

Bat Conservation Trust



28th October 2020

Proposed changes to the planning system – our consultation response

5. Do you agree that Local Plans should be simplified in line with our proposals?

No - the current planning system has been developed over many years and it has benefits that can and should be retained and built on. Good planning is essential for people as well as the environment. The proposals set out in the white paper are based on a preconception that the planning process is a barrier to development however this assumption does not appear to be based on quantitative data and has been challenged by several major planning organisations as being fundamentally flawed – a report by CPRE¹ shows that there is already sufficient land for 1.3 million homes with over a third of these having planning permissions in place suggesting that these proposals will not speed up the delivery of new or affordable homes. Furthermore, in 2011 and 2012, Defra conducted “The England Review of Nature Directives Implementation” and concluded that ‘It was clear from the wide range of evidence and views submitted in the course of the Review that in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained.’

Any changes to the planning system must demonstrate:

1. environmental protection – our environment, with its on-going loss of biodiversity, increasing pollution, and climate change, is acknowledged to be out of balance and the planning reforms need to redress this balance. Planning reform should be an opportunity to secure integrated environmental and strategic land use planning into one document and to bring a more rounded approach that focuses on Natural Capital while also bringing about social and economic benefits. There is a clear need for any changes to the planning regime to be assessed against Natural Capital.
2. resourcing
 - (a) Data. To ensure that environmental information is available for local plans to identify areas for development without adding to the ongoing loss of biodiversity, and to heed the aims and objectives of the 25 Year Environment Plan and the Environment Bill, will necessitate having up to date and robust environmental surveys that will need to be repeated at regular intervals. For some species such as bats and birds, surveys will need to be on a site by site basis as development proposal materialise. The current environmental data set is far from complete and cannot be relied on to give a proper assessment of biodiversity particularly in light of rapidly progressing climate change which will shift species ranges. Whilst there may be a wealth of information from habitat mapping, the same cannot said of species data. For bats much of the vital roost data that exists is only generated by site level surveys. Without such information, Natural England will not be able to properly fulfil its legal obligations to advise public bodies. To rectify this will require expertise to regularly collect, store, display and interpret the

data. Failure to follow the evidence and **not to have site-based assessments across all three categories will be a major detrimental blow to species conservation**, particularly for building-reliant and slow breeding species such as bats and swifts.

- (b) Bats. Many species of bat are reliant on built structures for their roosts and this gives them a closer relationship with our built environment and makes them particularly vulnerable. For this reason and historic steep declines in bat populations, bats and their roosts are protected by law and it is this legislation that has been a contributory factor to the rare positive story for England's species with signs those bat species associated with built structures showing signs of recovery. We strongly oppose any proposals that remove the current avoid, mitigate, compensate process for bats and their roosts which is underpinned by necessary site survey of built structures and trees. Strategic-level mapping will not be capable of replacing on-site survey work and it has already been demonstrated and agreed by the building sector that if carried out at the right stage, the process is not onerous.
 - (c) Resourcing. Additionally, there are ongoing plans to streamline species licensing further with a view to making it faster and more effective for all concerned using Earned Recognitionⁱⁱ for ecologists (working with Natural England and CIEEM). There is also a Wildlife Assessment Check that assist SME understand the likely biodiversity on site that will need to be considered upfront prior to submitting for planning. Other actions that can assist would be to improve Local Authority access to ecological expertise as well as increasing the number of strategic planners and development management officers. This would enable environmental matters to be considered early and guidance to developers supplied so that they are aware of the quality of information required by Planning Authorities to validate applications. This would be a significant step forward to ensuring that the planning process works for everybody.
3. democracy - as we outline below, the current planning system already has an adequate democratic process that allows local people and communities to have a voice in how their neighbourhood is developed. These proposals will remove a significant tier of democracy while not necessarily speeding up developments.

The on-going decline of biodiversity has been well documented ⁱⁱⁱ and recently publicised ^{iv}. Whilst the UK's species protection legislation has gone some way to arrest that decline, the relevant legislation was not designed to prevent habitat loss and fragmentation which has continued at pace. The very reason why we are having to address an environmental crisis is due to the notion that damage, and harm can be mitigated for, rather than be avoided.

BCT welcomes the UK Government's continued commitment to its aim of leaving the environment in a better state than when it found it ^v. We also recognise that development must take place and that developers want and need certainty, clarity, and simplicity in a democratic planning system where development fulfils the needs of people locally. To achieve this BCT would strongly argue that the current system already does that and that the Government's proposal in this white paper will not help developers, people or nature. We would though suggest that reforms to the planning system are urgently needed to address the imbalance that is adversely impacting on the environment and these planning reforms have the potential to significantly contribute to that.

