it led us to overhaul our own equality impact assessment resources. We now use a Equality and Social Inclusion Impact Assessment (ESIIA) approach, in which as well as the nine Protected Characteristics groupings under the Equality Act 2010 we also consider a tenth grouping, identified as social inclusion, where we consider likely policy impacts upon rural communities and those who may be considered as vulnerable eg low income households.
- iv.) The Council has just completed consultation on Issues and Strategic Options for the Local Plan Review, continuing to hold to the principles of developing and implementing planning policy that is grounded in rural reality, robust evidence, and feedback from engagement with as a wide a range of stakeholders as possible. Existing and future resourcing issues may challenge our ability to continue with such approaches. We have for example contended in response to Local Plans Expert Group (LPEG) in 2016 that the LPEG's recommendations do not adequately provide for our situation and that we may therefore be inappropriately disadvantaged if the Government adopts these recommendations as drafted. We look forward to the further considerations of the LPEG in the light of commentary from ourselves and others.

### **3.0 Key Line of Enquiry: Natural England (NE)**

#### 3.1 Question Areas

**Q4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

**Q5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

**Q6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

#### 3.2 Shropshire Council overall response

- 3.2.1 Shropshire Council has greatly valued the advice, both standing advice and bespoke responses on difficult issues, and guidance, based on sound research, that has been provided by Natural England (NE) over the years. This has provided a benchmark of best practice for LAs and the private sector, reducing disputes, providing a level playing field for considering and discussing ecological issues and hence reducing the number of planning appeals on ecological grounds. This has given clarity to the public and private sector, as well as individual members of the public, and saved expense, delays and staff resources by reducing challenges.
- 3.2.2 The apparent pressure on NE to no longer provide this role, despite what is set out in the NERC Act 2006, sections 3 and 4, is very much a matter of regret. Existing guidance is not keeping pace with NE policy changes and technological advances. The resulting contradictions are causing confusion amongst consultants, developers and the Local Planning Authorities (LPAs), causing delays to planning applications.
- 3.2.3 Natural England appears to be increasingly under-resourced, causing delays to European Protected Species (EPS) licence applications and planning consultations with individual NE officers covering several counties. We sometimes recommend that developers seek paid Discretionary Advice Service (DAS) advice from NE, but NE are now saying that they have insufficient staff to provide DAS at present. In our experience, this is causing delays to sustainable development, and the blame for this delay should not be laid at the door of protected species legislation. Appropriate staffing levels would speed up licence applications and consultation responses (particularly on complex cases), thus speeding up processes for development. The NERC Act chapter 1 frequently states that NE 'may' do things to further their functions, but if it continues to be



under-resourced to this extent it will be unable to carry out these functions and fulfil its general purpose in Section 2 of the Act.

- 3.2.4 As a local authority, we liaise with all three of the arms-length agencies of Defra, eg through the Shropshire and Telford and Wrekin Local Nature Partnership, as well as with constituent bodies and organisations such as the local Wildlife Trust. We would wish to make particular reference to the usefulness of the Local Environment and Economic Development (LEED) Toolkit that Natural England (NE) developed along with the Environment Agency (EA) and the Forestry Commission (FC) and four LEPs. NE ran with before it unfortunately ceased to be an offer to LEPs. We organised a LEED Stage One Workshop in July 2014, and found it a good partnership and evidence-gathering tool, and a Marches Ecosystems Assessment was subsequently produced last year.

#### **4.0 Key Line of Enquiry: Sustainability and biodiversity**

##### 4.1 Question Area

**Q7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

##### 4.2. Shropshire Council response

- 4.2.1 Our County Ecologist, Dan Wrench, advises that, shortly after the Act was enacted, Shropshire Council led an event involving representatives from a range of public bodies. The implication of the duty were discussed and a selection of public bodies given an opportunity to discuss how they were already considering biodiversity in their day to day operations. Since this event there has been almost no mention of the duty or questions raised.
- 4.2.2 The duty is seen as serving little function as there are no guidelines on how this should be enacted and no legal comeback for any public body when challenged about their responsibilities under the Act. There seems little point in raising awareness of this Act when any public body can simply say that they have had 'regard to biodiversity' but they have chosen not to undertake any work to enhance biodiversity.
- 4.2.3 The Council has also noted the new regulations increasing the scope of Environmental Impact Assessments (EIAs). The term 'human beings' has been replaced with 'population and human health' and 'flora and fauna' has been replaced by the term 'biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC' (i.e. the Habitats Directive and Wild Birds Directive). There are also additional requirements to consider the vulnerability of projects to

risks of major accidents and/or disasters, as well as explicit references to greenhouse gases and hydromorphological changes.

4.2.4 The EIA is a process that should still only focus on the likely significant environmental effects of a project, so these topics will only be relevant in certain circumstances. However, we would suggest that the EIAs may usefully be considered as a complementary assessment strand to rural proofing and to equality impact assessments;; that work to raise awareness of the extant 2006 duty to 'have regard' to biodiversity should present these as three clearly linked threads; and that Defra should lead on such work as part of developing the 25 year environmental plan.

#### 4.3 Question area

**Q8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

#### 4.4 Shropshire Council response

4.4.1 Dan Wrench, County Ecologist, advises as follows:

- i.) *"I know of no discernible or measurable impact of the biodiversity duty of the Act. If some form of annual reporting were required by public bodies which was posted on the Government web site and publicised appropriately this may generate more interest in the biodiversity duty under the Act, and perhaps even generate some action.*
- ii.) *"With the developing science of natural capital accounting the Act should be modified to include reference to enhancements of natural capital and the ecosystem services they provide. Public Bodies should be required (and adequately funded) to report on enhancements to biodiversity in addition to the other ecosystem services that are now commonly described.*
- iii.) *"One potential issue is that the ability to measure gains or losses to biodiversity or ecosystem services, in response to this Act or via other mechanisms, is being eroded due to Local Ecological Records Centres being lost or their capacity reduced by an almost complete lack of central government funding. Data regarding local biodiversity and ecosystem services requires collection, collation, management and interpretation and funding for this should not be piecemeal but resourced centrally (perhaps from national infrastructure funding) for the benefit of public bodies, as well as housing developers, NGOs, academia, etc."*

- 4.4.2 We reinforce points made in response to the Industrial Strategy Green Paper about natural capital and the particular relevance of this in rural geographies and for those where the urban/rural interdependencies can be most marked, such as in the West Midlands. Local Nature Partnerships (LNPs) are missing from the Strategy Green Paper but are potentially key partnerships on this, and they need re-energising, funding and given a clear role in the LEPs to ensure growth plans are enhanced by consideration of the benefits of natural capital as part of an Industrial Strategy.
- 4.4.3 Here in the sub-region, we are actively seeking to address this by seeking closer ties to the Marches LEP and act as their environmental advisory panel. Part of this process involves the aligning of our geographies with the formation of a single LNP covering Shropshire, Telford & Wrekin, and Herefordshire. We hope this alliance will minimise negative environmental impacts of economic development while maximising the clear economic gains and risk mitigation supported by natural capital and ecosystem services – such as tourism.
- 4.4.4 The following case study sets out to explain how we look to make use of ecosystems assessment at local level.
- i.) Shropshire Council led on production of a **Marches Ecosystem Assessment** in 2016. This established some indicative monetary figures for a selection of ecosystem services for around half of the land area of the Marches LEP area.
  - ii.) Summary figures include a total for those ecosystem services measured, of:
    - £14.7 billion (capitalised over 25 years)
    - The effect of the existence of greenspace on people’s exercise levels in The Marches is valued at £146.9 million pounds annually.
    - The value of carbon stored in soil and vegetation in The Marches: £7.2 billion
  - iii.) The full document is available here: <http://bit.ly/MEA-report>
  - iv.) Nature’s Worth – a summary of this document is available: <http://bit.ly/NaturesWorth>
  - v.) A linked study has helped assess the number of households in the Marches that have adequate access to Accessible Natural Greenspace. This has clear links for both biodiversity and for public health. It is a measure that can be relatively easily generated from existing data sources on greenspace and could be considered as another option for assessing ecosystem services. Details on how these figures and maps were generated are available here: <http://bit.ly/ANGST-detail>

vi.) Our online map is available here: <http://bit.ly/ANGSt-Shrewsbury>

4.4.5 Our Ecologist has also indicated that it would be interesting to know from Defra, as the Government Department through which LNPs were established, whether other LEPs are taking this approach or perhaps have other arrangements that work. We have for example heard good things about the Gloucestershire LNP / LEP relations.

4.4.6 We would also be interested in any national investigations into the links between access to natural greenspace and increased staff productivity plus reduced staff absenteeism, and anything around how LEPs may be working with LNPs to save business costs, and would suggest this as a timely area of research that could be commissioned through Defra.

#### 4.5 Question Area

##### **Q9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

#### 4.6 Shropshire Council response

4.6.1 We will work with the devolved administration in Wales with a particular focus upon working with the Welsh authorities across the borders of the Marches and Staffordshire in recognition of ramifications upon efforts to improve water quality and water supply linked to river and tributary watercourses, notably the Severn.

4.6.2 Under the Nature Conservation (Scotland) Act (2004), all public bodies in Scotland are required to 'further' the conservation of biodiversity when carrying out their responsibilities. The Wildlife and Natural Environment (Scotland) Act (2011) requires public bodies in Scotland to provide a publicly available report, every three years, on the actions which they have taken to meet this biodiversity duty. Under Section 6 of the Environment Act (Wales) the duty to 'have regard' in the NERC Act has been superseded requiring a public authority to 'seek to maintain and enhance biodiversity' and 'promote the resilience of ecosystems' as well as publicly reporting on achievements every 3 years.

4.6.3 We feel that similar requirements should be placed on English public bodies, to take a more active role and to report at regular intervals on how they have done so. This would lead to a consistent approach across the UK countries, would focus attention on the Duty and allow monitoring of its effectiveness. As it stands, there is no way of quantifying the effect of the Duty in England and whether or not it is contributing to the Government's commitment to halt the overall decline in biodiversity.

## **5.0 Key Line of Enquiry: the changing context since 2006**

### 5.1 Question Area

**Q10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

**Q11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

### 5.2 Shropshire Council response

5.2.1 Natural England should have a key role in ensuring that the 'General Purpose' Section 2 is upheld throughout and after Brexit negotiations, ensuring that UK legislation is appropriately updated to protect our country's biodiversity, fulfil our international obligations and achieve the Government's commitment to halt biodiversity loss. Until more information unfolds about the Brexit negotiations and their implications we would not be able to comment further.

5.2.2 We recommend that this policy area be considered further in depth by the Committee, drawing upon recent Select Committee inquiry reports including into agriculture and public goods and likely impacts of Brexit. We reiterate our offer made in opening commentary to this response, as per our final paragraph below.

5.2.3 Given the implications to yet be fully identified of Brexit, including upon policy ramifications around devolution of powers to local areas, and around funding arrangements, as well as on communities themselves in terms of personal incomes and life chances, we would like to place on record our offer to contribute further on policy development in this matter at national level. In so doing, we would also recommend a formal recognition by Government of the role of the Rural Services Network (RSN) as a primary channel to inform national rural policy development

### **Sign off**

**Mr George Candler, Director of Place and Enterprise, Shropshire Council**

*11 September 2017*

## **Small Farms Association and Tenant Farmers Association – oral evidence (QQ 67-77)**

Tuesday 24 October 2017

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Earl of Arran; Baroness Byford; Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; Countess of Mar; Baroness Parminter; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 9

Heard in Public

Questions 67 - 77

## Examination of witnesses

Mr George Dunn and Mr David Trigger.

Q67 **The Chairman:** Thank you very much, Mr Dunn and Mr Trigger, for coming to speak to us today. You have in front of you a list of interests that have been declared by members of the Committee, and the meeting is being broadcast live by the parliamentary website. A transcript of the meeting will be taken and published on the Committee website, and you will have the opportunity to make corrections to that transcript when necessary. For two of our members it is their first time on this committee, so they have to declare all their interests the first time they speak in public. So be warned.

The first question is: as bodies representing customers of Natural England, what impression do you get of the customer experience? How has that experience changed, positively and negatively, since Natural England was founded in 2006?

**David Trigger:** First, I am a grass-roots smallholder from south Devon.

On the question, Natural England has opened up more understanding of the countryside than ever before. People have now started to realise that it is important to grow on whatever scale. What the previous gentleman said about his plans was interesting, but in my part of the world I explain to people every day how you can grow on anything, from allotments to small pieces of ground. Now this has brought to people's attention how important it is to feed yourself with good, honest food.

**The Chairman:** And Natural England has helped in that process.

**David Trigger:** Natural England has done that. It is bringing the focus of agriculture to the people who need to know about it.

**George Dunn:** My organisation, the Tenant Farmers Association, has seen a real change. When Natural England was born, obviously there were some concerns about why it was conceived and when it came on to the horizon. However, these people found it to be an engaging organisation. They found people at grass-roots level who were prepared to discuss issues, guide and lead and to look at issues in a new way. Inevitably, over time, we have seen Natural England recede from that focus on those one-to-one, customer-focused discussions. There has also been a tendency to be less inclined to want to give advice because of concerns about overstepping the mark as a statutory body, whereas at the beginning there was a lot of exchanging of views, information and advice. Now there is a feeling that Natural England needs to get back to that space, and from our discussions with Natural England we get the feeling that it wants to do that. But we have seen a change over time in that retreat from that customer focus.

**The Chairman:** But do you think that that retreat has been because of the boundaries within which it operates or because of financial resources?

**George Dunn:** Both. The financial resources have certainly been an issue, and Natural England has not been immune to the sorts of cuts that we have seen across other parts of government, quite naturally. Obviously, the biggest expense is people, and pulling back on people is the way to do that. But, obviously, the more it has become involved in its statutory remit, the less it has been inclined to be open-handed about advice and information, in our view.

Q68 **The Countess of Mar:** What has been your experience of Natural England's delivery of agri-environment schemes, how would you like to see that change, and what could be done to change it?

**George Dunn:** From our perspective, it is almost as if we have had two conversations with Natural England. There has been the conversation about the freedoms provided by the NERC Act, about being more outcome-focused and about working with people at a grass-roots level to develop regional-specific and locally-specific schemes. However, the schemes that it has been delivering have been anything but outcome-focused. They have been very process-driven, particularly the most recent incarnation of agri-environment schemes. We were very critical of the way Natural England approached those. Quite recently we have seen a low take-up of those schemes because of the convoluted way in which they operate. But to be fair to Natural England, it has had stuff done to it. Its ethos is to be more outward-focusing and outcome-driven, but the schemes that it has been given to deliver have been completely different from its ethos. So, yes, we have been critical of the schemes, but we do not necessarily think that that is all the fault of Natural England. It is the fault of the policymakers who created them in the first place.

**The Countess of Mar:** Were those policies created in the European Union or with Defra?

**George Dunn:** Obviously, the European Union set down the rules on Pillar 2, and there is always the excuse of disallowance and the extent to which we need things to be photographed and geo-marked, and all that, to ensure accountability. So some of the blame can be put at the European Union's door. But at the end of the day, Defra had a remarkable amount of freedom to implement Pillar 2 in the way it saw fit, and the NERC Act provides a reasonable framework to do that. Therefore, a lot of this is to do with the way in which we have implemented the Pillar 2 policies, rather than being restricted by them.

**David Trigger:** There is something that I would like to bring to you all that is close to my heart, too; it is using the young farmers in our community. I have a poster here from the Devon Rural Hub, which explains its meeting place. We are missing a trick here by not getting the young ones interested. They are the seeds, the ones who will grow and develop more things. They are the ones you should be asking whether we can do this or that, and what we need to go forward. I feel very strongly about that.

Q69 **Lord Faulkner of Worcester:** I want to ask you about the Commission for Rural Communities, which from some of the written evidence that we



have had seems to have quite a lot of friends out there. They liked the research, they felt that the advocacy role was important, and they regret that it is no longer available to them. What is your impression of what it did well and what it did less well? Is its absence as keenly felt as some of our written witnesses said it is?

**George Dunn:** Personally, I was a great supporter of the CRC. It did some good work and it was a useful voice for the rural communities of our country, independent from what else was going on at the time. It is a bit ironic that probably its most successful report, the uplands report, came when it was told that it would be disbanded. That report was a fantastic piece of research. It had that independence, that ability to speak out for rural people, and we are not talking about speaking up for the well-off but about communities in rural areas where there is real poverty and real concern about access to services. The CRC did a massively good job in speaking out for those individuals, and it provided the evidence base to support reasonable changes in government policy. So from our perspective, the loss of the CRC has been felt quite keenly.

If you look at how we have developed the policy over time, we only really do rural proofing of policy when there is a uniquely significant impact on rural areas. We do not rural-proof stuff more widely, such as universal credit, stamp duty land tax or online VAT. That stuff gets no rural proofing, because it just seems to happen. It is only when there is a uniquely rural component such as agricultural policy, environmental policy or flood management that the rural component is taken into consideration. So the loss of the CRC in that respect has had a massive impact across wider government.

**David Trigger:** The analogy I tend to use is that the CRC bridged a gap; it brought things from the grass-roots level to everybody so that they were aware of what was happening in the wider community in rural areas. As you said, there is still a lot of poverty out there and lots of deprivation, and people who are still struggling day to day. However, as proud people they do not always tell others how bad it is. If they have an organisation they can go to, that always helps. At least they can share it with somebody else.

Q70 **Baroness Whitaker:** Rural proofing is obviously an extremely important aspect of national policy. Mr Dunn touched on some deficits. May I ask both of you when, in your experience, the rural proofing of national policy has worked best, and when has it not worked at all?

**George Dunn:** As I said, where we see a significant component of a policy or a change that has a rural component to it, the Government seem to wake up to the fact that a bit of rural proofing needs to be put into that particular aspect. Where it is unforeseen at the beginning—

**Baroness Whitaker:** Could you give me an example?

**George Dunn:** Let us take, for example, universal credit, minimum income thresholds and the time you have to find your way through it. In rural areas people tend to be much more plural and self-employed in their existence than people in urban areas. People in rural areas may have pretty lumpy

incomes if they are doing jobs in particular ways. They may work long hours. So to impose the national minimum wage on the minimum income threshold might be completely inappropriate for someone who is working very long hours for maybe not very much money over a period of time, or whose income is lumpy or because it comes from a number of different sources. That is an area where we think the process could have been thought through better.

Stamp duty land tax is another. There you have a policy to stop developers and property owners avoiding paying the correct duty on large premises in the centre of London, Bristol, Manchester or anywhere else. It was introduced as a way to tax long leases at high value. In my sector, the landlord-tenant sector, tenant farmers looking for long tenancies have to pay lots in stamp duty land tax because they have a long lease over a lot of land. It makes sense for people to have long tenancies, because they invest for the long term and they will invest in the environment, but stamp duty land tax is a regressive tax against those individuals. That has not been rural-proofed.

There are some really bad examples like that where there is no clear rural concern immediately but there is when you apply it across the rural economy, given how it operates. In the past, something like the CRC would have been at the forefront of government telling it that it had to think about these issues. As lobby groups we are doing that all the while, individually and with other groups, but it is much more difficult to do it from outside government than it is if you have a body within government to champion those issues.

**David Trigger:** I treat our members with the respect they need. As custodians of the land and what they give respect to, policies sometimes do not consider the smaller farmers or the family farmer who has small acres of ground and is strangled by the bureaucracy of trying to implement one policy that may counteract another. It has to be considered that some of the policies do not meet the objective of what they are trying to do.

**George Dunn:** Mr Trigger and I are talking about small businesses in the main and the individuals who are running them. They do not have an HR department to help them with a workplace pension scheme. They do not have an IT department to help them when the broadband goes down and they cannot do their VAT. They do not have a marketing department to help them sell internationally on the export market, which is what we are told we should be doing. These are small businesses that are trying their best to give employment and raise income in rural areas, yet they have to deal with the same sorts of regulations and policies that bigger companies in urban areas have to deal with. In a sense, if we could do something in a little way for every rural business to raise its profile we would see a massive improvement in rural economic growth.

Q71 **The Earl of Caithness:** You both represent organisations in the rural economy and you obviously thought the CRC was good. Have you noticed an improvement in your relationships with government since the abolition of the CRC? In particular, have you had input into the 25-year plan?

**George Dunn:** From the Tenant Farmers Association's perspective, we have seen no change in our involvement with government. To be fair, we have pretty well-established routes into government, particularly with Defra, the Rural Payments Agency, Natural England and the like. We have always had a good open door with those organisations, and those open doors have been maintained. There is always a lot of discussion. Obviously it is difficult to measure progress against activity. There is certainly a lot of activity, but we do not know how much progress we are making on those issues.

The abolition of the CRC has not necessarily caused a problem for organisations such as ours. Going back to something Mr Trigger said, interaction with those at grass-roots level is what is suffering. It is all right for me to stand here and be an advocate on behalf of my members. My members are quite capable of being advocates on their own, but they want to talk to the right people. They have ideas that they want to bring to the table. They have expertise that they want recognised. They are land managers and professionals on their own account. They have solutions to some of the problems that we face at the local level that they want to be able to articulate in ways that I cannot on their behalf. That is what we have lost: the ability for local people to have that dialogue with those types of organisations that can really make a difference for them.

**David Trigger:** That is very true. We do need the ears. We need people out there to be listening to what everybody in the rural community has to offer. Lots of people out there have many skills that have been hidden for many years which they can bring to the stage. Sometimes they just do not get asked questions. I welcome today's session, because once again it is bringing our quest to bring who we are and what we do more to the fore.

**George Dunn:** I go back to a scheme from the past, the environmentally sensitive areas scheme. In a previous incarnation I was responsible for assisting with some of the policy evaluation of those initial ESAs when I worked for MAFF as an economist many years ago. The defining point of success for those schemes was the project officer: the person on the ground who was able to be an advocate for the scheme, had the trust of the people and could have a dialogue with individuals about what worked and what did not. The schemes did not work well when the project officer was somewhat removed, was not engaged or did not have the people skills to do that.

That is what we are losing with some of the schemes that are now online applications or stuff you do remotely. We are losing that people-to-people focus. We are not dealing with straight, linear relationships. Things are messy and they change. Things are not always the same across different sites, even in a catchment. People could say, "Look, I have a basket of resources available to me. You've got your land and your farming experience. How can we bring the two together to make a real difference for the natural environment and the rural economy?" That is what we need to see.

Q72 **The Earl of Caithness:** What are your thoughts on natural capital? You

listened to Professor Helm and you obviously know about it. Do you fear this, even though it might in some instances be against the activities and interests of some of your members as they currently farm and operate their holdings?

**George Dunn:** We do not fear it, because obviously our members, in both organisations, rely on the natural capital that they have: their soil, their environment, their water et cetera. I disagree with Professor Helm when he says that nature gives us this for free. Nature does help, but there is a lot of management of this stuff. We have seen some bad management in certain places, but we have also seen some good management. Professor Helm painted a bit of an apocalyptic view of where we were over the last 25 years. There has been massive improvement in environmental management and biodiversity in parts of the country. But this stuff needs to be managed. Our members are rightly proud of some of the stuff they have. Sometimes they are nervous about putting their head above the parapet if they talk about a particular species that they have found, because they do not want a massive designation over their land and then to be restricted from doing stuff. That will impact on their businesses. However, they appreciate what they have; they wake up every morning and they see it. It is part of their economic wherewithal. We are not frightened by it, but the language used by people such as Professor Helm and others about the way land managers treat their land, which is quite pejorative, is not helpful. We need to look at joint solutions.

Q73 **Baroness Scott of Needham Market:** I have a question and I was not sure where to put it. I suppose this is as good a place as any. On the Government's devolution agenda, particularly metro mayors and all that, do you have any concerns about where rural policy fits in? If you are focusing on metro areas, do rural areas get neglected? There is also the fact that large metro areas quite often have significant rural hinterlands.

**George Dunn:** We have evidence, and I am sure Mr Trigger will also have evidence, that when regional bodies are established they are dominated quite often by the urban and suburban interests of members, and rural areas do not gain as much as they might. It may not be politically correct to say it, but we are quite a small country to talk about devolution. It does not necessarily matter where the decisions are made; it is about how they are made and how you engage with people. We need to keep the lines of communication short. We do not want to have more gatekeepers getting in the way. Sometimes devolution and regional policy creates another set of gatekeepers that you have to go through. Having good dialogue between those who make decisions and those who have to live by those decisions is absolutely correct. So I am not necessarily an advocate of seeing much more regionalisation and devolution, because that just creates more committees and more decision-makers rather than real action. As I said before, sometimes we measure progress by activity. There is quite a lot of activity in the devolution space, but I would disagree that there is too much progress.

**David Trigger:** Some 20 years ago I brought the rural community into the heart of Bristol through city farms. It was about bringing awareness of how

to produce and grow things and care for chickens—things like that. Once again, those living in concrete jungles are sympathetic and we can get ideas from other people as well. There are many ways to approach this.

Another organisation is Transition, which is based in Totnes in Devon. It is a classic example, and I was pleased to be part of it. Once again, it was about using the ground in small catchments for the betterment of local people.

**Baroness Byford:** This is a supplementary question. It is hugely important that you engage locally, and I am very grateful for what both your organisations do. Having listened to the evidence earlier, and the suggestion that Natural England and Defra might have a shake-up and a new outcome, does that frighten you or are you encouraged by the idea of greater opportunity to look at what you do on behalf of the greater public good and access? Many of you are probably involved in Open Farm Sunday and other things that help to give the public a better understanding, because clearly our communities will become more urbanised as we go on. Do you feel that there is an opportunity there that might not have been there before because we have been tied down by the way we do things?

**George Dunn:** It neither frightens me nor encourages me. It just depresses me that we are talking again about institutional change. The easiest thing for government to do is to move the seats around and change organisations. But nothing changes on the ground. We have the NERC Act, which is pretty broad legislation. Under Section 6, Natural England can basically pay anybody it likes to do stuff that forwards its purpose. Section 7 says that it can have whatever management agreement it likes with whoever it thinks possible to forward its purposes. Section 8 says that it can be experimental. So there is already enough there for the existing organisations to use effectively.

I do not want to see just another institutional merry-go-round that changes the seats around for no particular gain. We need to take what we have already. Natural England is a great body with some great people, and the people we talk to on a regular basis are enthusiastic about the area of work they are involved in, but obviously they feel beleaguered by the dead hand of the bureaucracy that they operate under and the resources that they have. Let us not go for the easy solution of creating another body or changing things around. Let us ask why this body is not functioning properly. How do we make the difficult move from talking about this stuff to actually doing something about it? From our point of view, that is the more fundamental problem.

**Baroness Byford:** In fairness, I think the professor was suggesting a bottom-up approach.

**George Dunn:** Yes, but he also talked about bringing in new organisations and changing things around, which I do not think we need in this space, other than in flood defence policy, where I agree that we need to be much more catchment-focused and to look at the internal drainage board mechanism as a way to develop flood management in local areas. Oher

than that, let us keep the institutions that we have and use them rather than think that we are doing something good by moving the seats around.

**David Trigger:** I have been very involved in that all my life. With change, you need people giving sound advice. If not, people will just cast off ideas and say that it is change for change's sake. I was very keen on starting countryside clinics, somewhere where people in the rural community could drop in to and get advice. They do not have to go to a town or city but can stay in their own area. The more we look into policy changes, the more I start to realise that perhaps we will have to think that way.

Q74 **Viscount Chandos:** As this is my first meeting, I should declare my relevant interests as a trustee of the Esmée Fairbairn Foundation and the Ernest Kleinwort Charitable Trust, both of which fund a range of environmental charities.

Mr Dunn, you mentioned the CRC's report on England's upland communities, which I think you were involved with. What was the biggest lesson of that report for rural policy in England? Do you feel that the Government's response to the subsequent House of Commons committee inquiry was appropriate? Do you feel that the Government have kept to the commitments they made in that response?

**George Dunn:** There are a lot of questions in there. I said previously that we thought that the uplands report was one of the best pieces of work that the CRC did. It was one of the best pieces of work because the commission bothered to speak to people at the grass-roots level. The commission spoke to nurses, doctors, dentists, teachers and publicans in rural upland areas, and listened to their thoughts, aspirations and concerns and reflected those well in the report. The biggest lesson is the need to ensure that people have a voice. One of the things that Esmée is funding is the RSA's work on citizen engagement post Brexit for food, farming and the countryside, which will be launched on 1 November. Again, that will put the citizen's voice back at the heart of the agenda. That is what the CRC report on the uplands did. The biggest lesson for government was to think in a cross-governmental way. The report had messages for the communities department, the business department, the Treasury, the Cabinet Office and Defra.

When the Government decided, during the bonfire of the quangos, to get rid of the CRC, they said, "We are all rural advocates now". That was the phrase used when the CRC was disbanded. Of course, the Government put a policy team in place in Defra to be responsible for this, and of course they said nice things to the Select Committee. But, again, over time, we have seen that chipped away and chipped away. An example is the agri-environment schemes for the uplands; we had the hill livestock compensatory allowances, which became the hill farm allowance, which became the UELS, which has become part of mid-tier. As we have moved down the line of these policies, it has become increasingly difficult for people to access them and be involved in these things. Inertia over time has meant that some of the nice words that were said at the time have not really come to fruition. We need to look back at some of the things that

the CRC said to put a new emphasis on uplands, which the Government said they would do when it was disbanded.

One of the issues that we have been keen to look at is the role for grazing livestock in upland areas. A lot has been said about the need for rewilding in upland areas, which in my view would be a completely mad solution to some of the issues that we face in upland areas. We need good mixed grazing livestock systems in upland areas to maintain the biodiversity, water quality et cetera. But we are not talking about that. There was some talk about it in the CRC report, but it has gone into the deep water again and has not seen the light of day. Inevitably, sadly, we have not seen the real advances that we were hoping for.

**David Trigger:** It is true what George said. Many a piece has been done on this, but the pieces need to be picked up and gathered together to see what is missing. We owe it to our people to do that.

**The Chairman:** Mr Dunn, can you clarify something? You said that you did not want any more devolution, as such. At the same time, you seem to be saying that you want more voices to be heard on the ground. Can you flesh out the slight dichotomy that seems to be coming across to me?

**George Dunn:** What I am trying to say, Lord Chairman, is that when we see devolution talked about and solutions to the devolution issues that arise, we tend to get more quangos, committees, gatekeepers—more discussion and less action. People in my organisation tell me that they want more dialogue and direct access to people who make decisions on these issues. We spend a lot of time, energy and resource on the devolution framework without doing devolution properly, which is getting down to the grass-roots people. The decisions might be made in London, but if the London office has people in Devon, Cornwall, Northumberland, Cumbria and Kent talking to people at the grass-roots level on a two-way basis—it is about information flowing not just from the centre out but from the regions back up again—decisions will be properly informed so that we do not have the normal set of affairs where you simply create a new committee. You would have direct dialogue with people at the grass roots as well.

Q75 **Lord Cavendish of Furness:** I, too, will declare my interests. I apologise to the Committee and to the gentlemen that they are rather long. I am a beneficiary of family trust companies concerned with landowning and farming interests that receive environment payments; landlord-tenant relationships, including leases to Natural England and Cumbria Wildlife Trust; mineral extraction; tourism and leisure; horseracing; shooting and fishing; and forestry. I am a member of the Country Land and Business Association, the National Trust, the Countryside Alliance, the Angling Trust, the Game & Wildlife Conservation Trust, the BASC, the Green Lanes Environmental Action Movement, the Moorland Association, North Lonsdale Agricultural Society, the Salmon & Trout Association, Cumbria Wildlife Trust; and Cumbria Woodlands. I hold office with the following: I am President of Cark and District Anglers Association; President of Grange and District Wildfowling Association; Patron and Past-President of the Cartmel

Agricultural Society; President of the Dry Stone Walling Association of Great Britain; and Chairman of the Leven Angling Association. I thank you for your patience.

My question is on Brexit. What are your biggest concerns and hopes relating to the UK's exit from the EU, and what would you like to see government do to take proper account of rural communities' demands during this process?

**George Dunn:** That is a big question to think about. My biggest concern is something that we probably cannot do much about now. Before we went into the referendum last year we should have had a more worked through plan for Brexit than we had at the time. I know there were reasons why that was not put in place, but we should have done some firmer thinking about what a post-Brexit Britain could look like before we had the referendum. Now there are only 18 months to go before we leave the EU. There are real concerns about trade and our trading relationships not just with Europe but with the rest of the world. We hear great talk about some of the discussions that we are having with some of our supposed new trading partners, but there are concerns about how our standards of production and our environmental standards will be maintained if we are expected to trade with parts of the world that do not meet the same environment and animal welfare standards that we have here.

There are clear concerns about labour and access to labour. We understand the need to try to find a way to use more labour from our own resources, but that will not happen overnight. There is a cultural difference—an issue about people wanting jobs that are on offer in rural areas. We need some transition from that perspective. The whole devolution argument, which we talked about earlier, is also a concern in the withdrawal Bill and how that will be played out; whether we will be in a mire of constitutional difficulty come the end of the year before we have even got out.

There are lots of challenges ahead, but on the positive side of what we might see we are looking at the possibility of developing for the first time in a generation a new set of agricultural and rural policies that are fit for purpose for our own shores. We need to give them some proper thought and develop them in an outcome-driven way. We have the ability to be more export-focused and perhaps even look at import substitution. Why are we still importing as much cheddar from Ireland as we have been recently? Is import substitution a new way to boost rural incomes, rural economies and the standards of food that we have here?

Public procurement in food is another issue and something that we have been debating for a long time. Our hospitals, military and schools should all be able to select British food as a primary point. We should be able to be more exacting about that in the way we do things. We will gain other freedoms from other bits of regulation that we can think about more constructively.

So the real risk is in how we make maximum use of the freedoms we are afforded as we move into the next generation post Brexit, but we definitely



need a good period of implementation. We cannot simply, in March 2019, fall into a completely different set of regulatory environmental policy frameworks. We need to have an implementation phase that takes us smoothly into the post-Brexit era.

