Cyswllt Amgylchedd Cymru | Wales Environment Link

WEL Paper to Climate Change, Environment and Infrastructure Committee on the Legislative Consent Motion for Planning and Infrastructure Bill

Wednesday 28th May 2025

We raise concerns about the nature of the Planning and Infrastructure Bill as proposed. We outline below how, as written, it demonstrates a fundamental misalignment with Welsh policy and legislation which, if unaddressed, will undoubtedly link to the degradation of Welsh nature and wellbeing.

Whilst the Committee will be aware the primary application of the proposed Planning and Infrastructure Bill lies mostly outside of Wales due to the devolved nature of our planning system, we believe that the principle of the Bill requires careful consideration by the Senedd.

As members of the committee will be sadly aware, Wales is ranked in the bottom 10% on the Natural History Museum's Biodiversity Intactness Index (rating 224 out of 240 countries)[1]. In recognition of the devastating state of nature within Wales, the Senedd was bold in its response, being amongst one of the first nations to formally vote to declare a nature emergency and in so doing committing, to act on the environmental governance gap[2]. At the time, the Senedd took this step in recognition of the intrinsic relationship between humanity's action and a healthy natural world, unanimously acknowledging their responsibility as Welsh legislators in halting the decline and committing themselves to action.

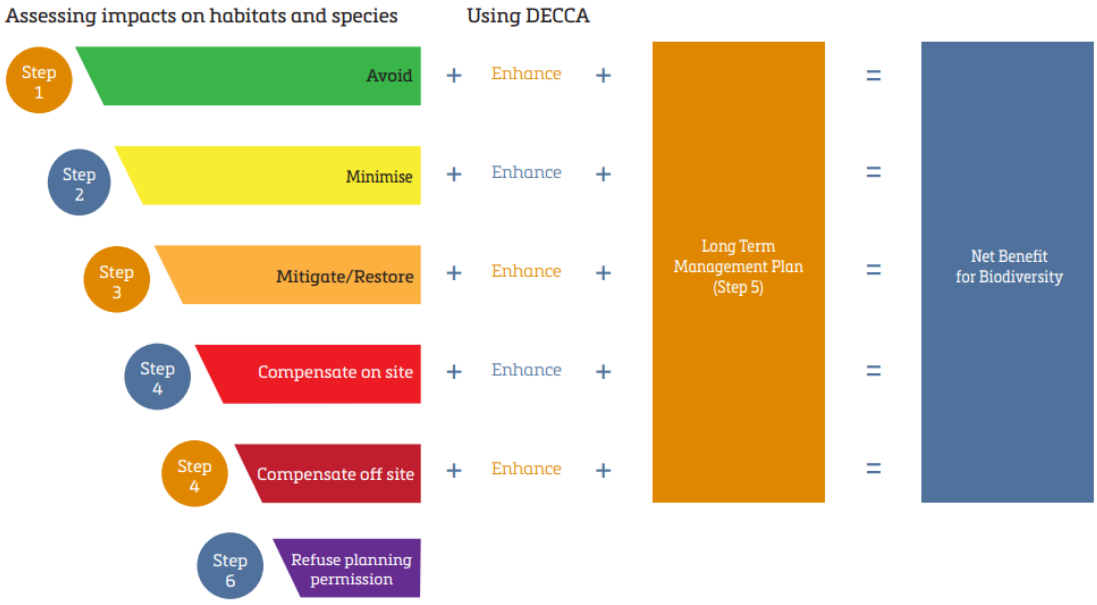
This position underlines the significance that the Welsh Government and this Senedd place on modelling leadership in responding to the nature and climate emergencies. The policies of Wales have long been held up by colleagues in other nations of the UK

[1] https://www.nhm.ac.uk/our-science/services/data/biodiversity-intactness-index.html
[2] https://business.senedd.wales/ieListDocuments.aspx?CId=700&MId=12320&Ver=4

as exemplary. Planning Policy Wales (PPW), reframed to integrate the principles of the Wellbeing of Future Generations Act, exemplifies the mindset that we have come to expect from the Senedd – taking a whole system approach and re-centring on the socio-economic benefits of working with nature. The step wise approach (although by no means perfectly implemented by Local Planning Authorities) ensures a strong position which prioritises avoidance of adverse impacts on biodiversity – regardless of any statutory designation – as a grounding principle.