As we understand the proposals, Local Plans, will focus on identifying land under three categories

- *Growth* areas suitable for substantial development, and where outline approval for development would be automatically secured for forms and types of development specified

in the Plan. Areas of flood risk would be excluded from this category (as would other important constraints), unless any risk can be fully mitigated;

- *Renewal* areas suitable for some development, such as gentle densification;
- *Protected* areas where – as the name suggests – development is restricted. This would include sites and areas which, because of their particular environmental and/or cultural characteristics, would justify more stringent development controls to ensure sustainability. This would include areas such as Green Belt, Areas of Outstanding Natural Beauty (AONBs), Conservation Areas, Local Wildlife Sites, areas of significant flood risk and important areas of green space. It would also include areas of open countryside outside of land in *Growth* or *Renewal* areas.

Reforms must do three things:

1. Avoid causing harm.
Identifying locations for development that avoids causing harm is an essential first step. Placing development in the right place avoiding damage or potential adverse impacts would provide certainty to developers that proposals are likely to proceed in a timely manner. However, experience is that the stated policy of “avoid, mitigate, compensate” is often overlooked when development happens on or around irreplaceable habitats such as ancient woodland. The reasons for this are unclear however mixed messaging such as the proposal in this white paper eg *Areas of flood risk would be excluded from this category (as would other important constraints), unless any risk can be fully mitigated* undermines the principle of avoidance.
2. Give nature space.
We need to have natural green infrastructure and also to green our existing infrastructure. BCT welcomes the intentions in this paper (Pillar 2 Planning for beautiful and sustainable places) to have attractive places to live and work in – indeed there are some good examples especially on out-of-town developments that have worked with nature rather than against it. But these reforms need to go beyond ‘prettifying’ developments. Planning reforms must ensure that there are natural green infrastructures in place to support nature’s recovery’ and that for this to be fully effective it should be dark green infrastructure (not illuminated by artificial light). By strategically integrating nature’s recovery with land-use planning so they are viewed collectively and alongside each other, this will help to ensure that development proposals do not cause on-going losses on the one hand whilst efforts are being made to halt the loss of biodiversity.
Employing this approach would also have the advantage that communities will be able to understand what their local area is important for and have the opportunity to fully engage and be able to contribute to the development process. Integrating biodiversity into Local Plans as part of the consultation process would usefully serve to increase the public’s awareness of biodiversity within their area and facilitate their involvement in the decision-making process.
3. Ensure proper and adequate public consultation.
The proposals in the draft white paper provide for a public consultation at the time of development plan production however this seems to ignore that under the current system,

development plans already undergo a detailed public consultation exercise including possible Planning Inquiry before a plan is adopted. Our experience is that members of the public do not understand this process.

Furthermore, the Localism Act 2011 introduced provisions to allow local communities to shape their own areas and the UK Government has provided financial support for communities wishing to produce a Neighbourhood Plan. The proposals in the white paper appear to undermine this commitment to local democracy and decision making by limiting into the local plan to a 6-week window and via digital platforms only. Also, proposals in this white paper that will undermine the scope of communities in devising their neighbourhood plans. Legally, an up-to-date Plan is not pre-requisite for neighbourhood planning however local communities are expected to consult with their local planning authority and they must have regard to national policy including the National Planning Policy framework.

Once land has been allocated for development and Adopted in the Plan, either through a democratic public consultation process, or through legislation, then that becomes the policy for that development both in type and extent, to take place. The adoption of inset maps and land allocations then gives an effect to a legitimate and financial interest in that land to the landowner. This in effect means that land allocations are in themselves a form of outline consent ie a 'planning in principle' and this is a concept that is rarely understood by the public.

We would suggest that the mechanism for public consultation should be explored – direct contact with stakeholders either in written format or by electronic means would be a first step but caution is needed to make the process inclusive to all. A notice posted on a lamppost is something that people may notice going about their day-to-day lives. If the process becomes all digital there is an urgent need to address the way in which people will be alerted to a relevant matter in which they may wish to be involved. It is also imperative that those without access to IT are not excluded. It is good to see that Rails found that digital approach increased the percentage of people under 45 who became involved but to go all digital would skew the balance the other way and exclude our most experienced and vulnerable elderly population. Focusing on a digital would also marginalise people who live in areas not best serviced by digital technology.

The white paper mentions that some 50% local authorities still do not have an adopted plan. However, we understand that a FoI request by CPRE has found that only 10% local authorities do not have an Adopted Plan. The reasons for this minority of local authorities not having an adopted plan have not been made clear and these should be described and explored further before making major changes to the current process. We would point out that Ministers already have powers to conclude a development plan where a local authority has yet to adopt one.

Growth and Renewal Areas. We are not clear what the intention is with regards the existing allocation of land. Will these allocations be subsumed into the new Growth Areas or will they be subjected to new policy and must undergo renewed scrutiny and risk being removed from new development plans? Will Renewal Areas become merged with Growth Areas?

