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), and the London Environment Committee, 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 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 personal 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 this 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