

The Future of Environmental Planning: notes of a seminar, 28 April 2021

The aim of this seminar was to provide informed input to the UK (for England) Scottish and Welsh governments on the future of environmental planning. The need for the input arose from a perceived gap in the UK Government's thinking between its agenda for planning changes and its proposed new suite of measures in the Environment Bill, which will have major implications for the planning system. These measures include local nature recovery networks, biodiversity net gain, and the establishment of a new Office for Environmental Protection (OEP). The regulatory and policy context in the devolved administrations of Scotland and Wales is different. However, changes to planning law and policy in constituent parts of the UK are likely to have an influence in other parts too, as was seen for example in England formulating a single national planning policy framework (NPPF) some time after similar frameworks had been introduced in Scotland and Wales.

Presenters and subsequent discussion groups considered the following elements:

- Possible environmental targets and how these should be delivered.
- The possible implications of the [draft Environmental Principles](#) and the role of the Office for Environmental Protection. This [Government response](#) to an earlier consultation provides further orientation.
- The post-Brexit future of strategic environmental assessment (SEA) and environmental impact assessment (EIA). A detailed consultation on possible changes is now expected in late 2021; in England it is likely to also be influenced by the Government's Planning White Paper which proposes rationalizing public involvement and decision making in planning to the plan making phase (when SEA takes place), and reducing it at the project stage (when EIA takes place.) This [document](#) gives the environmental NGO sector perspective on the possible implications of EIA-SEA reform.

Environmental targets in planning

Professor Richard Cowell (Cardiff University) drew upon reflective work with Thomas Fischer of the University of Liverpool and Tony Jackson at the University of Dundee. They examined how we might tighten the links between the planning system and environmental targets, goals and objectives.

This is an urgent task. Despite numerous environmental targets now swirling around the policy universe, it remains unclear how many of these targets 'bite' in planning. The gap between targets and planning is especially glaring with strategic policies for the land resource itself, and how the planning system works to allocate enough space, in the best locations, to deliver on things like nature-based solutions.

To tighten the links between environmental targets and planning we must consider both how targets are *translated* into planning-relevant terms and *institutionalised* in relatively non-negotiable ways. One approach could be to assert the targets at national level in planning policy, and allow local actors decide how to respond. An alternative is to translate environmental targets into the land and space requirements at national level, and then transpose them into lower-level planning arenas. Areas of planning that have long been more target-driven, such as housing, may also offer lessons.

Tightening the role of environmental targets in planning is undoubtedly challenging. However, we should strive to do it for the same reasons that governments have struggled relentlessly with issue of housing delivery - because the outcomes are important, failure is highly consequential, and therefore we have no choice but to commit to the governance struggles it brings.

Breakout session 1

Questions:

- **What environmental targets should be set in planning policy?**
- **How best could targets be mainstreamed into plan-making and implementation?**
- **When has planning helped the achievement of environmental targets?**

Feedback tended to focus on the first two questions rather than the third.

Targets needed for:

- making brownfield first a reality not just aspiration: but need to understand the biodiversity value of BF before consent is considered for development
- repurposing buildings and knocking them down as last resort.
- Avoiding net loss of biodiversity
- maintaining mature trees and also on native planting that is more biodiversity friendly. Should not just be about planting trees.

Government needs to make sure:

- Statutory requirement to meet targets and accountability of decision makers for them will be the most important change
- its housing targets meet its environmental targets: needs to be allowed to say through the planning system when required number of housing can't be built in a way that meets the environmental targets.
- positioning of targets into centre of decision-making.
- NPPF gives clearer priority to the environment.
- There is a strong auditing regime.
- Strong benchmarking at the start is also critical to make sure targets are focussed and measurable in their impact (no point saying we want a 10% improvement if we don't know where we are starting).
- Local authorities need to:
- have binding strategy for environment or climate change at level of local authority, which provides context for local plan. If too target-driven, lose original goal.
- a 5-year climate/nature target which focus on environmental outcomes and exactly what is expected within them.
- coordination between them, and countries of the UK, is critical for broader action to make a difference in an ecological landscape.
- be able to be more ambitious than the overarching policy if they want to be as well.

Environmental principles and impact assessment

Nicholas Grant (Landmark Chambers) gave an introduction to the new environmental protection regime set out in the Environment Bill, specifically the Office for Environmental Protection (OEP) and the Policy Statement of Environmental Principles (out for consultation in draft at the time of the seminar), and how potentially these would relate to the land use planning system.