We note the Government's ambition of 300,000 homes to be built annually over the lifetime of this Government. To achieve this without causing harm, local planning authorities will require sufficient

robust and up-to-date environmental data, at the appropriate spatial scale, on which to base future land allocations.

Under the current systems we do not see how this can be readily achieved within this time scale. The necessary ecological surveys and assessment of that data will take a long time to carry out risking land allocation without proper consideration of environmental issues.

This can lead to serious issues for both the developer and the environment especially where this impacts on species such as bats. We know of cases where significant bat roosts have only been discovered at the time of planning^{vi}. The legislation that protects bats is only effective at protecting the resting places of bats and it does little or nothing to protect either their commuting corridors or their core (roost) foraging sustenance area. Loss of either of these factors can itself lead to loss of local bat populations and contribute to ongoing decline in biodiversity.

Current advice is that local authorities should not approve planning applications subject to setting conditions of consent, such as environmental assessment, where the results of those assessments might materially affect the outcome, such as a consent might not be otherwise be given or major changes to the application have to be made. This is especially important with respect to protected species such as bats and where a derogation licence is required.

Furthermore, we should point out that environmental (biodiversity) data is not static and changes over time. In some cases, this may be to the advantage of a developer but in other instances this may then give rise to delays and changes in design. We do believe that it is important to generally identify areas where they may be significant ecological interest eg South Hams bat SACs, thereby alerting planners and developers to the type of issues they will need to consider. However, decisions need to be based on robust up-to-date that is properly interpreted to avoid delays and frustration at a later date. Once permission in principle has been granted for a site, it is difficult to prevent or change development design, even where ecologically important habitats or species are found by later survey work, which will result in further delays.

Protected Areas.

We note the Government's proposals for protected areas but we see this as aligning with the current planning system, with the other two categories being erosions of consideration of species, habitats, the natural world and by association, people's health and wellbeing. Whilst we welcome stringent controls in permitting some development in protected areas, development proposals including those that might be described as 'green' this should only be permitted where no harm or damage to the environment is caused and indeed should show significant biodiversity gain as part of the process. It is vital that the emphasis is placed on avoidance and not mitigation. In our experience, developers find it easier to mitigate rather than to avoid and it is this approach that can result in delays especially where development proposals are received for areas outside settlement and development areas.

Such an approach could form part of the basis for Nature Recovery Networks – identifying and protecting tracts of land from development where these are essential for nature recovery and where development may not take place.

We are pleased to see that the white paper (Pillar 2 Planning for beautiful and sustainable places under the chapter on effective stewardship and enhancement of our natural and historic environment) suggests that Plans will include both national and internationally important sites as

well as local sites. However, this is tempered by later statements indicating that it will be down to local authorities, after the proposals in the white paper have been implemented, to consider how these different categories of land will be considered as part of the planning and development process. Such an approach will result in inconsistencies between local authorities and planning inspectorate decisions.

We are also uncertain of the use of the subjective term 'Beauty' which is widely used. On looking at the detail around this term it applies to buildings and amenity spaces and, despite all the evidence, does not focus on natural places other than perhaps reference to street trees. This is massively out of step with the link to nature that is acknowledged as so important for people's physical and mental health and wellbeing.

Environment Bill

The UK Government's flagship Environment Bill has several key proposals to underpin the 25 Year Environment Plan, that are relevant to these proposals. We are pleased to see the Bill and some of its content included in the white paper but there is a large disconnect between what is written in that section and the rest of the document, with no clear idea of how these will work as a whole. Failure to integrate only serves to undermine the Government's commitment to biodiversity and places biodiversity as third place and as an afterthought.

If the Government is serious in delivering its ambitions set out in the 25 YEP, then the proposed planning reforms must take the Environment Bill with it, as part of a strategic approach to land use planning in England.

Local planning authorities will be expected to deliver some elements of this, notably nature recovery networks. Planning reforms must give support to the Environment Bill and not to undermine it in any way. We note that there is a proposal to abandon the Duty to Co-operate which may undermine this ambition. We would wish to see local authorities working with each other as well as other public bodies such as Natural England, but they may also need to maintain a degree of autonomy to reflect local distinctiveness and methods of achieving the required aims.

We also remain concerned over future proposals to simplify the environmental impact assessment process as this is likely to result in reduced effectiveness and which will fail to halt the on-going loss of biodiversity. It will be essential to have adequate environmental data at the right scale to ensure a proper assessment of environmental impacts are understood. This information must be robust and up to date to take account of changes that are likely to happen over time.

7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of "sustainable development", which would include consideration of environmental impact?

9(a). Do you agree that there should be automatic permission for areas for substantial development (Growth areas) with faster routes for detailed consent?

