

# Habitats and Species \_ Planning and Infrastructure Bill

[Richard Turney KC](#)

at Landmark Chambers  
May 7, 2025

Part 3 of the [Planning and Infrastructure Bill](#) has drawn significant criticism from professional ecologists and many NGOs for what is considered to be a regressive step in nature protection in England. The title of the part - "development and nature recovery" - identifies a linkage which for some is contentious in itself: does development have a significant part to play in nature recovery at all? But the substance is what has caused the controversy.

## Overview of Part 3

Briefly put, clauses 48 to 60 would create a new type of plan, the environmental delivery plan (EDP). EDPs would be prepared by Natural England and identify environmental features that are likely to be negatively affected by development, the measures that are to be taken to protect those features, the amount of nature restoration levy payable to Natural England to cover the cost of those measures, and the environmental obligations to be discharged, disapplied or modified when the levy is paid.

Without descending into the detail, the EDPs could cover any area within England (including the whole of it) and any scale of development. The EDP may cover both a "protected feature of a protected site" and a "protected species". The levy would be chargeable on development where the EDP applies and provisions would be made for how the levy would be spent by Natural England. Natural England would have new enforcement powers and a new compulsory purchase power to allow it to take conservation measures.

The real "heat" of the provisions for the conservation community is in Schedule 4 to the Bill. This sets out the effect on environmental duties of EDPs. Paragraphs 1 and 2 deal with European and Ramsar sites, and SSSIs. The effect of the EDP identifying the environmental feature concerned, setting up a measure, imposing a levy for the measure, and the levy being paid is that the impacts are "disregarded".

The same "disregards" apply to species protections under paragraphs 3, 4 and 5. Paragraph 3 is concerned with European protected species, the most discussed examples being bats and great crested newts. Paragraph 4 is concerned with the wide ranging protections of the Part of the Wildlife and Countryside Act 1981 - including the protection of wild birds, their nests, and eggs. Paragraph 5 is concerned with the Protection of Badgers Act 1992. A subtle consequential change proposed to that Act would treat the killing of badgers to be carried out for "reasons of overriding public interest".

What does this mean for development, and can it help to deliver development whilst restoring nature?

My answer to the latter point is, as drafted, almost certainly not.

## Habitats

Certain impacts on European sites have become a genuine roadblock to development in many parts of the country. In most cases, these are not the impacts of building new development (such as homes) but rather the diffuse impacts of new, or relocated, human activity: recreational pressure, increased nutrient emissions from sewage treatment works, increased water demands. Strategic approaches have been in place for years (e.g. Thames Basin Heaths SANGS). Others are clearly needed (e.g. water neutrality). An EDP and a levy may well be the best way of delivering such solutions, removing the postcode

lottery of availability of strategic solutions and the all-too-frequent ransoming of developable land by those who can provide avoidance/mitigation/compensation in the right place. NE - if resourced to do it - should be well placed to deal with this, not least because of its existing statutory functions in respect of the SSSI network which covers the full range of European sites, and more.

## **Species**

But habitats are not the same as species. Protecting habitats is a necessary, but not sufficient, condition of species protection.

The sharp end of the Bill is in "disregarding" actual direct impacts on protected - and in some cases, very special - specimens of species. Actual bats, birds, and badgers. Developers have for years had to avoid such impacts: seasonal restrictions for bird nesting; bat measures; new ponds for GCN; reptile translocations; replacement badger setts. Individual specimens, living on the development site, are preserved, even if disturbed. The most extreme impacts - such as killing live animals - are avoided.

The Bill could change all of that. An EDP could propose a national badger park, with licences deemed to be granted to kill badgers and destroy their setts elsewhere on payment of a levy. It could propose new or improved bat sites (which are often designated SSSIs/SACs), and on payment of a levy deem to authorise the destruction of a roost elsewhere. It could provide new bird nesting sites, and on payment allow hedgerows to be removed in nesting season.

None of that seems to make much sense for nature. Surely, we want to deliver new and improved habitats *without* destroying individual specimens or pockets of biodiversity. Surely, too, the delivery of EDPs to protect particular species will depend on the performance of habitat measures, trial and error, and good luck. It is easy to have a plan for a fence and a land management regime. It is harder to plan for the behaviour of a particular animal.

And I am not sure that it makes much sense for delivering the homes and infrastructure we need. Species surveys clearly impose an upfront cost for developers, and can produce timing issues. But the number of homes or infrastructure projects that have genuinely been prevented by the presence of specimens of a protected species is vanishingly low, if it exists at all. Fundamentally, developers are not in the business of seeking to destroy protected species and most willingly work to deliver particular protections to address species interests on their sites.

There may also be valid questions about the purpose of securing incremental biodiversity net gain - measured only in terms of habitats - if the effect of development is to disturb, displace, or even kill off existing on site species biodiversity.

It might be argued that deemed licences could be conditioned to largely preserve on site species interests, so that for example disturbance and destruction is minimised. But if that is so, what benefit would be delivered beyond the existing regimes?

## **Conclusion**

For those reasons, the apparent legislative purpose of these provisions may be best served by confining the proposals to habitats, and stepping away from the idea that species protection can be put in the same boat.