**Lord Cavendish of Furness:** I do not know whether you have noticed, as I have, completely outstanding young people coming into farming and the tenanted sector. Does that suggest confidence in British agriculture?

**George Dunn:** There are substantial numbers of young people. What has been interesting in my career with the TFA, which has now spanned nearly 21 years, is that when I started you could not get anybody interested in coming into the industry. Even the sons and daughters of farmers were going elsewhere to find work and employment. Now we are inundated with young people from all walks of life looking to get a start in agriculture. Yes, some of them have rose-tinted spectacles and need to be helped to understand what they are getting themselves into, but we have a massive interest in our industry that we have not had for a generation. Not all of those will be able to be principals and businesspeople in their own right. We need to be thinking about how we can encourage them to be good employees in our sector as well. We need more farm managers, food processors, vets, agronomists and everything else that goes with the industry. We need to take the enthusiasm that is there and ensure that we capitalise on it.

There is confidence among young people. Many young people will see Brexit as a bump in the road. What I mean by that is that it might be a big bump and a big correction, but what they want is some long-term thinking. They want to say, "If I'm going to invest my time, energy, money and family time into this venture, am I going to be here for 10, 15 or 20 years? How can I take that forward?" They do not want to have a five-year lease of land, their kids in local schools, their partner having a job in the village shop and suddenly find the rug pulled from beneath their feet. Some of the advice that landlords are getting about being short-term in their thinking because of Brexit is completely wrong. Landlords should be thinking long term and saying to people, "Okay, if you've got the confidence to be in the sector we will lend you a 10 or 15 year lease. You're the entrepreneurs, the businesspeople, the risk-takers. You sort out how that operates for you". There will be some really good businesses out there.

**David Trigger:** There is a word that I like to use a lot. It is a modern word: smart. We need to be smart with this. We need to show when we sit down and work out plans that they are going to work and are achievable, that they bring employment for the wide gamut of rural areas that they look after—the butcher, the baker, the candlestick maker—and go out to the young. The only thing that has not been mentioned that I am a little concerned about, and which more people talk about in industry, is that nobody has looked to the age profile either. There are lots of older farmers who are still there, doing the work and going out and doing tremendous things on the land, but one day they will not be there with their knowledge. We need to capture that. We need to be out there getting their knowledge

and information back to the rest of us so that we can pass it on and keep this England going.

Q76 **Baroness Scott of Needham Market:** Thank you. I will completely change the subject. We have had quite a lot of witnesses in their evidence raising concerns about the use of green lanes, or unclassified county roads, by motor vehicles. From your perspective as national organisations, could you comment on how widespread this concern and this practice are, and whether you think the answer is a legislative one and whether we need an amendment to the law, or whether it is largely about enforcement and things like local authorities bringing in traffic regulation orders?

**George Dunn:** This is not my great area of expertise, I must admit. The conversations we have had with our members tend to be more about enforcement of the law. There is plenty of legislative scope for ensuring that these things should not happen, but of course they do. It is a bit like speeding on the motorway; if no-one is there to watch, how are you caught? Quite a lot of access along these lanes. It is illegal, but enforcement issues are the problem. Then we have the \$64,000 question of how you resource enforcement in local areas. You cannot have somebody sitting at the bottom of every green lane waiting for the trail rider to come. It is not that straightforward. We need to look at ways of better enforcing the laws that are already there.

**David Trigger:** I would go further than that. As in my early days on the parish council, there is the classic example of each parish having its own boundaries. It has border paths, footpaths and other paths. If you take a local interest in what is around these paths, you will find that a lot of people would not actually use every green lane. It is a case of each area having to grasp the nettle and say, "Right. Let's adopt it. Let's control what is actually going on in our own area." That would also help the situation. We are too heavy-handed. We could solve our own problems.

**Baroness Byford:** Before I go to my final question, I will pose a couple of supplementaries to you. We spoke about Brexit and its opportunities and challenges, and we are grateful for the evidence that you have given. Mr Trigger, from the small farmer's perspective, have you seen a much greater coming together of smaller farmers to enable them to develop new ways of marketing what you produce? Mr Dunn has spoken about that side, which I know requires a long-term strategy, but I ask this from your perspective rather than from his for the moment.

**David Trigger:** In the early days of our association, we would take a group of farmers to Brittany. The farmers who went with us had their eyes open wide, taking in exactly what was going on and enjoying what the small farmers had to offer, and they learned a few lessons. To be honest, I think small farmers have gained a lot of information in understanding other people's plight. It is the same as us. Sometimes they are isolated. Some people actually farm their land without seeing their next-door neighbours. It is a crying shame that that is the way the world is these days. I think Brexit will change lots of things for lots of people, without their control.

**Baroness Byford:** I mean, from a commercial point of view, whether they would come together much more and try to work as mini co-operatives and help in that way.

**David Trigger:** We met a chief executive who knew every farmer by their first name. That was very impressive. There were 200 farmers, and he knew every one.

**George Dunn:** It is impressive to note when you talk to individuals about the way they are connecting with the local communities that quite a lot of informal co-operation goes on in communities. The farming community tends to come together, particularly if people become sick or there is an issue. Where we have not been so good is in the more formal areas of co-operation, such as in the marketing that you are talking about.

My daughter Alex has just been to New Zealand for four months and has seen how co-operative the farming community is there, having responded to the challenges it faced in the 1980s with the reduction of subsidies. I do not suggest that we have a cliff-edge approach, but we need to learn from some of the experiences that my daughter has seen out there, with communities coming together and forming co-operative organisations more collectively. We had a go at it following the Curry commission and the creation of the English food and farming partnerships, but we did not really make a success of it. We should definitely pick that up again.

**Baroness Byford:** If it was not successful, what made it unsuccessful? What key things could we do in the future that have not been done in the past?

**George Dunn:** There are two things. First, we have overcomplicated it. There are some good initiatives. The Dartmoor Farm initiative is a good one; we have seen some co-operative marketing there. As I understand it, the farmers came together as a group of individuals who asked, "How do we want to do this stuff?" They created their own co-operative structure rather than somebody coming to impose one. Our governance has not been so good in some of the co-operatives. Also, a bad taste was left in the mouth from things like the abolition of the potato marketing board. As an industry, we need to get over that and find new ways to become much more co-operative in the future.

Q77 **Baroness Byford:** My last question is this. If you had one thing that you were able to put in this report that you would like us to include, what message would you give us?

**David Trigger:** My answer is plain and simple: listen to us and to grass-roots people and get us to understand exactly how you operate. That will help us to achieve the task that we need to achieve.

**Baroness Byford:** I am lucky enough to be involved, so I have that. Do you see it as a formal structure? How do you see it enabling that to happen?

**David Trigger:** The more you go into it, the more formal it looks. Sometimes we miss out on the important points. There is time for formal

talks and general discussions. It could be a brainstorming session with some of the farmers that get initiatives. There are many other things.

**Baroness Byford:** Mr Dunn has obviously been in that loop for a while.

**George Dunn:** Absolutely. The one thing I would say is let us use the flexibility that the NERC Act provided. It created a pretty broad framework for Natural England basically to do what it likes in order to forward its core purpose. It has not been able to do that because of extraneous things such as European rules, accountability and resourcing issues. So let us use some of that experimental stuff that we were talking about 10 or 12 years ago that Natural England was given to do and has not been able to do anything about, but let us do it in a way that properly engages with grass-roots people in areas where they want to influence that policy. Let us do it in a collegiate way locally, rather than having top-down approaches.

**The Chairman:** Thank you both very much. It has been a very good evidence session.

## **Staffordshire County Council – written evidence (NER0077)**

### **Re: House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006 – Call for Evidence**

Defined rural areas make up around 80% of Staffordshire's land area, whilst around a quarter of our population live within rural areas with many more residing in our market towns. Policies that affect rural areas therefore have a significant effect on our county, and we therefore very much welcome this inquiry and the opportunity to comment.

Whilst the role of the Select Committee is to consider the Natural Environment and Rural Communities Act 2006, the questions set out within the call for evidence clearly show an interest to consider wider Government policy. In this regard the inquiry is very well timed given the recent County Councils Network (CCN) publication, 'A New Deal For Counties', which sets out the priorities for county areas over the next few years and is something we wholeheartedly support.

In many ways the recent work of the CCN is a response to recent Government policies which have been largely aligned to large cities and metropolitan areas, such as City Deals and Devolution Deals, whilst advocating greater recognition of the vital role of counties in providing jobs, homes and places to visit. There has to be particular concern that counties, and therefore rural areas, have for too long experienced funding inequalities when compared with our urban counterparts, including for social care, public health, our local schools, transport and infrastructure.

However, it does now seem that there is beginning to be greater recognition of the importance of counties, such as within the emerging national Industrial Strategy and the priority to drive growth across the whole country. We need to build on our existing economic strengths whilst tackling the challenges that stifle growth, so that the economic potential of our rural areas can be realised. In doing so, it will be important to harness local knowledge and expertise from within the counties; empowering, strengthening and representing our communities in the process. As the Industrial Strategy becomes a white paper, it will be vital to ensure that this ambition is not lost.

Whilst it may have seemed sensible to have specific parts of Whitehall considering rural policy and ensuring that wider policies and programmes are 'rural-proofed', in practice it is debatable as to how effective this has been. Often it has seemed that rural policies and programmes have been reactive to policies from other Whitehall departments – add-ons have been created, or existing Government initiatives have been rebadged as rural without any real additionality. As an organisation external to Whitehall, we feel it is not clear what function Defra's Rural Policy team now provides; however Defra should be actively engaged in collaborating with other Whitehall departments on policy development from the outset. Defra should have an overview of wider policy implications upon rural areas, but with 'rural' policy frequently being mainstreamed across government, without the need for it necessarily being lead from within Defra itself.

It is our belief that organisations and partnerships such as CCN and The Rural Coalition are well-placed to offer the functions of advocate, adviser and watchdog in the future and therefore the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, need not have any significant impact on Government's policy for rural areas. We believe that a far bigger issue is the need for counties and rural areas to be considered to a much greater extent by all Whitehall departments. This will be vital to driving growth and community sustainability across the country in the coming years and particularly in light of Brexit and the significant sums of money that are currently distributed to rural areas through the EU. This is clearly no easy task but we believe that this will require strong leadership from all politicians and within all Whitehall departments to ensure that our counties and rural areas can maximise their economic potential and provide the highest-standards of living for all of our residents.

More specifically Natural England, like all public bodies, faces reduced resources and this gives rise to inevitable pressures. There has been a decreased input to land use planning with growing dependence on standing advice. This can have knock on impacts on local planning authorities and on securing socio-economic development.

Agri-environment schemes (e.g. Countryside Stewardship) are key to delivering many environmental outcomes particularly in relation to management of Sites of Special Scientific Interest and Natura 2000 sites. Following Brexit it will be important that resources are still available to deliver environmental management for these priority areas. Many of these are managed by local authorities, NGOs etc. (i.e. not farming businesses) and it will be important to secure the future of these sites and ensure that resources are still available by a similar mechanism.

In relation to the Biodiversity Duty, this has had a beneficial impact in relation to wider biodiversity (i.e. non-designated). However it is not particularly well understood and the mechanisms to determine whether it is being delivered are unclear. The equivalent duties in Scotland and Wales seem more effective in requiring enhancement which is more in line with the requirements of the NPPF, and also requiring some reporting on activity to meet the duty. With local authorities facing huge pressures on resources careful consideration is required to develop a more meaningful duty with greater clarity and a simple mechanism for assessment.

To conclude, whatever institutions are charged with this responsibility in the future, either a reinvigorated post-Brexit role for Defra, a clearly defined regional remit via Midlands Engine, or Royal Commission, they will need underpinning with stronger representation from regional CLA, NFU, AHBD and Local Government / Local Enterprise Partnership stakeholders.

**Mark Parkinson, Economic Development & Planning Policy Manager**

cc

Cllr Philip Atkins, Leader, Staffordshire County Council

Cllr Mark Winnington, Cabinet Member for Economic Growth, Staffordshire County Council

*11 September 2017*

**Lord Bishop of St Albans and Bishop of Hereford -  
written evidence (NER0043)**

[Evidence to be found under Bishop of Hereford](#)



Dr Nigel Stone and Kent Downs AONB Unit – oral evidence (QQ 25-30)

**Dr Nigel Stone and Kent Downs AONB Unit – oral evidence (QQ 25-30)**

[Transcript to be found under Kent Downs AONB Unit](#)

## **South West Coast Path Association - written evidence (NER0045)**

The South West Coast Path Association on behalf of the National Trails Alliance, a collaboration of all National Trails, seeks to provide evidence to the House of Lords Select Committee on the Natural Environment and Rural Communities Act 2006.

### **How well has Natural England fulfilled the mandate that it currently has?**

*Natural England's general purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. And specifically (d)promoting access to the countryside and open spaces and encouraging open-air recreation.*

The role of Natural England has significantly reduced since 2010, and appears to be continuing to decline. In the early years of the agency, Natural England was very proactive at encouraging people to get out and enjoy the outdoors, and working with other government agencies to develop schemes such as:

- 'Walk the Way to Health' initiative to establish a national network of health walk groups across the country and established new partnerships with Primary Care Trusts and local authorities to enhance the evidence base on the health benefits of the natural environment.
- Secured £25 million from the Big Lottery Fund Changing Spaces programme for Access to Nature, a grant scheme managed by Natural England on behalf of a consortium of 12 national environmental organisations, to provide new opportunities for people to enjoy the natural environment.
- Developed an engagement programme to give one million children a high-quality learning experience in the natural environment, with 250,000 involved each year over the next three years.
- In 2010 awarded nearly £10 million under the Access to Nature, Aggregates Levy and Natural Assets schemes, benefiting 160,000 children, and another 531,000 countryside visitors.
- Developed a programme of outdoor learning activities for 400,000 Scouts and Cubs and launched the 'Language of Landscape', with Ordnance Survey, to benefit 750,000 11yr old school children.

As evidenced by the work it delivered to promote access in the early years, Natural England has the powers to be the government lead on public access, but in recent years, probably due to reductions in its budget, it is currently failing in many ways to do this.

This is evidenced by:

- **The lack of apparent leadership on countryside access matters.**  
Natural England's Board Members do not include a countryside access specialist or anyone with interest in promoting public access. The Operations Director responsible for Access has changed four times in 1.5 years. The health and wellbeing benefits that countryside access provide are well evidenced, as are the economic benefits that help sustain many rural communities. Both of these benefits were in the past championed by the Commission for Rural Communities (CRC). Natural England do produce the Monitoring Engagement in the Natural Environment (MENE) research which is very useful and referenced extensively as for the first time it delivers robust evidence of how many people visit the countryside. However there is little evidence of Natural England using this research to influence other government departments to invest in countryside access. Natural England is currently failing to provide strategic leadership to the many organisations that deliver countryside access at a local level or to provide them with a link with other government agencies to use countryside access as a tool to deliver Health & Tourism / Economic priorities. This is evidenced not only by the lack of cohesive countryside access strategy within Defra and Natural England, despite the strong evidence for it, but also by failures to influence other departments/agencies including DCLG - Local Economic Partnerships / Coastal Community Teams, DCMS - Sport England and Visit Britain/England.
- **The lack of a sustainable strategy for National Trails in England, including the England Coast Path** There are 13 National Trails across England, and 2 in Wales, stretching over 2,600 miles providing opportunities for visitors to walk, cycle and horse ride through some of the UK's finest landscapes. The England Coast Path will be the newest National Trail and when completed in 2020 will be one of the longest coastal walking routes in the world. The Trails are national assets, improving the health, wellbeing and prosperity of the UK as well as inspiring people to value our natural environment. However:
  - Natural England has reduced its funding to National Trails by 30% since 2012. The entire National Trail maintenance budget is now just £1.69 million per annum.
  - Natural England tried to impose a further 50% in year funding cut in June 2016 which would have effectively closed many National Trails. Thankfully Defra reversed this proposal. Since that time Natural England continue to threaten further funding cuts at every meeting with National Trails.
  - Natural England wants National Trails to become less reliant on public sector funding in the future. Natural England have commissioned an independent report on the Income Generation strategy for National Trails including the England Coast Path. This report is not yet published

but the findings conclude that there is no body or income source to replace maintenance funding of National Trails and for the National Trail family to be more effective at income generation they will require more investment, from Natural England, not less.

- Natural England has significantly reduced its National Trail staff levels to the point that their role as National Trail Champion is ineffective. This is evidenced by the fact that Natural England have not published a National Trails Annual Report since 2013/2014  
<https://www.gov.uk/government/publications/national-trails-annual-report>
- Natural England has declined to confirm its role as National Trail Champion and what this includes due to its reduced staffing levels and own funding uncertainty.
- Natural England created a 'New Deal' three year agreement with Trail Partnerships in 2013, this expired in 2016 and has not be replaced/updated or renewed. Effectively leaving National Trails without an agreement.
- The New Deal agreement by Natural England included a three-year funding cycle has not been forthcoming and although Defra has committed funding until 2017-2018, future funding past this date is currently unclear. This leaves National Trails 'trading insolvently' when the annual maintenance grant is not confirmed by the 1<sup>st</sup> January each year, it is typical for Natural England to leave this confirmation of funding until very close to or after the start of the financial year. This prevents National Trails from effectively planning ahead, thereby getting greater value for money and using the funds to leverage further funding. This appears to be at odds with Conservation 21 which aims to work in *trusted, shared plans .. that look to the longer term*.
- Natural England have committed the funds to create the England Coast Path but not to maintain it. The pressure of maintaining more National Trail with no additional funding puts existing and new National Trails, including the England Coast Path, in jeopardy.

#### The solution

In the short term, to ensure the future of the National Trails is safeguarded, National Trails ask that:

- DEFRA upholds the Natural England agreement and commits to an ongoing three year funding cycle
- Defra maintains the total investment of £1.69 million each year for the 13 existing National Trails until 2021
- Defra provides staged funding for the England Coast Path as it opens: (2017/18 £0.13 million; 2018/19 £0.89 million; 2019/20 £1.39 million; 2020/21 £1.49 million)

And in the medium term Defra and Natural England work with National Trails to ensure there is an effective countryside access body and National Trail Champion in the future

#### KEY FACTS

- There are 14 National Trails in England including the new England Coast Path due to be complete in 2020\*
- The England Coast Path will be the longest walking trail in Europe\*\*
- The public can enjoy 2,600 miles / 4,160 KM of high quality access through the finest landscapes along National Trails\*
- The National Trails pass through 6 National Parks, 15 AONB, 2 UNESCO Biosphere Reserves, 7 UNESCO World Heritage Sites, 10 English Cities and 33 National Nature Reserves\*
- 83 million people visit the trails each year – both local and international visitors\*
- Visitor spend is worth £533 million each year to the economy\*
- Volunteers spend 3,000 working days per year on the trail, which has been valued at £300,000\*
- The National Trails website has 2.6 million visitors per year which supports 4,260 businesses\*
- Walking and riding on the National Trails could save the NHS £167 million through improved health and wellbeing\*
- 93% of visitors left calm and relaxed after a trip to one of the National Trails\*
- There is growing public demand, for example there has been a 21% increase in visitors to the Norfolk Coast Path in 2016-2017\*\*\*\*
- The National Trails are award winning with the South West Coast Path being awarded Outstanding Contribution to Tourism and the South Downs Way being recognised as one of the top 10 mountain bike routes in the world\*
- Trails represent value for money, with government spending on National Trails standing at only 3p per person per year\*
- £1.6 million Government funding levers in additional funds, doubling spend
- Management of all Trails is overseen by a Partnership of stakeholders including charities, highway authorities, user groups and others, e.g. Ramblers, CLA
- Nobody in England is more than 52 miles away from a National Trail\*\*\*

\* National Trails Infographic background data

\*\* [www.nationaltrail.co.uk](http://www.nationaltrail.co.uk)

\*\*\* Distance From National Trails in England – Heat Map

\*\*\*\* Norfolk County Council (Environment Team)

#### **National Trails represented**

Cleveland Way	Spanning 109 miles, this trail starts at Helmsley, North Yorkshire and ends at Filey, North Yorkshire – taking an average of 9 days to complete.
Cotswold Way	Spanning 102 miles, this trail starts at Chipping Campden, Gloucestershire and ends at Bath, Somerset – taking an average of 7-10 days to complete.
Hadrian's Wall Path	Spanning 84 miles, this trail starts at Wallsend, Tyne and Wear and ends at Bowness on Solway, Cumbria – taking an average of 6-7 days to complete.
North Downs Way	Spanning 153 miles, this trail starts at Farnham, Surrey and ends at Dover, Kent – taking an average of 12 days to complete.
Offa's Dyke Path	Spanning 177 miles, this trail starts at Chepstow, Monmouthshire and ends at Prestatyn, Denbighshire – taking an average of 14 days to complete.
Pedders Way and Norfolk Coast Path	Spanning 90 miles, this trail starts at Knettishall, Suffolk and ends at Cromer, Norfolk – taking an average of 7 days to complete.
Pennine Bridleway	Spanning 205 miles, this trail starts at White Peak area, Derbyshire and ends at Howgill Fells, Cumbria – taking an average of 1-14+ days to complete by bike or variable times by horse.
Pennine Way	Spanning 268 miles, this trail starts at Edale, Derbyshire and ends at Kirk Yethholm, Scottish Border – taking an average of 16-19 days to complete.
South Downs Way	Spanning 100 miles, this trail starts at Winchester, Hampshire and ends at Eastbourne, East Sussex – taking an average of 8-9 days to complete walking and 2-3 days by bike.
South West Coast Path	Spanning 630 miles, this trail starts at Minehead, Somerset and ends at Poole, Dorset taking an average of 30 days to complete walking fast or 7-8 weeks at a leisurely pace.
Thames Path	Spanning 184 miles, this trail starts near Cricklade, Wiltshire and ends at the Thames Barrier, Greenwich, London – taking an average of 14 days to complete.
The Ridgeway	Spanning 87 miles, this trail starts at Avebury, Wiltshire and ends at Ivinghoe Beacon, Buckinghamshire – taking an average of 6 days to complete.

Yorkshire Wolds Way      Spanning 79 miles, this trail starts at Hessel, East Riding of Yorkshire and ends at Filey Brigg, North Yorkshire – taking an average of 5-6 days to complete.

*12 September 2017*

Tenant Farmers Association and Small Farms Association – oral evidence (QQ 67-77)

**Tenant Farmers Association and Small Farms Association  
– oral evidence (QQ 67-77)**

[Transcript to be found under Small Farms Association](#)



## **Town and Country Planning Association (TCPA) – oral evidence (QQ 95-106)**

Tuesday 7 November 2017

11.05 pm

[Watch the meeting](#)

Members present: Lord Cameron of Dillington (The Chairman); Baroness Byford; Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; Countess of Mar; Baroness Whitaker.

Evidence Session No. 12

Heard in Public

Questions 95 – 106

## Examination of witnesses

Dr Hugh Ellis and Trevor Cherrett.

Q95 **The Chairman:** Welcome, gentlemen. Thank you for coming along today. You have before you a list of interests that have been declared by members of the Committee. The meeting is being broadcast live via the parliamentary website, and a transcript will be taken and published on the Committee website. You will have the opportunity to make corrections to that transcript where necessary. First, there is no need for both of you to answer each question, so do feel free to share the responses between the two of you. Secondly, do you want to introduce yourselves for the record and make any introductory statements?

**Dr Hugh Ellis:** Good morning. I am the director of policy at the Town and Country Planning Association, which has had a 120-year interest in rural and urban planning. We are in the middle of a major end-to-end review of the English planning system, so much of what I have to say is related to the evidence we have received.

**Trevor Cherrett:** I am on the TCPA policy council and I, too, am involved in the review, in particular on the local neighbourhood planning side. I am also chair of the Wiltshire Community Land Trust, with a long past involving rural planning across most sectors.

Q96 **The Chairman:** Thank you. My first question is: does Natural England make a positive contribution to the planning process, both at the level of individual applications and more broadly? Also, have you noticed a tendency for it to withdraw from involvement at the strategic level in recent years? We have heard evidence from other witnesses that that is largely because of resources. Perhaps you would like to comment.

**Dr Hugh Ellis:** It has the capability to make a positive contribution, but I would preface that by saying that since 2010 the English planning system has undergone extraordinary and radical change. I think we are clear that legally it is much less effective than it was in terms of its powers. It saw a major and significant change of policy along with major structural changes that in particular made it less effective. In a summary, we might say that English planning is procedurally more complex but less effective at delivering outcomes than probably at any time since 1947. In that sense, Natural England is operating in a very different environment from the one it might have been set up to deliver. That creates a great deal of challenge.

There are also impacts, particularly on rural planning authorities, which mean that Natural England needs to play a much stronger role, particularly in providing advice and support. Some of the planning authorities we visited as part of the Raynsford review had fallen below the critical mass at which they could function properly. Quite a few people in the private sector would say that metaphorically no one is answering the phone. Also, for plan making we visited authorities that had 1.25 full-time equivalent staff trying to write an entire local plan. The problem is particularly in rural areas, because there is an assumption on the part of DCLG that nothing much is happening in rural districts, so they do not have a resourcing

option. This is particularly noticeable in upland areas suffering from flood risk.

There is also no doubt that post-2010 all the statutory consultees were sent clear messages about how they should involve themselves in the planning process. The phrase that was often used with us was, “We should not get in the way”, whatever that meant; it was not clearly defined. It means that the role of Natural England in policy support has been reduced.

The word we would use to summarise this is that it has become a more passive resource, partly because of those political messages but predominantly because of resources. In our view, Natural England’s role, critical though it is, is not a fulsome one in much of the planning process.

**The Chairman:** From what you are saying, it seems that the lack of conservation vision in planning decisions is not entirely down to a lack of resources for Natural England; it is also down to a lack of resources in planning departments to assimilate those views.

**Dr Hugh Ellis:** That is right. If you look at the loss of expertise in planning authorities at the county, district and unitary levels, the posts that seem to have disappeared most starkly are in biodiversity, conservation and sustainable development. The National Audit Office has calculated that there has been overall a 40% reduction in funding for local planning authorities, but there has been a disproportionate hit on the expert services that planning authorities used to rely on.

Q97 **Lord Cavendish of Furness:** Sticking with Natural England, do either of you see it providing support to authorities on wider planning issues? You have answered this in part. I have landscapes in mind in particular. What role would you like it to play?

**Dr Hugh Ellis:** The issue of wider planning goes to the heart of whether there is a wider planning framework for Natural England to involve itself in. A very stark question about the way Natural England is organised is that it is attempting to operate through 340-plus local planning authorities, although many of the landscape-scale issues play out in a different kind of geography. One of the great tragedies of Natural England is a failure to understand that that geography is real rather than ideological, if you like. Landscapes and catchments are real. The problem with most district council boundaries is that they do not align themselves well with that kind of geography. The notion of strategic and regional planning fulfilled that role and allowed an engagement on landscape-scale issues that was beginning to play an important part.

Again, this is about how you might evolve Natural England’s role in the context of there being no regional framework to work in. In that context, you would expect it to want to play a bigger role by providing more advice and support. We should also be clear that while the devolution arrangements in England provide opportunities, our summary so far of devolution in England, not to be too polite about it, is that it is chaotic. You cannot describe an English planning system, because each devolution deal is separate and each combined authority is emerging in a slightly different

way. Natural England certainly has to engage more actively with those tiers of devolution as it goes forward.

**Lord Cavendish of Furness:** Before I ask a supplementary question, I have to say that you are quite gloomy about the state of affairs. Historically, planning has not been a disaster, has it? Compared with other countries, we have had some considerable success. Are you looking to the future with regard to this chaos, more than looking back?

**Dr Hugh Ellis:** What is clear from the Raynsford review is that planning has proved to be extraordinarily powerful, with some great post-war achievements, particularly in designation and conservation in the national park movement and in the wider environment. We were reflecting before the meeting on the difficulty that we now have of a whole series of problems regarding whether the boat has essentially sunk and has to be recreated or whether it is capable of reform. The problem is that there needs to be such a degree of structural change to make planning work properly that it is a tall order. That is what we are thinking about now.

The heart of that question is: what do we want out of the planning system and how do we regulate land? There are some real contradictions, for example in upland areas. Planning has no bite on upland land uses whatsoever, yet if you are in Carlisle you are producing flood strategies that are intimately dependent on what people are doing in the upland areas. That is a real opportunity to create a land use spatial planning framework that is logical in structure, clear in purpose and really effective from the social perspective of recognising needs. But that requires fundamental change, and the reasons why the planning system does not work in England are absolutely self-evident; it has a confused purpose, confused powers, a lack of clarity about its structure, and there is a significant gap between it and communities. All those things need to be put right if we are to progress.

**The Chairman:** Along with resources, from what you are saying.

**Dr Hugh Ellis:** Yes, and resources.

**Trevor Cherrett:** I want to add a point briefly in answer to your first question. I think you will find that staff working in AONBs and national parks expect to be getting advice from Natural England, but they are struggling to get that response because of the resource limitations. Even they are not getting the support and advice they probably want. That is primarily a resource issue.

**Baroness Byford:** Dr Ellis, having given us a list of things that need to be changed to make the system work, would you include in it some of the Environment Agency's current responsibilities?

**Dr Hugh Ellis:** I certainly would. Again, this is about how you populate the different institutions that provide expert advice and the relationships between them. To some extent, it is about stewardship and care of the nation as a whole, something that is troubling us a great deal at the moment. Whether that is dealt with through the process of a national

strategy that would allow agencies to reflect priorities overall for England at the right spatial scale is something that we are debating.

It is important to note that at the moment it is impossible to map the structures, institutions and powers coherently. I tried to explain planning in two-tier local authority areas, including the division of responsibilities, to a group of 16 year-olds in Bristol. I was about 20 seconds in before they were all looking at their phones. That, in a sense, is indicative of the fact that the more we stand back from the system we have developed in this country, the more confusing it looks, interestingly because there has been no fundamental review of planning over the whole post-war period. There have been selective reviews about selective issues, but never a body that could stand back and say, "This is the framework that might operate in the best public interest".

**Trevor Cherrett:** I would add a point about delivery. I support the view that delivery should be at the sub-national level because of the hugely diverse nature of rural England physically, socially and economically. It is only at that level that you can see how it all fits together and how the policies relate to each other. The policy should be national, of course, but its delivery should be made at the more local level where you can see the interactions and local people can be fully engaged. We are obviously a very long way from that.

**Baroness Byford:** Presumably that would make it quite difficult to provide a recommended guidance on how it should be implemented on the ground. Local areas vary so much. Do you have a view on that?

**Trevor Cherrett:** It is hard to draw the line. Policy should be directed, and it would be good to have a national rural policy that gives a steer. Funding would come from the Treasury, so that is where rural policy would have to be made. But there should be latitude in the devolved areas to decide how things are done locally. It is a question of getting the balance right.

Q98 **The Earl of Caithness:** Given that you cannot wave a magic wand and change the planning system in the way you would like, what do you suggest should be changed in the NERC Act 2006 so that Natural England could fulfil its role in a proper way?

**Dr Hugh Ellis:** One response to that is something that we are about to move on to, which is changes to the duty. However, we have to focus on Natural England's core territory, which is a meaningful relationship in law with the operation of the planning system. One of the legal complexities that we have developed is that the Act tries to place a duty on planning authorities to do certain things, but actually it is quite a weak duty and we do not seem to have the structures for implementation.

A key example of that is the relationship between Natural England and the National Planning Policy Framework. In theory, the NPPF is owned by DCLG and contains quite a lot of good policy, but most of the policy that relates to the natural environment and rural planning is not applied effectively. We can certainly talk about that. It seems to me that there needs to be some fundamental change. As an example, one of those issues is: what is the formal relationship between Natural England and the multitude of devolved

authorities, all of which have their own legal framework being created for them in separate city deals? Could that relationship be made more formal, with clearer lines for what would be required from such bodies?

**The Earl of Caithness:** The Natural England standard on landscape that it has circulated to its staff, and which no doubt you have read, shows that it is going to provide a common framework to help people to work more consistently: “A coherent picture”, “clearer and shared understanding”, “give our customers a better understanding”. Is that a true reflection of the situation now as compared with 10 years ago?

**Dr Hugh Ellis:** There is a significant difference over the two time periods. It may well be a very effective initiative, but the general trend from statutory consultees has been to create passive resources when the real need on the ground in the built environment in rural planning is for specific, bespoke advice. In other words, who can you pick up the phone and talk to? It is that resource that is the missing element. Ten years ago, while I am sure it was not perfect, there was simply more resource available to have conversations on the ground about outcomes for planning.

**The Chairman:** As a matter of interest, and moving slightly away from Natural England for a moment, what do you think the effect on rural economies and communities has been from the loss of other forms of support that used to be provided by the RDAs, such as the market towns initiative? I believe that Mr Cherrett was involved in this area.

**Trevor Cherrett:** It has disappeared. We said earlier that the ship has sunk. Local planning authorities do their best. They are charged mainly with local plans, and as we know, the focus of local plans is finding land for housing. They have all those policies around, but a lot of specifically rural policy—an example was what the Commission for Rural Communities was working on, along with a lot of work that we did on sustainable rural development—has kind of evaporated, unless there is a particular interest in a local planning authority. A lot of that has gone, but it might be picked up in local authorities’ economic strategies, perhaps through the LEPs if they have a rural interest. That is getting better, but it has been patchy. It has been a matter of trying to recreate the role through various different mechanisms, which has led to a bit of a jigsaw.

**Dr Hugh Ellis:** It is important to say from the Manchester experience that with the growth of city regions and devolution deals, the countryside is again being regarded as a hinterland. Certainly in our conversations with people in the south Pennine partnership, we had a sense that the areas of rural England that lie outside designations and between big cities are simply seen as places through which you build infrastructure to get to somewhere else. That cultural trend can play out just as much through the devolution agenda as it can nationally; there is a lack of awareness of and sensitivity towards those issues.

