

Planning & Infrastructure Bill: Parliamentary briefing for Lords 2nd Reading

The Bill weakens environmental protections

During Commons Report stage of the Planning and Infrastructure Bill, the Minister stated that “*The Government’s view is that the Bill is not regressive*”.¹ The Government’s view is not correct.

In their advice to Government, the Office for Environmental Protection (OEP) was clear that “*the bill would have the effect of reducing the level of environmental protection provided for by existing environmental law. As drafted, the provisions are a regression. This is particularly so for England’s most important wildlife- those habitats and species protected under the Habitats Regulations.*”²

This adds to the range of legal opinions that all find that the Planning Bill weakens vital legal environmental protections.³ No significant changes to Part 3 have been made since the OEP advice was published on 1st May. The Bill remains environmentally regressive: it seeks to swap the tightly defined Habitats Regulations test on development impacts - ‘will harm to nature be inflicted or not?’ - for a poor substitute - a subjective consideration of whether harm can theoretically be made up for in the future.

The backdrop to this weakening is years of suggestion that nutrient neutrality rules hinder housebuilding, and proposals that the Habitats Regulations should be side-stepped as a result. The environment sector has demonstrated that environmental regression is not necessary to resolve this. Strategic mitigation approaches, where developers across affected catchments pay into a central mitigation pot, accelerate housing delivery in nutrient neutrality affected areas without breaching the Habitats Regulations. For example, a strategic scheme developed by Hampshire & Isle of Wight Wildlife Trust has led to 95% of 16,000 new homes delayed by nutrient neutrality rules in 2022 around the Solent being greenlit by January 2024, all within the current Habitats Regulations rules.⁴

The Government has decided not to up support for such effective on-the-ground schemes and instead has opted to create a legal work-around of the Habitats Regulations and other environmental protections, covering obligations far beyond neutrality rules. As Natural England warned in 2023, when the previous Government attempted a different route around the Habitats Regulations (later defeated by the House of Lords⁵) ‘*creating a carve out from the Habitats Regulations is, in isolation, a regression in environmental legal protections*’.⁶ This sledgehammer-to-crack-a-nut approach will cause harm to nature, at a time when habitats and species are in decline and Environment Act nature recovery targets are slipping out of reach.⁷

We urge members of the House of Lords – just as they did in 2023 by removing regressive nutrient neutrality measures from the Levelling Up and Regeneration Act – to reject this new attempt to unnecessarily weaken environmental protections. Part 3 of the Planning and Infrastructure Bill should be withdrawn.

¹ [Transcript](#) of Commons Report stage, 9th June 2025

² OEP [advice letter](#), 1st May 2025

³ See [written evidence](#) provide to the Public Bill Committee in the Commons

⁴ Nutrient neutrality [briefing](#), September 2024

⁵ See [coverage](#) of and [response](#) to Lords rejection of Government amendments to Levelling Up and Regeneration Act, September 2023

⁶ From a response to Freedom of Information request, which can be supplied if required.

⁷ OEP environmental [progress report](#), January 2025

The false premise underpinning the Bill

At Commons Report stage, the Bill Minister stated that current environmental protections are “*not working for development because constraints like the requirements for nutrient neutrality in sensitive river catchments are stifling the building of new homes and infrastructure*”.

Nutrient neutrality rules apply to only the most sensitive areas, nutrient-stressed freshwater catchments important for nature where critical environmental thresholds have already been breached. As set out above, in this small number of areas strategic approaches are already resolving delays, without any changes to current environmental protections. Nutrient neutrality delays to housebuilding are receding into the rear mirror. They could recede yet faster if the Government offered more practical support for on-the-ground strategic approaches, instead of pursuing its current legislative approach.