[Yes / No / Not sure. Please provide supporting statement.]

9(b). Do you agree with our proposals above for the consent arrangements for *Renewal* and *Protected* areas?

[Yes / No / Not sure. Please provide supporting statement.]

9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?

[Yes / No / Not sure. Please provide supporting statement.]

10. Do you agree with our proposals to make decision-making faster and more certain?

[Yes / No / Not sure. Please provide supporting statement.]

No - Bat Conservation Trust does not agree with the proposals 5, 7a, 9 and 10. BCT recognises the importance of both economic and social progress in England however this must be done in a truly sustainable manner and we have not seen a clear definition of sustainable development by the UK Government. Over many decades, economic and social interest has fundamentally driven land use planning, with environmental concerns being a secondary consideration, resulting in the position we are today with both a climate and biodiversity crisis. Sustainable development needs to redresses this imbalance. In the context of this white paper, strategically placing development in the right place, so that it avoids causing environmental harm without reliance on mitigation, is key as is re-greening the existing built environment.

Whilst we would support removing duplication between the various environmental assessments (Strategic Environmental Assessment and Environmental Impact Assessment) we would point out that they are designed to do different things and to satisfy international obligations. Any changes to the SEA and EIA must not leave gaps or reduce their efficacy.

Subject to details in the future Bill, we are of the view that these will fail to deliver environmental benefits and may even result in further losses of biodiversity.

Earned Recognition aims to replace the existing licensing system for surveys and mitigation and reward demonstrated competence with a streamlined licensing process. The idea of earned recognition is to reward demonstrable competence with streamlined process and certainty. That will allow the system to focus on outcomes to make it better for bats and stakeholders.

12. Do you agree with our proposals for a 30-month statutory timescale for the production of Local Plans?

[Yes / No / Not sure. Please provide supporting statement.]

No – 30 months is insufficient time to obtain the level of robust environmental data to properly inform the development of plans.

Furthermore, for some key elements of biodiversity, such as mobile species (bats and birds), species occupancy and reliance on habitats is not static but changes both seasonally and with species own cyclical time frames as well as in response to climate change. Site-specific surveys will need to be undertaken by qualified and experienced surveyors over appropriate lengths of time.

Moreover, this information will need to be updated periodically as environmental factors will change over time. This may prove to be unduly costly and it would be better, to ensure site-specific surveys were undertaken at a timely manner in advance of planning application and not rely on out of date information.

There are already several systems in place for planners and developers to use to help reduce delays in planning. Not only is there published planning guidance in the form of supplementary planning guidance but also there are pragmatic tools such as the Wildlife Assessment Check

(<https://www.biodiversityinplanning.org/wildlife-assessment-check/>) which ensures that wildlife is taken into account at an early stage, thus reducing the risk of delays in the planning process. This was jointly developed by a partnership of 19 organisations representing the conservation, planning

and development sectors. Other actions that can assist would be to improve Local Authority access to ecological expertise as well as increasing the number of strategic planners and development management officers so environmental issues can be built in early. This would enable environmental matters to be considered early and guidance to developers supplied so that they are aware of the quality of information required by Planning Authorities to validate applications. This would be a significant step forward in ensuring that the planning process works for everybody. BCT is aware that some consideration has previously been given to extending District Level Licensing, that has been trialled on great crested newts with mixed outcomes, to bats. As the Red Tape Initiative concluded and we very strongly support, *'simply copying and pasting the district level licensing approach but replacing newts with bats wasn't going to work. In general, when compared to newts, bats are long-lived, slow to reproduce and faithful to roosts that they use, in some cases for generation after generation. This makes them much less flexible than newts. A number of bat species are reliant on built structures for their roosts which give them a closer relationship with our built environment'*.

22(a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure - BCT is not sure about this as there is no information to assist our thinking in relation to the UK Govt's proposals within its Environment Bill for Biodiversity Net Gain as well as nature conservation covenants.

ⁱ <https://www.cpre.org.uk/news/theres-already-enough-suitable-land-to-meet-targets-for-new-homes-we-find/>

ⁱⁱ Earned Recognition aims to replace the existing licensing system for surveys and mitigation and reward demonstrated competence with a streamlined licensing process. The idea of earned recognition is to reward demonstrable competence with streamlined process and certainty. That will allow the system to focus on outcomes to make it better for bats and stakeholders.

ⁱⁱⁱ State of Nature report 2019

^{iv} <https://www.bbc.co.uk/news/science-environment-54120111>

^v A Green Future: Our 25 Year Plan to Improve the Environment

^{vi} <https://www.bats.org.uk/news/2019/10/greater-horseshoe-bat-rediscovered-in-kent> <https://www.guardian-series.co.uk/news/15770465.rare-bat-not-seen-in-london-since-the-late-1950s-discovered-in-hainault-forest-country-park/>