I am also conscious of the fact that, as regards the future structural changes to planning, which we may not have time to talk about, the Government have indicated the end of the requirement for a local plan and the new legal duty for a light-touch strategic plan. But if you look at and

map the arrangements between LEPs, strategic planning and combined authorities, you can see that we have ended up with multiple layers of quite complex arrangements, none of which are necessarily focused on dealing with the fundamental issue of a sensitivity to particular groups, areas and places in England. They are fundamentally focused on the powerhouse of the city as a model for the future.

**Q99 Lord Faulkner of Worcester:** I want to ask about local plans, if I may, which the Government are very keen on and attach a lot of importance to. Do you think they are a good framework for helping local planning authorities conserve and enhance biodiversity?

**Dr Hugh Ellis:** I do not think that the local plan framework can be seen to be delivering effectively on that agenda. But I have to caveat that by saying that research on the outcomes of planning decisions and local plans is actually quite thin. The Government do not conduct any qualitative research on the outcomes. We have to be careful about what we say. Certainly, in our experience as part of the Raynsford review, the outcomes from local plans are overwhelmingly focused on the quantum of housing allocation rather than the quality of what is built or biodiversity outcomes. That is because the NPPF is not a document to be read as a whole. Although it says that at the beginning it is not implemented equally, and the paragraphs on a five-year land supply have overwhelming weight in the policy framework.

However, the removal of the requirement for the local plan is simply a disaster, because much of the place-making policy that we need for all sorts of reasons—

**The Chairman:** Sorry, the removal of what?

**Dr Hugh Ellis:** The Government have signalled that the policy requirement for the preparation of local plans will come to an end. They flagged that in the housing and planning White Paper in January. At that point I could not quite believe that they were planning to do it, but it has been clarified since then that they do intend to do that. That is a very radical change. Local authorities will still be allowed to prepare local plans; there is no barrier to them doing so, although I would be interested in the conversation with the treasurer when the chief planner says, "I'd like to spend £4 million preparing a local plan". In some areas, there is an emerging view that a light-touch strategic plan will be a legal requirement for the local authority, followed by neighbourhood plans. We can talk about the value of those, but what they cannot do is a vast swathe of place-making policy that is currently conducted in those areas.

If we are not careful, the framework will mean this: rural districts with limited amounts of money will not prepare local plans. There will be some neighbourhood plans and there will be a strategic planning layer. Above that, planning in England will be dominated by city regions and major cities. It is impossible for me to say this too many times: I do not know how that framework will work. I cannot see the narrative. I do not understand the structural arrangements. I am extremely worried about how people will relate to it. I think it adds yet more confusion to the process. To answer the question, local plans have the capability to do a very powerful and

important job. At the moment, the policy direction is not focused on biodiversity, and in the future it is likely to become more uncertain.

**Lord Faulkner of Worcester:** Do you think they should be more prescriptive on things such as flood risk and the effects of climate change?

**Dr Hugh Ellis:** Overwhelmingly, yes. One interesting thing that we are delving into for the Raynsford review is that we do not have a plan-led system in this country. Many people will sit in front of committees saying that in law we do. In fact, we have never had a very forceful plan-led system. In the majority of the country we do not, either because plans do not exist or because they can be rendered out of date within months of preparation on five-year land supply; of course, it is not in the hands of the local authority to determine build-out rates. In that sense, it is a real challenge. We need a system where the communities and all of us understand much more clearly what plans mean. They should have a stronger legal basis, and that would provide clarity to all parts of the development sector and to communities.

**Lord Faulkner of Worcester:** As a lay man, I am often surprised to see how a local plan envisages the construction of a significant number of houses, yet they are quite clearly in a flood-plain risk area. You would have thought that the local plan might actually say something about that.

**Dr Hugh Ellis:** That is right. It is very often determined by the pressure to meet the five-year land supply but also, you are quite right, by the vaguenesses of policy. I am very much in favour of rules of thumb rather than complex probabilities in climate change policy. Just saying, "Please don't do that", would probably be a much more effective approach.

**Lord Cavendish of Furness:** You seem to be talking the whole time about planning from the point of view of the planner. Do you try to see it also from the point of view of those of us who have to try to work with the planning system?

**Dr Hugh Ellis:** We really do, although as a professional planner it is a challenge to talk to normal human beings. When we do talk to normal human beings, I am deeply worried—I think we all are at the TCPA—that there is a gulf between people's aspirations and experience and the professional world of planning. That is partly because of the language that we speak and the structures that we put in place. I said at the beginning that the curious thing about planning reform is that it has made the system much more complex to understand but also much less effective at delivering straightforward outcomes. We are attempting to bring some clarity to that issue in the Raynsford review. Neighbourhood planning is a very powerful fixture in trying to transform that. There are different views about neighbourhood planning, but on the whole it has sparked a massive new debate about people's involvement in the future of their communities. Again, there has been no government review since 1969 of the relationship of people to planning, which is quite shocking, really.

**Trevor Cherrett:** I think there is hope for neighbourhood planning. The examples so far show that people are getting stuck in. There are all sorts



of problems and it is much more complicated than it need be and so on, but actually the record shows that people are getting involved, and they are willing to take on these complex issues involving the local plan and so on. There is a long way to go, but in planning, as far as I am concerned, that is about the only good news there is. That should get better. We need to support that and make it link into the strategic approaches that we have been talking about, which are so sadly wrong at the moment.

**Lord Cavendish of Furness:** If we are going to get somewhere, we need both sides of the argument.

**Baroness Byford:** Before I move on to my main question, I would like to follow that up. I am somewhat depressed by the way in which you have reflected the lack of cohesion in the present planning system. Do either of your associations have your own internal reviews of what has been happening, say, over the past five or 10 years? Have you drawn anything from any such work that you would particularly like to reflect to this Committee before I ask you my slightly more direct question? To me, we are going round and round in circles. We talk about local plans and strategic plans, but some district councils come forward with plans that then they cannot follow through on, so those plans are not adequate for the amount of housing and development they need. Where are we going?

**Trevor Cherrett:** My personal view is that neighbourhood plans should become the core local plan. That needs to fit into some strategic planning, which we need to devise out of the chaos of what is happening at the moment. If local plans are going to go, we need some sort of strategic planning within which neighbourhood planning will fit. For one thing, neighbourhood plans are much more at community level. In a market town or a group of villages, you know where to go to find out what is going on. You have that local knowledge about sites and about what does and does not work. That is a very good basis, given that this country is made up of a huge number of towns and small cities, such as Salisbury or Chichester, which in terms of local government are effectively parish councils at the moment. In my view, that is quite absurd. We need to bring back that local planning operation, with which people can be much more involved. But it has to sit within wider strategic planning of some kind. We really have to rebuild the ship to go back to that.

**The Chairman:** Do neighbourhood plans work as effectively? They seem to work very well in rural villages, where there is probably a mix of what you might call middle-class and deprived people. I always have the feeling that in areas where there are richer people they work better than in what you might call a slum area of some sort.

**Trevor Cherrett:** Absolutely. There are two issues there. One is the rural/urban issue. The other is that the neighbourhood plans that are going well are the ones that have retired planners and so on—all the usual suspects—working on them. There is no question about that. We need to widen that and to support those that lack those resources. There has been some steady resourcing of neighbourhood planning. We need to increase that and widen it out. It should be made mandatory; we should say that pretty well everywhere has to have one.

In the urban situation, the same arguments apply. The problems will be different, but I do not see why those arguments should not apply in urban neighbourhoods. I will hand over to Hugh on this, because he is more experienced on the urban environment than I am.

**Dr Hugh Ellis:** I would just add that there are significant problems with social capital in poorer areas. There are 2,000 neighbourhood plans under way. I think government estimates that 12,000 would give us total coverage in England, so you could say that that is a positive start, but in urban areas the governance of neighbourhood plans is completely different. There is no democratic accountability. The forums are forums; no one elects them. The multiple urban problems, particularly the churn of residents in particular wards, mean that it is extremely difficult to make a neighbourhood plan. So there is still quite a long way to go before we can make the system work.

Very briefly in response to the bigger question about where things go, England as a place is exceptionally poorly managed, even from a stewardship perspective. Leaving any political view to one side, objectively, the way we organise ourselves gives rise to fundamental questions. The housing forecasting regime, for instance, which has just been consulted on, has significantly increased the numbers of homes that we need to build in high-demand areas with a cap. In northern areas, of course, it has reduced them.

From an urban and policy point of view, there is a need to stand back from England and ask very simply whether it is sensible to attempt to cram all the population and growth into one spatial area with a multitude of infrastructure and environmental issues. We were very good at this, but what is required now is a very sane and humane policy of seeing the nation in the round. Places like Liverpool were engineered for a million people, and now the population is 430,000.

There is no perfect way, but there has to be a better way of managing our resources for the long term. You do that through a debate on strategies that enable the joining-up of investment decisions, advice, policy and expertise to make that happen. We have been exceptionally averse to doing that for a very long time because of this lack of a geographical sense of the nation and, in the broadest sense, because of a lack of care.

Q100 **Baroness Byford:** Right. My question, which you both partly answered earlier, is: do you think that the Act "having regard" to biodiversity makes a difference in the decisions that are taken in planning?

**Dr Hugh Ellis:** I think we can be quite direct and say that we do not.

**Baroness Byford:** I thought you might say that.

**Dr Hugh Ellis:** I would say only that we thought that the duty, when we reviewed it, was extremely weak. Therefore, it is no surprise that most practising planners have never heard of it. Certainly it is not debated or discussed in any great detail.

**The Earl of Caithness:** What wording would you choose? We have had

evidence that the wording does not really matter; what matters is how you implement it. How would you make the wording so strong that it has to be implemented?

**Dr Hugh Ellis:** There are already degrees of duties in the planning framework that are worth looking at, and by other public organisations. Certainly the word “must” should be in the duty. The sustainable development duty, for example, is brilliantly crafted to be meaningless in planning law. It says, “contribute to the achievement of sustainable development as defined in guidance”. By the time you have got to the end of that sentence there is no possible challenge ever to be mounted about whether anyone did or did not deliver sustainable development.

I agree entirely that making it happen is about the resources, culture and education of the people who are implementing it, but it has always seemed to me that we look to Parliament to give us both a legal and a cultural steer. Legal duties have both those profound, positive roles. It seems to us that you could strengthen the duty in all sorts of ways, and it is pretty vital to do so. That then translates into whether or not plans will be effective. The model of the climate change Act is probably the most powerful. It operates through planning, which indicates to you that there is a way of constructing legal duties that will have some bite.

Also, critically, any legal duty needs some reporting function, which is not there in this case. In our view, whether it is the Bank of England framework or the Committee on Climate Change, it means that you have a powerful imperative to do something, and there is an absolute imperative for the body set up to ensure that it happens to report directly to Parliament or to the Secretary of State.

Q101 **Baroness Whitaker:** Following on very much from that, and bearing in mind Dr Ellis’s earlier comments on the lack of capacity in planning authorities, can we turn to the idea of natural capital? We have had quite a lot of evidence on the value of the natural capital approach to valuing and protecting biodiversity. What do you feel is the value of such an approach, and do you feel that it has any weaknesses?

**Dr Hugh Ellis:** The development of natural capital as an idea could be very powerful. Let me be clear: it has certainly not filtered through into planning yet. We are still at an early stage of its operation. It could be very powerful in attempting to quantify the benefit of environmental services. If it provided a monetarised way of doing that, we could begin to feed that into the machine of decision-making.

However, I have one big reservation, and it is a personal one: it is a limitation of all economists that they fail to understand human beings fully. One of the problems here is that you need to take natural capital and meld it with John Ruskin just a little. People’s relationship with landscape and the environment is acutely personal and extremely powerful. That relationship with the land, or with a street—an urban street or wherever it might be—has always been underestimated.

This takes us back to whether planners understand people. Many of the landscapes that I value extremely highly would feature nowhere on a

valuation derived from some form of natural capital. So let me be clear: I think it can make a contribution, but if you try to use it as a technocratic way of separating values from decisions about the environment and people's feelings about the environment, it will fail. That has to be a part of it. The problem is that economists cannot find a way of doing that yet. So I think it is a building block but not the whole building block.

**Baroness Whitaker:** If more innovative ways were found in the natural capital framework of valuing all the things that you and probably all of us hold dear, do you think that public authorities could have a duty with regard to natural capital that could absorb the biodiversity requirement and make it a bit easier to operate?

**Dr Hugh Ellis:** There is always room for improvement in the level of debate and decision-making by being able to have a proper grasp of the value of ecosystem services. I am sure that brighter people than me will invent something, but I have yet to see economics be able to understand that human relationship or to quantify it. It is probably impossible. That is why human beings have to debate politically the values of different places. And there has to be dialogue and conversation about that. That is the nature of people's relationship with land. So I am not optimistic that there is a technocratic fix to human beings' profound link with their environment. Natural capital can help you to understand it to some degree, so I think there is merit in that.

**Trevor Cherrett:** Village design statements are one example. Local people decide what is important about their place, and that includes biodiversity, landscape, local places. It is a question of who is doing the valuing. For people in a village, a bit of scrubby land that you thought was of no value might be very valuable because it is where they walk the dog or because it has some historic value. It is quite a tricky area. That comes back to who is valuing it and what value you put on it. At the community level, there is a big community role there.

**Baroness Whitaker:** So you think that a participatory approach to natural capital might yield more accurate results?

**Trevor Cherrett:** At certain levels, yes.

Q102 **Viscount Chandos:** I think you have already said enough about how the countryside is being dominated by the cities in planning, but I guess it is still worth asking the question: how well or otherwise do you feel that the Government take account of rural needs in policy-making? You referred earlier to the work of the CRC. How much do you feel that its abolition has affected this?

**Trevor Cherrett:** Generally poorly. My starting point is that we seem to be for ever trying to persuade government to take rural into account. Why would rural not be taken into account if it is 20% to 25% of the population and 80% of the land? Why do organs of government, departments and so on, not take it fully into account? We have seen a period of trying to make them take it into account through rural-proofing and setting up commissions and bodies and so on. It has worked very patchily. Breaking

that down into why is another big matter. It has been a real struggle, and I think it has got worse.

Q103 **Baroness Whitaker:** We move on to rural housing, which is another important area. Using the example of the affordable housing threshold, do you have any sense of why rural needs might not have been taken into account in developing and implementing this policy?

**Trevor Cherrett:** It seems that the priority for delivering growth in housing has completely overshadowed the distinct needs of rural areas. Taking the Section 106 requirement away from schemes for under 10 units is a disaster for rural areas, as I am sure you know. Either somebody somewhere decided that supporting developers was so important that they overrode it or they misplaced it—they did not think of the rural implications. I come back to the point about rural-proofing, which we seem continually to be having to remind government about. There is an issue there with continuity. You might get periods where people are working quite well, but then they move on and you have to learn again. It seems that the priority for growth and supporting SMEs in rural areas was overwhelming and rather submerged that crucial policy for rural housing, which we are still struggling with.

**Dr Hugh Ellis:** There is another dimension to planning in rural areas that is also very contentious, which is the relaxation of permitted development. That has been very extensive in rural areas and has been welcomed by many people who live and work in the countryside. From a boring planning perspective, there have been two questions. One is whether or not taking whole swathes of development out of the planning process delivers better outcomes. One thing I am sure it has not done is make housing in rural areas more affordable. There was an assumption that if you increase supply without a tight control over the provision of particular tenures, you will make a contribution to affordability. In fact, in many areas it is not clear what amount of general-demand housing you would have to build to stabilise house prices in rural areas. The focus is wrong. It should be on creative ways of building specific affordable tenures in rural areas.

Finally, we are absolutely opposed to the redefinition of affordability in the forthcoming NPPF rewrite. In many places, 80% of market value is not affordable. It is so far away from affordability as to be nonsense. The focus in delivering affordable homes should be on tenures, which the Government are now, quite rightly, talking about again. Social rent is an important component.

**Baroness Whitaker:** Do either of you have a better structure in mind?

**Dr Hugh Ellis:** The question of delivering on rural housing needs is being fought out in relation to the Government's commitment to a new social housing Green Paper, which I understand is on the way. I hope and pray that that Green Paper contains a very substantial understanding of the issues affecting rural affordability. I hope that it does not simply set out issues to do with growth and urban areas, important though those are; they are part of the mix. That Green Paper will be the defining moment in whether or not as a nation we have a new framework for delivering particular and vital affordable tenures in rural areas.

**Trevor Cherrett:** At the moment, we have two main mechanisms. One is Section 106, which we have seen being undermined by recent government policy. The other is the exceptions policy. The exceptions policy strikes me as a classic English Alice in Wonderland policy, whereby you declare a site on land that is not allocated for housing and you make it housing. It has worked in a strange kind of way. In a lot of villages it has delivered housing, albeit often very slowly and in a very difficult, time-consuming way. But we really ought to have a more straightforward system of being able to allocate sites for housing, probably through the Section 106 model, as indeed is now happening on exception sites—you need some sort of subsidy. We seem to have made a right Horlicks of it, really, and most schemes are despite rather than because of clear policy. It would be good to try to create a more straightforward policy, where you allocate land for housing with a Section 106. There is another argument about whether you could allocate for affordable housing, but I do not want to get into all that now.

Q104 **The Countess of Mar:** I apologise for not having been here earlier. I had business in the Chamber.

Continuing with rural exception sites, we have heard evidence that one of the unforeseen consequences of the right to buy was the dire effect on the supply of new affordable homes, particularly in rural exception sites. Do you think rural exception sites have been successful? You have indicated that you may not. Why?

**Trevor Cherrett:** As I say, in a rather Alice in Wonderland sort of way, exception sites have been successful. In perhaps a typically compromising, muddling-through way, it has delivered housing. Of course, this goes back to the 1970s and 1980s. There is a long history here. As you know, rural housing has been in crisis for 30 or 40 years—most of my career, actually—which is very worrying.

**The Chairman:** Surely the great advantage of the exception sites is that the land is not of development value. Sometimes it is very low-value, just above agricultural value and so on. That is their real advantage and why they have been so successful.

**Trevor Cherrett:** Absolutely, yes. You are quite right. That is the way it has worked: getting land more cheaply so that you can build affordable housing. But the Section 106 method really comes back to land values. You say to a developer, “You have to develop 40% or 50%”—whatever it is—“and that should be related to the profile of need in that place”, and they buy that land knowing that. The viability is based on the delivery of 40% of whatever of affordable housing. That should happen, but, again, it tends not to and you get into a battle about viability, and developers fight off viability and so on. Yes, I would say that the exceptions policy has worked, probably uniquely in the world, but there is an inherent problem with it and it rather undermines the development plan-led approach.

**The Countess of Mar:** What do you think about the fact that the promise that it will be retained as an affordable home in perpetuity has been broken by the right to buy?

**Trevor Cherrett:** That is a desperate problem. It is usually the first thing that people in communities ask: “Will this be in perpetuity?” That battle is still going on. The right to buy takes the problem back to the 1980s, when all this started, and not building replacement houses has created the problem over the decades, which is very unfortunate.

**The Chairman:** I can see that Dr Ellis is dying to get in, but before he does, perhaps Lord Cavendish might like to speak.

**Lord Cavendish of Furness:** There is an urgent need for the nation to have a better planning policy, but I would say at the same time that there is no competence or understanding of this in Westminster, which amounts almost to crassness, given the reality on the ground of what the country needs. Does this not lead to the suggestion that local government and local people ought to be more empowered, thus moving away from the centre? I think there are instances in other countries of planning being much more local and less national. I see the advantages of national planning, but it is difficult to get my mind around those contradictions.

**Dr Hugh Ellis:** They are almost fundamental constitutional questions that the nation has not settled. I was fascinated to find that there is much less argument in France, Denmark and Germany over the different tiers of planning, because their planning laws are reflected in a constitutional settlement that describes the powers and structures above the layer of their planning laws. That makes an enormous difference, but we have never done that, so there is bound to be inherent tension and argument in the system. Many of the issues involving the balance of power between local and central government need urgent attention. I know that it is an anorak point, but Redcliffe-Maud in 1969 was the last time we examined this question. It is not surprising that local government in this country has a problem. Fundamental to solving these issues is the need to ascribe a simple framework to the business of central, strategic, local and neighbourhood planning in England, and that is perfectly possible to do. You then need to provide a constitutional solution, which would make an enormous difference to the way we are organised.

All I would say about policy is that the debate in this country about centralism and localism has tended to be: if you believe in neighbourhood planning, you are a good person, and if you believe in national planning, you are a Stalinist. Like many other political debates, here endeth the lesson. The truth, of course, is that the system that works well in other European countries is one of mutually supporting frameworks doing different things and trying to enable each other rather than imposing their will. One thing that the Raynsford review has made pretty clear is that we are now at the highest watermark of centralisation in the post-war period in terms of control by national government over planning. You can see that in energy policy and housing policy. I say nothing about whether that is right or wrong, but it is the case. Interestingly, also, it is in part about the national government trying to get the local plan framework to deliver on its bigger agenda when in fact they probably ought to be playing a more active role in larger scale demographic change—even, for example, a programme of new communities. I am optimistic, because many other

jurisdictions manage to do this quite well, or at least with less argument about the different layers of power.

Q105 **Baroness Byford:** I should like to return to the rural scenario. Given that the Commission for Rural Communities has been disbanded, where do you think that policy should be held? Obviously at the moment it is in Defra, but other witnesses have told us that they think it should be in another department. I should be glad of your views on where you think it ought to be.

**Trevor Cherrett:** This is a really interesting question. I think the CRC did a great job on information research, although I would say that because I worked for the commission for a while. I was looking in my shed where I keep the old reports. My goodness me, its output right across the board on rural topics was astonishing, with much good advice. But, and there is a but, how much of that got through is patchy. This comes back to the rural proofing problem: how do you influence government? It did not work all that effectively through Defra and it is still not working. I should perhaps remind the Committee that there are a number of bodies, including the Rural Coalition, the Rural England Stakeholder Group and the Rural Services Network that are doing a terrific job on shoestring budgets to keep the flame alight. They are trying to influence government with a greater or lesser degree of success.

On the question of how that is actually delivered, the commission has to feed into another body that has real power and influence in government. It needs to make sure that departments actually rural-proof. Earlier I asked: why would they not rural-proof anyway? It is part of this country and they should be delivering, but they do not seem to be. There must be a legal requirement that they do so, and at the national level you have to enforce it. There are different ways of doing that, although it is rather like rebuilding the ship. We have different designs, but it could be some sort of rural policy unit in the Cabinet Office. I will hand over to Hugh here, because there are different ways of governing that. However, there is a clear need for greater clout in relation to that happening. It has not happened before.

I will add one more point. My own view is that delivery should be more at the sub-national, regional and local levels, but the policy has to be worked out at central government level. A lot of money should be devolved to regional areas for the reasons I gave before relating to our very diverse countryside and the different problems that need to be dealt with locally. There is an issue about how all that good research and information is dealt with. We have talked about the CRC, which links with the environment, climate change and all the other aspects that need to really impact on government. The problem with Defra is that it has enough on its plate with agriculture and the environment. For one reason or another, I do not think that the department has ever really taken to the rural affairs bit. Certainly now with Brexit the department has more than its work cut out to deal with some really difficult stuff on farming and the environment. Adding all the community stuff on to that does not work, and of course the community stuff is influenced by all departments, so in some way it has to be brought to them all.



**The Chairman:** But the duty to rural-proof is a bit like the “have regard to” biodiversity that we were discussing earlier. You need to have reporting institutions in place, along with auditing and maybe an enforcement agency. Where would you suggest all that might go? Who would local authorities and the other departments be reporting to?

**Dr Hugh Ellis:** We talked about different models, but it depends on the core objective of the body. As we have heard, the CRC did well on information-gathering and expertise but perhaps less well on advocacy and influencing policy. The model we have been thinking about is based very much on the Committee on Climate Change model. Interestingly, that develops the greatest clarity of relationship with other institutions and provides for a body that is independent.

One of the things that troubled us about the abolition of so many bodies is that while it is good fun to set about abolishing quangos, the problem is that this nation needs really good data along with very good analysis, information and expertise. We should celebrate that—it is an unpopular view—and we need to locate it in places where it can be influential, and most important, in places where it can be independent. That challenge is best illustrated by the Committee on Climate Change, which because of the legal framework under which it was set up has some measure of independence, along with a clear reporting framework. It has a host department that it works through, although that has been subject to change and is now BEIS, I think. That is the framework we should head towards, but the critical problem is expertise, knowledge, data and understanding. We desperately need an independent body for all of that.

Q106 **The Chairman:** Thank you. I have one final, all-encompassing question. What one thing would you like to see the Committee saying in its end of term report?

**Dr Hugh Ellis:** We argued about this and could not come up with one thing. I will finish with three things. One is that what really troubles us is the question about who has oversight for England as a whole in its future spatial development as well as its social, environmental and economic development. Who is thinking about those relationships and that geography is a very important point. That is no criticism of any individual, but at the moment there is no body. Not even the infrastructure planning commission has a remit for the whole of England. No one body has the role, and we suffer from that.

Beyond that, it is a debate between two things: an independent body that is critical and a powerful legal duty. To be clear, the legal duty applies in a couple of ways. It certainly needs to apply to Natural England more powerfully in its relationship with planning, and it needs to apply to the rural-proofing issue. The consequences and outputs of a new independent body need to be taken seriously by government, and that can be described as a powerful duty, hopefully more powerful than the one currently described in the 2006 Act.

**The Chairman:** Thank you very much. This has been an interesting session.

## **Town and Country Planning Association (TCPA) – supplementary written evidence (NER0085)**

### **Introduction**

The TCPA welcomes this opportunity to follow up our answers given orally to the Select Committee on Tuesday 7<sup>th</sup> November, in the form of a brief synopsis of our evidence related to the main issues raised.

### **Natural England**

Although NE's statutory role in providing advice to public bodies remains intact, its capacity to provide this has been reduced in recent years and anecdotal evidence suggests that local planning authorities, including national parks and AONB committees, have found it increasingly difficult to obtain much of such advice. This is primarily a resource issue but the weakness of the legal duty contained in the 2006 Act means that other public bodies and particularly planning authorities have, on the whole, ignored it. The duty itself does not feature in testing of plans and rarely in as factor in the determination of planning applications.

Furthermore, the demise of strategic planning with the closure of Regional Assemblies, Govt Offices for the Regions, and Regional Development Agencies has meant that there has been no structured liaison at this level. Given that Regional Strategies undertook substantial work on environmental issues, including climate change and bio-diversity, this is a major setback.

Although Local Plans have remained intact to date as core development plans, their ability to take on complex issues surrounding conservation, landscape, biodiversity, eco-services and climate change have also been severely undermined by firstly, the limited interpretation of the National Planning Policy Framework, viz although the latter includes the wider environmental issues mentioned above, it fails to develop any profound meaning or guidance on 'sustainable development' and focuses strongly on providing sufficient locations for housing development to meet calculated needs; and secondly, the severe depletion of planning staff in local authorities, which constrains their ability to undertake anything more than what they perceive as the highest priority tasks. The TCPA is currently conducting an end to end review of English planning and we attach as Annex 1 a summary of the initial findings.

### **Natural Capital**

The concept of Natural Capital as an asset to be considered alongside other types of capital, such as economic and social capital, is welcome. But measuring such capital is fraught with difficulties. Who measures it, and on what basis? There is a danger that such measurements can too easily be 'traded off' against measurements of other assets, such as economic gains. An asset that 'experts' might value poorly, such as a scrubby piece of land near a housing estate, might be highly valued by local residents. We believe that natural capital can be a valuable part of assessing values but cannot be deployed without effective community participation to allow for expression of complex relationships people have with places and landscapes.

## **Rural Housing**

Affordable rural housing has been provided through two main policy mechanisms in England:

- 1) Rural Exception Sites: this has been a successful, albeit slow and painstaking, method of delivering affordable homes on cheaper sites not allocated for housing. Recently the principle of including a small number of houses for sale, in order to make the development financially viable through an element of cross-subsidy (and for that reason only) has also been accepted, largely in response to Government reductions in social housing grants and social rent. However, exception sites depend on a firm settlement boundary, outside of which land would not normally be allocated for housing, and are not always compatible with Neighbourhood Plans, which may seek to identify sites for affordable housing more directly, sometimes by setting up community land trusts or similar community-led plans. Fundamentally, they undermine the principles of a development plan –led planning system. However, there is no doubt that they have made a major contribution to meeting local affordable housing needs in many English villages.
  
- 2) Section 106 is the other main route for delivering affordable housing, usually through a Local Plan policy that requires a certain percentage of affordable homes in the proposed development ( normally in the order of 30-40 %). This has also been a very successful method of delivering affordable homes, with housing associations playing a major part. However, the recent decision to exclude schemes with less than 10 units from S106 requirements has been a major blow for rural schemes, which typically are in that size bracket. Fortunately, strong lobbying from the rural housing community has managed to allow some negotiations (usually involving commuted sums rather than actual homes) in certain areas such National Parks, AONBs, and Neighbourhood Plan areas. Nevertheless, the policy to exclude schemes with less than 10 units reveals a blatant disregard for rural circumstances, a gross failure of `rural proofing`. Whether that failure is attributable to ignorance or the over-riding priority given to support the financial viability of housebuilders is a matter of conjecture.

The delivery of affordable rural housing has also been seriously undermined by further extensions to the Right to Buy. Fortunately, strong lobbying again has managed to secure a voluntary role for housing associations, such that they can choose whether or not they apply the Right to Buy to rural schemes. Nevertheless, the failure to `rural proof` such policies is starkly evident.

## **The Commission for Rural Communities**

The Commission for Rural Communities undertook a wide range of research on social and economic rural issues, and provided high quality information an analysis, notably via the annual State of the Countryside reports. It also advocated the needs and concerns of rural communities, transparently through the role of the Rural Advocate (CRC Chairman Dr Stuart Burgess) and made recommendations on rural policy. Some of these recommendations influenced policy at national and/or local levels, for example encouraging local authorities to apply Council Tax to second homes. However, it has also to be said that influencing policy across the board was not wholly successful, and that `rural

Town and Country Planning Association (TCPA) – supplementary written evidence (NER0085)

proofing`, which the CRC did much to define and develop, was never fully adopted across the Departments of Government. That said, the CRC provide a real `rural presence`, and since its demise, and the demise of its `successor`, the Rural Communities Policy Unit in Defra, the housing examples indicated above show that even less account of rural needs appear to be taken by government, despite the sterling efforts of independent but thinly resourced `rural voices` such as the Rural Coalition and Rural England Stakeholders.

### **Rural Governance**

Given the failure of government to take rural needs into account with any consistency or rigour, what changes might be made to improve this state of affairs in the future? From a rural policy viewpoint – embracing social, economic and environmental issues – our view is that **effective rural proofing across all Departments of Government based on high quality information and evidence** must be the primary aim of any reforms of governance.

To date the rural proofing duty has rested with Defra, and it has manifestly failed over many years. Arguably, the `Rural Affairs` part of Defra, added on to its roles as part of a political deal, has never really developed fully. Given Defra`s major responsibilities for farming and the environment, and the serious crises such as BSE and FMD that it has had to deal with, together with the forthcoming implications of BREXIT, it could also be argued that it is not best placed to deal with wider rural policy issues such as housing, planning and service delivery, which relate more closely to other Departments, notably DCLG.

In our view there are 3 key functions that are required to ensure that rural proofing works:-

- 1) The formulation of **national rural policy**, linked to wider national policies on the economy, society and the environment
- 2) The availability of **high quality information and analysis**, independently sourced.
- 3) The capability of all public bodies to **take account of the rural implications** arising from the policies and decisions that they develop

One way of achieving this would be to create a governmental **Rural Policy Unit** (either separately or placed within the Cabinet Office or a lead Dept such as DCLG) charged with :

- 1) developing **national rural policy** in the context of wider strategic policies on the Economy, Environment, Climate Change, Spatial Planning
- 2) ensuring that all Government Departments take fully into account the rural implications of policies and decisions being formulated ie they undertake `**rural proofing`**.
- 3) drawing information and evidence from **an independent body** ( such as the CRC) or bodies charged with providing rural information and analysis, and responding to specific requests for information from public bodies (central and local).

**An alternative model** might be the creation of an independent rural body charged with developing rural policy and advising government, perhaps on the lines of the Committee on Climate Change or the Monetary Policy Committee. Such a body would still need to draw from the best independent evidence, and have the powers to monitor and enforce rural proofing.

Whichever national model is developed, it is our view that the **delivery of rural policy** is best placed at a sub-national level, given the finely tuned diversity of rural England, and preferably at a coherent strategic level of planning based on rational geographical territories rooted in the environment ( including landscape, watersheds etc) and on socio-economic patterns of activity. However, given that no such rational territories appear likely in the foreseeable future, it will be necessary to draw upon the highest levels of collaboration within and between the existing and developing jigsaw of sub-national bodies such as city regions, LEPs, and combined local authorities.

But to achieve the above will also call for reforms to the planning system. There is an urgent need for a national spatial policy (see 1) above) and the kind of strategic planning indicated in the paragraph above. At the local level, Neighbourhood Plans and Community Plans have demonstrated the potential to take on many rural and environmental issues, although the impending demise of Local Plans raises huge questions about who and how their current functions will be taken on. Many of these issues are being studied within the current TCPA Raynsford Review, on which a separate paper is attached.

### **Conclusion**

One might be forgiven for assuming that `rural proofing` is something that government would do as a matter of course, given that 20% or so of the nation`s population live in rural areas, which occupy 80% or so of the nation`s land. The fact that there is no evidence that Government considers rural issues systematically and that there is neither a rural nor urban policy in England is a barrier to dealing with multiple challenges facing the nation. A statutory duty on Government related to those established for climate change would be a key part in changing this culture by creating an independent body which reports to parliament. What flows from this obligation would be a body capable of providing independent analysis and policy advice and oversight on the degree to which government policy is considering the rural dimension.

