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 essential for an Environment Act to transfer the Lisbon Treaty 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.

1 http://www.green-alliance.org.uk/resources/GreenerUK_Withdrawal_Bill.pdf
**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 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\(^2\), 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?

4.1 The Wildlife Trusts are extremely keen for Natural England (NE) to be successful in delivering its general purpose\(^3\).

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.

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2 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/](http://heartofswlep.co.uk/projects/south-west-local-enterprise-partnerships-new-rural-productivity-commission-seeks-views-rural-businesses/)

3 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.
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.

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 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\(^4\). 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\(^5\). 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”.

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\(^{st}\) 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

\(^4\) [http://jncc.defra.gov.uk/page-4231](http://jncc.defra.gov.uk/page-4231).

\(^5\) [http://www.wildlifetrusts.org/stateofnature16](http://www.wildlifetrusts.org/stateofnature16)
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 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 and approaches.

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7 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. 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.
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.

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. 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.

http://jncc.defra.gov.uk/docs/UKBI2017_DS_C1.xlsx
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.

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. 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 lowland grasslands as these are some of our most vulnerable and threatened remaining habitats.

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

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.  

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.’  

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, 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 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 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 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  

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10 https://nbnatlas.org/  
12 Natural England (March 2016) A review of the beetles of Great Britain: Ground Beetles (Carabidae)  
13 Natural Environment and Rural Communities Act 2006  
14 TWT (2016) Local Wildlife Sites
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 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). There are some positive local examples of

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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’.

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\(^\text{16}\), 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.

\(^{16}\) https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3158833
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\(^{17}\). 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.

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 it’s 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”18. 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

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18 https://publications.parliament.uk/pa/cm201213/cmselect/cmspeak/1069/106911.htm
business. For example, the exemplary negotiations that NE brokered, as a regulator, with Suffolk and Essex Water (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 21st 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 wellDOCUMENTED 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. 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 or 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. However, all too 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.

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**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.

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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**21**, 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**22**: “**Help for public bodies to fulfil their duty under the Natural Environment and**

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Rural Committees 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 following the Government’s Smarter Guidance Review. The only guidance to have replaced it is now held on www.gov.uk website. 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.

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 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, 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

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26 ALGE (2013) Ecological capacity and competence in English Planning
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. This Act introduced a new, stronger biodiversity duty 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. 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.

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

29 http://www.snh.gov.uk/docs/A1882273.pdf
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 principles into primary legislation. These six principles are:
   (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

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30 [http://www.green-alliance.org.uk/resources/GreenerUK_Withdrawal_Bill.pdf](http://www.green-alliance.org.uk/resources/GreenerUK_Withdrawal_Bill.pdf)