Beyond nutrient neutrality, evidence of environmental protections impacting on housing and infrastructure delivery is scant. The Government’s own impact assessment of the Planning & Infrastructure Bill, published in May, observed: ‘*There is very limited data on how environmental obligations affect development*’⁸. Evidence showing extremely limited impact from environmental obligations is growing, including:

- Research published by Home Builders Federation in June which looked at the causes of delays to community investment from development, including the provision of much-needed affordable housing. Under-resourced local authorities and lack of standardisation in process were listed as the primary causes of delay, with no mention made of environmental protections.⁹
- A survey of 500 councillors published in June which asked those at the frontline of planning what they felt the biggest barriers to national housing delivery to be. The most cited reason for this was skills shortages in the housebuilding sector (33%) followed by developer land banking (19%). Environmental issues came 20th out of a list of 24, cited by just 3% of respondents.¹⁰
- Research published by The Wildlife Trusts in May found that bats and great crested newts, often maligned by Ministers as persistent blockers to development, were a factor in just 3% of planning appeal decisions in 2024. This means that in 97% of cases where developers appealed a planning decision, it wasn’t because of bats and newts.¹¹
- Research conducted by Cavendish Consultancy in 2024 looked at Development Consent Order consent times for major infrastructure projects from 2011 to 2023. It found a distinct split between the first half of the 2010’s and the latter, with consents significantly delayed in the later period. The same environmental protections applied throughout both periods. What did change was, in the words of Cavendish, more political turmoil and ‘*political manoeuvring*’ causing delays to happen once projects hit the Secretary of State’s desk, especially with the huge turnover of Ministers in the May, Johnson, Truss and Sunak administrations.¹²

Part 3 of the Bill is a superfluous attempt to solve the perceived problem of nature delays to development, which closer examination reveals to be something of a mirage. It is an exercise in tilting at windmills instead of grappling with better evidenced causes of development delays. It will cause significant – and wholly unnecessary – damage to nature.

⁸ Government [impact assessment](#)

⁹ HBF [research](#)

¹⁰ National Planning [Barometer](#)

¹¹ The Wildlife Trusts [research](#)

¹² Cavendish Consulting [research](#)

Possible Part 3 amendments

During Commons Report stage, the Bill Minister confirmed that the Government are “*giving serious consideration to ways in which we might instil further confidence in respect of the rigour of the overall improvement test, provide for greater certainty in respect of the delivery of EDPs, and ensure that there is more clarity about the evidential basis and environmental rationale for strategic network level conservation measures*”.

To start to address the Bill’s deficiencies, it is vital that these warm words are brought forward via Government amendments to the Bill. Action to make the overall improvement test (which will allow the Habitats Regulations to be by-passed) more robust, and to strengthen the evidential basis and timetabling of the Environmental Delivery Plans (EDPs) that will manage development impacts when the test is passed, would take forward some of the OEP recommendations. Commons Report stage saw backbench Labour, Conservative, Liberal Democrat and Green MPs vote together for an amendment along these lines, to improve the Bill for the nature.¹³ We urge Ministers to closely consider this significant cross-party support and growing momentum for change to this part of the Bill. If they cannot bring themselves to withdraw Part 3 entirely (The Wildlife Trusts’ preference), they should at least swiftly bring forward Government amendments to effectively address OEP recommendations in these areas.

It is important to stress that action on the overall improvement test and EDP evidence and timing would not address all the OEP’s recommendations.

The OEP recommendation to consider the need for the mitigation hierarchy (the long-standing requirement for developers to first seek to avoid harm to nature, and only then seek to mitigate and then compensate for that harm) has not yet been accepted by Ministers. The OEP advice stated that, without a focus on harm avoidance, as ensured by the mitigation hierarchy, ‘*the law could allow a protected site to be harmed in such a way as to affect its integrity, even in an extreme case to be destroyed entirely*’.

This risk of site destruction from Part 3 is particularly concerning for irreplaceable habitats, like ancient woodland, which currently can be covered by both legal protections (including under the Habitats Regulations) and from policy protections under the National Planning Policy Framework (NPPF).

The Habitats Regulations are the UK’s most effective nature conservation laws and have demonstrably slowed the pace of nature’s decline.¹⁴ In contrast to the Habitats Regulations, the NPPF protections are weaker and continue to allow damage to irreplaceable habitats like ancient woodland. Research published by The Woodland Trust this June, as part of their ‘State of Woods and Trees 2025’ report highlighted that, due to loopholes in the NPPF protections, ancient woodlands are vulnerable to ‘*deterioration and damage by adjacent development*’.¹⁵

The weakening of the strongest component of irreplaceable habitat protections poses a threat to these precious wild spaces. It could even lead to the bizarre scenario where habitats that are legally protected are worse off than those that only have policy level protections.