**ANNEX 1 The Raynsford Review: Planning 2020**  
**Policy issues paper September 2017 - Second Edition** [November 2017]

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**Introduction**

This paper is designed to briefly summarise the policy progress of the review team at the end of the first six months of our work. The paper is focused on the emerging headline issues from the roundtables and submissions as well as from the secretariat's research work reflected in the background papers. The objective of the paper is to guide the priorities of the review team and to stimulate debate about some of the difficult policy and legal issues which are emerging from our engagement strategy. The paper is intended for internal use only to enable a frank expression of some of the issues the review team will need to confront. It is, of course, far too early to draw any firm conclusions from the existing submissions but there are two major issues which confront us. The first relates to the nature of the evidence we have been given and the second to the complexity of the policy and legal dilemmas which emerge from that evidence.

**1 The Evidence so far**

One important caveat about the nature of the 'conversations' surrounding the roundtable events is the clear gap between what stakeholders will say publicly and what they care to tell us informally and off the record. For example, interviews with public sector planners reinforce a desire not to be seen to talk down planning in their own authority and so not to express their private conclusions about how challenging planning practice is. Likewise, some developers have publicly reflected on the value of a plan led system while they recognised privately that land speculation 'off plan' has been a highly lucrative part of their business model. The danger for the review team is that there is a lack of quality and impartial evidence on many of these issues and as a result a risk that we become mired in competing waves of what is essentially hearsay based on the understandable corporate priorities of the differing sectors.

**2 The key policy issues**

The nature of the evidence we have seen so far including the policy reviews contained in the background papers is complex and diverse but in general is marked by profound disagreement between land owners, developers, NGO's, professional bodies, communities and Government about almost every aspect of the spatial planning system. So far as there is any agreement it surrounds shared criticism of the current state of planning practice. Ironically both communities and parts of the private sector are equally frustrated by uncertainty and confusion in the system. Often for very different reasons. The key areas of concern and disagreement surround:

1. The purpose and objectives of the system
2. The degree to which the current system is delivering on its objectives
3. How much power spatial planning should have. (Positive and negative)
4. How the balance of planning powers should be distributed between central and local government.
5. The right spatial structure for planning including Local government structure and boundaries.
6. The degree to which communities should have meaningful control over their own local environment and the nature of community rights.
7. The issues of betterment and fair Land Taxation

In addition to these principle policy questions there have been a range of other related issues consistently raised in the evidence:

- Concern about skills of planners and the content of planning education
- The poor morale of the planning service about confusion about the role of the town planner
- The widespread confusion about key policy and practice changes including, for example, the viability test, the legal weight of the development plan, the impact of devolution, the duty to cooperate, the significant change to status of green belt.
- The failure of planning to adequately ensure the coordination of a wider investment in a wider range of social, transport and utilities infrastructure
- The funding of the planning service

It is significant that the resourcing of the planning service to enable a positive and informed response to users was by far the most significant issue raised by private sector. Solving this problem would undoubtedly contribute more in the short term to the concerns around delivery than any other single measure.

One positive outcome of our work so far is that these issues fit well with our terms of reference suggesting that the review is broadly focused on the right issues. Less reassuring is the complexity and controversy which surround many of these problems. In some cases, they have remained unresolved for decades precisely because acceptable political solutions have been so hard to find. In this context, it is useful to briefly set out the dimensions of each of these 7 emerging policy themes.

### **1 The Purpose and Objectives of the planning system**

There is broadly a division between those stakeholders who support a view of planning as being designed to uphold public interest outcomes with the objective of achieving sustainable development (SD)<sup>238</sup> and those, including successive Governments since 2010, who see the objective of planning to support private sector housing delivery in support of the wider economic growth. Background paper 2 pointed out there has been much longer debate about the role of state in the land question and balance between private property rights and the public interest. However, it appears that in recent years that argument has been settled in favour of system focused on production of the quantum of housing by empowering private property interests and has largely ignored the many other dimensions of planning for place. Part of this change has been the assumption that the allocation of housing units for private sector providers equates directly with the public interest. (One participant concluded that the public and private interest are the same).

There is no doubt the overwhelming feedback from public sector planners was that SD was no longer an operational principle of planning and the allocation of housing was now often taking place on sites that were clearly judged to be unsustainable before the adoption of the NPPF. It may be obvious that SD is no longer important to planning decisions and indeed we can evidence the way the NPPF marginalised the idea as an operational principle. The degree to which unsustainable outcomes are being produced is harder to quantify without further detailed research.

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<sup>238</sup> This view is best summarised a support the definition of planning expressed in PPS1 which was revoked by the NPPF in 2012

The tension between a public interest system focused on SD and market led objectives for planning reinforces the current reality of a system whose purpose is, at best, confused. This problem is reinforced by the remnants of the wider public interest agenda in planning including mechanisms for assessment of SD. Neither has the legal duty to uphold SD in planning legislation had any mediating impact because it's entirely based on a definition made in policy in the NPPF. In moving forward, the review team will need to consider:

- What the purpose of new planning system might be
- How that purpose can be given long term and meaningful expression
- How agreement could be reached on such a purpose so that clarity can be brought to the practice of planning.

This brief summary leaves out the call from some respondents for a refocusing of much more positive and 'people centred' planning system. Since this is a TCPA objective care is need not to over emphasis the significance of this call. It is a view which tended to be expressed by some politicians, younger participants, some NGOs and by some community organisations. A further view which was significant in some conservation and amenity groups as well as some politicians was an essentially traditional and conservative model based on a notion of stewardship of the land framed by meeting local needs and emphasising broad pattern of continuity. There was some welcome agreement on the case for planning as rational tool for the coordination of public and private investment and in particular the role of plans in supporting asset values.

## **2 Is the current system 'successful'?**

The degree to which the current system is a success depends entirely the objective which it has been set. If we accept the government's claim that the purpose of planning is to increase the allocation of housing units then the system is plainly delivering with 270,000 housing units granted in 2016 bringing the total to an estimated 500,000<sup>239</sup> and an unrecorded additional number of units allocated in adopted and draft local plans<sup>240</sup>. Permissions alone are now running in advance of demographic need and have been since 2014<sup>241</sup>. In fact, the government's own test of 'success' is more nuanced, focusing on homes completed and here the record is less impressive. In 2015/16 139,000 new homes were built. By adding the number created by conversion the figure reached a total 190,000 housing units completed<sup>242</sup>. While quality and sustainability have not been policy priorities for government affordability has and here the record is extremely poor particularly on tenures such as social rent.

The Governments' other indicators of success present a mixed picture. Neighbourhood planning must be judged as success in terms of the number of plans being prepared (2000 now under preparation). The preparation of local

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<sup>239</sup> Research for the LGA in January 2016 indicated there were 475,000 un implemented permissions. Our estimate crudely projects a conservative view that we adding around 0,000 to this figure every year (i.e. the gap between 270,000 consented and 160,000 completed).

<sup>240</sup> The last research we can find was by the LGA in 2016 and estimated that there were 475,000 un implemented planning permission in 2016. Permissions continue to run in advance of completion by around 80,000 PA which suggest we should have exceeded 500,000 un implemented permissions BUT there remains dispute about the precise figure

<sup>241</sup> They have to reach the level approved in w2008 under a very different planning system.

<sup>242</sup> DCLG Live tables 209 and 120.



Town and Country Planning Association (TCPA) – supplementary written evidence (NER0085)

plans is also moving forward although the deadline for plan preparation of X the level of adopted post NPPF plans remains around 50%

Development management has been subject to review and reform and the performance on planning applications is impressive. For major housing schemes in 2005 66% were approved. In 16/17 that figure had increased to 80%. In 16/17 84% of major housing applications were agreed within the 13-week deadline or an agreed deadline with the applicant.<sup>243</sup> Issues of delay and service quality are emerging strongly from applicants and the tension between speed and quality remains a shared concern across the sectors.

It is hard to conclude that the system is not producing enough consents or that planning consent is subject to a general problem of delay (although there is obviously frustration on individual schemes). However, it is also hard to conclude even when tested against the residualised policy ambitions of the NPPF that current system can be judged to be wholly 'successful'. Given the level of intensive reform devoted to the system in the last 7 years the results on the overwhelming government priority of housing delivery are unimpressive. Reform has been intensive but also piecemeal adding to a sense which some respondents described as 'bewilderment' as to the overall objective of government. So far as there had been a narrative, respondents felt it was about getting planning 'out of the way'. Some respondents felt this was quite right but others believed it added to general sense of demoralisation in planning practice. One emerging paradox about this reform is that while it deregulated some aspects of planning it has added a great deal of procedural complexity illustrated by the labyrinthine amendments of planning legislation and perhaps most obviously in complex new mechanisms such as Permission in Principle. There remains an important question about whether any of this new complexity has been worthwhile.

The adoption of broader test for the planning system based on the kinds of objectives reflected in traditional notions of spatial planning and sustainable development provides an even more challenging picture. The broad concern surrounds an abandonment of notions of holistic place making and respondents raised a range of concerns including:

- A lack of affordable and social housing
- The exclusion of communities from key planning decisions on housing and energy
- Private sector frustration with an ever-changing system and poor service
- Poor build and design quality
- Lack of sustainable transport infrastructure
- A lack basic social infrastructure
- Complex and regressive taxation measures through section 106 agreements and CiL

Our problem is that many of these alleged problems are not verified or quantified by any reliable research. So while its possible to identify a host of poor quality design outcomes we cannot be sure how significant these problems are or if the quality of delivery is significantly worse than it was before 2010.

### **3 The powers of the existing system**

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<sup>243</sup> DCLG Live Table P120A

Town and Country Planning Association (TCPA) – supplementary written evidence (NER0085)

There was a clear consensus that the planning system is significantly less powerful than it was in 2010 or indeed at any time since 1947. On this issue, there is clear evidence in terms of the changes to permitted development and the prior approval process. Care is needed not to describe these routes to consent as not requiring any form of permission. Prior approval does require a consent but the core issue is the fundamental limitation on the kinds of issues LPA are allowed to think about. As well as the tangible reduction in legal powers of the system there are other indicators of a system no longer functions as positive framework for decisions. The very high level of successful appeals for major housing is one signal, the related legal and policy weakness of the development plan is another. These issues were picked up in provocation paper 1 and while the majority of feedback from all sectors is that plans now carry less weight in relation to housing there was a view that a fully update plan meeting all the NPPF tests could still determine decisions. The problem is that achieving this position is extremely difficult so that in most places most of the time the plan is easily overturned.

It is significant that while other positive instruments of the planning system such as new towns powers which were designed to deal with rapid housing growth as still available, central government has, so far, made no attempt to use them.

There may also be dangers in focusing too much on the recent reduction in power of the existing system and ignoring longer term questions about the scope of the spatial planning system and the case for expansion of powers over land uses important to issues such as climate change and bio diversity. There remains a positive opportunity to reflect how a new spatial planning approach might engage with wider land use change.

#### **4 The balance of power between central and local Government**

It is perhaps inevitable that respondents from local government felt a strong sense of disempowerment in relation to many aspects of planning. The compliant about too much central government interference in detailed policy was particularly acute amongst local councillors. This is another issue defined by complexity and confusion. For example, central government has always had extensive reserve powers over local planning and differing administrations have chosen to exercise them more or less extensively. There is clear evidence in the content of policy that central government is exercising very tight control over some key planning issues such energy and housing. The deadline and sanctions over local plan preparation is another indication of this trend. It seems likely that the current period reflects a high-water mark in this centralising tendency.

Because there has never been a clear constitutional settlement of powers between central and local government which is a feature of many other EU nations it hard to make a judgement about what the right balance of power should be. This problem is exacerbated because central government no longer plays a role in regional or national planning on key planning challenges such as housing delivery. In the absence of national programs for new towns for example, the full weight of delivery must fall upon local plans. In this context national government is also inevitably going to involve itself closely in the outcomes. Many of the current reforms are driven by central frustration at what ministers regard as the poor performance of LPAs. The problem is that such involvement raises serious questions about point of local democracy and leads to tensions which are themselves a barrier to outcomes.

## **5 The English spatial planning framework**

Background paper 2 made clear that the structure of the English planning system had been bound up with complex history of local government reform. Respondents suggested that the secretariat re-examine the Redcliffe-Maud report into local government in England published in 1969 which remains the last time Government sought a comprehensive reassessment of the principles and structures of local government. The conclusions of Redcliffe-Maud<sup>244</sup> remain insightful particularly in relation to the number of planning authorities and the differing tiers of strategic and local plans. The implementation of the report would have meant, amongst many other things, a reduction in the number of planning authorities and greater fit between the administrative and functional geography of England. The reasons the report was not implemented have been discussed at length many times but in retrospect it was the failure of Royal Commission to match their understanding of economic geography with grasp of political reality. Subsequent changes to local Government created the confused legacy we now have. The only serious attempt to deal with the strategic regional question came with proposals for elected English regions in 2004. The rejection of such an option in the North East ended the regional governance debate and while the reasons for the failure were complex the result was that administrative logic was defeated by the aspirations and loyalties of communities. We should of course recognise that the rest of UK has achieved a very great deal in relation to devolution and that London remains a powerful exemplar of regional government.

The core problem for the review team is that little or no progress can be made in developing sensible planning structure for England unless a parallel process of local government reform is undertaken. Powerful constituencies of interest, such as the District Councils, would need a compelling incentive to give up their planning powers to more rational strategic bodies. The review team will need to create a 'picture' of how planning structures from national to neighbourhood might work and what kind of governance might give the political legitimacy.

## **6 The Power of local communities**

One of the major challenges of the review is to reach out beyond the 'insiders' in the planning system to communities and individuals who are the ultimate consumers of the system. The feedback from the community sector so far has been very strong and mostly very negative about planning practice. So far this mainly from established groups who might be expected to have the resources to engage more effectively. So far respondents have raised a variety of issues which they feel act as barriers to participation. These issues include:

- The power of developers to exploit the system
- Complex language and procedures
- The lack of support in responding to planning applications
- Anger at unequal rights and developers appealing decisions
- Confusion at why elected members can support them
- Difficulty in engaging with plan preparation processes and anger that consultation responses are not taken seriously
- Anger the neighbourhood plans can be overturned
- Anger at the 'purchase of planning permission' through section 106 agreements

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<sup>244</sup> Including the minority reports

All of these contribute to sense of grievance that planning does not reflect community needs. Some may stem from a lack of knowledge of what planning is trying to achieve and this is most obvious in relation to green belt development but also relates to a disconnect between the values and practice of planning and the communities they serve.

There has been an intense debate during the roundtables about the merits of neighbourhood planning with conflicting views about whether this should form the core of the planning framework in England. On the whole the feedback was positive about the potential role of NPs but there are challenges and lessons which cannot be ignored including the legal relationship with other strategic plans and the lack of any requirements for NP's to take responsibility for key measures on issues such as human health and climate resilience.

### **7 The collection of betterment values through fair land taxes.**

The issue of land tax and betterment has featured in many of the engagement events both as a matter of principle and in relation to the opportunity to provide vital infrastructure. While there is tremendous policy 'noise' around the issue and a good deal of interest from government there is as yet no consensus about how land values might be captured. Of all the issues in front of the review the issue of land value capture is probably the most difficult because it directly impacts on the interests of land owners. There is now a separate and detailed provocation paper on these issues and this framed a useful seminar which revealed starkly differing views about how to proceed in a way which meets the requirements for transparency and progressive taxation outcomes.

### **Conclusion**

Overall the review is making good progress but there are clear research gaps which need to be filled. These are particularly important in those areas where respondents have provided us with conflicting views. One positive view of the evidence we have had so far is that it confirms the need for change and the value of asking fundamental questions about what the system is meant to be for. Less reassuring is the complexity and controversy which surround many of these problems. In some cases, they have remained unresolved for decades precisely because acceptable political solutions have been so hard to find.

We are now moving from evidence gathering to analysis but we do need to begin to consider the broad scope of solutions we might want to consider in the interim report in April 2018. Here the dilemma is between the logical and politically acceptable. For example, no planning reform can take place without a final and lasting settlement to local government structures in England based on some relationship with functional geography. The current system is simply illogical and confused. The same might apply to betterment taxation and to clarifying the planned system and host of other issues where there is no difficulty in finding technical solutions. But of course, all these solutions require a logic and rationality absent for our current debate on the future of England. There is inevitably a tendency to dwell on the negatives during this early stage of evidence gathering but over the next few months we need to move rapidly to creative, logical and practical solutions to these problems.

### **Policy questions emerging from the Terms of Reference**

Town and Country Planning Association (TCPA) – supplementary written evidence (NER0085)

**To examine the performance of the English planning system in relation to the key challenges facing the nation. To identify key areas of underperformance and to offer positive recommendations for reform. Specifically, the review will:**

**Examine the objectives of the planning system in relation to delivering Sustainable Development in the long term public interest and reflect on how SD should be manifest in the key objectives in local and national policy.** In particular, to examine how the application of the NPPF has affected the outcomes of the planning system and how effective changes can be made.

**Examine the extent of the application of the land use planning system and case for comprehensive long term approach.** In essence this reflects both the original question asked in 1947 and the RCEP reports of 2002 as to whether land use control should apply to all land uses. This is particularly relevant for flood risk. It would also pick up the widespread extension of PD rights which have significantly reduced the scope of planning.

**To examine the structures of the planning system in relation to its application to the national, sub-regional, local and neighbourhood scales.** This theme picks up the devolution and national planning debate as well the case for a role for the New Towns legislation. The dilemma is defining a narrative and an effective relationship between the spatial scales.

**To consider the appropriate governance structures of the system in relation to democratic accountability and citizen rights.** (This now will be substantially dealt with the Labour review of People and Planning)

**To consider how the substantial values which arise from land use regulation can be effectively captured and distributed in the public interest.** This is the key betterment question and relates to section 106 and CIL and to the wider question of land value capture

**To consider the key delivery issues which can aid effective implementation.** This theme will include how the planning services can be resourced and the appropriate skills and expertise of planners and what this implies for planning education.

*24 November 2017*

Trail Riders Fellowship and Motoring Organisations' Land Access Recreation Association – oral evidence (QQ 143-148)

**Trail Riders Fellowship and Motoring Organisations' Land Access Recreation Association – oral evidence (QQ 143-148)**

[Transcript to be found under Motoring Organisations' Land Access Recreation Association](#)

## **Trail Riders Fellowship – supplementary written evidence (NER0089)**

### **Additional Evidence**

**Q144: The Chairman: Thank you both very much. As you know, we are here to examine the NERC Act and its suitability for today. Did the approach adopted in the NERC Act strike an appropriate balance between the needs of motor vehicle-users and those of other groups who use public rights of way?**

1. The Trail Riders Fellowship (TRF) estimates that there is c.6000 miles of green road in England and Wales. The estimated mileage comprises green roads that are recorded as Byway Open to All Traffic and/or as part of the ordinary road network that is recorded on the List of Streets Maintainable at Public Expense, the latter being commonly known as Unclassified County Roads (UCR's).
2. NERC has struck an appropriate balance in terms of the *quantity* of network available nationally. 6k miles is a sufficient mileage for the public interest to substantially realise the benefits of responsible, low-impact trailriding. However, the distribution of that mileage has not struck an appropriate balance in terms of the quality of the network. A significant number of areas of the country have inadequate provision whilst others are well-provided for.
3. In a minority of areas, usually aligned to County boundaries, NERC has failed to deliver an appropriate balance in terms of the *quality* of the network.
4. The needs of responsible motor-cyclists and the needs of non-motorised users are not incompatible or opposed. Non-motorised users are, in TRF members experience, generally cordial on the rare occasions that we meet on a green road. The good road-manners demonstrated by TRF members when meeting equestrians serve as an example for other forms of traffic, both on narrow tarmac roads and green roads. The TRF convention is to stop and pull over for equestrians on narrow roads, whether they are on tarmac or not.
5. During the immediate years following NERC, the balance struck was especially harsh on TRF members who were using relatively low powered motorcycles and navigating by means of paper maps. The balance has more recently become appropriate in some areas, because of technological advances in motorcycles and motorcycle navigation.
6. Navigating by paper map is very time consuming and carries a considerable risk of error – this is of especial concern where the penalties for inadvertently straying off legal roads are harsh. The common use of motorcycle specific sat-nav has had the effect of improving the quality of trailriding available. More time is spent trailriding as opposed to working out where you want to be trailriding.

7. Advances in motorcycle technology post-nerc have resulted in bikes being available that can more readily cope with the considerable increase in tarmac miles between the green roads, whilst still being low-impact and capable on green roads.
8. The result of those two technological advances is that the mileage of green road ridden during a typical days trailride is comparable to that ridden pre-NERC, albeit with a substantially increased mileage of tarmac roads in-between.

**Baroness Byford: Both of you are here giving evidence on behalf of what I would call “responsible users”, hopefully, in your various capacities. What do you do about those who are not responsible—something that is challenging this Committee—to divide between what is acceptable behaviour of both your organisations and what is not, because clearly that is a huge problem?**

9. TRF actively lobbies for and supports TRO’s which provide effective regulatory solutions to irresponsible behaviour.
10. An example of this would be the successful permit TRO’s used in Kent (appx1).
11. TRF also actively engages with the Motor Cycle Industries Association (MCIA) and encourages manufacturers to produce lower-impact motorcycles.
12. The industry is responding favourably to TRF’s and others requests for lower-impact motorcycles that are especially suitable for responsible trailriding. The available models this year are substantially lower impact than the models available around the time that NERC was being considered.

**Q145 Lord Cavendish of Furness: That is interesting information about the culture of your two organisations. Going back to Part 6 of the NERC Act, some witnesses have told the Committee that Part 6 has had the unintended consequence of intensifying use by motor vehicles on these routes not covered by the provisions of the Act, leading to damage to such routes. Would you share this assessment? What has been the practical effect of Part 6 of the NERC Act on England’s green lanes since it came into force?**

13. TRF’s experience is that responsible trailriding will, generally, have no greater impact on the road surface than that of a horse. In some circumstances the impact of a motorcycle will be less than that of a horse. Responsible trailriding does not cause greater impact on the road than that caused by a horse and cart – for which a substantial proportion of the available network has been historically engineered to sustain and accommodate.



14. A study in 1994 (appx 2) supports the TRF's view. Further, the study found that walkers can have a higher impact than motorcycles in some circumstances.
15. Insofar as displacement of motorcycle traffic is concerned, the effects of the NERC act would not have resulted in an increase in damage any more than would arise from an increase in equestrian traffic.
16. The practical effect of NERC has been to extinguish motorcycle access on roads that were established carriageways. For example, the provisions of part 6 of the NERC Act bit on roads that were accepted by landowners to be carriageways under the provisions of the Rights of Way Act 1932 (and subsequent provisions to admit carriageways via deposition of maps under the Highways Act 1959 and 1980).
17. The NERC act has also bitten on tarmac roads that lead to public car parks and/or train stations. The engagement of exemptions is unclear and prone to becoming unavailable via the mechanisms of the 2026 cut-off date for CROW Act 2000.
18. The quantity of mileage of established carriageways was substantially reduced. Save for some exceptional examples, those carriageways affected by NERC were and are sustainable, suitable and appropriate for motorcycle traffic.
19. The quality of the remaining network was also substantially reduced as the blunt tool of NERC paid no regard to network logic or coherence.
20. Authorities that did not perform statutory duties to reclassify established carriageways to BOAT, were rewarded by NERC.
21. A practical effect of NERC has been to substantially increase the capacity of TRF to conserve the remaining network. TRF has significantly less burden arising from the need to deal with BOAT claims. That has freed up TRF resources to conserve the available network.

**Lord Cavendish of Furness: I want to press you on the substance of the question. Would you share the assessment of those witnesses who told the Committee that Part 6 of the NERC Act has had the unintended consequence of this intensification?**

22. The Faber – Maunsell report(appx 3) commissioned by DEFRA prior to NERC found that motorcycle traffic was substantially less than the volume of traffic associated with access and agriculture.
23. Access and agriculture traffic has intensified and has not been affected by NERC. For example, the weight of both agricultural vehicles and 4x4's has increased in the ten years since NERC. The more intensive farming methods used require more agricultural traffic.
24. The displacement of the relatively small volumes of motorcycle traffic has not resulted in a substantial increase in the volume of traffic on the remaining network. If one were to assume that the volume of traffic had been doubled, that is no more than two times very little = very little.
25. This is illustrated by vehicle logging records obtained for some roads targeted for TRO's. For example, a TRO is currently proposed in respect of a road called "Wetton" in the Peak District. The Authorities own vehicle

logging figures (appx 4) show that it is used by an average of 1.17 motorcycles per day.

26. The objective evidence supports the TRF's view that there was relatively little motorcycle traffic prior to NERC and that this remains the case post NERC.
27. On a point of history, TRF would point out that there were an estimated 20,000 motorcyclists in 1903 (appx 5). Those motorcyclists in 1903 would have travelled almost exclusively on unsealed roads, many of which are presently recorded as path and restricted byway. The TRF currently estimates there to be c.20,000 trailriders who regularly travel on unsealed carriageways. Trailriding numbers appear to be at historical baseline.
28. TRF suggests that it is reasonable to conclude that NERC has resulted in an intensification of illegal motoring, especially on restricted byways. Reducing provision has not resulted in the elimination of public motoring activity on such roads, many of which have been used by local populations for motoring for 3 generations or more.

**Baroness Scott of Needham Market: Setting aside for a moment the question of potential conflict of use of routes and how we manage that and looking at the legislative framework for rights of way of all kinds, do you believe that it is possible to achieve certainty and clarity under the current legal framework, or is there a case for almost starting again with a blank sheet of paper?**

29. The current framework has achieved a substantial degree of both conclusive and presumptive certainty, to the extent where the degree of uncertainty is bordering on the negligible.
30. Around half of the network available is conclusively available to motorcycles, being recorded as BOAT.
31. The remainder is recorded as UCR. Where those UCR's are in use by the public with motorcycles, a legal presumption is engaged that the use is lawful (appx 6). In the absence of evidence to the contrary, the status of a UCR which has been historically used by motorcycles, can be presumed to be carriageway. This view is consistent with the published view of the Green Lanes Environmental Action Movement (appx. 7), which holds that evidence of vehicular use on a UCR will secure carriageway status, unless a negative can be proven.
32. That situation of legal presumption is one that is reinforced by the regularity of those roads not being denied to motorcyclists by provisions of the Rights of Way Act 1932, and the subsequent mechanisms to record as path via the definitive maps legislations. Further, the Road Traffic Act 1930 has been available to secure criminal convictions in respect of motorcyclists that use UCR's which are not carriageways i.e. that they are bridlepath or footpath.
33. A high-profile example of a prosecution for motorcycling on a UCR related to Grimsell Lane in Derbyshire. This case was relied upon by those lobbying for NERC/CROW to extinguish motorcycle rights, who argued that TRF members were exploiting a loophole in the law to ride a bridlepath.

Grimsell Lane has been found to be a carriageway and is now recorded on the definitive map as such. The loophole in the law was one which allowed for innocent responsible motorcyclists, all valued members of the wider responsible motorcycling community, to be subject of unjustified prosecution, and for Grimsell Lane carriageway to be misrepresented as a path on the definitive map for an unreasonable length of time (appx 8 and 9).

34. There are some very rare exceptions where UCR's are not carriageways. TRF is open to supporting the correct recording of those paths on the definitive map. This is a position TRF has long maintained and continues to advance via the Motoring Stakeholder Working Group (MSWG).

**Baroness Scott of Needham Market: I chaired the rights of way committee in Suffolk for a decade, and it was my life for 10 years. The local authorities were not in such a bad state financially then, but resource was a significant issue. If it were possible to streamline some of these procedures, how could that be achieved?**

35. Case law holds that the definitive map was never intended to record metalled roads that are recorded on the List of Streets. The likelihood is that the vast majority of such roads would be recorded as BOAT.
36. Only two Authorities are actively pursuing the dual recording of UCR's as both BOAT and UCR. TRF considers that this is a waste of public resources which conflicts with the intended purposes of the definitive map.
37. It would streamline the process if the CROW Act provision to prevent recording of BOAT's on the definitive map were brought forward, with a view to halting the recording of carriageway UCR's as BOAT.
38. Where roads that are currently recorded as restricted byway or path are found to have motorcycle rights, they should be taken off the definitive map and managed as UCR's, sitting at the lower end of the spectrum of ordinary roads.

**The Countess of Mar: My question will do for this part as well. BOATs are, by their nature, byways open to all traffic. One of the unintended consequences of this, and you have described it, is that the activities of your members will sometimes make those roads unpassable to horse riders, pedestrians and cyclists. Is there any way in which you can come to a compromise by looking after a road that is perhaps sustainable but needs some repair, or stopping your members from going on unsustainable roads so that other users can use them as they will?**

39. TRF has long understood that Byways Open to All Traffic are not "open to all traffic". Byways, as with any highway, are only open to traffic that does not cause a common-law nuisance or other offence.

40. This foundation of highway law is the reason why the driver of a large lorry has no right to drive down a narrow tarmac road and get stuck. There is no entitlement for the lorry driver to inflict that nuisance on the public.
41. The term “Byway Open to All Traffic” is an inappropriate and misleading one that is the source of much confusion. It is possible for a BOAT to be open to low-impact motorcycle use but not for use by wider and heavier horse and carts or 4x4’s.
42. There are severe levels of damage on some green roads, but this is confined to a very small proportion of the green road network. Much of the severe damage is not associated with motorcycle use and it will frequently pose an obstruction to TRF’s members. TRF has repaired damage arising from natural causes and agricultural/4x4 traffic. This has resulted in the road becoming available for all users, including motorcyclists, who could not use it before the TRF’s intervention.
43. TRF undertakes a considerable amount of practical conservation work on green roads. We punch above our weight for a relatively small organisation and regularly employ heavy machinery (JCB’s etc) to repair roads.
44. TRF works with Authority to promote compliance with temporary TRO’s.
45. TRF is also at the cutting edge of developing innovative use of statutory regulation to facilitate sustainable use.

**Q147 Baroness Whitaker: We seem to have moved on to traffic regulation orders. A number of witnesses have told the Committee that different local authorities and national park authorities have had very different attitudes towards the use of TROs. Why do you think this is? Do different authorities have different approaches to the needs of the groups that you represent?**

46. Yes, the approaches are markedly different, with a significant variation in cost and effectiveness.
47. For example, East Sussex County Council imposed a package of TRO’s which provided proportional traffic regulation for almost (16 roads) the entire East Sussex Network, including the Old Coach Road which runs from Alfriston to Firle.
48. The East Sussex solution prohibits 4x4 use during the winter months and is effectively enforced with physical barriers. Motorcycles and Quadricycles are exempted from the restriction, as they are considered not to be especially damaging to the road surface. The East Sussex solution has received broad support from the moderate majority of all concerned, including TRF.
49. East Sussex County Council has informed TRF that the cost of making a TRO is in the region of £2000, with the additional cost of barriers.
50. In contrast, TRF understands that the Peak District National Park Authority is imposing TRO’s at the rate of one per year (5 in 5 years) with an annual budget of at least c.£26k (appx 10), this excludes the adverse costs awards arising from its making unlawful TRO’s.

51. National Park Authorities can exercise TRO powers subject of less statutory and democratic safeguards than by which Highways Authorities can exercise TRO powers.
52. Further, the Localism Act 2011 has operated to remove any meaningful safeguards against bias within the National Parks Authorities. The effect of this has been to elevate organisations with a peculiar ideological dislike of motorcycling to a special position within the National Park Authorities and its TRO process. This is proving to be a barrier to securing cheap, effective and proportional TRO's that are successfully used in other National Parks and areas of the Country.

**Baroness Scott of Needham Market: I would like you to help me to understand something. You have commented on your positive engagement with the TRO process. We have also had evidence that—I am paraphrasing—whenever a local authority tries to adopt a TRO the vehicular users look at every comma and produce a legal challenge. It is entirely at odds. How has that perception arisen, and how might that gap be bridged?**

53. TRF works very hard with Authorities to try and avoid TRO litigation. This is in part because, even where TRF's case is successful, we never recover the full amount of our costs. The Authority also wastes public money (i.e. the TRF members money) which can be better spent on performing statutory duties. TRO litigation results in TRF members losing out twice, once from the TRF membership purse and once from their public funds purse.
54. Comma's and minor technicalities cannot defeat a TRO. It is legally impossible to defeat a TRO in such a manner. The legislation confines the options for legal challenge to an avenue prescribed by statute. The statute only allows for claims of procedural failings to defeat a TRO where this has put the TRF at a "substantial disadvantage" during the TRO process.
55. The other statutory avenue for challenge is where the TRO was not made within the powers of the Authority.
56. The key provision of the relevant legislation is within para 34-37, schedule 9 of the Road Traffic Regulation Act 1984. This provides that the Court *only* has the power to quash, or partially quash, a TRO where it is:

"...satisfied that the order, or any provision of the order, is not within the relevant powers, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements.."

57. In summary the TRF can only defeat a TRO where it can prove that it was put at a substantial disadvantage during the process or where the TRO is unreasonable in the Wednesbury sense. This framework allows considerable scope for Authority to use unfair procedure to produce an unreasonable TRO, providing it does not stray into the distant realms of

being Wednesbury unreasonable or putting TRF at a substantial disadvantage.

