# Planning and Infrastructure Bill 2025: Amendments for Lords Committee Stage

## 27 August 2025

As the Planning and Infrastructure Bill progresses through its Committee and Report stages in the House of Lords, our organisation welcomes the opportunity to contribute constructively to the debate. We share the Government's recognition that the planning system plays a crucial role in shaping sustainable communities and delivering the infrastructure the country needs. However, we remain deeply concerned that the Bill – even with the Government's own amendments tabled in late July – risks weakening long-standing environmental safeguards and undermining the UK's commitments to nature recovery, climate resilience and sustainable development.

The Government's amendments, while a step in the right direction, do not adequately address the fundamental shortcomings of the Bill. In their current form, they continue to represent a regression of environmental protections, creating legal uncertainty and threatening to erode hard-won standards that have been vital to safeguarding ecosystems, public health and community wellbeing.

Our proposed amendments are therefore designed to strengthen the Bill, ensuring that it delivers infrastructure in a way that is consistent with the UK's environmental obligations, supports nature-positive planning, and provides clarity and certainty for both developers and communities. They are practical, proportionate, and aligned with the principle that economic growth and environmental stewardship must go hand in hand.

**Amendment 1: Applying the Mitigation Hierarchy to EDPs**

**Clause 57(1) and 57(2), page 93**

Replace Clause 57(1) and 57(2) with the below:

***57. Other requirements for an EDP***

*(1) An EDP must—*

*(a) describe the conservation status of each identified environmental feature as at the EDP start date, and*

*(b) set out conservation measures that have taken all reasonable steps to avoid harm to environmental features first, mitigate harm to environmental features if avoidance of harm is not reasonably practicable, or, as a last resort, compensate for harm to environmental features.*

*(2) An EDP must set out—*

*(a) how the conservation measures have insofar as is reasonably practicable followed the mitigation hierarchy as set out above in clause 57(1)(b),*

*(b) why the conservation measures are considered appropriate, and*

*(c) what alternatives to the conservation measures were considered by Natural England and why they were not included.*

**Explanatory note:** As currently drafted the Bill does not apply the mitigation hierarchy to the conservation measures set out in any EDPs drafted by Natural England (NE). This means that NE is free to write an EDP that favours providing compensation (replacement) habitats for the loss of original protected habitats, even when it might have been perfectly feasible for an EDP to implement measures to safeguard the original protected habitat.

This could occur, for example, if NE is pressured into preferring compensation, due to it having lower cost, even where mitigation would be both feasible at the strategic level and not sufficiently expensive to make development unviable.

**Amendment 2: Ensuring that the 'Overall Improvement' test is real, rather than notional**

**Clause 60(3), page 96**

Replace clause 60(3) with—

*(3) The Secretary of State may make the EDP only if the EDP passes the overall improvement test.*

**Explanatory note:** Existing environmental law is effective because it requires judgement and action to take place in and be cognisant of the 'real world'. For example, the Habitats Regulations require that if an adverse effect on the integrity of an Internationally important site cannot be precluded, then a project causing such an effect may only be consented *inter alia* where there are imperative reasons of overriding public interest.

As currently written however, clause 60(3) makes the new 'overall improvement test' a purely notional test that takes place solely within the mind of the Secretary of State (i.e. the test is passed solely on the basis of whether or not the Secretary of State considers that it is passed – there is no need for her/his opinion to be underpinned by evidence).

In other words, it doesn't matter how contrary to evidence it might be in reality that the Secretary of State 'considers' that the 'overall improvement test' is passed – if she/he nonetheless is of that opinion, then the test is in fact passed.

It is obviously necessary for the Secretary of State to make the judgement as to whether the test is passed, but deleting reference to the Secretary of State's opinion being determinative, as proposed above, means that it becomes clear that the 'overall improvement test' is a test that

exists in the 'real world', and the Secretary of State's judgement must therefore reflect those real world circumstances.

This proposed change to Clause 60(3) (deleting "*the Secretary of State considers that*") therefore gives scope for the Secretary of State's judgement to be challenged in court if it is clearly flawed, unjustified, or runs contrary of the scientific evidence, whereas at present the drafting of the Bill places the Secretary of State's judgement in primacy over any facts or evidence to the contrary.