Any set of Government amendments to Part 3 at Lords stages must include measures to apply the mitigation hierarchy and protect irreplaceable habitats.

¹³ [Vote](#) on amendment 69, Commons Report stage

¹⁴ [Briefing](#) summarising evidence on Habitats Regulations efficacy

¹⁵ State of Woods and Trees 2025 [report](#)

At 2nd reading, peers could also usefully press Ministers to provide clarification on the following points concerning Part 3:

- How it aligns with General Election promises made by Ministers before taking office, including a promise to ensure *‘that our new towns and house building include nature at their heart, with access to parks and green spaces on people’s doorsteps and environmental standards protected’*.¹⁶
- How abuse of developer viability provisions will be prevented. Clause 69 gives Natural England a legal duty to consider the *‘economic viability of development’* when preparing EDPs, with clause 67 applying a similar duty to the Secretary of State.¹⁷ This could also allow developers to damage important natural habitats with inappropriate development and then avoid commensurate payment for the damage, by claiming that payment would make their development no longer viable.
- How it will impact the devolved nations. Clause 54 states that an EDP can cover an area in England, or in *‘the waters adjacent to England’*. This opens up the possibility of EDPs leading to the degradation of terrestrial, freshwater and coastal habitats adjacent to the Scottish, Welsh and Northern Irish borders, with spillover effects for wildlife there.
- How the OEP’s advice has been taken into account - and if their advice will be sought on any future amendments. As the Government’s own environmental watchdog, the OEP’s expertise should be actively engaged to help improve the Bill.

Possible amendments in other parts of the Bill

Commons stages saw several positive amendments proposed to other parts of the Bill, which would better align the planning system behind the achievement of nature recovery targets.

Three Commons Report stage amendments were supported by over 50 MPs, on a cross-party basis, to create new planning protections for chalk streams and for these protections to be applied through the spatial development strategies created by clause 52.¹⁸

This Commons interest in chalk streams reflects a growing awareness that we are failing to look after this natural treasure for the world. These streams rise on chalk soils whose filtration qualities result in crystal-clear, mineral-rich waters teeming with aquatic life. A handful of chalk streams occur in northern France and Denmark, but the majority (85% of the world’s supply) are found in England. These rare habitats are threatened like never before due to development and other pressures. 37% of chalk water bodies do not meet the criteria for good ecological status, due in large part of over-abstraction for water to serve development in inappropriate locations.¹⁹ This spring, the driest since 1956, heightens the risk of some vulnerable chalk streams drying up altogether in future years.

Requiring the Secretary of State to create new chalk stream protections would respond to these growing risks. Affixing chalk stream responsibilities to the spatial development strategies created by the Bill would allow these new protections to be applied in a strategic and effective way, across entire regions where chalk streams flow. It would also allow protection requirements to be fairly balanced with development objectives, furthering the ‘win-wins for nature and development’ Ministers are so keen to see from this Bill.

¹⁶ Wildlife Trusts and RSPB ‘Broken Promises’ [press release](#), 22nd May 2025.

¹⁷ Planning and Infrastructure [Bill](#), as brought from the Commons

¹⁸ See Commons Report stage [amendment paper](#) on 9th June and [coverage](#) of chalk stream parliamentary photocall on 4th June

¹⁹ Wildlife Trusts chalk stream [material](#)

The Wildlife Trusts would be delighted to work with peers to take these chalk stream proposals forward at Lords committee stage. We would also be pleased to explore progression of other positive nature amendments discussed in the Commons, including:

- Strengthening Local Wildlife Site protections and creating a new ‘Wildbelt’ land designation for habitats in the process of restoration.
- Requiring the Secretary of State to pass regulations to enable the provision of nature-friendly design measures in new developments, including swift bricks and hedgehog highways.
- Requiring spatial development strategies to include policies to increase the amount of land used for community gardening and allotments.
- Putting limits on the amount of the Public Forest Estate that could be used for renewable energy, under the proposals in clause 28 of the Bill.
- Creating new environmental duties for the Forestry Commission and Forestry England.
- Requiring the Secretary of State to support local planning authorities to phase out licences for peat extraction activities.

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The Wildlife Trusts are also a member of two allied coalitions working on the bill, [Wildlife & Countryside Link](#) and the [Better Planning Coalition](#).

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