58. The perception has arisen largely through some Authorities, and organisations which campaign against the interests of responsible motorcycling, making false representations as to the legislative framework.
59. TRF has, via the Motoring Stakeholder Working Group, provided a clear and reasoned explanation to members of that Group as to the operation of legislative mechanisms for challenging TRO's, why TRO's cannot be defeated on minor technicalities, and why the statutory framework allows considerable scope for use of an unfair process and/or imposition of an unreasonable TRO.
60. The incidence of legal challenge and the damage to public interests from over-restrictive TRO's can be effectively addressed by introducing greater safeguards for proportionality into the TRO process for unsealed roads. TRF suggests that the safeguards for proportionality that are utilised in legislation for Public Space Protection Orders would be a good place to start.
61. The majority of TRO's imposed during 2016 were supported by TRF, this includes a TRO (Turbarry Road, North Yorks) that included a total prohibition of motorcycle traffic.
62. Three TRO's were quashed in 2016 as a result of TRF legal challenge. Of those three, two were followed up with Experimental TRO's (ETRO's) to test the sustainability of motorcycles.
63. One of those ETRO's (Hexham Lane) has now been made permanent, with the finding that motorcycle traffic caused substantially less impact than agricultural and access traffic. The TRO made prohibits recreational 4x4 use but allows for unrestricted motorcycle access.
64. The other ETRO is in place on Seggimire Lane North Yorks, the experiment allows for motorcycle use. The road remains in good condition – better than Hexham Lane.
65. The third quashed TRO affected various green roads in Hampshire. The Council is currently proposing motorcycle exempt TRO's for the majority of the roads it previously sought motorcycle restrictions on.
66. The three cases were comprised by consent order. TRF maintained that all its grounds of challenge were well founded. The grounds were not tested because the Authorities chose to concede on grounds of procedural error.
67. However, the TRF's argued grounds of irrationality were tested in the practical sense post litigation. Motorcycle exempt TRO's were subsequently used and have proven successful for managing the roads concerned.

**Baroness Scott of Needham Market: What proportion of TROs would you agree with, and how many would you lodge an objection against?**

68. TRO's are not a binary choice between access and no access for motorcycles.
69. TRF would generally object to a TRO that sought to ban all access for motorcycles, unless there were exceptional circumstances, such as the road being incapable of sustaining equestrian traffic and ergo motorcycle traffic.
70. TRF would generally support a TRO that sought a partial and proportional restriction on motorcycles, where there was a clearly evidenced need to impose a degree of restriction and the restriction proposed was proportionate.
71. Securing support for a motorcycle TRO is especially challenging for some Authorities, whose historic treatment of motorcyclists has resulted in a loss of public confidence that motorcyclists will be treated fairly.
72. Further, National Park Authorities tend to pursue TRO's for reasons of "Natural Beauty", a statutory TRO reason that is of outstanding obscurity.
73. Despite this, TRF regularly offers to support substantial restrictions on motorcycling for the purposes of advancing non-motorised users interests and "natural beauty" in National Parks.
74. Despite TRF's very reasonable offers of compromise, some National Park Authorities appear compelled to imposing total bans at every opportunity.
75. For example, TRF supported the use of TRO's on Washgate Lane and Derby Lane in the Peak District, that would have imposed substantial restriction on motorcycling. Trailriding would only have been permitted on a minority of off-peak days and only as part of a regulated event organised by TRF or the Auto Cycle Union (ACU). This mechanism would have confined use to responsible trailriders under the supervision of TRF/ACU. The vast majority of days would have been free of motor traffic. The Peak District National Park Authority rejected this solution. TRF remains unclear as to the reasons why, although the statutory response suggests that the decision is primarily founded in ideological reasoning as opposed to a tangible problem with regulated, responsible, trailriding.
76. National Park Authorities have never imposed a TRO that provides any degree of exemption for responsible trail motorcycling.
77. Further, National Park Authorities have never exempted electric mopeds from TRO's, despite the TRF's requests to do so. Electric mopeds commonly resemble mountain bicycles or electric mountain bicycles. They are virtually silent in use. TRF would, generally, object to TRO's that banned electric mopeds for reasons of noise, damage, amenity, and/or natural beauty. There appears to be no rational argument to prohibit such traffic in respect of the National Park Authorities unsuccessful TRO's imposed since NERC.

**Q148 The Countess of Mar: You give the impression that there are a lot of TROs around, but evidence that we have had from local authorities has been that they have used them very rarely because**

**they are so expensive. You have answered most of my question. Do you think TROs are the right approach for resolving these issues concerning green-laning or are new and different approaches required?**

78. TRO's that restrict motorcycles are relatively rare in the national context.
79. The motorcycle TRO's that are used tend to be found in clusters, or on especially important routes with strategic value.
80. Some TRO's restrict motorcycles for illogical reasons e.g. to prevent fly-tipping.
81. Insofar as motorcycle access is concerned, responsible trailriding is rarely a problem – at least not in the tangible sense. The problem is generally one of irresponsible trailriding.
82. TRO's are a flexible tool which can be used creatively to address irresponsible trailriding.
83. There is scope to make greater use of Public Space Protection Orders (PSPO's) to regulate motorcycling, especially in National Parks.
84. PSPO's can be used to e.g. limit groups sizes, motorcycle noise, prohibit recreational winching and towing by 4x4's.
85. The rarity of TRO's is proportional to the rarity of the network. There isn't that much to impose TRO's on. In East Sussex, one could draw a comparison between restrictions on CROW access land and motorcycle TRO's. There are a handful of motorcycle TRO's and there are a handful of CROW access land restrictions. In East Sussex there isn't much CROW access land and there isn't much of a green road network.
86. TRF estimates that current TRO's in the Peak District National Park affect around 10% of the useful green road network. 5 National Park Authority TRO's may not be perceived as a significant amount. In practical application those TRO's have inflicted substantial detriment on trailriding interests and the Special Qualities of the park.
87. To appreciate the detriment experienced by trailriders in the Peak District National Park, consider that the pre-NERC trailriding network in the area was estimated to be around 200 miles, take away half the access through losses to NERC, then take away c.10% of the remainder. Compare that to the Pennine Bridleway National Trail which is some 200 miles long. Consider what it would be like if that was the only legal access available to ride your horse, cycle, or walk on. Try to appreciate what impact it would have on those interests if you lost half of that access, plus a further 10% of the remainder, with the Authorities threatening to take away more.
88. Responsible motorcyclists in the Peak District have had to contend with a continuing and relentless attack on their interests for over a century, there is hardly any more access to be taken away from them. Those with a strong ideological dislike of responsible motorcycling are 99% victorious in terms of the proportion of unsealed highway access. Yet they still seek to take the last remnants of network available for motorcycling.
89. To put this into context, the preliminary findings of a TRF survey of the green road network in the Peak District found that there are 101 green roads of interest to trailriders. That is to say the green roads are through



routes with an unsealed surface. 11 of those roads are currently subject of TRO. The Peak District National Park Authorities TRO's have denied responsible, low-impact motorcycle use of 5 green roads which provided important strategic links in a relatively miniscule proportion of access available to trailriding. That proportion amounts to some 85 miles or thereabouts. The public rights of way (PROW) network in Peak District National Park is around 2000miles or thereabouts. Prior to the 5 TRO's imposed by Peak District National Park Authority, non-motorised users had access to a network consisting of some 3,510 BOAT's, restricted byways and paths of which a heady total of 37 (1.05%) were BOAT. To put it another way, 98.95% of the PROW network was MPV free. The effect of 5 TRO's in the Peak District is to reduce responsible, low-impact motorcycle access by 10% and increase the proportion of motorcycle free access by 0.14%, over 5 years and at substantially greater expense to the public purse than TRO's made by Highways Authorities.

90. In respect of all 5 of those TRO's, TRF supported alternatives that placed significant restrictions on motorcycle access, such that they would have substantially advanced non-motorised users interests without causing absolute detriment to responsible, low-impact motorcycling, or indeed, those who may wish to use an electric moped.
91. Had the Peak District National Park Authority accepted a TRF supported compromise, which provided for motorcycle free days at peak times, the motorcycle free access would still have been increased by some 0.12% or thereabouts.
92. The barrier to securing a successful compromise appears to TRF to be driven by ideological goals to inflict absolute detriment on trailriding interests where possible. TRF contends that efforts of advancing national park purposes, especially those relating to the cultural heritage of motorcycling, are being neglected in park.

**The Earl of Caithness: You have talked about sustainable lanes and you have talked about proportionate TROs. Both those words can be argued about, and, doubtless, you are extremely good at doing that. You have also talked about your legal right. What about the legal right for those of us who would like to walk on green lanes, particularly the disabled who find it harder to walk, because, as Lady Mar said, there is considerable damage? I have faced this problem myself and was unable to proceed. Are you prepared to give up any of your so-called legal rights on the 3,200 miles of green lane?**

93. The NERC Act saw fit to provide exemption for electrically assisted pedal cycles but did not make any provision to protect the interests of users of mobility scooters (invalid carriages in law).
94. NERC extinguished all public mechanically propelled vehicle (MPV) rights on restricted byways. Mobility scooters are legally classed as mechanically propelled vehicles. The effect of NERC was to extinguish the

disabled users' entitlement to use restricted byways with mobility scooters.

95. Whilst such use continues, on the basis that it is decriminalised, it is not use by way of entitlement, but by leave or licence of the landowner. The Landowner can still pursue an action for trespass against such a user. The interests of such users have been eroded by NERC.
96. There is, in TRF's understanding, an important exception to the use of mobility scooters on restricted byways being decriminalised. That is where a restricted byway forms part of a level crossing on a railway.
97. Use of a mobility scooter on a restricted byway level crossing may constitute trespass on a railway, which is a criminal offence.
98. The definition of disability was expanded by the Equality Act 2010. The definition encompasses those who might not have previously been protected by legislation.
99. Some TRF members are physically frail and suffer from conditions (e.g. arthritic knees) which makes walking, cycling and horseriding difficult, painful and/or impossible. This is especially so in the context of travelling the full length of a green road so as to be enjoyable.
100. The availability of motorcycle access allows for those TRF members, who fall within the Equality Act definition of disabled, a unique facility for countryside access.
101. Just as the interests of users of mobility scooters were adversely affected by NERC, the interests of disabled users of motorcycles, 4x4's, and ordinary cars, were adversely affected by NERC.
102. The relatively miniscule proportion of green road access available for motorcycling provides for diversity of opportunity to access the countryside. That diversity provides for unique opportunities for some with disability to access the countryside, where they otherwise would not be able to do so. A one size fits all approach to countryside access would have adverse consequences for those with disabilities.
103. TRF regularly encounters callous and insensitive treatment of disabled motorcyclists, particularly in relation to responses to TRO objections. "It's ok, they (the disabled motorcyclist) can walk, cycle or horseride the road instead". Such responses fail to comprehend that the disabled victims of both NERC and clumsy TRO's may not be physically able to participate in extended walks, mount a horse, or ride a bicycle. Indeed, even where they are able to do so, a journey on the road concerned may result in the person experiencing pain as opposed to enjoyment.
104. Motorcycling is also a great leveller. A disabled person riding a motorcycle does not appear as disabled and can pursue the activity in the company of able-bodied companions.
105. TRF prefers the term "entitlement" to "rights" as this is a more accurate description of the legal mechanism that provides the foundation for all forms of public access.
106. Public users of the highway are only entitled to use it in such a way that does not commit a public nuisance or other offence.
107. The first use of the highway by a mechanically propelled vehicle (MPV) occurred in 1801, by way of entitlement. Subsequent statutory protection of that entitlement for the public to use MPV on the highway was introduced in 1861, before the modern pedal cycle was invented.
108. At every stage of the statutory protection of the fundamental entitlement to travel by motorvehicle, safeguards have been applied to

preserve the common law position in respect of nuisance. Much of that common-law is now translated into statutory offence.

109. Responsible, low impact motorcycling has commonly taken place since the late 1890's by virtue of the fact that it is not a public nuisance.
110. Had motorcycles (and other motor vehicles, in use since 1801) commonly presented the public nuisance of excessive damage to highways, such that others could not conveniently pass, their use could not have received statutory protection, as it has from the Locomotives Act of 1861 to the present day.
111. TRF contends that the quality of the green road network for all users can be improved. An improved awareness of entitlement and its limitations is key to that.
112. It is possible to reduce the mileage of green roads available to responsible motorcyclists whilst still improving the quality of green road network for motorcycling and other interests.
113. The barrier to achieving this is largely one of overcoming ideological goals to cause absolute detriment to responsible motorcycling.

*15 December 2017*

## **UK Environmental Law Association – written evidence (NER0053)**

### **Evidence of the United Kingdom Environmental Law Association Nature Conservation Working Party**

1. The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice on proposals of governments and regulators covering a range of environmental law topics, with the help of its specialist working parties. This response has been prepared by the Association's nature conservation working Party ("NCWP").
3. The UKELA NCWP has awarded a bursary to Joanna Smallwood of the Sussex University Law School. She is currently in the second year of an ESRC funded socio-legal PhD at Sussex University. The title of her PhD is: "The Convention on Biological Diversity's objectives include conservation of biological diversity at a global level but has it become another victim of extinction as a result of its text and strategic plan?" The NCWP acknowledges the substantial input from Joanna Smallwood in the compilation of this submission.

### **Rural Advocacy and the Commission for Rural Communities**

#### **2. Are sufficient measures being taken to ensure that policies are rural proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should take the lead on such matters?**

4. One aspect of rural proofing and ensuring adequate advocacy for rural interests is biodiversity governance.
5. In Wales, the system of local biodiversity action plan (LBAP) officers is key with regard to implementation of the enhanced s6<sup>245</sup> Biodiversity duty as well as other legal biodiversity obligations including those arising from international law. LBAP officers act as a point of contact to all stakeholders and facilitate better information and coordination between different stakeholders to aid the implementation of biodiversity policies. They provide a means by which biodiversity obligations arising from national, European and international levels are considered and applied to the local level according to the local circumstances. They look at the problems of implementation and the barriers faced and feed back to the Welsh government on direct experiences for the policy makers.
6. Each Welsh county has a differing emphasis on the LBAP officer. Some counties have 3 day a week positions (such as Pembrokeshire). This allows for

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<sup>245</sup> Section 6 of the Environment (Wales) Act 2016

quite a good system to aid implementation of biodiversity policies. Other counties have only a 1 day a week position and this is considered to be inadequate resourcing.

7. Where LBAP officers are poorly supported there is less of a distinction between delivery by an LBAP implementation officer and sole delivery by the local authority. Leaving the local authorities to deal with implementation of biodiversity policies amongst the plethora of other issues they have to deal with risks biodiversity duties and obligations being side-lined.

8. The role of the LBAP officer seems crucial to deliver effective 'rural proofing' of biodiversity policies at the local level. They provide information and advice to, and co-ordinate differing positions of, stakeholders. They act as a point of contact to make practical advice regarding implementation of obligations arising from different levels of biodiversity governance and feed into local action on implementation. They also provide feed-back to the Welsh government on what is and is not working in relation to policies.

9. LBAP officers in Wales also meet together through a forum known as Biodiversity for Cymru (B4C) and they discuss policies, how to implement them and test new policies.

10. The overarching structures co-ordinating the LBAP officers have been BAP Partnerships for the 4 countries. However, the structure of biodiversity governance within the 4 countries is changing. In England the BAP Partnership has been dissolved. In Wales the BAP Partnership still exists but the amount of funding for county LBAP officers varies. In Scotland the BAP Partnership has been dissolved and is being replaced by a new biodiversity co-ordination group. BAP partnerships (or their successors) need to be well supported to deliver effective implementation of biodiversity duties at the local level. Unless these systems are in place then it removes the ability to 'rural proof' policies and to deliver action at the local and national level in relation to biodiversity policies.

11. The Committee is referred to the following conclusion:

"24. The lack of resources to enable local authorities to fulfil their own statutory duties and responsibilities, in terms of conservation, preservation, planning and in tackling wildlife crime reflects at best a woeful ignorance on the part of those in charge and, at worst, neglect or absolute disdain. Local authorities still have a considerable amount of work to do to educate and train their own workforce on their roles and responsibilities. (Paragraph 38)"

12. This conclusion was reached by the House of Commons Environmental Audit Select Committee in its Twelfth Report on Wildlife Crime dated 15 September 2004. The position in relation to local authority ecologist resourcing has deteriorated substantially since then<sup>246</sup>.

### **3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being**

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<sup>246</sup> See for example the report of the All Party Parliamentary Group on Biodiversity meeting held on 11 September 2014 "Ecological Capacity in Local Planning Authorities" <https://www.cieem.net/news/204/ecological-capacity-in-local-planning-authorities>

**represented within the current structures of Government, and how could representation and co-ordination be improved?**

13. In our view DEFRA should continue to be the co-ordinator for rural policy.

## **Natural England**

**4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

14. Government has imposed drastic resource reductions upon Natural England in successive recent years. Overall the organisation has responded remarkably well in making the changes required. Whilst members of the Working Group recognise that the wide-ranging functions can and do fit well together, the diminished organisation has, at times, been unable to meet operational demand to effectively discharge some of its functions such as species protection and licensing.

**5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

15. The Working Group does not believe that changes to the remit or responsibilities of Natural England are called for. Neither Brexit nor developments since 2006 would be any justification for changes to Natural England.

## **Sustainability and biodiversity**

**7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

16. The Group is concerned about the extent to which the understanding of the duty penetrates within organisations to whom it applies beyond those who are compelled to be aware of and apply the duty regularly.

17. Joanna Smallwood is likely to have an increased level of empirical evidence in due course because she is intending to interview officers of English bodies to whom the duty.

**8a) What has been the practical impact of the 2006 duty?**

18. The Working Group has seen a copy of the evidence of Professor Colin Reid of the University of Dundee which is extracts from his book *Nature Conservation Law* (3<sup>rd</sup> ed) (2009, W. Green, Edinburgh) and refers the Committee to that text both generally and also specifically in relation to this question.

**b) Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006.**

19. The UN 1992 Convention on Biological Diversity (CBD) recognises that to ensure effective protection, biodiversity conservation needs to be incorporated into other sectors beyond just those dealing with conservation. The CBD treaty text includes binding obligations in respect of wider approaches to integrating nature conservation into different sectors through mainstreaming.<sup>247</sup> Further, the concept of mainstreaming has been built upon in 2010 by the CBD Conference of the Parties (COP) through the 2020 Strategic Goal A and the first 5 Aichi targets which all relate to mainstreaming.<sup>248</sup> As well as these targets there are further decisions and guidance produced at the CBD COP in relation to mainstreaming.<sup>249</sup> Target 2 concerns the integration of biodiversity values into national and local development and poverty reduction strategies and planning processes.

20. Biodiversity mainstreaming can be seen to have been integrated to some extent in the UK through the use of ‘public duties’. In England some public law duties must be considered by other sectors beyond purely those responsible for nature conservation.

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<sup>247</sup> Article 6(b) of the Convention on Biological Diversity requires “Contracting Parties to integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies”.

<sup>248</sup> Strategic Goal A: Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society.

#### **mainstreaming biodiversity across government and society**



##### **Target 1**

By 2020, at the latest, people are aware of the values of biodiversity and the steps they can take to conserve and use it sustainably.



##### **Target 2**

By 2020, at the latest, biodiversity values have been integrated into national and local development and poverty reduction strategies and planning processes and are being incorporated into national accounting, as appropriate, and reporting systems.



##### **Target 3**

By 2020, at the latest, incentives, including subsidies, harmful to biodiversity are eliminated, phased out or reformed in order to minimize or avoid negative impacts, and positive incentives for the conservation and sustainable use of biodiversity are developed and applied, consistent and in harmony with the Convention and other relevant international obligations, taking into account national socio economic conditions.



##### **Target 4**

By 2020, at the latest, Governments, business and stakeholders at all levels have taken steps to achieve or have implemented plans for sustainable production and consumption and have kept the impacts of use of natural resources well within safe ecological limits.

<sup>249</sup> Parties have adopted numerous decisions and declarations to address mainstreaming. Most recently COP13 addressed strategic actions to enhance national implementation, in particular through mainstreaming and the integration of biodiversity across relevant sectors, including agriculture, forestry and fisheries. The result was the Cancun declaration on mainstreaming the conservation and sustainable use of biodiversity for well-being. Parties committed to, “work at all levels within our governments and across all sectors to mainstream biodiversity, establishing effective institutional, legislative and regulatory frameworks, tailored to national needs and circumstances, and incorporating an inclusive economic, social, and cultural approach with full respect for nature and human rights”. <https://www.cbd.int/cop/cop-13/hls/cancun%20declaration-en.pdf> accessed 20/6/17.

21. The relevant duties in England in relation to biodiversity are;

- a. A general duty on all public bodies in relation to SSSIs to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features that justified notification of the land as an SSSI. (CROWA 2000 s 28G)
- b. A general duty on all public bodies to have regard to conserving biodiversity. (NERC Act 2006, s40 (1))
- c. Ministers and Government departments, but not public bodies more widely, must have particular regard to the Biodiversity Convention 1992 (NERCA 2006, s40 (2)).

22. The use of the biodiversity duties mechanism therefore contributes to the concept of mainstreaming biodiversity found under strategic goal A and the corresponding Aichi Targets, in particular AT 2. However as it stands, England's biodiversity duty to only have 'regard for biodiversity' does not embrace other legal obligations under CBD Aichi Targets 14 and 15 relating to safeguarding and restoring ecosystems that provide essential services and enhancing biodiversity.

***"Strategic Goal D. Enhance the benefits to all from biodiversity and ecosystem services.***

*AT 14. By 2020, ecosystems that provide essential services, including services related to water, and contribute to health, livelihoods and well-being, are restored and safeguarded, taking account the needs of women, indigenous and local communities and the poor and the vulnerable.*

*AT15. By 2020, ecosystem resilience and the contribution of biodiversity to carbon stocks has been enhanced, through conservation and restoration, including restoration of at least 15 per cent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combatting desertification."*

23. The global agreement of the 2010-2020 CBD Strategic Plan and the Aichi Biodiversity Targets represent a key development in our understanding of the value of ecosystems and biodiversity and they need to be incorporated into English law.

24. One such way this can be achieved is by enhancing the biodiversity duty as has already been done in Wales. Wales have used the ecosystem approach and fulfilled their obligations under the CBD through the creation of an enhanced biodiversity duty as well as supporting legislation that aims to put sustainable development as a priority for the Welsh government.

**9. How does the English duty to 'have regard' to biodiversity compare to the Scottish duty to 'further' biodiversity and the enhanced 2016 biodiversity duty in Wales?**

25. The English duty compared to the Welsh duty is significantly weaker and does not comprehensively address the CBD Aichi Targets and strategic plan, in particular AT 14 and 15 relating to ecosystem services.

The Welsh Biodiversity Duty



26. The Environment (Wales) Act 2016 (EWA 2016) contains statutory provisions in relation to managing natural resources in a sustainable way. The EWA 2016 adopts an integrated approach to managing natural resources in order to achieve long term sustainability. The EWA 2016 introduces a new s6 'biodiversity and resilience of eco-systems duty.' This replaces the previous s 40 NERC duty. The biodiversity duty applies to all public authorities (Welsh ministers, local authorities, public bodies and statutory undertakers). Public authorities must also report on actions they have taken in relation to this duty.

26. The enhanced duty requires all public authorities when carrying out their functions in Wales to;

*"(1) seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.*

*(2) In complying with subsection (1), a public authority must take account of the resilience of ecosystems, in particular the following aspects—*

*(a) diversity between and within ecosystems;*

*(b) the connections between and within ecosystems;*

*(c) the scale of ecosystems;*

*(d) the condition of ecosystems (including their structure and functioning);*

*(e) the adaptability of ecosystems."*

27. It can be seen that this duty closely reflects the CBD Aichi Targets and in fact uses direct wording from the CBD. The biodiversity duty is also supported by other innovative environmental legislation, the Well-being of Future Generations (Wales) Act 2015<sup>250</sup> and The Planning (Wales) Act 2015<sup>251</sup>. Together this trinity of legislation forms the basis of a comprehensive system to effectively address biodiversity loss within Wales.

28. Further, the Welsh Government has developed systems to support the effectiveness of the legislation. The Government has adopted a programme for

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<sup>250</sup> The Well-being of Future Generations (Wales) Act 2015 places seven well-being goals into law and requires public bodies to apply the sustainable development principle in five key ways. Sustainable development is defined as "the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals". When Public bodies are required to act, "in accordance with the sustainable development principle", they must act in a manner which seeks to ensure that "the needs of the present are met without compromising the ability of future generations to meet their own needs". The Act includes a duty that each public body must carry out sustainable development. Public bodies are required to take two actions in relation to carrying out sustainable development.

- 1) Setting and publishing objectives ("well-being objectives") designed to maximise its contribution to achieving each of the well-being goals, and
- 2) Taking all reasonable steps (in exercising its functions) to meet those objectives.

<sup>251</sup> The Planning (Wales) Act 2015. This Act introduces a duty on Local Planning Authorities to have regard to the 'local well-being plan' produced by the Public Service Board (PSB) and to develop greater engagement with local communities at the pre-application stage of planning.

sustainable development change. This 20 year programme promotes change in the behaviour of civil servants to make Wales sustainable. A dedicated manager provides advice and training to policy officials and other civil servants. This work is aimed to complement the Welsh legislation by training civil servants with new ways to shift their behaviour with the aim to shift responses to their behaviour. They are trying to find ways of working better using techniques at the cutting edge of behavioural change.

29. Wales has set a good standard in terms of implementing international obligations at the national level with the enhanced biodiversity duty and supporting legislation and government support to change the way biodiversity is seen and protected within Wales. Such an approach within England would ensure biodiversity is kept high on the agenda and recognise its essential nature in providing England with a huge variety of essential services.

Richard Barlow

Chair UKELA NCWP

*11 September 2017*

## **Welsh Government – written evidence (NER0093)**

Dear Lord Cameron,

Thank you for the Committee Offices' email of 14 December requesting information from the Welsh Government to assist the UK Government's post-legislative scrutiny of the Natural Environment and Rural Communities Act 2006.

Please see responses below to the questions you have posed:

### **Question 1: What was the rationale behind adopting the wording "must seek to maintain and enhance biodiversity" within the new biodiversity duty contained in the Environment (Wales) Act 2016?**

The introduction of the sustainable management of natural resources in the Environment (Wales) Act offered an opportunity to redefine the section 40 biodiversity duty in the Natural Environment and Rural Communities Act in a way, which enables public authorities in Wales to contribute to the achievement of sustainable management of natural resources as defined in section 3 of the Act.

Biodiversity is key to the resilience of ecosystems, which is central to the sustainable management of natural resources. Maintaining and enhancing biodiversity helps to promote the resilience of ecosystems and, therefore, contribute to the services provided by ecosystems, the services, which underpin our Well-being of Future Generations Act (2015) (<http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>) well-being goals.

The new duty, therefore, connects to our ecosystem approach, which requires biodiversity to be maintained and constantly enhanced as biological resources are a vital element in ensuring our ecosystems are functioning healthy and their integrity is enhanced and maintained at a rate which ensures they are providing the life supporting systems necessary to ensure overall resilience. The section 40 duty did not accomplish this link.

Redefining the duty also enabled integration of the new duty with obligations under the Well-being of Future Generations Act for those bodies required to contribute to the well-being goals. As such, the new duty enabled better integration of the biodiversity into the decision-making of public authorities.

The new duty encourages public authorities to mainstream biodiversity across the delivery of their functions and integrate it at an early stage in decision making. It mainstreams biodiversity as a natural and integral part of policy and decision making. This helps to ensure actions which can impact on biodiversity are not considered in isolation and also take into account the wider role biodiversity has in contributing to the improvement of ecosystems and the resilience of biodiversity, ecosystems and the connecting network of ecosystems.

The new duty, therefore, is not an isolated duty but one which interconnects with helping to deliver the new approach introduced by the Well-being of Future Generations (Wales) Act and the Environment (Wales) Act.

**Question 2: What guidance, if any, is made available to public bodies to support them in implementing the duty?**

The then Minister for Natural Resources wrote to 140 public authorities subject to the duty with initial guidance, ahead of the duty coming into force in May 2016. This was supplemented by interim guidance published on the Wales Biodiversity Partnership website

, also in May 2016. The Welsh Government responds to any queries with guidance as to how to comply with the Duty and this has been compiled into a Frequently Asked Questions document, which is to be published shortly. Much of this guidance is about how the Duty should be mainstreamed and embedded into public authorities' decision making. Officials will be working with public authorities and NGOs to build on this with practical and best practice guidance and examples for both mainstreaming and on the ground action for biodiversity.

**Question 3: What has been the practical impact of the new duty? Has the new duty improved the conservation of biodiversity in comparison to when the NERC Act duty was in effect?**

As the new duty came into force in May 2016, it is too early to tell whether it has had any impact on the conservation of biodiversity. The primary impact has been to encourage public authorities to consider and plan to maintain and enhance biodiversity as an element of their corporate planning processes. This is still at an early stage but a number of Local Authorities have now included performance measures for biodiversity within their corporate performance management. Other authorities have prepared and published plans to comply with the Duty.

**Question 4: What is the intention of the requirement for public bodies to plan and report on how they are implementing the duty? Do you anticipate that this will improve adherence to the biodiversity duty, in comparison to when the NERC Act 2006 duty was in effect in Wales?**

The intention of the planning requirement of the duty is to encourage public authorities to mainstream biodiversity as a natural and integral part of policy and decision making across the delivery of their functions. A plan for the purposes of the duty should include a high level statement which demonstrates commitment to and responsibility for complying with the duty at a corporate level. It should then include the steps which will be taken to fulfil this commitment across the functions of the organisation. These steps can be aligned to the objectives of the Nature Recovery Action Plan for Wales as these aim to reverse the decline of biodiversity in Wales. Best practice would be the plan is an integral part of any business planning, asset management and/or corporate planning processes as this will demonstrate how the consideration of biodiversity is being embedded within the public authority. The preparation of a separate plan to fulfil the duty is not necessarily required.

The reporting requirement provides an element of accountability as public authorities must demonstrate what they have done to comply with the duty.

We do anticipate these requirements will improve adherence to the biodiversity duty, and build on some of the successes Wales has already achieved with the previous NERC Act Duty, in improving action for biodiversity and particularly in mainstreaming the consideration of biodiversity into decision making.

**Question 5: How are rural needs taken into account in policy making? Is there a particular advisory or consultative body that is able to represent or advocate on behalf of rural communities in Wales?**

The Welsh Government has a keen interest in ensuring its policies take into account the rural dimension because of the rural nature of much of Wales. The comparatively limited size of Wales allows policy makers to be closer to rural issues and also for the National Assembly for Wales' Climate Change, Environment and Rural Affairs Committee to scrutinise the Welsh Government.

Rural proofing, along with Equalities and Human Rights, Welsh Language and Rights of the Child, is a mandatory element to policy development in the Welsh Government. Policy officials, when developing a policy, programme or initiative, must complete impact assessments for each of these at the outset and policy makers are encouraged to engage at the earliest opportunity. All of the impact assessments have been designed to drive fairness and inclusion in policy development in Wales.

With rural proofing, policy leads are encouraged to become involved with rural issues as early as possible to ensure the needs and considerations of the communities who live, work, socialise and do business in rural Wales are incorporated from the start of the policy process and become an essential part of the policy development and implementation. Rural proofing is aimed at producing information to highlight the key issues which need to be addressed from a rural perspective when developing new policies. As a starting point, policy officials are expected to read the rural proofing guidance which is available to help raise awareness of rural issues and to assist them in the design of their policies.

The appraisal process is made up of two stages: the screening tool stage and the completion of a checklist. Policy leads are advised to initially work through the screening tool to establish whether a proposed policy is likely to encounter challenges presented by rural areas and there are some questions to complete to identify the purpose of the policy and if rural issues have been considered. This is then sent to the rural proofing team within the Welsh Government for review. If the rural proofing team feel the policy will have a significant impact on rural areas or if there are concerns, a full checklist must be completed for assessment. It is at this point policy leads may begin to think of alternative ways to deliver their policy/programme in a rural area if issues are identified.

Policy officials have the opportunity to work with the Welsh Government's Knowledge and Analytical Services Division to help capture the data and evidence which is required to help understand the situation in rural areas and the particular challenges they face. The rural proofing process is intended to encourage policy makers to think about rural issues as early as possible and to provide them with support in developing policies.

**Question 6: What assessment, if any, have you made of the work of the Joint Nature Conservation Committee? Does it have access to sufficient research and data to perform its functions effectively? Could any improvements be made to the work of the Committee?**

Defra and the Devolved Administrations (DA) conducted a review of the Joint Nature Conservation Committee (JNCC) to establish the most effective and efficient delivery model for the JNCC across the UK now and in the future. The resulting report was published in November 2016 and the actions are being taken forward through the resulting Implementation plan agreed by the DAs. The Welsh Government played an active part within the review and supports its findings, which were as follows:

- Key improvements should be made to the size and focus of the Committee and to wider management and ways of working of the JNCC to improve JNCC's delivery focus and increase the overall value for money to the UK public purse.
- JNCC will remain as a Non-Departmental Public Body because it meets the Cabinet Office three tests
  - it performs a technical function
  - its activities require political impartiality
  - it needs to act independently to establish facts
- JNCC staff and their skills are highly valued by Defra and the Devolved Administrations.

The JNCC review identified some operational changes which will improve delivery of government nature conservation priorities and provide for a leaner, nimbler organisation. They will improve its delivery focus and help provide the best value for money for the UK taxpayer. These are:

- Improvements to structure, leadership and membership of the JNCC Committee to improve its value to sponsors and make the Committee more nimble. This will include a reduction in the size of the Committee when legislation becomes available.
- Reduction in overheads through savings in costs of accommodation and corporate services. This will include £104k for accommodation and £90k for corporate services efficiencies over the next 10 years;
- More government involvement in planning and prioritisation of JNCC's work programme. The annual business planning process will be made more effective through an annual JNCC led 'Big Room' event;
- For marine functions, smarter commissioning of evidence by policy customers across organisations is recommended through closer working between JNCC, Cefas, MMO, Marine Scotland Science and others;
- Improved collaboration and commissioning of delivery of JNCC offshore marine functions, particularly in partnership with Marine Scotland and SNH for Scottish waters, to enable priorities in each country to be met. Establishment of Scotland- specific implementation projects for offshore work and dedicated working level points of contact for Scottish partners;
- Delegation to Scottish Natural Heritage of JNCC renewables advice in Scottish offshore waters (as has been done in England, with Natural England);
- Stronger collaboration by JNCC with its partners and customers leading to better project and programme design, enhanced career development opportunities for staff, greater leverage of JNCC skills and knowledge sharing both ways. In particular: more joint planning, co-location of staff with partners, and flexible staffing, e.g. secondments both ways. Expanding links with universities and research institutes will also be important;
- A clearer rationale from JNCC for how and why funding is being apportioned across programmes; and a recommendation that the JNCC looks for opportunities for alternative sources of income in addition to government funding to increase its long- term resilience, where this is consistent with HM Treasury's Managing Public Money guidance.

