

## County Council – 8 July 2025

### Item 7 – Notice of Motion by Councillor Taylor

#### Planning and Infrastructure Bill (PIB) and the natural environment

##### 1. Introduction

1.1 This briefing summarises:

- Part 3 of the PIB relating to nature restoration;
- the potential implications of the PIB on nature as currently drafted; and
- the environmental features present in East Sussex that could be impacted by Part 3 of the PIB.

##### 2. The Planning and Infrastructure Bill

2.1 The PIB is intended to speed up and streamline the delivery of new homes and critical infrastructure and seeks to introduce a more strategic approach to nature recovery in relation to development. The Bill was laid before Parliament on 11/03/25 under urgent measures with Government aiming for Royal Assent by the summer. Part 3 of the PIB relates to Nature Restoration.

2.2 On Bill introduction, the Secretary of State for Housing confirmed via a statement under section 20(3) of the Environment Act that the Bill would not have the effect of reducing the level of environmental protection of existing environmental law.

2.3 In summary, Part 3 of the Bill would enable the creation of Environmental Delivery Plans (EDPs) that could disapply any element (“environmental feature”) of the Wildlife and Countryside Act, the Conservation of Habitats and Species Regulations (the “Habitats Regulations”) and/or the Protection of Badgers Act, provided that the Housing Secretary is persuaded that the mitigation and enhancement measures set out in an EDP would be “likely” to enhance the “environmental feature” in question by the end of the EDP (10 years). In exchange, developers will pay into a new Nature Restoration Fund (NRF) that Natural England (NE) will be tasked to discharge to enhance the “environmental feature(s)” that is/are disapplied.

2.4 The core principles behind the PIB are to identify environmental challenges such as nutrient neutrality (not currently an issue in East Sussex) early and address them proactively through state-led intervention. However, there is a widespread view amongst environmental organisations that Part 3 of the Bill requires significant amendments to ensure existing legal protections for the environment are not reduced.

2.5 The Office for Environmental Protection (OEP), Government’s advisor on the environment, has provided [advice to the Government](#) stating “*In our considered view, the bill would have the effect of reducing the level of environmental protection provided for by existing environmental law. As drafted, the provisions are a regression.*” Two particular concerns raised by the OEP are: a) as currently drafted, the ‘overall improvement test’ for adopting EDPs would allow considerably more subjectivity and uncertainty in decision-making than under existing environmental law; and b) allowing conservation measures to be located away from the protected sites affected by the development could undermine the protected sites network and affect the Government’s legally binding biodiversity targets and objectives. To date, three legal opinions have reached the same conclusion that Part 3 of the Bill is regressive.

### **3. Environmental Features in East Sussex**

3.1 If a request by a developer to use an EDP is accepted by NE, payment of the levy results in the environmental impact of the development being disregarded for the purposes of obligations under the Habitats Regulations or Wildlife and Countryside Act. In relation to protected species, payment of the levy results in the developer being treated as having been granted a licence under relevant legislation, i.e. the Habitats Regulations, the Wildlife and Countryside Act or the Protection of Badgers Act. The following provides a summary of the designated sites and protected species present in East Sussex and the protection afforded to them under existing environmental law, which could be disregarded under the PIB as currently drafted.

3.2 Sites of Special Scientific Interest (SSSIs) are designated under the Wildlife and Countryside Act 1981, as amended, where they support habitats and/or species of national importance, and represent our best sites for wildlife and geology. There are 65 SSSIs in East Sussex. Within these nationally important areas, some are additionally designated as National Nature Reserves (NNR). NNRs were established to protect some of our most important habitats, species and geology and are considered to be the 'jewel in the crown' of our SSSIs. There are four NNRs in East Sussex (Castle Hill, Mount Caburn (Lewes Downs), Lullington Heath and Pevensey Levels).

3.3 The Wildlife and Countryside Act and National Planning Policy Framework require that development should avoid impacts on SSSIs. NE has to be consulted and local planning authorities have to take any advice received from NE into account in deciding whether or not to grant planning permission for any development proposal likely to damage the features of a SSSI, and in deciding what (if any) conditions are to be attached to the planning permission.

3.4 Some SSSIs receive additional protection under the Habitats Regulations where they are internationally important for habitats and species (Special Areas of Conservation/SACs), birds (Special Protection Areas/SPAs) or wetlands (Ramsar sites). These international designations often cover different interest features to the underlying SSSIs. Within East Sussex there are six SACs (Ashdown Forest, Castle Hill, Dungeness, Hastings Cliffs, Lewes Downs and Pevensey Levels), two SPAs (Ashdown Forest and Dungeness, Romney Marsh and Rye Bay) and two Ramsar sites (Pevensey Levels and Dungeness, Romney Marsh and Rye Bay). Collectively, these sites are referred to as Habitat Sites.

3.5 For Habitat Sites, a local planning authority may adopt a Local Plan or grant planning permission for any development proposals likely to have a significant effect on a Habitat Site only after having ascertained that it will not adversely affect the integrity of the site. Local Plan adoption or planning permission may be given if there are no alternative solutions and imperative reasons of overriding public interest, which is a rare occurrence. In this case, compensation must be provided for impacts.

3.6 All species of bat (15/18 UK species are found in East Sussex), great crested newt, hazel dormouse, otter, cetaceans (whales, dolphins and porpoises), some plants (including floating water plantain and early gentian) and lesser whirlpool ram's-horn snail are European Protected Species (EPS) found in East Sussex. These species receive full protection under the Habitats Regulations. Licences can be issued to permit otherwise prohibited action under the legislation providing three licensing tests are met (the 'purpose test' such as imperative reasons for overriding public interest, the 'no satisfactory alternative test' and the 'favourable conservation status' test). The impacts of licensed works must be mitigated for accordingly to ensure that the action authorised will not be detrimental to maintaining the populations of the species concerned in their natural range.

3.7 Many species of plants and animals are legally protected against harm and/or disturbance under the Wildlife and Countryside Act. Legally protected species in East Sussex (some of which may also be EPS) which are most often encountered through the planning process include reptiles, breeding birds and water vole. The presence of legally protected species and the extent to which they could be impacted is a material consideration in the determination of planning applications. Appropriate mitigation must be secured.

3.8 Under the Protection of Badgers Act, it is an offence to kill, injure or take a badger, or to damage or interfere with a sett unless a licence is obtained from NE. Where possible, development proposals should avoid negative effects on badgers. Where this is not possible, the developer will need to include adequate mitigation or, as a last resort, compensation measures in their proposals.

#### **4. Conclusion**

4.1 It is considered likely that as drafted, Part 3 of the PIB will reduce the level of environment protection currently afforded to designated sites and protected species. The consensus of experts in the sector is that Part 3 either requires significant amendments or should be withdrawn to allow for more in-depth consideration.

### **Background information**

The Bill has been through the House of Commons and is now in the Committee Stage in the House of Lords. Details are available at: [Planning and Infrastructure Bill - Parliamentary Bills - UK Parliament](#)

The Local Government Association issued the following response on 24 March 2025 [-Planning and Infrastructure Bill, Second Reading, House of Commons, Monday 24 March 2025: LGA response | Local Government Association](#)