Call for Evidence

The impact of environmental regulations on development: Inquiry

Date: 30 March 2023

The CLA is the membership organisation for owners and managers of land, property and businesses in rural England and Wales. Our 27,000 members own or manage around half the rural land in England and Wales and operate more than 250 different types of businesses. We help safeguard the interests of owners of land, and all those with an economic, social, and environmental interest in rural land.

Question 1: What environmental regulations need to be considered when undertaking development? When during the development process are they most likely to be encountered?

1. Developments are now required to be 'Nutrient Neutral'. When undertaking new development, whether residential, commercial, or agricultural, developers must ensure that the development does not add excessive levels of nutrients into the water environment, so not to have an adverse effect on protected nature conservation sites (as per the **Conservation of Habitats and Species Regulations 2017**). Ever since a European Court of Justice ruling in 2018 which determined new development should not have a significant effect on any designated nature conservation site, developers have been confronted by moratoriums on decision making and extensive, sometimes encumbering mitigation requirements.

2. Nutrient Neutrality is encountered during the planning stage, when a developer must enter into agreement with planners about mitigation for additional nutrients that will be produced as a result of the development. There seems to be no allowance for the headroom which will be created when wastewater treatment works are upgraded by 2030. Yet, the issue with nutrient neutrality is likely to be faced throughout the lifetime of the development. Natural England's mitigation scheme aims to acquire land so that it can be used as mitigation for 100 years or more. If developers offset themselves, this tenure for mitigation will be an obligation throughout the lifetime of the development, and possibly longer.

3. The **Environment Act 2021** made amendments to the Town and Country Planning Act 1990 to make 'Biodiversity Net Gain' mandatory for all developments. The requirement for biodiversity net gain will be encountered at planning stage, when the calculations are made, and then throughout the build and final handover of a scheme to deliver the additionality.

4. The **Wildlife and Countryside Act 1981** grants Natural England the right to deny consent for any activity which may negatively affect Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), Special Protection Areas (SPA), Ramsar sites (wetlands), and associated impact zones. The ability of a third party to deny consent presents a risk to developers at the very outset of the development process.

5. Section 84 & 85 of **Countryside and Rights of Way Act 2000** places a duty on relevant authorities to have regard for any National Park or Area of Outstanding Natural Beauty when considering new developments. Developers will be affected by the presence of a National Park or AONB at both design and planning stage, they may face mitigation which increases costs, or restricts the extent of the development.

6. The Government is currently working on a revised architecture for planning system, including amendments to how local plans are written and adopted. Local planning authorities will therefore encounter all the above regulations at Local Plan adoption stage. Within the new architecture the Government should ensure the regulations do not stifle the ambition of local development plans.

Question 2: What is the single biggest challenge for developers and promoters in fulfilling environmental requirements? How could this be resolved?

7. There is not one single biggest challenge, however there are a few which are interlinked and challenge deliverability. The first is land availability where offset or additionality may be required. For example, a CLA member wanting to deliver a farm shop and café in existing buildings discovered that an additional three and a half hectares would be required for nutrient mitigation. Land availability is a challenge across the board due to many competing uses for land. A resolution would be clear guidance for local authorities and developers about what proportionate mitigation or additionality is for various types of development site.

8. If mitigation or additionality as required by environmental regulations is met by a third party elsewhere, the challenge of cost and therefore viability of the development may be harder felt. For example, the cost of meeting BNG obligations for developers is estimated at £19,698/ha to create and maintain sites over a 30-year lifecycle[1]. No land cost is factored into this figure, so it may be higher where off-setting is delivered offsite. While this might produce opportunity for landowners looking to enter a new market, this level of cost could negatively impact viability and lead to developments not being brought forward. Exemptions and or alternative methodologies might provide solutions for small sites, which would otherwise not be delivered.

Question 3: Are changes in environmental regulations governing development clearly communicated? Is sufficient support available to help developers and promoters fulfil their responsibilities?

9. No. Guidance of all environmental regulations is poorly communicated, particularly to small developers and SME builders. In particular, guidance on what is expected for the long-term management of biodiversity net gain is unclear. The ongoing management of habitats may be the responsibility of the original developer, but it is not clear if they pass this on whether they remain liable for non-maintenance in the future and whether a fine could be levied. Additionally, it remains unclear what responsibility a developer has for disruption of habitats nearby to a development but not necessarily within its footprint and therefore what mitigation is required.

[1] https://environment-analyst.com/global/83704/full-costs-of-biodiversity-net-gain-revealed

10. A wider issue exists with landscape designations for environmental protection. It is not well communicated what happens to planning applications while a designation is awaiting approval from the Secretary of State. Possible designation can be treated as a material consideration by Planning Officers, this causes great uncertainty and often there is a breakdown in communication during this process, the consequence being non-delivery.