We look forward to hearing the findings of the Committee's work.

Yours sincerely,

**Lesley Griffiths AC/AM**

Cabinet Secretary for Energy, Planning  
and Rural Affairs

**Hannah Blythyn AC/AM**

Minister for Environment



## **David White – written evidence (NER0034)**

### **Summary**

The Select Committee sets questions on the functions, powers, resources and performance of Natural England (NE), created under the Natural Environment and Rural Communities Act 2006. The writer's response focuses solely on NE's land-holdings managed as nature reserves. He finds that issues of incompetence, induced by deficient resources and mistaken priorities, affect the agency's performance. By not paying due regard to statutory duties, and disregarding the achievements of former agencies, NE risks blighting the state's nature reserve mission. For seven decades, UK governments have exercised a duty to preserve, in statutory nature reserves, '*flora, fauna or geological or physiographical features of special interest*' (National Parks and Access to the Countryside Act 1949). This pledge to future generations will be broken if NE fails to secure its share of UK's hitherto best-managed heritage. The writer advocates immediate government steps to address the issues and restore NE's competence.

### **Response to questions set in the Select Committee's call for evidence**

1. The remit of bodies established by the 2006 Act, Natural England (NE) and the Joint Nature Conservation Committee (JNCC), includes a function which, for seven decades, has been a cornerstone of statutory nature conservation in the UK. This response to questions 4, 5, 6 & 10 focuses entirely on National Nature Reserves (NNR) and other land-holdings managed as nature reserves. Annex A outlines the writer's experience of statutory nature conservation. Annexes B and C remind readers of the laws, statutory duties and priorities pertinent to nature reserves in England. Annex D offers a base-line NNR management model.

### **Question 4: How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform its function?**

2. This composite question gives an opportunity to voice concerns, widespread amongst former public service practitioners, about the future of nature reserves held and managed by UK governments. In a study of issues that have hindered state endeavour for seven decades (see Annex A), the writer advocates an urgent health-check of the UK's nature reserve estate. Apropos NE's participation, this would entail time-consuming investigation of two crucial questions about every nature reserve. What is the present condition of notified scientific interests? Has the agency kept up long-term management in accord with statutory duties? Sufficient evidence is unlikely to be found in NE's Reports to Parliament or elsewhere in the literature. The investigation might have to compare objectives in a sample of reserve management plans with delivery in the field. Within the Select Committee's time-scale, very little relevant evidence

is available. This response therefore is expressed in terms of perceived risks to England's natural heritage; and doubts about the agency's competence in dealing with issues such as wide-ranging functions, resources and inappropriate powers. Paragraphs 3 to 14 comprise responses to the several parts of Question 4.

How well has Natural England fulfilled its mandate for statutory nature reserves?

3. NE has added 4 sites to the UK's National Nature Reserve (NNR) series. Currently NE manages 142 NNR and has bestowed the title NNR on 82 Approved Body sites (see Annex B). In 2013 the agency published *NNR Management Standard* applicable to both types of NNR. NE adopted this standard as a *Key Performance Indicator* for the first time in 2014/15, proclaiming: '*By 2020 70% of England's NNRs will be meeting the NNR Management Standard*'. If this aspirational standard for NNR upkeep were fully met in practice, the NNR series would be on a robust footing. However, very little positive evidence has come to light that NE's actions have secured the natural heritage within the suite of NNRs. NE's competence to do this up to the standard of former agencies is open to considerable doubt.

4. Notes comparing Natural England's performance with NNR management model (Annex D):

- \* Commitment to GB (international) NNR programme is not strong enough in the face of austerity and other chronic issues. Reserve acquisition has almost halted. During its 15 years, English Nature (EN) expanded the number by 83; compared with NE's 4 in 11 years.
- \* A lower priority share of annual grant-in-aid is deployed on the NNR estate.
- \* Staff time dedicated to NNRs is insufficient compared with the minimum demonstrated by former agencies.
- \* Complement of specialists does not match the needs (upkeep and research) imposed by diverse notified interests of the estate.
- \* Obligatory management programmes have not been sustained.
- \* Reports to Parliament yield inadequate data on the condition of natural resources in NE's care year by year. EN's final report (2005) states that 86.4% (by area) of state-controlled and Approved Body NNRs was in '*favourable or recovering condition*'. NE's monitoring of this kind is inconsistent. There is no subsequent report of NE's formal performance target adopted in 2013-14. Likewise, the target proclaimed in 2014/15 has not been reported on for two years.

5. The agency's performance, in terms of legal duty, policy, priority and technique, has been flawed by incompetence. The condition of natural features under care is not on public record. Thus, pending further research, the jury is out on how well Natural England has fulfilled its nature reserve mandate. Incompetence has been induced by NE's mistaken priorities during the period of shrinking resources since 2008; these issues are addressed again at paragraph

10. The agency has not paid due regard to its legal duty to preserve England's natural heritage in nature reserves (see Annex C). Putting the cream of England's heritage of '*fauna, flora and features of geological or geomorphological interest*' at risk is a serious error by the government and a disheartening prospect for a large body of UK tax-payers.

How well do Natural England's wide-ranging functions fit together - in relation to statutory nature reserves?

6. NE's responsibility for nature conservation sits alongside farm business services and rural recreation functions. Nature reserves and rural recreation generally fit well together. There are two benefits to nature conservation: a proxy educational remit and opportunity to build public pride in Britain's NNR series. The educational potential of nature reserves is stressed in the government's seminal paper (Cmd 7122, published in 1947), but not promulgated by the founding 1949 Act. Nevertheless, practitioners incline to lump education, particularly at higher levels, with access and recreation as a suitable use of NNR. Habitually, the general public pays scant regard to places of interest to specialists. Recent demand for more recreational and educational facilities on NNRs has been welcomed as a sign of growing popular support. But there is a dilemma.

7. Access and recreation may be desirable on NNR but are always subordinate to conservation management. The 1949 Act, as amended, defines a nature reserve as '*(a) land managed solely for a conservation purpose, or (b) land managed not only for a conservation purpose but also for a recreational purpose, if the management of the land for the recreational purpose does not compromise its management for the conservation purpose*' (see Annex C). In terms of policy, the inference is that management of a nature reserve for a recreational purpose must not compromise its management for a conservation purpose. Former agencies, while welcoming the coupling of recreation and nature conservation on NNRs, have followed this overriding guidance. One naturally expects NE to make similar decisions in all circumstances. In years when the grant-in-aid is adequate, management for recreational purposes should proceed so long as it's compatible with obligatory conservation management. In lean years, when budgets are reduced, essential conservation management must have priority, over the entire estate, while recreational management, however desirable and compatible, must be reduced or postponed.

8. Another priority issue crops up within the nature conservation function. The adoption in 2016 of NE's conservation strategy '*Conservation 21*' suggests some NNRs could be left behind in the enthusiasm for landscape-scale conservation, especially if a site's strategic role does not tie-up with NE's current selection of important landscapes. Similarly, NNR Management Plans may be regarded as '*microplans*', not to be effected unless '*substantially contributing to landscape priorities*'. If so, this is out of accord with legislative duties, and another retrograde step in the 70 year endeavour to secure England's natural heritage.

Does Natural England have the appropriate powers to perform its nature reserve function?

9. NE has appropriate powers, with one exception. No conservation agency is empowered to enforce the approved management of Approved Body NNRs. Technically, these are not state-managed nature reserves. They qualify as statutory when a government agency declares them under the title NNR, promulgated in the Wildlife and Countryside Act (see Annex B). The agency's role ends when it approves the managing body's site prescription. If the Approved Body defaults, the Agency's only recourse, bar persuasion, is de-declaration. To sustain the reputation of NNR for best-practice conservation management (see Annex D) NE has sought compliance since 2013 with its excellent *NNR Management Standard*; and offered Approved Bodies specific grant-aid.

Does Natural England have the appropriate resources to perform its statutory nature reserve function?

10. Ever since section 96 of the 1949 Act was enacted (see Annex B) government funding of statutory nature reserves has been an issue. Former agencies hoped that, given legal duty to preserve GB's scientific heritage (see Annex C), they could rely on ring-fenced funding for long-term management and apposite research on nature reserves. This never happened but, despite four decades of inappropriate grant-in-aid, NC, NCC and the first generation of devolved agencies secured the heritage in an expanding estate of NNRs (see Annex D). Three decades later, Natural England's participation in this mission is challenged more severely; by reduced government funding coupled with poor in-house priorities.

11. Far from ring-fencing, NE's grant-in-aid has declined, severely and progressively after the global financial crisis; even though annual expenditure on obligatory site-upkeep is likely to be insignificant in state budgetary terms. NE's total grant-in-aid has declined from £225m in 2006/7 to £105.9m in 2016/17. Seeking alternative resources for NNR upkeep is out of step with the legal imperative; deployment of skilled staff & essential site-upkeep should not have to depend on lottery or other hit or miss funding.

12. Something has gone badly wrong with priorities. NE has made budget deployment choices which have steadily shrunk the sums it spends on NNR upkeep. The 2016/17 budget for management of state-run NNRs was £1, 240, 800. This represents 1.2% of NE's total budget, for a purpose which is core to state nature conservation. The spend per hectare per year by grant aid to private land under temporary schemes greatly exceeds that on NE's own reserves. NE made £827,000 from NNR income in 2016/17, but didn't declare it supplemental to grant-in-aid funding for NNR purposes. 2016/17 Annual Report states that the £16.6m earned income that year is used to fund only non-statutory work. The total number of staff dedicated to, or contributing to, nature reserve management is well below the minimum number per site established by former agencies. Through early departures, the number of ecological specialists, NNR Managers and

Estate Workers is severely depleted. NE no longer has the job category Estate Worker.

14. Government's grant-in-aid awards are insufficient to sustain NE's wide-ranging functions. NE's nature reserve incompetence is due to shortage of government resources exacerbated by inappropriate priority choices. The agency has given priority to functions other than nature reserve upkeep; and has deployed insufficient staff and budgetary resources for securing England's scientific heritage in nature reserves. By disregarding statutory duties and priorities (see Annex C), the government and NE are putting our natural heritage at risk. Appropriate state funding and agency competence should be reinstated.

**Question 5: Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

15. NE's questionable nature reserve endeavour during many years of austerity, should be countered by changes to responsibilities. The Cabinet Office and Treasury Departments should emphasize the primacy of the 1949 Act by:

- \* reinforcing the statutory duty to preserve nationally important scientific resources in nature reserves for the benefit of future generations;
- \* restoring state funding and staff levels consistent with obligatory reserve management up to the standard set by former agencies;
- \* reinforcing statutory priorities - conservation first, recreation second and only if compatible with conservation - and ensuring that scarce state resources for nature reserves are not switched mainly to enjoyment by the present generation.

16. NE's statutory Reports to Parliament would be much improved by consistently informing Parliament (and tax-payers, indirectly) of the condition of notified scientific features in statutory nature reserves. At present the JNCC monitors GB protected sites year by year, without analysis of special interest, reserve type or distribution. JNCC should be mandated to collect and report more meaningful information for all the UK countries.

**Question 6: Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England - and other partners - been in promoting better access?**

17. NE has carried on significantly EN's work to better NNR access e.g. with 'Spotlight Reserves'; and devoted much effort to promoting and achieving enhanced access for recreational visitors on its inherited state-run estate. Under the Countryside and Rights of Way Act 2000, NE has recently dedicated a legal right of access on 64 of its freehold and long-lease NNRs. NE accounts show increased spending on visitor infrastructure and health and safety compliance. NE's big push on improving and extending recreational access and facilities on its

NNRs, and setting public engagement standards for all NNRs, has been in competition for the declining human and financial resources.

18. Access to state nature reserves for purpose other than conservation is a special case in the spectrum of countryside sites with recreational or educational potential. Issues that arise from the conservation/recreation dilemma in two different circumstances are discussed at paragraph 7. There is no evidence on public record that NE has made competent decisions about the compatibility of recreational and conservation management of particular NNRs. NNR habitat and species quality may be losing ground. During the current period of restricted staff and budgets, NE have failed to ensure that recreation management, however compatible and desirable, does not deflect state funding away from imperative conservation management. This is a strategy that should embrace the entire NNR estate. Continued spending on recreational projects since 2007/8 has compounded the risk to the notified interests of NNR due to austerity and efficiency saving.

**Question 10: Will the structure established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

19. The writer understands that the statutory conservation structure in the UK comprises: NE, embedded in DEFRA; three other country agencies, variously configured within government bodies in Scotland, Wales and Northern Ireland; and the JNCC. As this paper focuses on NE's nature reserve function, the implications of Brexit for nature conservation as a whole are not addressed. Suffice it to say: the situation is highly fluid, and the fundamental objective must be that domestic conservation legislation and European conservation legislation are seamlessly merged into post Brexit UK and English law, standards and practice, setting the bar higher for the state of UK's terrestrial and marine environments. This demands robust, adequately resourced country agencies, to further integrate statutory and policy goals for nature conservation and wider environmental interests.

20. Apropos state-managed nature reserves, Brexit has no implications because this cornerstone in the portfolio of NE and JNCC derives from long-standing, unequivocal domestic legislation. However, there are structural issues in England today. Embedding NE in a department with diverse environmental and other functions has removed the independence enjoyed by former agencies. While country agencies take the coupling of conservation and recreation in their stride (see Question 6), the consequences of broader merging - such as indirect funding, director's loss of seniority, in-house compromise with competing land-use interests and muddled management planning - severely challenge the nature reserve programme. It is important to remove this impediment to NE's competence.

21. But structural change is not required; the way to overcome this issue in EN and DEFRA is to reinstate the staffing, funding and monitoring imperatives advocated in this paper (paragraph 15). In JNCC, too, a non-structural change is advocated (paragraph 16). JNCC should be encouraged to oversee state-managed nature reserves from a UK perspective, to assess the result of management activity by the constituent country agencies. JNCC should be required to report

periodically to Parliament and tax-payers the condition of special scientific features under state management throughout UK.

### **The future of statutory nature reserves**

22. The writer's advocacy in this paper springs from conviction that statutory direction is appropriate for the mission to secure UK's natural heritage. For more than fifty years, empowering government agencies to hold and manage land as nature reserves has been a successful statutory provision. Current difficulties arising mainly from the global economic crisis, shortly after the NERC Act was enacted, must be overcome to get Natural England (and other country agencies) back on the right track. Statutory National Nature Reserves must come to be seen again as relevant, exemplary beacons of excellence and inspiration, offering the benefits we expect from the best of UK's natural environment.

### **Annex A: Profile of writer**

A1. David White, BSc London 1960, Diploma ecology & conservation London 1961, MSc geomorphology London 1963,

1963-96 Government Scientific Officer-Grade 7: The Nature Conservancy East Anglia & South Wales Regions; Nature Conservancy Council Head of Science & Policy Branch Wales; Countryside Council for Wales Head of Earth Science and Landscape,

1996-2017 UK tax-payer motivated to respond herein by studying threats to the future of the UK's statutory nature reserves (*NNR Matters*, 2016 Newsletter, 49 Club).

### **Annex B: Laws defining the nature reserve remit of Natural England and Joint Nature Conservation Committee**

**B1. Governmental nature conservation functions derive from a series of laws over the past seven decades. Powers to hold and declare land as nature reserve, given initially in 1949 to a Great Britain agency, have been devolved** (and extended by other statutes to Northern Ireland and the Isle of Man). **The 2006 Act (Section 2 and Schedule 1) transferred, from English Nature to Natural England, a portfolio of nature conservation responsibilities, including, albeit cryptically, nature reserve powers dating from the earliest legislation.** NE no longer has the policy independence of its predecessors; it is embedded in DEFRA, and its nature conservation role is merged with other functions.

B2. The principal statutes conferring responsibility for nature reserves in England are as follows:

\* National Parks and Access to the Countryside Act 1949: created The Nature Conservancy, an independent agency with powers to hold and declare terrestrial nature reserves in England and Wales; section 96 empowered the Treasury to '*make grants to the Nature Conservancy in respect of their expenditure, whether incurred under this Act or otherwise*'.

- \* Nature Conservancy Council Act 1973: replaced NC by Nature Conservancy Council, a nature conservation agency operating throughout GB.
- \* Wildlife and Countryside Act 1981: section 35 empowered NCC to declare as statutory National Nature Reserves its own nature reserves and those held and managed by public sector or NGO partners.
- \* Environmental Protection Act 1990: replaced NCC by independent NCC for England, two other country agencies, and non-statutory JNCC.
- \* Countryside and Rights of Way Act 2000: renamed NCC for England as English Nature.
- \* Natural Environment and Rural Communities Act 2006: replaced EN by Natural England; and re-constituted JNCC as a statutory body with UK international function but no explicit remit for statutory nature reserves.

### **Annex C Statutory nature reserve duties & priorities inherited by Natural England**

**C1. The effect of the 2006 Act on government nature reserve operations is to transfer to NE statutory duties and priorities under the 1949 & 1981 Acts.** These are substantially the same as those transferred, under other Acts, to all British agencies currently represented in JNCC. Nature reserve definitions and purposes promulgated in the 1949 Act (section 15) have been amended, none has been repealed.

C2. Extant statutory definitions are as follows:

- \* Nature reserve: '*(a) land managed solely for a conservation purpose, or (b) land managed not only for a conservation purpose but also for a recreational purpose, if the management of the land for the recreational purpose does not compromise its management for the conservation purpose*'.
- \* Conservation purpose: '*land is managed for a conservation purpose if it is managed for the purpose of (a) providing, under suitable conditions and control, special opportunities for the study, and research into, matters relating to the fauna and flora of Great Britain and the physical conditions in which they live, and for the study of geological and physiographical features of special interest in the area, or (b) preserving flora, fauna or geological or physiographical features of special interest in the area, or for both those purposes. The reference to preserving flora or fauna includes enabling or facilitating its recovery or increase*'.
- \* Recreation purpose: '*land is managed for a recreational purpose if it is managed for the purpose of providing opportunities for the enjoyment of nature or for open-air recreation*'.

**C3. The 1949 Act duty to maintain scientific resources in nature reserves, together with a duty to report to Parliament annually, persist as an inescapable part of country agencies' mission in 2017. This amounts to a government pledge to future generations for an indefinite period, implicitly in perpetuity. The priority given to conservation over recreation re-emphasizes the heritage goal of the legislation.** The nature



conservation context, in which all country agencies operate today, has been greatly widened by statutes during the last four decades. NE, furthermore, performs reserve establishment and management roles alongside farm business services and rural recreation functions.

#### **Annex D: Former agencies' nature reserve management model**

D1. During the writer's career (see Annex A) NC, NCC and CCW fulfilled their mandate for nature reserves. They paid due regard to statutory nature reserve provisions (see Annexes B & C); and recognized that special scientific interests require not only legal protection but also sustained, skilled management. NCC managed a growing GB estate (171 NNRs by 1981) with considerable success, despite frequent budgetary deficiency. The survival of special scientific interests in nearly all NNR declared previously was confirmed by commissioned enquiries (*Nature Conservation Review, 1977* & *Geological Conservation Review*). Insiders believed that GB's natural heritage was secure in statutory nature reserves for at least four decades.

D2. In 1990, the writer took part in the transition to a body created to fit together nature conservation and countryside recreation functions. As Head of Science and Policy in Wales, he drafted a prospectus based on NCC's portfolio of statutory powers and duties. The Welsh Office melded this with a similar draft by the Countryside Commission to design an agency with staff complement and other resources appropriate for both functions.

D3. The writer witnessed, for seven years, success of the NNR mission by a body with wider-ranging functions in Wales. CCW staff, like their NC and NCC predecessors recognized the government pledge to maintain natural resources for future generations. Increased attention to landscape-scale conservation and countryside recreation provisions was not allowed to blur the focus on NNR; and increased demand for recreational management was met but regulated, following statutory priorities (see Annex C).

D4. Until 1996 at least, declared NNRs held and managed by the state were widely acknowledged to have the most robust system of site-safeguard available in GB. This state-of-the-art achievement may serve as a base-line for assessing the performance of subsequent agencies. Key attributes are noted below:

- \* GB vision: a firm policy commitment to advance NNR establishment; and endeavour to meet statutory duties re. GB's natural heritage.
- \* Deployment of grant-in-aid: nature reserve programme given priority for a share of annual grant-in-aid. Intermittent funding from other sources considered inappropriate for meeting the statutory duty.
- \* Staff complement: in-house staff in sufficient number to acquire and manage the growing suite of land-holdings; local field staff full-time; HQ specialists in land agency, applied science, cartography, etc available whenever necessary.
- \* Specialist skills: appropriate range of experienced scientific specialists to plan management of diverse special interests - rock exposures, landforms, physical

processes, populations, communities, biomes, ecological relationships & the interplay of natural & cultural processes.

\* Prescribed management: highest nation-wide priority given to obligatory measures essential to long-term survival of notified features in the whole estate; less priority to optional access, educational, recreational, interpretative and cosmetic prescriptions.

\* Apposite research: expert priority decisions re experimental management needed to find out how best to maintain or improve notified interests; and essential monitoring of management results.

\* Sustained implementation: obligatory field operations consistent with NNR prescription carried out without fail. Optional management and research tailored to available resources.

\* Progress reports: acquisition/declaration statistics updated in statutory annual Reports to Parliament. *Nature Conservation Review 1977* is the only report in the public domain that fulfills the need for objective monitoring of NNR management.

*10 September 2017*

## **Wildlife and Countryside Link – written evidence (NER0078)**

Wildlife and Countryside Link (Link) brings together 46 environment and animal protection organisations to advocate for the conservation and protection of wildlife, countryside and the marine environment. Our members practice 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 we have the support of over eight million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following organisations:

- **A Rocha UK**
- **Buglife - The Invertebrate Conservation Trust**
- **Butterfly Conservation**
- **Campaign for National Parks**
- **Campaign to Protect Rural England (CPRE)**
- **Environmental Investigation Agency (EIA)**
- **Freshwater Habitats Trust**
- **Friends of the Earth England**
- **MARINELife**
- **National Trust**
- **Plantlife**
- **People’s Trust for Endangered Species**
- **Royal Society for the Protection of Birds (RSPB)**
- **The Amphibian and Reptile Conservation**
- **The Association of Local Environmental Records Centres (ALERC)**
- **The Bat Conservation Trust (BCT)**
- **The British Mountaineering Council**
- **The Marine Conservation Society**
- **The Open Spaces Society**
- **The Woodland Trust**
- **Rewilding Britain**
- **Wildfowl & Wetlands Trust (WWT)**
- **WWF UK**
- **Zoological Society of London**

### **Rural advocacy and the Commission for Rural Communities (CRC)**

**1. Since the closure of the Commission for Rural Communities (CRC), and subsequent winding up of the Defra Rural Communities Policy Unit, how – if at all - are the CRC’s original functions of advocate, adviser and watchdog being fulfilled?**

The role of the CRC has not been adequately fulfilled since it was abolished in 2013. Whilst we recognise that Defra has made efforts to advise on rural policy, and particularly on rural proofing, we do not believe they are the appropriate

independent advocate or watchdog for rural communities. The CRC previously produced an annual State of the Countryside report, which has largely been replaced by Defra's 'Statistical Digest of Rural England'<sup>252</sup>. The capacity of the Department to take action on such reports is limited, not least due to a lack of sufficient dedicated resource for work on rural policy issues.

## **2. Are sufficient measures being taken to ensure that policies are rural-proofed at national and local levels? Who is taking the lead on policy for rural areas – and who should be taking the lead on such matters?**

We recognise that Defra has recently developed guidance on rural proofing<sup>253</sup>, to assess the impact of policies on rural areas. This was produced in response to a Government commissioned independent [review](#) of rural proofing led by Lord Cameron of Dillington. Much needs to be done to ensure that national and local Government policies truly consider the needs of rural areas. At the local level, this includes councils ensuring the provision and funding of rural services, such as adequate public transport options, rural broadband and affordable housing for the local community. We recommend the creation of an independent champion for rural communities.

## **3. What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

Defra does have a role in setting a national framework to enable rural communities to thrive. It is the best placed Government department to carry out this role but it cannot fulfil the role of an independent advocate or watchdog.

In developing the country's policy response to Brexit there is a risk that the needs of rural communities will not be adequately incorporated into decision making. We therefore suggest that a Defra Stakeholder Working Group be set up to investigate how national policy can be improved to help better deliver for rural communities.

### **Natural England**

## **4. How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

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<sup>252</sup> DEFRA (accessed 06/09/2017) Statistical Digest of Rural England:

<https://www.gov.uk/government/statistics/statistical-digest-of-rural-england>

<sup>253</sup> DEFRA (2017) Rural proofing: practical guidance to assess impacts of policies on rural areas:

<https://www.gov.uk/government/publications/rural-proofing>

Natural England plays a critical role in conserving and enhancing the natural environment. The agency also has a vital role to play if the Government is to realise its ambition of being the first to pass on the natural environment in a better state to future generations.<sup>254</sup>

However, based on recent assessments, Natural England has struggled to fulfil its mandate.<sup>255 256</sup> We suggest this is predominantly as a result of continued budget cuts and erosion of its independence from the Westminster Government. Due to these cuts Natural England does not have the resources or sufficient numbers of suitably skilled and experienced staff to perform its functions fully and effectively.

It is extremely concerning that Natural England is roughly half the size it was five years ago and it is difficult to see how further cuts will do anything other than compromise delivery of its core services. As an executive non-departmental body, Natural England's primary source of funding is grant-in-aid from Defra, which has been reduced by roughly 60 per cent from £263 million in the 2009/10 financial year, to £106 million in 2016/17. Correspondingly, the agency's total expenditure has fallen from a high of £257 million in 2010/11 to £155 million in 2016/17. In addition Natural England's 'Conservation Strategy for the 21st Century', is devoid of any detailed funding mechanisms.<sup>257</sup>

A lack of resources has also undermined Natural England's ability to work with its partners, and its ability to leverage the additional resources that are needed to ensure the conservation sector work more effectively. A properly resourced and independent Natural England could better deliver the Government's own ambitions for the natural environment. This would include being able to provide public goods and services - such as timely responses to planning requests - engage with a wide range of stakeholders, and offer the support that business needs to reduce costs and drive sustainable development. Better resourcing and independence from Government would also allow Natural England to provide strategic leadership on the natural environment in England, including enabling effective delivery partnerships. Natural England's recent initiative to create a partnership strategy for enhancing the value of National Nature Reserves is an excellent example of this.

Despite these pressures there are important areas where Natural England is making a significant contribution. For example, Natural England's farm advice is invaluable, as is its management of the Countryside Stewardship budget.

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<sup>254</sup> Conservative Party Manifesto (2017) <https://www.conservatives.com/manifesto>

<sup>255</sup> The State of Nature Partnerships (2016) 'State of Nature 2016'

<sup>256</sup> UK National Ecosystem Assessment (2011) 'The UK National Ecosystem Assessment: Synthesis of the Key Findings. UNEP-WCMC', Cambridge.

<sup>257</sup> Natural England (2016) Conservation 21: Natural England's conservation strategy for the 21st century: <https://www.gov.uk/government/publications/conservation-21-natural-englands-conservation-strategy-for-the-21st-century>

## **5. Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

The NERC Act 2006 establishes Natural England as a statutory advisor on the natural environment to Government and as a regulator, with its general purpose being *‘to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development’*.

To be able to properly fulfil its statutory role, Natural England must be free from political interference, and its engagement with Defra must be entirely transparent and within the public domain. The recently published Natural England Framework Document 2017<sup>258</sup> sets out the agency’s purpose, governance arrangements, ways of working and duties. We would welcome the Committee’s assessment of the extent to which Natural England is independent from Government, especially with respect to being able to set its own operational priorities, manage its own budgets and staff resources, and deliver fully its regulatory functions.

One notable change since 2006 is the increased use of charging for Natural England’s services. While it is important that Natural England should seek to secure revenue through charging for services, including the Discretionary Advice Service, this must not conflict with being able to fulfil its enforcement role. In addition Natural England must feel enabled and be supported to take legal action where necessary.

Guidance from Defra relating to Natural England, such as the Natural England Framework, must be amended to articulate clearly that its primary purpose is to conserve and enhance the natural environment, including being a strong, informed voice for England’s natural environment and landscapes.

We note that the introduction of the ‘growth duty’ through the Deregulation Act 2015 has the potential to override the proper exercise of Natural England’s statutory purpose to conserve and enhance the natural environment as established under the NERC Act 2006. This is an issue first raised by Mary Creagh MP<sup>259</sup>, speaking at a committee hearing of the Enterprise bill in 2016, she said *“there will often be situations where the objectives of businesses will conflict with the proper exercise of Natural England’s regulatory functions and its statutory purpose.”* Under the NERC Act Natural England is already obliged to consider (or have regard to) sustainable development in carrying out its

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<sup>258</sup> Natural England Framework Document 2017

<https://www.gov.uk/government/organisations/natural-england/about/our-governance>

<sup>259</sup> Mary Creagh MP, March 2016:

[http://www.marycreagh.com/enterprise\\_bill\\_should\\_not\\_risk\\_effective\\_regulation](http://www.marycreagh.com/enterprise_bill_should_not_risk_effective_regulation)

statutory duties, and that its most meaningful contribution to sustainable development is the protection, enhancement and management of the natural environment.

Requiring Natural England to have economic and social primary objectives impedes the ability of Natural England to fulfil its purpose to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, and contribute to sustainable development as set out in the NERC Act. It is therefore inappropriate for Natural England to have economic and social objectives, as primary objectives.

Following the UK's decision to leave the European Union and the Government's commitment to produce a 25 year environment plan, Natural England may play a greater role to play in protecting and enhancing the natural environment. Therefore, any change in its remit must be properly resourced and accounted for.

**6. Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

We welcome the recent announcement<sup>260</sup> by Natural England that they are now working to deliver 100 per cent of the England Coast Path, which it aims to complete by 2020. This indicates that where a project is properly resourced Natural England is able to deliver it successfully.

It is right that our countryside should be made more 'accessible' to the public and we would welcome a Natural England assessment of the wider Public Rights of Way network, ensuring that all public paths are well signed and added to an online map. The delivery of these access improvements are best served by local authorities, but should be supported by national funding.

Natural England are generally good in terms of promoting better access. However, there have been a small number of occasions that suggest that over time Natural England is not consistent with its own evidence based policy on access to nature and sometimes unnecessary restrictions are put in place.

There are also concerns that Natural England does not have a legal duty to promote better access.

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<sup>260</sup> World's longest coastal footpath one step closer, (2017):  
<https://www.gov.uk/government/news/worlds-longest-coastal-footpath-one-step-closer>

## **Sustainability and biodiversity**

### **7. Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

The NERC Act's biodiversity duty applies to all public bodies including all Ministers and Government departments. This is perhaps potentially one of the most powerful tools to encourage active conservation in UK legislation as it clearly requires an active engagement from all public bodies. Yet it is predominantly seen as a Defra objective and when it is considered in other departments it is often taken as a relatively low level ambition which can be addressed with a correspondingly low level commitment.

We recommend that, to raise awareness of the duty and for it to be properly applied, it must be seen as a cross-Governmental duty with much greater integration within other departmental policies. We also note that the duty in Scotland and Wales is comparatively stronger than that in England<sup>261</sup> and therefore recommend that Westminster strengthens its ambition in this regard.

The Environment Audit Committee's report on 'Sustainability and HM Treasury' (2016) concluded that the Treasury fails to promote sustainability both in itself and via its influence across Government.<sup>262</sup> Specific areas of concern included examples of the Treasury changing and cancelling long-established environmental policies and projects at short notice with little or no consultation. This is in part due to the technical and political frameworks which the Treasury uses consistently to favour short-term priorities over long-term sustainability. In part, this is because the frameworks do not take sufficient account of future environmental costs and benefits. The Committee reported that it was disappointed in the Treasury's response and that it is not clear whether the Treasury will make the necessary changes following the publication of report<sup>263</sup>. The Treasury could play a valuable role in ensuring the biodiversity duty is adopted across Government. Although biodiversity is difficult to place a value on, it could nevertheless be accounted for in decision making.

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<sup>261</sup> Nature Conservation (**Scotland**) Act 2004: Section 1 states that "It is the duty of every public body and office holder, in exercising any functions, to further the conservation of biodiversity so far as it is consistent with the proper exercise of those functions"

Environment (**Wales**) Act 2016: Section 6 of the Act places a duty on public authorities to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to 'promote the resilience of ecosystems'.

<sup>262</sup> House of Commons Environment Audit Committee (2016) 'Sustainability and HM Treasury':

<https://publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/181/181.pdf>

<sup>263</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2015/sustainability-hm-treasury-gov-response-report-published-16-17/>



The Department for Communities and Local Government (DCLG) has a potentially significant impact on the biodiversity of England through local planning and development. Yet DCLG continues to fail to take its biodiversity duty, and requirement for sustainable development as laid out in the National Planning Policy Framework, seriously. This can be highlighted in the Government's recent Housing white paper which does little to support the delivery of sustainable development.

Wildlife and Countryside Link's response to the Housing White Paper highlights our concerns and recommendations for delivering more sustainable development [https://www.wcl.org.uk/docs/Housing\\_White\\_Paper\\_WCL\\_020517\\_.pdf](https://www.wcl.org.uk/docs/Housing_White_Paper_WCL_020517_.pdf). We also signpost to our response to Government's consultation on changes to the National Planning Policy Framework <https://www.wcl.org.uk/docs/220216%20WLCL%20Response%20to%20NPPF%20consultation.pdf>.