**Amendment 3: Protection against misuse of Henry VIII Powers**

**Clause 89(2), page 118**

Add onto the end of Clause 89(2)—

*Any such amendments will be subject to the Super Affirmative Procedure in Parliament prior to coming into force*.

**Explanatory note:** As currently drafted, clause 89(2) would grant the Government so-called 'Henry VIII powers' to amend any other Acts of Parliament or assimilated law that it considered appropriate for the purposes of implementing the purpose of Part 3 of the Planning and Infrastructure Bill.

These sweeping powers could lead to executive overreach in that it makes it possible for the Government to potentially make amendments to legislation such as the Wildlife & Countryside Act 1981 (as amended) or the Habitats Regulations, without Parliamentary scrutiny, that go beyond what is required for the purposes of implementing the Bill and which might also have the effect of watering down the safeguards that these pieces of legislation provide for the environment.

Ensuring that any such consequential amendments are subject to the Super Affirmative Procedure means that they would be subject to Parliamentary scrutiny before coming into force.

Note: Given that the provisions of Part 3 of the Planning and Infrastructure Bill were rushed through Parliament using emergency powers, it could be considered that the secondary legislation needed to implement Environmental Delivery Plans and the Nature Restoration Levy should also be subject to the Super Affirmative Procedure.

**Amendment 4: Removal of unintended consequences arising from the potentially unlimited scope for different Environmental Features to be covered by EDPs**

**Clause 55(2), page 91**

Replace Clause 55(2) with—

*An environmental feature identified in an EDP must be—*

*(a) a protected feature of a protected site, or*

*(b) a protected species*

**Explanatory note:** As currently drafted, the text of clause 55(2) says that environmental features identified in an EDP 'may' (but not 'must') be either a protected feature of a protected site, or a protected species.

The word 'may' renders this clause open to unintended abuse as, for example, it might enable Natural England to identify an 'assemblage' of species as the 'environmental feature' covered within an EDP (for example, the entire bat assemblage of a County).

If this was done, then an 'overall improvement' in that feature (the bat assemblage) could be said to occur if (for example) half the species within that assemblage would be expected to benefit, even if one or two of the rarest and most important species within that assemblage might be driven to localised extinction.

In short, as currently drafted the clause risks rare species or those that are more difficult to accommodate being sacrificed, in exchange for benefits being delivered to other species that might be easier to mitigate or compensate for.

This kind of fungibility between species is clearly not the intention behind the drafting of the Bill, so should be removed.

**Amendment 5: Evidence and data requirements**

**Clause 57, page 93**

After Clause 57(2) insert new subsection—

*(X) When Natural England decides to prepare an EDP it must—*

*(a) demonstrate that there is measurable scientific evidence to inform the implementation of conservation measures as part of an EDP which could contribute to a significant environmental improvement in the conservation status of the relevant environmental feature,*

*(b) be able to establish sufficient baseline data on the relevant environmental features to enable an accurate evaluation of the current ecological conditions within the EDP and the environmental impact of development on identified environmental features, and*

*(c) in preparing an EDP, take account of the environmental principles set out in Section 17 of the Environment Act 2021 and publish a statement explaining how it has done so.*

**Explanatory note:** This amendment ensures that Environmental Delivery Plans (EDPs) are grounded in robust, scientific evidence and clear ecological baselines, so that they can genuinely deliver measurable improvements for nature rather than becoming a tick-box exercise.

The Government's proposed amendments only require Natural England to have regard to existing scientific evidence, but are silent on what happens if there is no relevant scientific data/evidence, or if it is inadequate to inform a meaningful judgement. Without requiring Natural England to demonstrate measurable scientific evidence (which could mean collecting new evidence where there is none), there is a risk that EDPs are based on assumptions or insufficient data, leading to ineffective or even counterproductive conservation measures. This

amendment ensures that every EDP has a strong evidential foundation, so interventions are credible and defensible.