Planning Policy Wales (edition from 12th Feb 2024) is clear in the value placed to local ecosystems and their retention in development schemes. Para 6.4.11 instructs Planning Authorities to "follow a step-wise approach to maintain and enhance biodiversity, build resilient ecological networks and deliver net benefits for biodiversity by ensuring that any adverse environmental effects are firstly avoided, then minimised, mitigated, and as a last resort compensated for. Enhancement must be secured by delivering a biodiversity benefit primarily on site or immediately adjacent to the site, over and above that required to mitigate or compensate for any negative impact". The text goes on to provide detailed guidance on how the stepwise approach is to be employed by LPAs (see para 6.4.15 and appended to this statement at Annex 2) and clearly illustrated at fig.12 of the document reproduced below.

Figure 12: Summary of the Step-Wise Approach



Whilst it is acknowledged that some impacts are unavoidable, the approach ensures that, where policy is appropriately implemented, all schemes are designed to go beyond mitigation, providing environmental enhancement on or near the site, ensuring the long-term resilience of the affected ecosystem and locality. This ensures direct accountability from the developers and embeds the value of integrating nature into each and every scheme in Wales.

The proposed Planning and Infrastructure Bill is widely acknowledged to be the antithesis of these foundational values. Part three of the Bill introduces *Environmental Delivery Plans* and the *Nature Restoration Levy,* which enables developers to discharge themselves of this accountability by paying into a fund (where this is not proven to be unviable). This has the potential to detrimentally, and irreversibly, impact irreplaceable habitats – such as ancient woodland and chalk streams – and site-specific protected species. Such plans are proposed to be developed with little public scrutiny and relies heavily on Natural England, whilst placing them in the conflicting position of convener and implementer of such schemes. In their assessment, Wildlife and Countryside Link (our sister Link in England), whilst supportive of aligning planning with environmental recovery, have repeatedly urged for significant amendments to the Bill. They suggest that without substantive changes, it lacks the safeguards necessary to meet the UK's legally binding climate and nature commitments. Furthermore, it risks regression of the levels of protection currently offered to nature.

The introduction of a fundamentally different and arguably 'nature negative' approach poses significant risks to the wellbeing of Wales, even if the direct legislative impact is minimal. We are thankfully aware and grateful that there are no current plans to review PPW to align it to the processes of the proposed Bill, or apply Part 3 to Welsh developments, we are deeply concerned about the 'streamlining' of the perception of nature within development schemes and the knock-on effects of belittling nature's importance in the mindsets of developers, financiers and decision makers.

Risk of dilution of key principles in policy and application

We caution that there is considerable risk that the acceptance of such an offsetting scheme in England could create pressure on Welsh planners (and consequently policy

makers) to adopt similar measures. Arguments we foresee are well versed in Local Planning Committees, where Local Development Plans between neighbouring areas become policy aligned regardless of local circumstances, via pressure to prevent any potential for an area to be 'less attractive' to development investment. At the local level, the harm such competition brings is mitigated by the robustness of Wales' existing environmental legislation.

More insidiously, the normalisation of 'payments for offsetting nature' elsewhere runs significant risk of subtly shifting public perception. It risks fostering a belief that environmental damage is an acceptable price to pay for economic growth, and can be easily remedied if the scheme can afford it. This fundamentally misunderstands, and detrimentally misrepresents, the complex, interrelated, interconnected and often irreplaceable nature of our relationship with nature within local ecosystems. It is not acceptable to have rhetoric from decision makers which suggests that nature has more or less value depending on external classifications - nature in place is intrinsically valuable to the ecosystem to which it forms a part, and this includes our own wellbeing. For example, there is a significant correlation between areas experiencing deprivation against all standard measures, and levels of tree cover.