The Government's drive for development means that biodiversity is often overlooked in order to meet local authority housing targets. High quality and high-density spaces can be achieved through incorporating green and blue spaces, as has been shown in other countries, such as the Netherlands. However, local authorities and planning authorities lack resources and expertise to be able to meet their biodiversity duty and ensure that development is sustainable. The Association of Local Authority Ecologists (ALGE) reports that only a third of local authorities have an in-house ecologist<sup>264</sup> and that the majority of local authority planners lack ecological qualifications and had very little ecological training. Without the provision of adequate ecological expertise and data, planning decisions are likely to be seriously flawed, potentially resulting in the loss of some of our most precious wildlife sites and delivering a net-loss in biodiversity. The Government's cuts to Natural England's budget have reduced their capacity to provide ecological support to such local authorities, and others.

As a result of the local authority cuts in 2011 ALGE concluded that local governments will find it more difficult to fulfil their statutory duty to have regard to the conservation of biodiversity in all aspects of its work. Cuts will result in less expertise and resources to work which is likely to lead to more planning decisions being made without taking biodiversity into account.<sup>265</sup>

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<sup>264</sup> Oxford, M. (2013) Ecological Capacity and Competence in English Planning Authorities. What is needed to deliver statutory obligations for biodiversity? Report published by the Association of Local Government Ecologists

<sup>265</sup> Association of Local Government Ecologists (2011-2012) 'Implications of the Comprehensive Spending Review on biodiversity work within local government: [http://www.alge.org.uk/SiteAssets/publications-and-reports/ALGE%20Report%20on%20Impact%20of%20Spending%20Cuts%20\(2011-12\).pdf](http://www.alge.org.uk/SiteAssets/publications-and-reports/ALGE%20Report%20on%20Impact%20of%20Spending%20Cuts%20(2011-12).pdf)

## **8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

There is limited evidence of the practical impact of the 'Biodiversity duty'. England is currently failing to meet its commitments under Biodiversity 2020 and there has been no significant improvement in biodiversity since the Government made its commitment to leave the environment in a better state than it found it. We suggest that the duty should be strengthened to encourage further ambition across Whitehall to deliver improvements in biodiversity.

Data show that:

- The area of SSSI in favourable condition has decline by 6.8 per cent from 45.3 per cent to 38.5 per cent <sup>266</sup> since 2006 and the areas of SSSI in favourable or unfavourable recovering has fallen below 95 per cent.
- The status of priority habitats is unknown as 43 per cent of England priority habitat is outside protected areas and not subject to a Higher Level Stewardship (HLS) agreement and as such no condition monitoring is undertaken.
- The total extent of land and sea designated as protected in the UK, has increased by 12.9 million hectares to 27.4 million hectares at the end of March 2017. This is almost entirely down to the designation of marine protected areas. However the majority of the new marine sites are not subject to positive active management or monitoring.
- Between 2010 and 2015 the index of the relative abundance of priority species declined by 18 per cent<sup>267</sup>.
- The Farmland Bird Index declined by 7 per cent between 2009 and 2014.
- Eight priority species were lost entirely from the UK between 2002 and 2008.

However, there are also areas where efforts have been shown to increase biodiversity. Whether this is as a result of the NERC Act biodiversity duty or not cannot be confirmed. Agri-environment schemes are the predominant method of funding for biodiversity in England and there is evidence that agri-environment management can be successful in increasing populations of species, when it is well targeted and implemented.

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<sup>266</sup> Defra (2017) The Extent and Condition of Protected Sites:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/635184/1\\_Protected\\_Sites\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635184/1_Protected_Sites_2017.pdf)

<sup>267</sup> Defra (2011) 'Biodiversity 2020: A strategy for England's wildlife and ecosystem services':

<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>

Between 2008 and 2014 six species of birds, plus the suite of Farmland Bird Index species, showed enhanced abundance on farms with Higher Level Stewardship<sup>268</sup>.

There has also been positive progress with respect to using more natural processes in mitigating and adapting to climate change, for example through natural flood management. However, it is important that evolving procedures to utilise natural processes optimise the potential for multiple benefits such as for biodiversity from the very beginning of scheme inception. Multiple benefits are not intrinsic and must be designed, managed and maintained within programmes of work.

The Climate Change Adaptation Committee report to Government (2017) highlights the natural environment, (such as soil health, the resilience of terrestrial and freshwater habitats to climate change, and biodiversity in the farmed countryside), as of particular concern.<sup>269</sup> It is not clear how Government are planning to address this concern.

### **The practical impact of the biodiversity duty under the NERC act could be enhanced in a number ways.**

These include:

The 25 year environment plan – to ensure that the biodiversity duty is better incorporated across public bodies the objectives and targets in the 25 year environment plan must be applicable, and actively promoted, across public bodies, including all Government departments. The NERC Act duty remit across all public bodies should be supported within the plan.

Improving soil health - Under the duty to conserve biodiversity, Government departments are required to have particular regard to the Convention on Biodiversity, which objectives include the conservation of biological diversity and the sustainable use of its components<sup>270</sup>. Soil biodiversity is critical to ecosystem function. However, the Environment Audit Committee report on soil health concluded that there is no evidence that Government is putting in place the policies to achieve Government's aim to manage soil sustainably by 2030<sup>271</sup>. As such, under the NERC Act duty, measures should be put in place to ensure this aim is achieved. For example 80 per cent of UK peatlands are damaged, despite

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<sup>268</sup> Macdonald, M.A. *et al.* (2012) Welsh Assembly Government Contract 183/2007/08 to Undertake Agri-environment Monitoring and Services: Lot 2 – species monitoring: <https://ww2.rspb.org.uk/globalassets/downloads/documents/conservation-projects/monitoring-of-agri-environment-schemes-report-cymru.pdf>

<sup>269</sup> Climate Change Adaptation Sub Committee (2017): <https://www.theccc.org.uk/publications/>

<sup>270</sup> <https://www.cbd.int/convention/text/default.shtml>

<sup>271</sup> EAC (2016) 'Soil Health': <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/180/180.pdf>

the majority being identified as an area of international importance under EU legislation<sup>272</sup>. We recommend a plan with targets for restoring all designated upland blanket bog habitats to favourable condition by 2030.

Better accounting for biodiversity – Funding for biodiversity measures is limited, and although delivering multiple benefits is often encouraged, some funding is only available to deliver specific outcomes such as flood risk management. This means having regard for biodiversity under the duty is more difficult to fund within projects. We recommend that biodiversity cost and benefit is included in all project options appraisals and given weight in decision making to ensure the duty is met.

New land management policy – Following the UK's decision to leave the EU, we have a real opportunity to change the way our land is managed so that it works better for people and for nature. To ensure the biodiversity duty is adequately fulfilled a new land management policy must have a strong baseline to ensure good practice, which is properly monitored and enforced, moving pillar 1 payments of the EU's CAP to a scheme which rewards farmers for the public goods they deliver (including biodiversity and landscape) and a targeted scheme to protect areas and species which are at most at risk.

Please see our 'Principles for securing a sustainable future for our countryside'

[https://www.wcl.org.uk/docs/Link-GUK%20Agriculture%20Principles%20Briefing\\_2.pdf](https://www.wcl.org.uk/docs/Link-GUK%20Agriculture%20Principles%20Briefing_2.pdf)

Enhancing urban biodiversity – the NERC Act biodiversity duty should be encouraged through DCLG down to local authorities, so that local authorities are empowered to use the duty to ensure development is sustainable and supports green spaces.

Areas of local authority work where this could apply include:

Funding for local parks and green spaces has been cut in recent years. Over 92 per cent of park budgets have been cut by local authorities, which have suffered an overall 27 per cent budget cut in real terms since 2010-11<sup>273</sup>.

Better integrating green infrastructure strategies within spatial planning can provide a valuable habitat for urban biodiversity. At the same time it can help reduce flood risk, reduce the urban heat island effect, absorb air pollutants and improve people's access to nature and health and well-being. These multiple

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<sup>272</sup>International Union for Conservation of Nature (?) 'What's so special about peatlands?':

[http://www.iucn-uk-peatlandprogramme.org/sites/www.iucn-uk-peatlandprogramme.org/files/160317%20Peatland\\_leaflet\\_WEB.pdf](http://www.iucn-uk-peatlandprogramme.org/sites/www.iucn-uk-peatlandprogramme.org/files/160317%20Peatland_leaflet_WEB.pdf)

<sup>273</sup> Joseph Rowntree Foundation (2015) 'The cost of the cuts: The impact on Local Government and poorer communities': <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/Summary-Final.pdf>

benefits need to be planned for at early stages of the design concept, and once created need to be managed for in the long term.

Local plans are important in driving sustainable development yet vary widely in how they decide to adopt the biodiversity duty with little direction from Westminster. The new regional development areas and mayors across England are currently developing their own regional development plans and this should be an opportunity to ensure that the biodiversity duty is effectively incorporated into each plan.

Effective application of green infrastructure such as Sustainable drainage systems (SUDs) in any local plan could be a valuable contribution to enhance biodiversity and adaptation to climate change. However plans to retrofit green infrastructure such as SuDS into urban areas is not being promoted by Westminster. We therefore recommend a national retrofit strategy which undertakes opportunity mapping to identify the most beneficial options for retrofitting.

### **The changing context since 2006**

#### **10. Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

The impacts of the UK's decision to leave the EU will undoubtedly have serious implications for biodiversity in the UK. Effective environmental governance is fundamental to the implementation of legislation. As such the European Commission (EC) and its supporting institutions currently play a fundamental role in the implementation and governance of environmental law in the UK, including the coordination of monitoring and reporting, production of guidance and to secure compliance. The structures established by the NERC Act were created within the context of the UK's membership to the EU. These structures are not sufficient to secure the necessary environmental standards post-Brexit. Whilst the Government has committed to transfer the letter of the law, through the European Union (Withdrawal) Bill, the loss of the oversight of the EU and its institutions, including the loss of the scrutiny and enforcement of the European Court of Justice (ECJ), risks undermining the effectiveness of legislation and the maintenance of good environmental standards in the UK.

Ensuring that appropriate protection for nature and environmental standards exists following the UK's decision to leave the EU will not be guaranteed solely through the structures established in the NERC Act. The 25 year plan for the environment must be ambitious and cross-departmental with clearly defined objectives and targets. The Government must replace EU institutions, such as

## Wildlife and Countryside Link – written evidence (NER0078)

the European Court of Justice, with effective alternatives. In addition, the principles from the Lisbon Treaty must be adopted by UK law, including the polluter pays principle and the precautionary principle. Monitoring must be maintained and funding for enhancing and protecting the environment must not be reduced further. Any replacement to the common agricultural and fisheries policies must work for the environment across the UK as well as for business.

The structures established by the NERC Act have an important part to play in ensuring that conserving biodiversity remains an integral part for all public bodies. However, in this context, the value that our public bodies place on their biodiversity duty needs to be strengthened accordingly in order for the Government to achieve its aim to be the first generation to leave the environment in a better state than it found it.

### **Wildlife and Countryside Link**

*12 September 2017*

The Wildlife Trusts and RSPB – oral evidence (QQ 78-88)

## **The Wildlife Trusts and RSPB – oral evidence (QQ 78-88)**

[Transcript to be found under RSPB](#)

## **The Wildlife Trusts – written evidence (NER0080)**

### **Summary**

#### **Q3 Rural advocacy and the Commission for Rural Communities**

The Wildlife Trusts believe steps should be taken to integrate planning and decision making across rural and urban areas.

#### **Q4 Natural England – mandate, function, powers and resources.**

The Wildlife Trusts highlight seven main themes in relation to Natural England's performance:

**Independence:** Natural England's role as an independent advisor to the Government should be strengthened and enhanced. There is a need for an organisation which has greater independence from central Government and can advise, develop, deliver and comment on policy in a public arena.

**Landscape-scale conservation and designated sites:** Natural England's substantial budget cuts have had a direct impact on its ability to deliver objectives and it has had to prioritise limited resources into site-based support to the detriment of landscape-scale schemes and approaches. But without good quality core sites of existing wildlife value, it will be impossible to deliver the Lawton vision of landscape-scale conservation, delivered through "more, bigger, better, joined" sites.

**Local Environmental Record Centres and Local Data:** In April 2016, Natural England ended its long-standing Memoranda of Agreements with Local Environmental Records Centres. Decisions impacting our natural world should be informed by the most up to date, and relevant data, NE's ability to fulfil its functions will be impeded without access to local data.

**Planning:** We believe Natural England is unable to undertake case work other than that affecting European Sites, SSSIs and European protected species. Consequently, it should explicitly state the reasons why it cannot respond to other case work and emphasise the importance of taking account of other sources of advice. This is particularly important in relation to cases where NE offers 'no comment' to ensure that the views of other bodies are not undermined.

**Working in Partnership:** Largely as a result of budget cuts, Natural England's ability to support partnership delivery at the landscape-scale has been diminished at the local level.

**Compliance, advice and enforcement:** Natural England's new strategy, *Conservation 21*, signals a move away from the compliance and enforcement role that only a statutory body can deliver – a move that we do not support.



**Higher Level Stewardship and Countryside Stewardship:** We welcome and support Natural England’s delivery of agri-environment schemes. We would like Natural England to more actively champion and promote increased uptake of the schemes.

**Q5 Changes to the remit and responsibilities of Natural England**

The Wildlife Trusts believe that as a result of Brexit, there is an urgent need for visionary and ambitious new legislation in the form of an Environment Act to fill the gap left by EU environmental legislation and associated drivers. We recommend the creation of powers for Natural England to create Wildlife Conservation Covenants or Access to Nature Covenants which could rest with other bodies and provide a degree of protection and continuity for local communities without the current requirement for a covenant to be held by an interested party with adjacent ownership rights.

**Q6 Access to the countryside**

The arrangements and provisions for enabling and managing access to the countryside remain generally appropriate. Information from MENE indicates that Natural England has been reasonably effective at sustaining levels of engagement but also indicate that there is significant scope for improvement.

**Q7 Duty to have regard for biodiversity**

Further work is urgently required for local authorities and public bodies to fully understand their duties and for best practice to be shared. We believe that England should follow the lead from the Welsh and Scottish Governments’ lead in enhancing the biodiversity duties of public bodies.

The importance of the ‘biodiversity’ Duty must be recognised by all Government departments and integrated with all policies. The 25 Year Environment Plan currently being produced by Defra could be an opportunity to realise this.

**Q8 Practical impact of the 2006 duty**

The Biodiversity Duty is useful as it reminds public bodies of their statutory responsibilities to wildlife. In our experience, the NERC duty is not taken seriously enough and has had limited practical impact. We consider that the Duty should be enhanced.

The 25 Year Environment Plan could be an opportunity to integrate the duty into decision making for all Government departments. We believe that the duty (in England, Wales and Scotland) would have greater impact if it was tied to measurable indicators of activities or impact for biodiversity at the local level.

**Q9 Comparison of the English duty to ‘have regard’ to biodiversity compared to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty in Wales.**

We believe that the current Biodiversity Duty is ineffective and failing to drive improvements in the way biodiversity is safeguarded and managed. We consider that England should follow Wales’ and Scotland’s lead in enhancing the biodiversity and reporting duties of public bodies in a way that clarifies and strengthens their responsibilities to promote a net gain for the natural environment as well as to protect it.

### **Q10 Sufficiency of the Act in light of Brexit**

There is an urgent need to set ambitious goals for nature's recovery and environmental improvement post-Brexit with positive spatial plans needed across the country. Given the changing circumstances and the implications of Brexit for environmental laws, it is essential for an Environment Act to transfer the Lisbon Treaty<sup>274</sup> principles into primary legislation.

Natural England needs to be adequately resourced and empowered to deliver on its general purpose as set out in the NERC Act. It needs to implement strategic landscape scale thinking across the organisation – both in policy and action on the ground.

### **Introduction**

The Wildlife Trusts are a movement of more than 800,000 members, 40,000 volunteers, 2,000 staff and 600 trustees, from a wide range of backgrounds and all walks of life, who share a set of common beliefs.

The Wildlife Trusts **believe** that:

- People are part of nature; everything we value ultimately comes from it - everything we do has an impact on it.
- The natural world is valuable in its own right, and is also the foundation of our wellbeing and prosperity; we depend on it and it depends on us.
- Everyone deserves to live in a healthy, wildlife-rich natural world.
- Everyone should have the opportunity to experience the joy of wildlife in their daily lives.

Our charitable **purpose** is to bring people closer to nature, and to make our land and seas rich in wildlife.

We want to **work with others** to bring about living landscapes, living seas and a society where nature matters.

Collectively as independent charities, The 47 Wildlife Trusts look after 98,500 hectares of land for nature conservation and public benefit, including 46 National Nature Reserves. Trusts own 7,500 head of farm livestock to help manage many of our sites directly and work with farmers on others.

We provide educational opportunities for hundreds of thousands of children each year, operate more than 100 visitor and education centres and host more than 10 million visits each year to our 2300 nature reserves. We contribute actively to the health and wellbeing of many local communities and check tens of thousands of planning applications each year to evaluate their impact on the

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<sup>274</sup> [http://www.green-alliance.org.uk/resources/GreenerUK\\_Withdrawal\\_Bill.pdf](http://www.green-alliance.org.uk/resources/GreenerUK_Withdrawal_Bill.pdf)

natural environment. We respond directly to more than 7500 of these each year to influence and improve the outcomes for wildlife and development.

We work closely with Natural England and many other public bodies across many of our charitable activities. The following responses to the Select Committee's call for evidence are a summary of our collective experience and views from the 37 Trusts in England.

## **Rural advocacy and the Commission for Rural Communities**

**Qu 3: What role should Defra – or other Government departments – play in co-ordinating policy for rural areas? How effectively are the interests – including social and economic interests - of rural communities being represented within the current structures of Government, and how could representation and co-ordination be improved?**

3.1 The Wildlife Trusts work across rural and urban areas; we recognise the mutual relationships, connections and interdependencies between the town and the countryside. For instance, development decisions in urban areas can affect development pressure and tourism opportunities in the countryside; rivers connect urban areas with their hinterland and upstream land management can directly affect flooding in the lowlands.

We are therefore reluctant to draw artificial boundaries between urban and rural populations and landscapes. In our experience, the divide has been exacerbated by the creation of unitary authorities. There may be many advantages of this approach but one consequence is that they potentially disconnect cities from their rural hinterland – and with which they were formerly intimately connected. Our experience of the urban priorities of many Local Enterprise Partnerships<sup>275</sup>, and the focus of local devolution on metropolitan mayors and 'the northern powerhouse' creates the risk of a growing urban-rural divide in policy and administration at a number of levels.

3.2 We believe the 25 Year Environment Plan and subsequent legislation should ensure that there is positive planning for environmental recovery in urban and rural areas overseen at a geographical level that allows for integrated planning and decision making across rural and urban areas.

**Q4: How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?**

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<sup>275</sup> In recognition of this bias, four South West LEPs established a rural productivity commission: <http://heartofswlep.co.uk/projects/south-west-local-enterprise-partnerships-new-rural-productivity-commission-seeks-views-rural-businesses/>

4.1 The Wildlife Trusts are extremely keen for Natural England (NE) to be successful in delivering its general purpose<sup>276</sup>.

We believe that Government in England needs a strong, effective and influential Agency to defend and promote the natural environment, and we therefore support its general purposes as outlined in the NERC Act 2006.

We consider Natural England to have performed well in delivering some elements of its mandate but that in other areas, it has only partially fulfilled its general purposes.

We consider that Natural England's functions do fit together well but that whilst there are many notable successes, we think that NE does not have the appropriate scale of powers, the vision or resources to achieve all of its general purposes.

Some but by no means all of the areas that we consider to be only partially fulfilled have been subject to significant funding cuts since 2010 and, in our view, reductions in resourcing levels have undoubtedly had an critical impact on Natural England's performance and capability to achieve its statutory functions.

Nevertheless, it is also clear that internal changes in the organisation's priorities and political influence from Government seem to have also had a major impact on the delivery, implementation and independence of Natural England's functions.

In our experience, there are many committed, expert and professional staff in Natural England whose hard and excellent work we applaud and welcome but there have been concerns about morale and clarity of purpose following a number of reorganisations and the loss of many experienced colleagues.

Externally, we believe the trust and respect for Natural England amongst those it works with – has been undermined and eroded over the last 7 years or so. We believe this is due to a number of factors which include, in part, some of the changes in its organisational priorities and behaviour. For example, Natural England's apparent reluctance to use its regulatory powers, except in the most severe cases, has eroded its credibility and levels of respect amongst some of those it needs to hold to account. For other stakeholders, Natural England has at times appeared indecisive and unreliable in its approach to the provision of advice and local decision-making – or in resolving the many areas of conflict around some wildlife management issues.

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<sup>276</sup> Natural England's general purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. Its general purpose includes: (a) promoting nature conservation and protecting biodiversity, (b) conserving and enhancing the landscape, (c) securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment, (d) promoting access to the countryside and open spaces and encouraging open-air recreation, and (e) contributing in other ways to social and economic well-being through management of the natural environment.

Ultimately, Natural England hasn't managed to develop or communicate a compelling or powerful-enough 'big' **vision for the natural environment** with which to win the hearts and minds of the many stakeholders it needs to influence to achieve its purposes. This is important because Natural England can only effectively change the way we look after the natural environment, if it influences and successfully changes the behaviour of those it needs to persuade to take action to deliver its purposes. It has also not been able to make the natural environment sufficiently meaningful and relevant in people's lives to draw mass support for its purposes – or adjust its relationships and ways of working with others

That said, The Wildlife Trusts welcome and acknowledge the many practical successes Natural England has achieved but there seems to have been little celebration of these beyond those already familiar with its work. We highlight some of these key successes throughout the responses below but, in summary they include:

- The Monitor of Engagement with the Natural Environment initiative.
- The development and roll-out of its climate change adaptation work streams including the tool-kits and workshop programmes.
- The Nature Improvement Area programme.
- The Natural Connections Demonstration Project.
- Natural England's willingness to pilot and trial new ideas, consider change and engage with stakeholders is welcome even though this is not always implemented at scale.
- Natural England's review of HS2 Limited's methodology and approach to assessing no net loss of biodiversity in 2016.
- Natural England's role in leading the development of new funding bids with its partners to support wider conservation programmes. The Access to Nature programme was particularly successful.

4.3 At a strategic and national level, The Wildlife Trusts consider that there is a continuing deterioration in our natural environment, albeit with a few successful and notable exceptions. A comprehensive body of evidence bears witness to this claim. For example, the latest Biodiversity Indicators from JNCC show that priority species numbers and abundance continue to decline<sup>277</sup>. The NGO-sector *State of Nature Reports* (2012 and 2016) also clearly demonstrate that since 1970, 56% of species declined with 53% declining since 2002<sup>278</sup>. Those species and habitats doing well tend to be those where there has been a coordinated and determined investment in their conservation and/or recovery – or they are generalist species like wood pigeons and nettles which have adapted well to human activity and intensely managed landscapes.

It must therefore be concluded that Natural England, as the body charged with safeguarding our natural environment has, at best, only partially succeeded - in its general purpose, as defined by the NERC Act 2006, to "*ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*".

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<sup>277</sup> <http://jncc.defra.gov.uk/page-4231>.

<sup>278</sup> <http://www.wildlifetrusts.org/stateofnature16>

The Wildlife Trusts believe that Natural England has not by itself been able to take measures - or enable enough action by others – to impact on the drivers of change at a scale sufficient to make an impact on this decline. The reasons for this are many and varied but seem to include:

- their lack of resources
- the political and commercial pressures placed on the organisation
- an imbalance in the powers available to NE in comparison to the drivers of the negative changes in the natural environment
- that the NERC Act is inadequate and powerless to address and reverse the trends that have been observed since 1945
- the absence of a clear, compelling, exciting and inspiring vision for England's natural environment in the 21<sup>st</sup> Century.

Whilst the continuing decline of our natural environment is not entirely Natural England's fault or responsibility, we believe that it could have made a significantly better contribution towards halting biodiversity loss and catalysing nature's recovery than it has. There has been an apparent lack of urgency to seriously challenge and influence the drivers and interests which underlie the ongoing and creeping loss in the number and abundance of species, the loss or damage to habitats and key ecological processes - and the increasing fragmentation of landscapes.

4.3 The Wildlife Trusts have a number of comments on Natural England's performance and remit which we outline across seven main themes:

- Natural England's independence and ability to give impartial advice;
- Its approach to landscape-scale conservation and designated sites;
- How Natural England gathers data and evidence particularly in respect of Local Environmental Record Centres and Local Data;
- Natural England's role in planning;
- Partnership working;
- Compliance and enforcement;
- Delivery of agri-environment schemes.

## **Independence**

4.4 The Wildlife Trusts are concerned by the change in Natural England's relationship with central Government and the suspicion that its independence and its ability to speak in public has been reduced.

**Natural England's role as an independent advisor to the Government should be strengthened so that it can advise, develop, deliver and comment on policy in a public arena.**

## **Landscape-scale conservation and designated areas**

4.5 During his evidence to the Select Committee (18 July 2017), Alan Law stated that, “in the early days of NE, it chose to focus on key performance indicators and the more traditional conservation approach whilst missing the overall ambition within the NERC Act around integrated delivery and landscape-scale working”. We would agree with this. Natural England is now organised around local teams seeking to deliver at a landscape scale<sup>279</sup> yet our experience, from individual Wildlife Trusts, is that substantial budget cuts have had a direct impact on Natural England’s ability to deliver their objectives and it has had to prioritise its limited resources into site-based support to the detriment of landscape-scale schemes<sup>280</sup> and approaches.

4.6 Natural England has been slow as an organisation to embrace the landscape-scale approach outlined in the Making Space for Nature Report (Lawton, 2010). The Wildlife Trusts have promoted this approach since 2006 and fully support its conclusions which map out a compelling strategy for how we can reverse declines in species and habitats. Government and all its departments and agencies should urgently implement its recommendations at a scale proportionate to the need. Ecological Network Mapping is the key to developing a landscape-scale approach and its importance is noted in the National Planning Policy Framework. Progress has been slow in developing and implementing integrated mapping and Natural England could have done more to support and roll-out this critical approach.

4.7 The Nature Improvement Area programme which emerged from the Natural Environment White Paper in 2011 was run by NE and showed great potential. It demonstrated many successful outcomes after only three years but it hasn’t been sustained in the initial 12 Areas or rolled out to new ones. A major programme (e.g. 150) of new Nature Improvement Areas, championed by Natural England, would make a significant impact.

4.8 Natural England’s has demonstrated its general commitment to the designated nature conservation network through the considerable efforts it, and its many partners, have made to get the SSSI network into favourable condition. These efforts have generally been positive and welcome – although there is still a long way to go and the rate of progress and levels of investment have been a concern.

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<sup>279</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/natural-environment-and-rural-communities-act-2006-committee/natural-environment-and-rural-communities-act-2006/oral/69287.html>

<sup>280</sup> We are very keen to work with NE to help implement and deliver an ambitious landscape-scale approach to nature’s recovery. In the same year the NERC Act came into force, The Wildlife Trusts launched their Living Landscapes vision – a recovery plan for nature<sup>280</sup>. We are now leading over 150 Living Landscape schemes across the UK working with and helping other people to restore wildlife to whole landscapes. We are restoring, recreating and reconnecting wildlife-rich spaces in rural and urban areas by working in partnership with local communities, landowners, schools and businesses.

Despite the positive activity and Natural England's statutory duty to protect the SSSI network, the proportion of designated sites considered to be in favourable condition has actually declined throughout the period of its existence<sup>281</sup>. There is however a lack of confidence in the accuracy of data and the manner in which NE has assessed and reported on SSSI condition. These assessments are being used to apply pressure on major landowners including individual Wildlife Trusts. A number of Trusts and others report difficulties in agreeing conservation objectives with Natural England for sites in their care.

4.9 We have been very pleased that Natural England has continued to designate SSSIs although at a slower rate than we believe necessary. Recent examples are particularly welcome and which include the designation of Lodge Hill in Kent, Rampisham Down in Dorset and the West Pennine Moors in Lancashire.

4.10 There is much more that should be done to designate key sites. Some vitally important remnants of rare habitats have never been designated because only "representative examples" of such habitats were included in the initial designation process. Recognising this, in 2014, guidance from the JNCC in respect of protecting lowland wildlife-rich grasslands changed. The guidance now recommends that all sites of particularly rare habitats should be designated and the previous approach of merely protecting the best examples is insufficient. Natural England has not yet implemented the guidance due to capacity constraints.

4.11 Natural England's development and roll-out of climate change adaptation (including the tool-kits for land managers) and workshop programmes has been an impressive and important work stream.

4.12 Defra and Natural England have, so far, failed to address the issue of consents for the burning of vegetation on SSSIs and the damage this causes over deep peat. This is contrary to wider initiatives to restore degraded peatlands and has resulted in the European Union initiating infraction proceedings against the UK Government following a complaint letter from the RSPB. It is unclear how Defra and NE will respond but **The Wildlife Trusts believe that urgent action is necessary to withdraw historic consents on SSSIs to prevent further damage to our critical peatland assets.**

**The wider issue is that without a network of good quality core sites of existing wildlife value, it will be impossible to deliver the Lawton vision of landscape-scale conservation, delivered through the concept of "more, bigger, better, joined" sites<sup>282</sup>.** Natural England must invest in or oversee the support of programmes which secure long term funding in these core sites – as well as creating new habitat around them.

**We believe that Natural England must be resourced to implement the JNCC guidance to urgently safeguard our few remaining high-quality**

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<sup>281</sup> [http://jncc.defra.gov.uk/docs/UKBI2017\\_DS\\_C1.xlsx](http://jncc.defra.gov.uk/docs/UKBI2017_DS_C1.xlsx)

<sup>282</sup>

<http://webarchive.nationalarchives.gov.uk/20130402170324/http://archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf>



**lowland grasslands as these are some of our most vulnerable and threatened remaining habitats.**

4.13 **Local Wildlife Sites.** We are concerned that Natural England and Defra have not prioritised the conservation, promotion and resourcing of the network of Local Wildlife Sites across England. These sites, formerly known as Sites of Importance for Nature Conservation (SINCs), receive no statutory protection and yet a large proportion are of great importance as core wildlife-rich habitats - and taken together, they represent a major national asset. Many are of equivalent quality to SSSIs, and include for example, important ancient woodlands. Much of our remaining wildlife habitat now survives in Local Wildlife Sites and yet a recent survey indicated that around 10% of these important sites were lost or seriously degraded between 2010 and 2015.

**Local Environmental Record Centres and Local Data**

4.14 In April 2016, Natural England ended its long-standing Memoranda of Agreements with Local Environmental Records Centres (LERCs) and withdrew the minimal level of funding support provided. LERCs are not-for-profit organisations that collect, collate and manage information on the natural environment for a defined geographic area. They support and collaborate with a network of largely volunteer experts to ensure information is robust and accurate and make information products and services accessible to a range of customers including decision-makers, developers, the public, and researchers. Significantly, they also provide the crucial local support and validation for the many UK recorders, who entrust and share their data – much of which is then made available through open source platforms like the NBN Atlas<sup>283</sup>.

4.15 In a joint statement issued by Natural England and the Association of Local Environmental Records Centres (ALERC), the main reasons for taking this decision was 'Natural England's drive for open data. This means that the limited resources available to them, have to be spent accessing data that conforms to this policy and can no longer contribute to funding the agreements with LERCs. In addition, Natural England's evidence budget is significantly less than it was eight years ago, so they have had to make difficult spending choices'. The statement goes on to say 'Natural England recognises that ending these MoAs will mean that they are not able to access or use much of the high resolution and verified data provided by LERCs.'<sup>284</sup>

4.16 The Wildlife Trusts recognise that in the last few years there have been large cuts in departmental and agency budgets, resulting in staff cuts and consequently a need to prioritise spending. We also recognise the value and role of public sector information being made open and available. However,

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<sup>283</sup> <https://nbnatlas.org/>

<sup>284</sup> <http://www.alerc.org.uk/announcements/further-clarification-on-the-ending-of-the-natural-england-moa-with-lercs>

decisions impacting our natural world should be informed by the most up to date, local and relevant data, and not limited to the data that is currently open/in the public domain. At this point in time, the NBN Atlas is still evolving and contains significant data gaps. Its precursor (the NBN Gateway), from which much of the data on the NBN Atlas was transferred, was cited as being of limited use in one of Natural England's own research reports<sup>285</sup> because of concerns about data validation. It is important to note that our concerns are not just about funding but the more important loss of access to local data.

4.17 The leap that Natural England made to end MoAs with LERCs (and thus access to robust, local and up to date ecological data) in favour of open data investment, without any planned transition, creates a significant question over how it can fulfil its legal responsibilities under the NERC biodiversity duty<sup>286</sup> and the Wildlife and Countryside Act 1981; and the validity of the evidence on which it bases its decision making. In contrast to Natural England, the Environment Agency has recognised that this local data remains vital in delivering its duties and has continued to support its agreements with LERCs. This demonstrates the conflicting policies of the two Government bodies and undermines Natural England's reasoning behind their decision to forego their relationships with LERCs.

4.18 In making its decision, NE stated its belief 'that their staff will still be able to meet most of the data needs they have for national analysis and decision making' The Wildlife Trusts disagree with this statement. Certain datasets, for example, on Local Wildlife Sites<sup>287</sup> are held, managed and updated locally by LWS partnerships and Local Environmental Records Centres, and on the whole, these are not currently accessible through open data platforms. LWS data should inform all decisions, advice and information relating to planning, development, licensing, countryside stewardship, land management and landscape scale initiatives; without access to it, Natural England cannot fulfil its functions effectively.

4.19 There is clearly a recognition of the importance of this data amongst some local Natural England staff who have, over the last year, sought the advice of some Trusts or the LERCs they host, about LWSs and other related issues such as Environmental Impact Assessment enquiries. The Wildlife Trusts want to see the right decisions being made, but ultimately the costs of collecting and managing this local data have to be met by local partners or recovered commercially through agreements. Unfortunately, there is an emerging pattern of NE not having the information it requires to do its job; and instead relying on the charitable conservation sector to plug that gap, for free.