11. There is not sufficient support to developers and promoters during the uncertainty of possible designation. For example, the recent proposed designation of 3000 acres of Penwith Moors as an SSSI demonstrated the flawed process of designating an area. Landowners, who may at some point wish to carry out small scale development, were supplied with only a generic list of actions which could be banned and impact development but were left waiting until the designation was in place before they were given clarity. Uncertainty makes it impossible to plan for the future.

Question 4: What are the costs of meeting environmental regulations for developers? How does this vary for types of developer or promoter and in different locations?

12. The mitigation schemes which have come forward for Nutrient Neutrality are somewhat of a 'postcode lottery' in costs, even within local planning authorities. The disparity in costs is, to some extent, caused by supply and demand; the third-party schemes in catchments with fewer competing schemes can simply get away with charging more. Varying costs of mitigation also reflects the higher land prices in some areas. For example, dealing with the nitrates caused by a single dwelling in the Havant area will take about 0.8 Kg per year of nitrates mitigation, at a cost of about £1,200 per dwelling. The same dwelling in the Andover area would require about 2.8 Kg per year of nitrates mitigation a cost of well over £10,000 per dwelling. A further inequality relates to the legal and administrative costs that are paid by applicants to secure mitigation from third-party schemes. These are required per transaction and can range from about £1,500 to over £4,000. This means that for a larger scheme these costs would add very little on a 'per dwelling' basis. However, for a single dwelling application or even of a handful of new homes, this fee considerably adds to the overall mitigation costs. The effect of this is to place smaller developers and independent builders, or indeed 'self-builders', at a clear financial disadvantage when it comes to securing mitigation.

13. CLA members may be both the developer and the landowner; there is therefore an opportunity cost associated with meeting environmental regulations. If a landowner/developer decides to meet mitigation themselves, their land will not be available for other opportunities. For example, an area set aside for Biodiversity Net Gain may not be available to enter an Environmental Land Management (ELM) scheme. Landowners are presented with a choice, often without all the details, of whether to enter longer-term environmental regulations markets or shorter-term ELM schemes. The risk is that landowners will make a decision which binds them into agreements which may cost them opportunities in the future.

Question 5: Is there sufficient coherence between different environmental regulations? How could regulations be administered in a more systematic and coherent way?

14. No, and this lack of coherence often means there are slow processing times of planning application and inefficiency of delivering environmental outcomes. The time taken for screening applications for associated environmental regulations, consideration of mitigation proposals, and ultimate decision-making is significant and often costly.

15. Mitigation and compensation measures need to be integrated into the planning process. For example, case law has illustrated how important it is for mitigation and compensation measures designed to reduce the impact of a project on a SAC, SPA, or Ramsar site to be considered at the appropriate stage in the Habitats Directive process. The Habitats Regulations 2017's overarching purpose is to safeguard the nation's most important wildlife habitats; however, these regulations do not operate in isolation even on an individual site level. A mechanism for taking a more holistic approach to Habitat Regulation Appraisals (HRAs) is needed, including considering alternatives if a plan or project is not given consent.

16. There is an opportunity cost associated with delivering HRA requirements – alternative uses for finite farm resources (money and time) can undermine environmental outcomes. More detailed and consistent guidance on the HRA process would allow the regulations to be applied consistently across plans and projects sites. This would avoid unexpected impacts on businesses. Proportionate assessment of plans and projects according to the level of risk to the integrity of the site should be applied.

17. Examples from CLA members show that long term management of a protected site to deliver conservation outcomes relies on a viable flow of funds from a diversified farming business. Indeed, often commercial activity can, and historically has been, integrated with the environmental outcomes. For example, sustainable agricultural production, game management for sporting activities, and sensitive development can all help under-write the costs of environmental land management on a site. The assumption that if an activity or development is not permitted the site will remain as it is, is not borne out in examples we have seen.

Question 6: What impact do Government bodies such as the Environment Agency and Natural England have on planning and development decisions? How effectively do these bodies work together? How does the Environment Agency interact with development as both regulator and owner of land and other assets?

18. Multiple Government bodies lead to a lack of joined up thinking, with policy made in isolation by otherwise competent authorities and bodies. The interaction of Government nature conservation bodies with the planning system is not consistent, and often there is not one place for information, or one version of the truth for applicants. For example, CLA members are being advised by local planning authorities that they need to consult Natural England and the Environment Agency for advice or consent but are not told how to do this or who to contact.