The approach inadvertently promotes the idea that human activity and the natural world are separate domains, where damage in one area can be 'balanced' by improvements elsewhere. The Senedd will know that this is a retrograde step and goes against everything they have been working to address through the Wellbeing of Future Generations Act. Our 'Resilient Wales' goal explicitly outlines that human well-being is inextricably linked to the health of the environment – that we are part of nature, not apart from it. Legislative frameworks that treat nature as a divisible and offsetable commodity threaten to deepen, rather than bridge, the perceived divide between society and the natural world. This divide created the extractive processes which has led to this point of emergency. Wales has been brave in seeking to rectify that. We are asking for bravery again.

Nature does not know boundaries

Ecological systems and environmental impacts do not respect administrative boundaries. The interface between England and Wales is characterised by diverse and ecologically significant landscapes and habitats, many ecosystems, such as river

catchments (e.g. the Wye) estuaries (e.g. Dee and Severn), and unique habits such as (e.g. Fenn's Whixall, and Bettisfield mosses), traverse these administrative boundaries. Consequently, the conservation of these shared natural assets necessitates a coordinated approach. In addition, many species, including some of our most threatened and protected species, are also at risk of diffuse adverse impacts from inappropriate development in England, as reduced habitat connectivity could drastically reduce their range and feeding opportunities. Mobile protected species that move across the border, like bat species that often make use of multiple different roosts or bird species with large ranges, would be at direct risk of harm and disturbance when in England, the effect of which would be felt in Wales.

Annex 1 to this paper identifies the range and extent of designated sites which straddle the England-Wales boundary. It includes the Wye Valley National Landscape, which will be particularly and uniquely impacted by this dualistic approach, given its planning function is exercised within both English and Welsh systems. We await the outcomes of the Cunliffe Review which is currently considering the long-term future of regulation and water company operation in Wales. Amongst other outcomes, we would hope that it will identify long-term regulatory outcomes for cross-border rivers. This Bill is a reminder that rivers do not follow regulatory boundaries.

It is clear that regardless of designation or not, the weakening of environmental safeguards or a shift towards a less stringent mitigation hierarchy across the border has the potential to create or exacerbate environmental pressures in Wales, despite Welsh Government's clear commitment to stringent environmental protection. This is of particular concern given that Wales is already addressing significant challenges in nature recovery and striving to reverse biodiversity loss. The potential for tangible harm to our shared environment, including Welsh ecosystems already under pressure, from development happening across the border is a very real risk.

Senedd Research highlights the CCEI Committee as commenting that halting biodiversity loss by 2030 will be "an extraordinary challenge", even with a supportive legislative framework. Moreover, Audit Wales have identified significant failings across public bodies to fully implement their duties. As part of the Welsh Government's declaration of a nature emergency, Julie James – as then Minister for Climate Change – made a commitment for Welsh Government to respond to the

climate and nature emergency in everything it does. With this principle in mind, we are requesting that Welsh Government:

1. Asserts Wales' distinct and progressive approach to environmental stewardship embedded within the planning system
2. Robustly challenges the principles underpinning the proposed Planning and Infrastructure Bill as
    (a) Contrary to the Sustainable Development Principle upon which its constitutionally founded; and
    (b) Detrimental to the UK meeting its shared obligations to the Kunming-Montreal Global Biodiversity Framework, and its harm to Wales position
3. Proposes the following amendment as part of the Senedd's consideration of the LCM to ensure the conservation and enhancement of designated and non-designated (but ecologically significant sites) within Wales impacted by proposals to allow disposal of Welsh Government Woodland Estate for the purposes renewable energy generation the following amendment is necessary

    Clause 24 after subsection (1) insert
    a. Natural Resources Wales may not use or make arrangements under subsection (1) for land placed at the disposal of Natural Resources Wales by the Welsh Government —
    b. (a) that would directly or indirectly have adverse effects on a site designated under the Environment Act Wales (2016) or the Wildlife and Countryside Act 1981; or
    c. (b) that would directly or indirectly have adverse effects on an irreplaceable habitat such as an ancient woodland or other such habitats identified as locally significant.