4.20 Currently, the relationship between NE and LERCs has broken down and data is now being withheld in many circumstances. This is unfortunate as prior to December 2015, The Wildlife Trust had been trying to broker an agreement to enable Local Wildlife Site data to inform the way that NE targets resources in Countryside Stewardship. It also means that other

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<sup>285</sup> Natural England (March 2016) [A review of the beetles of Great Britain: Ground Beetles \(Carabidae\)](#)

<sup>286</sup> Natural Environment and Rural Communities Act 2006

<sup>287</sup> TWT (2016) [Local Wildlife Sites](#)

critical decisions may not be informed by the best and most appropriate local data. For example, Natural England is currently working to amend the licensing process for development affecting sites with great crested newts. These changes will significantly reduce the financial and time burdens on developers by adopting a lighter touch risk based approach, which focusses on outcomes and improved habitat restoration. However, this will require a good knowledge of the local population against which to establish the significance of any discrete population.

4.21 The use of national datasets to target agri-environment funding and/or other local place-based decisions is not a safe approach because the level of detail is inadequate and to quote a colleague “it’s like trying to go for a 10 mile hike using an AA road map rather than a 1:25000 Ordnance Survey map”.

4.22 **We believe that Natural England should recognise the importance of local data and review its approach to LERCs and the networks of local volunteer recorders. In our view, it is important to re-build and re-establish the relationship with Local Environmental Record Centres.**

## Planning

4.23 In our experience, with one or two exceptions, there are often too few planning-focussed Natural England officers available to respond to local development proposals that could damage wildlife. Wildlife Trusts regularly find that responses from Natural England just contain some standard paragraphs with little bespoke detail. Wildlife Trusts are increasingly having to provide more detailed advice, especially on protected species, to fill in the gaps left by NE. For example, in 2015/2016, The Wildlife Trusts in England responded to more than 7,500 planning applications (more than Natural England look to provide bespoke responses to each year<sup>288</sup>). There are some positive local examples of good practice where experienced Natural England staff working on planning have good knowledge, but this is not geographically consistent and the exception rather than the norm.

4.24 There is a lack of alignment between the Wildlife and Countryside Act 1981, which requires Natural England to defend only the specific features for which a Site of Special Scientific Interest (SSSI) are listed; and Natural England’s general duty under the NERC Act 2006 to ‘ensure that the natural environment is conserved, enhanced and managed’. This creates confusion. For example, when Parish, Borough and District Councils consult Natural England with a planning proposal, Natural England often responds in writing with ‘no comment’.

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<sup>288</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/natural-environment-and-rural-communities-act-2006-committee/natural-environment-and-rural-communities-act-2006/oral/69287.html>

A 'no comment' response does not mean that the proposal is benign and won't impact on the natural environment. However, this is often the assumption made by councils receiving such a response from a statutory agency, even if it specifically states that it has not considered priority habitat or general biodiversity. The result is that the issues raised by other organisations, e.g. NGO conservation bodies and local authority ecologists are often over-ruled and disregarded.

In a recent Public Inquiry<sup>289</sup>, for example, the barrister acting for a developer proposing 175 homes directly adjacent to a SSSI successfully argued that, because of the general duty under the NERC Act, the Inspector should conclude that Natural England's failure to attend the inquiry meant the proposals were of benefit for wildlife.

**4.25 To help avoid this unintended and unacceptable misunderstanding of the NERC Act, we believe Natural England should explicitly state that it does not have the resources to undertake case work other than those affecting European Sites, SSSIs and European protected species and that representations from other organisations should be taken into account with regards to priority habitats and biodiversity more generally. This is particularly important to ensure that the legitimate views of other local bodies are not undermined.**

**4.26 The Wildlife Trusts believe that Natural England needs to work much more closely with Local Planning Authorities to help overcome the confusion over its advice.**

4.27 In 2016, Natural England was tasked with completing a review of HS2 Ltd's methodology and approach to assessing no net loss of biodiversity. It led workshop sessions with a range of stakeholders to gather evidence, analysis and expert views on the issues and produced an excellent report. The report recommended changes should be made to both HS2 Ltd's assessment of its impact on the natural environment and to the level of compensation required. However, we were disappointed with the Government's immediate rejection of the key findings from its own advisors.

## **Working in partnership**

4.28 We welcome the message that Natural England is committed to work with, and through, other organisations and in partnerships on landscape-scale projects<sup>290</sup>. We agree that effective delivery in the natural environment is dependent on partnership activity where value is added over time, as relationships develop and trust is built.

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<sup>289</sup> <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3158833>

<sup>290</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/natural-environment-and-rural-communities-act-2006-committee/natural-environment-and-rural-communities-act-2006/oral/69287.html>

- 4.29 Natural England has helped to develop a number of new funding bids with its partners to support and extend wider conservation programmes. This has been very well received. The Access to Nature programme funded by Big Lottery was particularly successful although insufficient efforts were made to make the programme financially self-sustaining and safeguard its legacy. More recent examples of positive programme support with partners include Natural England's role in leading the Back from the Brink project and Saving our Silver Grasslands project.
- 4.30 We have also had recent experience of some very good partnership working at a national level, for example, around the Highways England Designated Fund and the recent review to prepare a Strategy for National Nature Reserves. Otherwise, our experience of partnership working has been mixed, especially at a local level where Natural England support is variable and stretched.
- 4.31 Natural England's willingness to pilot and trial new ideas, consider change and engage with stakeholders is welcome. For example, the recent The Natural Connections Demonstration Project in the South West has looked at promoting the natural environment in education, and trials to explore the role of farm clusters and other innovative approaches have made excellent contributions to emerging policy issues. The risk is that Natural England does not always consistently follow these pilots to implement and scale-up their good ideas. On the other hand, there are concerns that the much-needed reform of the great crested newt licensing arrangements is being rolled-out nationally before the lessons of the pilot projects have been evaluated.
- 4.32 **We would welcome Natural England taking further steps towards co-designing new initiatives with key interested partners, as proposed in Conservation 21. We believe this would result in better policy outcomes and increased support and buy-in for Natural England and its work.**

### **Compliance, advice and enforcement**

- 4.33 Natural England has published its new strategy, *Conservation 21*, which has a greater focus on landscape-scale approaches (at land and at sea), putting people at the heart of the environment and growing natural capital – all of which The Wildlife Trusts fully support. However, we are concerned that the strategy signals a move away from recognising the importance of compliance and enforcement in protecting and enhancing the natural environment – a role that only a statutory body can deliver.
- 4.34 This change was confirmed by Alan Law during his evidence to the Select Committee (18 July 2017), when he said that Natural England's role is to "identify where there are opportunities to restore and enhance the environment, and to engage with business, local communities and landowners to achieve those aims, **rather than identifying there has been**

**a problem and seeking to apply regulation to remedy it”.** We disagree strongly with the last part of the statement.

- 4.35 One of Natural England’s key roles and functions is to act as the regulator for the natural environment. This is an essential tool in Natural England’s toolbox – and one of the few areas where it has the teeth and the ability to set high standards and send clear signals about its determination to defend the natural environment. We believe that regulation is an essential tool which NE should use albeit wisely, sparingly and in a proportionate way rather than giving the message that enforcement does not have a role to play and is not a priority.
- 4.36 It is important that Natural England finds an appropriate and effective balance between smarter regulation with proportionate enforcement - and providing positive incentives, encouragement or advice. Regulation can remedy problems but it can also be very effective in preventing problems by setting out clear guidance to law-abiding citizens.
- 4.37 We have concerns about how the Hampton Principles are interpreted in practice by NE. The principles state that “Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection”<sup>291</sup>. We believe that a healthy, wildlife-rich natural environment is not only valuable in its own right, but also because it is fundamentally important for human health, wellbeing, personal development and prosperity. Ultimately, it is the foundation on which our economy is built and provides economic benefits.
- 4.38 Natural England’s purpose of supporting sustainable development should not mean inactivity or indifference to potentially damaging economic progress. Too frequently Natural England has not engaged effectively with helping to shape and influence economic proposals presumably because this could be perceived as ‘intervention when the case for protection isn’t clear’.
- 4.39 In our view, this is a missed opportunity for Natural England to regularly challenge and secure the best possible net gain outcomes from economic progress and proposals. This is not about Natural England necessarily preventing or discouraging development – but it is about securing the best possible deal for economic progress AND the natural environment. It is about raising the environmental standards of development by driving a hard but fair bargain and securing the best possible win-win outcomes which recognise the value of the natural environment’s contribution to sustainable development.
- 4.40 We welcome those apparently few occasions on which Natural England has entered into hard negotiations to challenge economic interests to deliver better net gain solutions – and to drive win-win solutions which benefit both the natural environment and business. For example, the exemplary negotiations that NE brokered, as a regulator, with Suffolk and Essex Water

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<sup>291</sup> <https://publications.parliament.uk/pa/cm201213/cmselect/cmspeak/1069/106911.htm>

(and other partners including Essex Wildlife Trust) to enable the extension of Abberton Reservoir in Essex. The site is a key SSSI and Special Area of Conservation but the reservoir was eventually extended in size through a process of co-design without challenge or the need to hold an expensive public enquiry. We would like to see this outcome-focussed approach being applied across a range of similar planning decisions.

## **Higher Level Stewardship and Countryside Stewardship**

The Wildlife Trusts strongly support the work that Natural England undertakes to deliver agri-environment schemes. Overall, we consider these schemes to offer substantial benefits for the environment and good value for money for the taxpayer. They have generally been well administered by Natural England but there are a number of issues with some aspects of the scheme delivery.

4.41 There have been concerns about the approach to the migration of HLS agreements to the new Countryside Stewardship scheme. There is a potential gap between the expiry of an HLS agreement and the application window for the new scheme. This results in a significant reduction in funding for many farmers, landowners and managers including Wildlife Trusts. Natural England has made 'bridging' payments in cases of hardship but in many areas, it appears to be placing at risk the gains that have been achieved by public investment in agri-environment schemes over many years. This risk is heightened by the problem that not all previous or existing agreement holders are able to access the new schemes either because of reductions in funding or revised targeting arrangements.

4.42 The Wildlife Trusts have concerns that the relationship between Natural England and the Rural Payments Agency has not been as close or integrated as it needs to be for the efficient and consistent application of the Stewardship scheme. A number of Trusts have experienced cash-flow issues because of the apparent lack of coordination between the two agencies on the different schemes they operate, particularly in terms of mapping issues.

4.43 **We believe that Natural England should champion the new Countryside Stewardship scheme and make more effort to promote greater uptake. We would also like to see Natural England undertake a review of the perceived barriers which may be dissuading new entrants from making applications to the scheme.**

**Q5: Are any changes to the remit and responsibilities of Natural England required, either as a result of Brexit or of other significant developments in the period since 2006?**

5.1 We believe that there is a gap in Natural England's ability to provide an option for voluntary protection of wildlife sites from future development or loss.

The ability to create wildlife conservation covenants could provide legacy safeguards for owners of important non-designated wildlife sites and help more sites come forward. They could also help protect non-designated sites that are created by offsetting or other planning arrangements and/or provide for voluntary access to wild places for local people.

**The Wildlife Trusts would welcome the introduction of powers for Natural England to create Wildlife Conservation Covenants or Access to Nature Covenants which could rest with other bodies (e.g. local authorities, parish councils, voluntary organisations and charities). These could provide a degree of protection and continuity for local communities without the current requirement for a covenant to be held by an interested party with adjacent ownership rights.**

5.2 Otherwise, within the current scope of the NERC Act, we do not think there are many changes required to the remit and responsibilities of Natural England. However, The Wildlife Trusts believe that as a result of Brexit, there is an urgent need for visionary and ambitious new legislation to fill the gap left by EU environmental legislation and the drivers provided by its Directives.

**The Wildlife Trusts consider that the NERC Act is inadequate to deliver the recovery of the natural environment that is so urgently required. England needs new and visionary legislation in the form of an Environment Act to provide an ambitious framework of measures to drive and secure the recovery of the natural environment in the 21<sup>st</sup> Century.** This may, in the long term, require changes to the remit and responsibilities of Natural England in order to give it the powers to drive the changes we need to achieve nature's recovery at land and sea.

**Q6: Do the arrangements and provisions for enabling and managing access to the countryside remain appropriate? How effective have Natural England – and other partners – been in promoting better access?**

6.1 In our opinion, the arrangements and provisions for enabling and managing access to the countryside remain generally appropriate. The key issue is the impact of budget cuts on the maintenance and improvement of the statutory and informal access network, both in Natural England and in Local Authority Countryside Services and Local Highways Authorities. The impacts of these cuts are gradually building on the integrity and quality of the rights of way network at a time when other agencies are trying to promote the health and wellbeing benefits of walking, cycling and taking exercise outdoors. **The evidence for the wider health and wellbeing benefits of taking exercise and voluntary activity in the natural environment is compelling. The Wildlife Trusts believe that Government and Natural England should look closely at the case for making investments to improve and promote levels of access to nature as a preventative health measure.**

6.2 We consider that Natural England's *Monitor of Engagement with the Natural Environment* (known as MENE) has been exemplary. This programme has produced excellent information for a wide range of organisations to track how



people are engaging with the natural environment. The increasing disconnection of people from nature (especially in urban areas) is a well-documented and serious issue. The MENE data-set will become increasingly important, for example, in the delivery and evaluation of the forthcoming 25 Year Environment Plan. **The Wildlife Trusts are concerned that this programme is currently under review, as a result of funding cuts. The valuable information it provides could be at risk or be diminished at this critical time.**

6.3 Information from MENE indicates that Natural England has been reasonably effective at sustaining levels of engagement but also indicates that there is significant scope for improvement. The implementation of the open access provisions of the Countryside and Rights of Way Act, 2000 has been successful with relatively few problems. There is strong evidence to show that investment in access infrastructure and programmes to improve levels of access can have important health and wellbeing benefits for local communities.

6.4 On the other hand, The Wildlife Trusts are concerned about the approach that Natural England has taken to introducing coastal access under the Marine and Coastal Access Act 2009. Whilst we welcome and strongly support the principle of opening new public access to our coasts, there are concerns that proposals for some coastal habitats risk causing unsustainable levels of recreational disturbance to some highly sensitive sites and species (e.g. rare migratory bird species and breeding mammals). **We believe that Natural England must adopt a precautionary approach in these circumstances and that careful management and potentially access restrictions may be required for these sites.**

6.5 The Wildlife Trusts strongly support the Access to Natural Greenspace Standards which were developed by English Nature. There is considerable evidence to show that large numbers of people live in places that do not have good access to nature close to where they live. We know this is a factor that contributes to health inequalities, to individual wellbeing and to the economic prosperity of neighbourhoods. **We believe that there is a strong need for Natural England to do more with developers and planners to promote better access to high quality greenspace in urban, rural and new housing developments.**

## **Sustainability and biodiversity**

**Q7: Is the duty to 'have regard' to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?**

It is difficult to provide hard evidence for this question although in our experience, the duty to 'have regard' to biodiversity is a weak and ineffective provision for securing net gain in the natural environment. In principle, we strongly support the intention of the biodiversity duty and agree that such a duty is necessary but in our experience, the way in which the legislation is framed is vague, easily ignored, almost impossible to enforce and ineffective. We would therefore support a review of the duty and would like to see it tightened so that

it is more specific, actively promotes the principles of net gain and is measurable.

7.1 In our experience, the level of understanding and awareness amongst local authorities and public bodies of their duty to have regard to biodiversity is very variable. Further efforts are required to raise awareness of the duty and provide guidance on how this should be interpreted in practice.

### **Local authorities**

7.2 Local authorities have also suffered from significant budget cuts in recent years. Many authorities have no or limited access to in-house ecological expertise. As a result, the duty to 'have regard' requirement is not strategically integrated through local authorities' remit and business.

7.3 There is also a potential issue with the data required for effective decision-making. Very few local authorities invest in gathering new data and/or survey and monitor existing sites. As a result, at a strategic level, decisions are being made with poor, incomplete or out-of-date data.

7.4 A number of local authorities have individual contracts or Service Level Agreements with their Local Environmental Record Centres (LERC) giving them access to the data they need to assist with the NERC duty. In 2015-16, ALERC members covered 314 local authorities and had partnership agreements with 221 of them, meaning that 70% of the local authorities who could potentially access LERC services were using them<sup>292</sup>. LERC's services provide notification of the existence of priority habitats and species listed under the NERC Act. It is unknown how local authorities who do not have access to this information manage to fully take biodiversity into account under the duty outlined by the Act.

7.5 If picked up at all, countryside services (where these still exist) and/or planning departments are most likely to be aware of the biodiversity duty. In our experience, there is very little awareness in other departments which have important links with biodiversity including property, transport, health and education.

### **Public bodies**

7.9 The Wildlife Trusts are concerned about the level of understanding and appreciation of the importance of the duty on other public bodies to have regard for biodiversity. By way of example, please see Box 1.

7.10 The NERC duty currently applies to all public bodies including Ministers, Government Departments, local authorities (at all levels), unitary companies and bodies carrying out functions of public character<sup>293</sup>. However, all too

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<sup>292</sup> <http://www.alerc.org.uk/>

<sup>293</sup> <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>

often, it is seen primarily as a Defra objective and, within that as a NE objective. For example, The Forestry Commission (FC), a Defra 'family' agency, still occasionally gives grant aid to tree planting on sites which already have high biodiversity value, such as unimproved grassland, thus causing the destruction of these habitats, e.g. in 2011, the FC gave an English Woodland Grant Scheme (EWGS) grant which included tree planting that resulted in the loss of unimproved grassland on two Local Wildlife Sites.

**The NERC Duty must be recognised as important by all Government departments and public bodies, and integrated with all policies.**

**Box 1:**

**Case study 1:** In 2017, a local Parish Council applied to Sport England for funding in order to 'restore' a sports pitch, which was originally created in the 1950s. In the intervening 65 years the field had recovered to be a good example of unimproved wild flower-rich acid grassland and is adjacent to a known local wildlife site. The Parish Council completed a very basic ecological survey and consulted with Natural England, the District Council and the County Council. The Parish Council team received no comments from Natural England and no concerns were raised by the Local Authorities who were also funding the restoration through S106 funding.

As a result of these responses, the Parish Council was of the opinion that there were no problems in proceeding with the application and works. They were awarded the money by Sport England and the site has now been destroyed through a process of rotovating, new drainage installed, seeded with rye grass and fertilizer applied.

The individual Wildlife Trust raised its concerns with Sport England and highlighted its duty to have regard for biodiversity under the NERC Act 2006 but is still awaiting a response as to how Sport England has regard for biodiversity when choosing projects, allocating funding and evaluating the existing biodiversity value of this or any other site. This example also highlights that although ecological surveys can be undertaken as part of project/application they are of little use if they are not evaluated and interpreted and fed in to the decision-making process.

**Case study 2** In 2014, Derby City Council proposed the construction of a new cycle track on a local wildlife site in Derby with the financial support of Sport England and in the absence of comment from Natural England. After a sustained public campaign and legal action, the proposal was withdrawn.

Again, Sport England has failed to respond to queries about how it fulfils its biodiversity duty.

7.11 Further work is urgently required for local authorities and public bodies to fully understand their duties and for best practice to be shared. **This is the same recommendation as the 2010 Defra commissioned Review of the Biodiversity Duty contained in Section 40 of the NERC Act 2006.** The Review recognised that awareness of the duty was a significant issue and one of the recommendations was that Defra (and the Welsh Assembly

Government) should “*produce a series of short guidance booklets on the duty aimed at different types of public authorities*”.

7.12 The Natural Environment White Paper<sup>294</sup>, produced by the Coalition Government in 2011, stated that “*Public bodies have a statutory duty to take account of conservation and biodiversity. We will provide new tools and guidance for key groups of public bodies, including local authorities, to support local action for nature. We will also raise the profile of this duty among parish councils, to address low awareness of the duty within this group*” (p. 17). A similar commitment was made in the subsequent England Biodiversity Strategy<sup>295</sup>: “*Help for public bodies to fulfil their duty under the Natural Environment and Rural Communities Act 2006 to take account of biodiversity, by developing tools and guidance for them to use, and by raising the profile of this duty with Parish Councils*”.

7.13 In 2007, Defra produced *Guidance for Public Authorities on Implementing the Biodiversity Duty*. However, it was subsequently withdrawn in 2015<sup>296</sup> following the Government’s Smarter Guidance Review. The only guidance to have replaced it is now held on [www.gov.uk](http://www.gov.uk) website<sup>297</sup>. We consider this to be an inadequate replacement and of little help to those genuinely seeking advice. It has certainly done little, if anything to take forward the recommendations of the review to improve the understanding of the duty and the responsibilities of public bodies.

**Q8: What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?**

8.1 The Biodiversity Duty is useful as it reminds public bodies of their statutory responsibilities to wildlife. Sadly, in our experience the NERC duty is not taken seriously enough and has had limited practical impact. Even where the duty is understood, our experience is that it is not well or consistently applied. An organisation can suggest that it has discharged the duty simply by stating that it has considered the responsibility without changing its plans and without fear of any recourse or penalty. By way of example, please see Box 2.

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<sup>294</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228842/8082.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf)

<sup>295</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf)

<sup>296</sup> <https://www.gov.uk/government/publications/guidance-for-public-authorities-on-implementing-the-biodiversity-duty>

<sup>297</sup> <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>

**Box 2: Case study**

In 2008, Buglife initiated a Judicial Review to legally challenge a damaging planning decision to approve warehousing and a lorry park at West Thurrock marshes – one of the UK’s best sites for rare bugs and other wildlife in South Essex. Their challenge centred on the fact that the developer (a public body) had failed to have sufficient regard for the existing biodiversity value of the site and had not satisfactorily applied the biodiversity duty. Dismissing the application to overturn the planning permission, the judge hearing the case (Mr Justice Mitting) described the Biodiversity Duty as being a “weak one”.

This is a clear indication that the duty carries little legal weight.

8.2 Another of the recommendations in Defra’s review<sup>298</sup> of the NERC duty (2010) was for all public bodies to have a Biodiversity Champion amongst their senior managers with responsibility for biodiversity, including, implementation of the duty. This recommendation does not appear to have been widely adopted, if at all.

8.3 Furthermore, a study in 2013 undertaken by the Association of Local Government Ecologists<sup>299</sup>, found 65% of local authorities have no or only limited access to any in-house ecological expertise – despite some of their functions being directly related to biodiversity. The same study reported that the majority (90%) of local authority planners lack ecological qualifications or training, and consequently only have basic levels of ecological expertise to discharge duties and national policy. Without an officer or champion with the expertise to oversee the duty and consider the impact of the organisations functions on biodiversity, it is difficult to see how public authorities are able to effectively fulfil their duty.

8.4 The 25 Year Environment Plan currently being produced by Defra could be an opportunity to integrate the duty into decision making for all Government departments. It is also fundamentally important that decision makers have access to high quality, locally-derived data and advice on Section 41 habitats and species.

8.5 We believe that the duty (in England, Wales and Scotland) would have greater impact if it was tied to measurable indicators of activities or impact for biodiversity at the local level.

**Q9: How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?**

9.1 In 2016, the Welsh Assembly Government introduced the Environment (Wales) Act 2016<sup>300</sup>. This Act introduced a new, stronger biodiversity duty

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<sup>298</sup> Defra (2010) *Review of the Biodiversity Duty contained in Section 40 of the NERC Act 2006* by ENTEC

<sup>299</sup> ALGE (2013) *Ecological capacity and competence in English Planning*

<sup>300</sup> <http://www.legislation.gov.uk/anaw/2016/3/contents/enacted>

replacing the duty in the NERC Act 2006. The Welsh Assembly Government recognised that whilst the NERC Duty had delivered some successes, they were not as widespread as required and that more needed to be done to meet international commitments on biodiversity<sup>301</sup>. The enhanced duty requires all public authorities to seek to “maintain and enhance biodiversity” and public authorities must also seek to “promote the resilience of ecosystems”.

9.2 In Scotland, the helpful difference to the duty in England, is that the Nature Conservation (Scotland) Act (2004) requires all public bodies in Scotland to further the conservation of biodiversity when carrying out their responsibilities. The Wildlife and Natural Environment (Scotland) Act (2011) further requires public bodies in Scotland to publicly report every three years on the actions taken to meet this biodiversity duty<sup>302</sup>.

**9.3 We believe that the current Biodiversity Duty is ineffective and failing to drive improvements in the way biodiversity is safeguarded and managed. We consider that England should follow Wales’ and Scotland’s lead in enhancing the biodiversity and reporting duties of public bodies in a way that clarifies and strengthens their responsibilities to promote a net gain for the natural environment as well as to protect it.**

## **The changing context since 2006**

**Q 10: Will the structures established by the Act be sufficient to ensure appropriate protection for nature and environmental standards following Brexit? Are any modifications or changes to the structures established by the Act required to address the implications of Brexit?**

10.1 There is a strong need to set ambitious goals for nature’s recovery and environmental improvement as we leave the EU with spatial plans that integrate ecological network maps needed across the country. The 25 Year Environment Plan could provide this but we believe a framework Environment Act would be most effective means of meeting the Government’s objectives for nature’s recovery and the needs of business, farmers, landowners, local communities and others. It would also provide the continuity of purpose beyond parliamentary and political cycles – and act as a driver to ensure that all Government Departments share ownership and responsibility for leaving the natural environment in a better state than this generation inherited it.

10.2 Given the changing circumstances and the implications of Brexit for environmental laws, it essential for an Environment Act to transfer the Lisbon Treaty<sup>303</sup> principles into primary legislation. These six principles are:

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<sup>301</sup> <http://gov.wales/docs/desh/publications/160321-biodiversity-and-resilience-of-ecosystems-duty-en.pdf>

<sup>302</sup> <http://www.snh.gov.uk/docs/A1882273.pdf>

<sup>303</sup> [http://www.green-alliance.org.uk/resources/GreenerUK\\_Withdrawal\\_Bill.pdf](http://www.green-alliance.org.uk/resources/GreenerUK_Withdrawal_Bill.pdf)

- (a) the precautionary principle;
- (b) the principle that preventive action should be taken;
- (c) the principle that environmental damage should as a priority be rectified at source;
- (d) the polluter pays principle;
- (e) the guarantee of participatory rights including access to information, public participation in decision making and access to justice in relation to environmental matters;
- (f) the integration principle.

**10.3 *Natural England needs to be adequately resourced and empowered to deliver on its general purpose as set out in the NERC Act.*** It needs to implement strategic landscape scale thinking across the organisation – both in policy and action on the ground. We believe we need statutory strategic plans for an area which describe the attributes required for a healthy, resilient natural environment. Only through an integrated approach can we hope to reverse the downward trend in biodiversity.

**Q 11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

No further comments.

*25 September 2017*

## **Mr John Wilson – written evidence (NER0032)**

DEFRA are prejudiced against certain landscapes in the Uplands of Northumberland to the detriment of visual diversity, socio-economics and the environment.

As a landowner, I am trying to buy land to plant large scale, native, deciduous woodland. My attempts are being frustrated by a general presumption against native deciduous forest (NDF) creation on non wooded priority habitats. That is despite the obvious benefits they bring:

### 1. Visual diversity

NDF situated in monotonous moorland landscape and large scale coniferous forests will enrich the view,

### 2. Socio-Economics

All rural areas are suffering from declining populations and economic deprivation. The lack of job opportunities and the migration of young people to the cities are some of the contributory factors. Schools and post offices are closing and accelerating the decline. Brexit and the possible reduction in agricultural support will likely speed up this process.

### 3. The Environment

Whilst BAP Priority Habitats (deep peat/upland heath) are beneficial to the environment, they do so on a scale which is lessor than an NDF. I have created NDFs and have seen the huge increase in mammalian and bird life on a scale which is far greater than any BAP. NDFs reduce rain water water run off from the hills by reducing the flow. The tree canopies absorb some of the water. BAPs do none of this.

As has been suggested in other places, the CSS – Woodland Creation is an overly cumbersome, tortuous application process. It is of little benefit to a person like me who has to buy the land to plant. CSS is of benefit to those who already own their land.

The whole scheme needs to be urgently overhauled and simplified after consultations with all woodland parties. I would be happy to be a consultee.

I hope you will read and give a sympathetic review of my views based on decades of experience.

John Wilson,

*9 September 2017*



## **Yorkshire Dales Green Lanes Alliance (NER0002)**

To the clerk to the select committee on the NERC Act

Dear Sir or Madam

As chairman of the Yorkshire Dales Green Lanes Alliance, I am submitting the following comments on the rights of way aspects of the NERC Act (part six). Information about our organisation may be found on our website, [yd gla.co.uk](http://yd gla.co.uk).

### **A. General comments on questions 6 and 11 in the call for evidence paper.**

Qu 6. The arrangements and provisions of the act, insofar as they cover rights of way, have, in one very important respect, been effective. With the few exceptions provided for in the act, the hitherto unstoppable expansion of the network of unsealed tracks legally open to recreational motor vehicles has been halted. This is a major achievement, vitiated only by an omission that needs to be made good. See the comment immediately below, on qu 11.

Qu 11. In section 67 (2) (b) NERC deliberately excepted the extensive, 3,000 mile network of unsealed tracks that are entered on local authorities' 'List of Streets', and which are often termed 'unsealed, unclassified county roads' (UUCRs) or 'green lanes'. The Act needs amending, so as to remove motor-vehicular rights from unsealed unclassified county roads on the List of Streets that are not part of what DEFRA calls 'the ordinary road network.' This would save about two thirds of the 3,000 miles of green lanes' from the damage and nuisance inflicted by recreational motors. This could be achieved via an amendment which re-classifies UUCRs that are not part of the ordinary road network, as Restricted Byways. (See expanded comments below on para 117 of DEFRA's document)

### **B. Comments on DEFRA's post-legislative scrutiny document**

Our comments follow the DEFRA document's paragraph numbers.

**17.** The purpose of Natural England, as set out in this paragraph, is 'to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.' Our view is that non-essential, recreational motors (chiefly 4x4s and motorbikes) severely damage those ancient, unsealed lanes along which the law still allows them to travel. Their activities are unsustainable. Many routes are already beyond repair and have lost their historic character. Natural England, therefore, in furthering its declared aims, could be more energetic in advising local and national park authorities to impose the restrictions – traffic regulation orders – that are legally available to them. Natural England should also help authorities to frame their traffic regulation orders in ways that can withstand the legal challenges that vehicle users commonly present. A complete

overhaul of the various Government documents that offer advice on green lane management to local and national park authorities is required. The present range of guidance documents is often obsolete and incomplete. The Motor Vehicle Stakeholder Working Group, presently convened under the chairmanship of Natural England, should be encouraged to produce a draft of a consolidated, up-to-date guidance document on green lane management.

**117.** DEFRA gives no evidence in this paragraph to support its contention that 'the majority of stakeholders and the public broadly support the measures in the Act'. We think that the contention is mistaken. Up-to-date surveys of public opinion on the matter are overdue, but in 2004 a survey by ICM found that 87% of the public wanted rights of way to be free from recreational vehicles. (8% didn't. 5% didn't know.) We doubt if these figures would be different today.

DEFRA assert in para 117 that the Act 'has been successful in achieving its primary aims'. This is true only if we set aside the 3000 miles of unsealed, unclassified roads that the Act itself sets aside, leaving their rights of way status unclear, and thereby tacitly leaving them open to recreational motors. This, we believe, is contrary to what Parliament intended in the CROW Act, which set severe limits on the addition of new Byways Open To All Traffic (BOATs) to the Definitive Map. At present, and if the law is not amended, it is entirely possible that about two thirds of the 3000 miles of UUCRs will indeed eventually have to be added to the Definitive Map as BOATS. This cannot be right. The exception of UUCRs from the NERC Act, was intended to protect from having its vehicular rights removed, those UUCRs that are part of the ordinary road network, used regularly by the public as it goes about its business,. But it is entirely feasible to distinguish between the ordinary road network, and routes that are unsealed 'green lanes'. Here is how:

(a) *The distinction between sealed and unsealed ways.* The Road Traffic Regulation Act (1984) defines an unsealed way as one whose 'surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material.' (s22BB (1)(b)(ii).) In particular cases this definition may be open to divergent interpretations. Furthermore, the definition comes in the section of the Act relating to national parks. None the less, the definition is there in law. It could easily be extended to apply to ways beyond national parks. Most importantly, it provides the basis for the development of a vital distinction between green lanes (UUCRs) and 'the ordinary roads network'.

(b) *'The ordinary roads network.'* This phrase comes from DEFRA's guidelines on the operation of NERC (para 27. The quotation marks are DEFRA's.) The quotation marks that DEFRA set around it perhaps indicate that they don't quite know what they mean by it. However, it is plain that the paragraph in which it appears, and the subsequent paragraph, are attempting to make a distinction between, on one hand, those roads upon which the use of motors is both essential, uncontentious, and taken-for-granted, and, on the other, those unsealed ways we know as green lanes.

Yorkshire Dales Green Lanes Alliance (NER0002)

Building on these two definitions, UUCRs that fall into category (a) should be re-classified, by an amendment to NERC, as Restricted Byways. This would give about two thousand miles of ancient green lanes the protection they need.

We have a final point, relating to the use by National Park Authorities of the powers, conferred by NERC, to impose traffic regulation orders. The Yorkshire Dales, and the Peak District national park authorities have used these powers, and have learned the hard way, after successful challenges to their orders in the High Court by vehicle user groups, how to frame litigation-proof TROs. Other authorities are reluctant to exercise their TRO-making powers, lest they incur substantial costs following legal challenges in the High Court. Natural England should be more supportive of national park authorities that are trying, in accordance with national park statutory purposes, to protect their green lanes. Guidance, drawing on the experience of authorities that have successfully imposed TROs, should be supplied by Natural England. The Motor Vehicle Stakeholder Forum could be useful here in drafting such advice – which could also, with little change, be made available to local authorities that are devising green lane management plans.

Yours sincerely

Michael Bartholomew (Chairman, Yorkshire Dales Green Lanes Alliance)

*15 August 2017*