To assess whether development has a negative or positive impact, it is essential to know the starting ecological conditions. Without sufficient baseline data, it would be impossible to evaluate whether an EDP is achieving meaningful environmental improvements. This requirement builds transparency, prevents "greenwashing," and allows proper monitoring over time.

The Environment Act 2021 already sets out environmental principles that should guide policy. By requiring Natural England to explicitly consider and publish how these principles have been applied, the amendment strengthens coherence between existing legislation and the Planning and Infrastructure Bill, and provides clarity for developers, regulators, and the public.

This amendment ensures that EDPs are not just well-intentioned statements, but practical, evidence-based plans that can withstand scrutiny and deliver genuine, measurable environmental benefits.

**Amendment 6: Liability for delivering the intended outcomes of EDPs**

**Clause 71(1), page 104**

Replace Clause 71(1) with—

*Nature restoration levy regulations must require Natural England to spend money received by virtue of the nature restoration levy on conservation measures that relate to the environmental feature in relation to which the levy is charged (see section 56(2)) and to use reasonable endeavours to ensure that the agreed conservation measures and the intended outcomes of the EDP are, either directly or indirectly, delivered*.

**Explanatory note:** As currently drafted, the Planning and Infrastructure Bill limits Natural England's role under the nature restoration levy to spending funds and monitoring Environmental Delivery Plans (EDPs). There is no explicit duty to ensure that the money collected actually results in meaningful ecological improvements on the ground. This creates a gap between inputs (funds spent) and outcomes (habitats restored, species supported, ecosystems improved).

Without this amendment, the system risks becoming a tick-box exercise where funds are technically allocated but nature is left no better off. For example, Natural England or a contractor could meet their legal obligation as currently enshrined in the draft Bill (i.e. to 'spend money') simply by purchasing equipment such as bat boxes, but if those items were never installed or properly maintained, the intended ecological benefit would never materialise.

This amendment strengthens accountability by requiring Natural England to use reasonable endeavours to ensure that agreed conservation measures and outcomes under an EDP are actually delivered. Importantly, the amendment recognises that Natural England may not deliver works itself, but may rely on contractors, landowners or other delivery partners. The obligation is therefore framed proportionately: it is not an absolute guarantee of success in every case, but a clear statutory responsibility to ensure delivery is actively pursued rather than passively assumed.

**Amendment 7: Exclusion of Irreplaceable Habitats**

**Clause 55, page 92**

After Clause 55(2) add two new subsections—

*(X1) An environmental feature identified in an EDP must not be—*

*(a) an irreplaceable habitat*

*(b) ecologically linked to an irreplaceable habitat to the extent that development affecting that feature would cause damage or degradation to an irreplaceable habitat.*

*(X2) For the purposes of this section, "irreplaceable habitat" means—*

*(a) a habitat included in the Biodiversity Gain Requirements (irreplaceable habitat) Regulations 2024; or*

*(b) an ecologically important habitat that would be prohibitively difficult or impossible to restore, create or replace within a reasonable timescale.*

**Explanatory note:** This amendment would clarify that an Environmental Delivery Plan cannot be created for irreplaceable habitats and would maintain existing rules and processes for their protection, including under the National Planning Policy Framework.

**Amendment 8: Ensuring the viability of Irreplaceable Habitats through Buffer Zones**

**Clause 57(2), page 93**

Under Clause 57(2)(b) add a further subsection—

*(c) implementation of appropriate buffer zones around identified irreplaceable habitats are in place to ensure these are not harmed during development.*

**Explanatory note:** Buffer zones are essential to protect irreplaceable habitats from the indirect but serious harms caused by nearby development. While a development may not remove or directly damage a habitat at its boundary, proximity can still lead to long-term degradation through pollution, soil compaction, changes in water flow, light and noise disturbance, and damage to roots or surrounding ecological processes. By requiring appropriate buffer zones, the Bill will safeguard the integrity and resilience of these habitats, ensuring they continue to function as part of a wider ecological network. This measure is a precautionary safeguard, recognising that once such habitats are damaged, they cannot be recreated.