Annex 1: Cross Border Designated sites (England & Wales)

Designation type	Site Names
National Landscapes	Wye Valley National Landscape
Special areas of conservation (SAC)	River Wye SAC
Special areas of conservation (SAC)	Dee Estuary / Aber Dyfrdwy SAC

Special areas of conservation (SAC)	Fenn's, Whixall, Bettisfield, Wem and Cadney Mosses SAC
Special areas of conservation (SAC)	Severn Estuary Môr Hafren SAC
Special areas of conservation (SAC)	Bristol Channel Approaches / Dynesfeydd Môr | Hafren SAC
Special Protection Area (SPA)	The Dee Estuary SPA
Special Protection Area (SPA)	Severn Estuary SPA
Special Protection Area (SPA)	Liverpool Bay / Bae Lerpwl SPA
Ramsar Site	The Dee Estuary Ramsar Site
Phase 2 Ramsar Site	Midland Meres and Mosses
Ramsar Site	Severn Estuary Ramsar Site
National Nature Reserve (NNR)	Fenn's, Whixall and Bettisfield Mosses, NNR
National Nature Reserve (NNR)	Lady Park Wood NNR
Special Scientific Interest (SSSI)	Dee Estuary SSSI
Special Scientific Interest (SSSI)	Severn Estuary SSSI
Special Scientific Interest (SSSI)	River Wye SSSI (system)
Special Scientific Interest (SSSI)	Fenn's, Whixall, Bettisfield, Wem & Cadney Moss Complex SSSI
Special Scientific Interest (SSSI)	Upper Wye Gorge SSSI
National Trail	Offas Dyke

Annex 2 – The Step Wise Approach (Planning Policy Wales ed.12 2024, pp.149-151)

6.4.15 The Step-Wise Approach

1a) The first priority for planning authorities is to avoid damage to biodiversity in its widest sense (i.e. the variety of species and habitats and their abundance) and ecosystem functioning. Where there may be harmful environmental effects, planning authorities will need to be satisfied that any reasonable alternative sites (including alternative siting and design options) that would result in less harm, no harm or benefit have been fully considered.

1b) Proposals in statutory designated sites are, as a matter of principle, unacceptable and therefore must be excluded from site searches undertaken by developers. This principle also extends to those sites containing protected species and habitats which are irreplaceable[129] and must be safeguarded. Such sites form the heart of resilient ecological networks and their role and the ecosystem services they provide must be protected, maintained and enhanced and safeguarded from development. It will be wholly exceptional for development to be justifiable in such instances.

2. When all locational, siting and design options for avoiding damage to biodiversity have been exhausted, applicants, in discussion with planning authorities, must seek to minimise the initial impact on biodiversity and ecosystems by:

- maintaining the largest possible area of existing habitat supporting biodiversity and functioning ecosystems, particularly Section 7 habitats and species where present, by minimising development size and appropriate orientation on site, paying due regard to the potential for continued long term maintenance and management of retained areas to benefit biodiversity;
- ensuring that retained habitats continue to be well connected to adjacent habitats to provide connectivity for key species and ensuring that the favourable conservation status of local species populations is maintained;
- retaining existing features, develop a management plan for their future care (e.g., trees, hedgerows, species rich grasslands, heath, wetlands, ponds and freshwater habitats) and use appropriate buffers to protect these from construction and operational impacts; and
- using proven innovative/creative solutions (where required) to minimise damage and maintain existing biodiversity features and ecosystems in tandem with robust monitoring and rectification strategies.

3a) Where, after measures to minimise impact, biodiversity and ecosystems could still be damaged, or lost through residual impacts, the proposed development should mitigate that damage. Mitigation measures must be put in place to limit the negative effects of a development.

[129] Habitats, including the natural resources which underpin them, which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. Examples include, ancient woodland and veteran trees, ancient hedgerows, wet woodlands, sand dunes, peatland, species rich grassland, long undisturbed soils, blanket bog, salt marsh and lowland fen.