He highlighted that the OEP's remit focused on scrutiny, advice and enforcement of environmental law; and most planning law being excluded from this. Similarly, the draft Environmental Principles are not directly applicable to local planning authorities, regulators, operators, developers, other parties or arms length bodies. The Principles apply when "making policy", not individual planning, regulatory or licensing decisions.

Overall the legislation is seen as fairly weak, applying only at policy level and leaving much untouched. The Principles could take long time to permeate planning policy and decisions. The draft Policy Statement contains some good points, but the text is very broad, so much will come down to the discretion of Ministers as to whether they want to incorporate the Principles. Policy makers have no duty to give primacy to the Principles – simply an obligation to have "due regard."

Professor Thomas Fischer (University of Liverpool) drew upon thirty years of experience in researching and evaluating impact assessment processes, to challenge perceived problems with EIA and SEA, and identify potential improvements.

Commonly perceived problems with EIA and SEA – that they are too expensive, take too long, baulk development and are ineffective in helping to protect the environment – all lack much evidence to support them. Survey research with professionals closely involved in EIA shows positive support for EIA in influencing early development decisions, and improving the environmental awareness of project initiators and competent authorities. Many problems with EIA and SEA can be better attributed to dominant beliefs that environmental protection is a drag on the economy, rather than a vital underpinning for economic activity. Often apparent 'environmental ineffectiveness' arises because perfectly good impact assessments are ignored by policy-makers.

Reforms to EIA and SEA are, however, strongly desirable, especially:

- reducing the emphasis given to collating baseline data and increasing the attention given to actual assessment of impacts;
- giving more attention to assessing the impacts of those alternatives at the point when different options are actually being considered;
- better post-project auditing, to learn from developments that have proceeded; and
- situating impact assessment in a policy framework that offers more clarity on those impact areas that are amenable to trade off, and those that are not.

Overall, EIA and SEA can easily be reformed. Whether those reforms are undertaken, or succeed, depends on whether we really want to make development more environmentally sustainable.

Breakout session 2

Questions:

How would you sum up your experience of environmental assessments?

- EIA useful tool for effective public engagement in planning – simplification would be helpful but not in terms of content. Absolutely critical to give you the basis on which to make that more

authoritative response to controversial applications. Some alleged cases where EIA deliberately excluded from public view (e.g. A585 Windy Harbour to Skippool road scheme in Lancashire, but also in Chichester)

- Seen by developers as a tickbox exercise:
 - perception of happening after decisions are taken (EIAs consider alternatives – but it's happening too late – after those things have been considered and shelved);
 - insufficient time for public consultation (campaigner has 30 days to assess an EIA in a local authority, 21 days for an extension. In some instances we have to look at 600+ documents which the developer has months to prepare and we only have a month to read);
 - assessments are often ignored or not enforced

Can SEA and EIA be combined without undermining the purpose of environmental assessment?

- Some support for combining the processes because strategic and project level assessments need to talk to each other. SEA should be about alternatives and broader questions/wider impacts. EIA goes into more detail on the specifics of the site itself.
- Need to refer to the various stages consciously and transparently within a systems approach. . Now it's a black box approach which is problematic.
- Need to make sure LPAs have sufficient resources and expertise to use EIA/SEA
- EIA SEA process should be used not just to assess impacts, but also be about how the development is delivering on environmental opportunities.
- EIA is currently essentially advisory, so potential for it to have greater bite along the lines of Habitats Regs Assessment whereby the finding of significant unmitigatable harm could actually prevent a development from happening unless imperative reasons in the public interest apply.
- EIAs should be involved much earlier in development proposal rather than when development already fleshed out. This way would be more effective at looking at alternative designs, eg for housing developments.
- Planners should be taking environmental considerations as they decide site allocation.
- Need to rationalise size of SEA-EIA documents and make them more accessible generally. . The main report should be the main way that the important arguments are presented- if all the additional documents are necessary then the report is inadequate. Also, digital files make a huge difference in their ability to be interpreted and read.

What are the best elements of the current system of environmental assessment that need to be kept?

- The current requirement for up-to-date on the ground assessment data needs to be retained, government shift towards only using strategic data is concerning
- Process is good for community involvement at the moment – they have opportunity to get involved. For example, new arrangements in Scotland overcome lack of community awareness of SEA by forcing LPAs to have an initial stage of local plan SEA which has to be examined, and this would include environmental considerations.
- EIA and SEA increases developer knowledge of environmental issues and the regulations they have to use

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