19. The moratorium of planning decisions due to the nutrient neutrality issue perfectly demonstrates the ineffectiveness of the interaction between local planning authorities and Government bodies. For example, in Norfolk, the local planning authority uses its own calculator for nutrient mitigation, one that requires more mitigation than Natural

England's calculator. The ability of local planning authorities to have their own calculators is perfectly legal but creates confusion and frustration for applicants. The continued difficulty with decision-making on planning applications across the South East, South West and East of England demonstrates the inability of these organisations to communicate with each other and to solve a known barrier to development and environmental outcomes.

Question 7: What role does Natural England play in monitoring and implementing these regulations? How does Natural England's involvement affect the delivery of new development?

20. Natural England's regulatory functions are limited to environmental issues. The CLA is concerned that Natural England lacks a clear obligation to have regard to economic or social, considerations. Furthermore, there is no independent body conducting impact assessments of environmental regulations on economic and social activity.

21. In particular, there should be greater emphasis on the economic and social interests of protected and designated landscapes, not just environmental designations and regulations. Business in these landscapes should be allowed to thrive in these landscapes and not be singled out with more obstacles to growth by reason of their location. This requires changes to the overly restrictive management plans and planning policies to allow economic diversification and growth that goes beyond tourism. Profitable and resilient businesses would continue to provide the land management that delivers landscape and nature recovery. Commercial businesses' sustainable growth should be seen as a welcome funding mechanism that helps to drive additional funding for nature recovery.

Question 8: To what extent are the information needs of the planning system proportionate?

22. The information needs of the planning system are not proportionate. The huge level of up-front costs associated with supporting a planning application and the significant risk of an unsuccessful outcome have a detrimental impact on the delivery of beneficial development in rural areas. For applications that are rejected, those costs are wasted. Not only is it economically inefficient, but the fear of excessive costs also deters people from applying. For example, a planning application for the redevelopment of a site in a market town required £1million of up-front costs for the supporting evidence but was ultimately refused.

23. Local planning authorities in their capacity as decision-makers are expected to assess a huge variety of issues related to development. The scope of local planning authorities' knowledge is often not sufficient to understand the information that is required to make decisions, or even sometimes to know what to ask for from applicants. The lack of knowledge in local planning authorities has meant they are forced to outsource expertise, including using statutory consultees, this adds time to a planning application and therefore increases costs to the applicant and the authority. The solution to this issue is to make greater use of planning processes such as Permission in Principle and

Permitted Development Rights to stagger the planning process and reduce risks and costs to both applicant and local planning authority.

Question 9: How far do the key actors in implementing environmental regulations have sufficient resources to carry out their responsibilities?

24. The key actors do not have sufficient resources to carry out their responsibilities. The complexity of the planning system and the expectation that it can deliver environmental regulations amongst multiple other responsibilities is placing considerable demands on planning authorities in terms of both plan formation and development management. Yet planning authorities' resources decreased by some 55% between 2010-2016[2]. The capacity issue is exacerbated by constant changes to the system, consultations and new initiatives, and subsequent training and updating of planning authority staff.

Question 10: Are there further significant changes which would improve this system?

25. Small sites and rural economic development are disproportionately impacted by the burden of environmental regulations. The very nature of rural development, whether residential or commercial, often means developing on a 'green' field, which may hold lots, or no environmental capital. The vision of developing in England's green countryside is often mistakenly believed to have an adversely detrimental impact on our natural environment and applicants can face an emotional barrier, as well as regulatory ones. To improve this system, and not disproportionately hold-back rural areas' development, the government should commit to a package of reforms to the planning system.

26. Firstly, the Green Belt policy has had significant scope creep, largely due to the emotional response to developing in rural areas. The overarching purpose of the Government's Green Belt planning policy, as defined by the 1947 Town and Country Planning Act, is to prevent urban sprawl and coalescence of settlements. The Green Belt must remain a planning policy and not an environmental designation. There must be an urgent review of Green Belt policy and it must consider whether the perceived benefits of Green Belt planning policy justify the real economic costs to society.

27. Secondly, the use of Permission in Principle, a two-stage planning process, should be extended to applications of Rural Economic Development. This would ensure the costly and onerous details required for environmental regulations are pushed back to a second stage, when more certainty of the outcome is available. A two-stage planning route could unlock a flood of new investment in rural areas.

28. Finally, the planning system must be properly resourced with personnel and expertise. The reliance on third party expertise and arms-length government bodies slows down planning applications and leads to communication breakdown and ineffective delivery. A properly resourced planning system, with up to date local plans alongside a simplification of the system would ease some of these struggles.

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[2] https://www.bbc.co.uk/news/uk-england-46443700

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