3b) Effective mitigation or restoration measures should be incorporated into the design proposal following the consideration of steps one and two above. Mitigation or restoration measures must be designed to address the specific negative effects by repairing damaged habitats and disturbed species. They should seek to restore in excess of like for like, accounting for disturbance and time lags for the recovery of habitat and species, and in every case, mitigation or restoration measures should seek to build ecosystem resilience within the site and where possible the wider area. In some circumstances, where like for like mitigation measures are not possible, particularly in respect of restoration measures, it may be necessary to consider on site compensation measures in the first instance. In designing mitigation measures where uncertainty exists, applicants should follow the precautionary principle and assume a significant effect. Off-site compensation measures (as set out in step four below) should be considered as a last resort.

4. When all the steps above have been exhausted, and where modifications, alternative sites, conditions or obligations are not sufficient to secure biodiversity outcomes further on-site/immediately proximate, as a last resort off-site compensation for unavoidable damage must be provided. This must be of significant magnitude to fully compensate for any loss. In the absence of a planned approach, compensation measures must be guided by place-based evidence and the onus is on applicants to address the following:

a. Off-site compensation should normally take the form of habitat restoration, or habitat creation, or the provision of long-term management agreements to enhance existing habitats and deliver a net benefit for biodiversity. It should also be informed by a full ecological assessment to establish a formal baseline before habitat creation or restoration starts and secured far enough in advance before the loss of biodiversity on site.

b. The Green Infrastructure Assessment should be used to identify suitable locations for securing off-site compensation. Where possible, a landscape–scale approach, focusing on promoting wider ecosystem resilience, should help guide locations for compensation. The Green Infrastructure Assessment should provide a spatial guide to opportunities already identified for securing a net benefit for biodiversity. Using the assessment will help determine whether locations for habitat compensation should be placed close to the development site, or whether new habitat or additional management located further away from the site would best support biodiversity and ecosystem resilience at a wider scale.

c. Where compensation for specific species is being sought, the focus should be on maintaining or enhancing the population of the species within its natural range. This approach might also identify locations for providing species-specific compensation further away from the site. Where they exist, Spatial Species Action Plans should be used to help identify suitable locations.

d. Any proposed compensation should be place based, take account of the Section 6 Duty (Biodiversity and Resilience of Ecosystems Duty), the DECCA framework and appropriate ecological advice from the local authority Ecologist, NRW or a suitably qualified ecologist.

5. Each stage of the step-wise approach must be accompanied by a long term management plan of agreed and appropriate avoidance, minimisation, mitigation/restoration and compensation measures alongside the agreed enhancement measures. The management plan should set out the immediate and on-going management of the site, future monitoring arrangements for all secured measures and it should clearly identify the funding mechanisms in place to meet the management plan objectives. The management plan must set out how a net benefit for biodiversity will be achieved within as short a time as possible and be locally responsive and relevant to local circumstances.

6 Finally, where the adverse effect on biodiversity and ecosystem resilience clearly outweighs other material considerations, the development should be refused.

6.4.16 The following factors will affect the implementation of the above step-wise approach:

- Pre-application surveys, research and data searches by developers will be necessary to establish the baseline state of biodiversity and ecosystem resilience on site taking into account the site's contribution to resilient ecological networks through its diversity, extent, connectivity and condition and the provision of ecosystem services.[130] For householder scale applications, planning authorities should outline expectations regarding information required to accompany an application, recognising that the enhancement measures sought should be proportionate to the scale of the application. Understanding the ecological context of a development will be essential in facilitating/enabling a proportionate response to the significance of any potential impact.
- Potential applicants should not conduct any pre-emptive site clearance works before submitting a planning application as this can make it more difficult for a development proposal to secure a net benefit for biodiversity. Where a site has been cleared prior to development its biodiversity value should be deemed to have been as it was before any site investigations or clearance took place. A net benefit for biodiversity must be achieved from that point. Habitat status can be established through evidence remaining on site and local desk-based assessments (planning authorities must ensure that they have access to these data sources). In such cases, habitat status will be presumed to be good in the absence of any evidence to the contrary.
- All development must deliver a net benefit for biodiversity and ecosystem resilience from the baseline state (proportionate to the scale and nature of the development proposed). Even if the biodiversity value has been maintained, there must still be a pro-active process to look for and secure enhancement through the design and implementation of the development.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

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