



arbtech

Initial Reaction: MHCLG Working Paper

These are merely a collection of thoughts pertaining to proposed changes to species and habitats mitigation provided by Robert Oates. All views are my own.

A separate, full and official response from Arbtech will be submitted to MHCLG and DEFRA next week, which I will also publish online.

a) Do you consider this approach would be likely to provide tangible improvements to the developer experience while supporting nature recovery?

This is the wrong question to ask, but before I get to why and what to do about that, I will attempt to answer it.

This morning, I responded personally to a troubled client who had emailed me a letter from an LPA that read as follows:

The application is still being treated as invalid. In order to rectify the situation I would be grateful if you could supply me with the following:

- 1) *The BNG Report states that credits will be purchased from a third party provider. Please provide details of the chosen provider along with their registration reference number from Natural Englands BNG register [sic]*

*Please submit any additional required documents to **Redacted** or by post to the address below.*

Upon receipt of the above your application will be given full consideration. If, however, I do not hear from you within the course of the next two weeks, it is my intention to dispose of your documentation and return your fee, where applicable, without prejudice to the submission of a further application

My issues with this letter are not simply a); two weeks from the 20th of December is not a realistic amount of time to obtain a variety of competitive quotes for BNG units, select and then reserve those units by organising and executing some form of option contract, and then provide those details to the LPA; or that the language is poorly chosen (given that it is technical in nature; there is a difference between credits and units¹).

My primary issue is the misapplication of DEFRA guidance resulting in a demand

¹ **Credits** available from the Secretary of State are a compensatory measure built into BNG that maintains off-site gain optionality for developers that cannot source the right quantum and category of **units** from those available in private markets i.e., the desired units are simply unavailable in the same NCA and/or the spatial multiplier would annul the site economically, or at least make the units obtainable only at an unreasonable expense.

placed upon the applicant that produced an avoidable delay. Notably, this delay was not because of BNG ('small site' or otherwise), or deficiencies in the report of a consultant ecologist, or the government, or the previous government. The root cause was a simple lack of training the LPA ecology consultee (with whom I have sympathy – it's a lot to get used to on top of their daily grind).

Nevertheless, completing the metric and a [Biodiversity Gain Plan](#) by apportioning off-site units to deliver 10% net gain is a pre-commencement matter, not one of pre-determination. That is, "*No works shall commence blah blah until a Biodiversity Gain Plan has been submitted blah blah*" should have been a condition of planning consent; not a reason to refuse to validate the application.

Don't believe me? I extract below from DEFRA's guidance for BNG (May 2024).

*Once planning permission has been granted, unless exempt, a Biodiversity Gain Plan must be submitted and approved prior to the commencement of that development. **This Plan is the mechanism to ensure that the biodiversity gain objective is met and in particular:***

- *the post-development biodiversity value of the development's onsite habitat is accurate based on the approved plans and drawings for the development;*
- **any offsite biodiversity gains have been registered and allocated to the development;** and
- *biodiversity credits, if they are necessary for the development, have been purchased.*

(Source: [Gov.uk](#))

Nota bene the section in bold. Validation is not the mechanism. Citing a few facts copied and pasted from the register is not the mechanism². The mechanism is the Biodiversity Gain Plan. The point the LPA consultee missed is that the decision notice is required to be able to allocate from the register, and without the register details, the applicant was being denied validation let alone a consented decision notice.

The circularity of the problems faced by developers are not isolated to my n=1 example. Regrettably, innocent (or not) of the Caesar-like power in local authority planning departments aren't limited to BNG.

Every year, LPAs officers increasingly can't (or won't) make a decision without towering stacks of confirmation that [insert ecological receptor] is or is not being impacted upon. Compounding that, year after year, new guidance is introduced or re-written,

² Not least because there is no guarantee of those same units being available by the time the application is consented or an appeal is upheld, without an option contract that expires over say, three years, which is prohibitively expensive and unreasonable.

with an overweight representation in the ecology sector from volunteer and charitable interest groups that are unsurprisingly biased by the lenses through which they view the world. This inexorable ratcheting up of the effort required to even get an application consented has in my view, reached a tipping point.

Assessments that could so easily be conditioned are forced to be submitted, belt-and-braces, pre-determination, which in turn produces delays³ because of seasonality. ‘Gold standard’ survey designs are themselves the creation of a tiny minority of people, usually behind closed doors, where (bafflingly for a sector that wants to be treated like a profession) hearsay gleaned from invite-only Facebook groups remains the best source of information for emerging standards and best practice. Further, once enshrined, these guidance standards are difficult to dissect and justify nonconformity to, because of a complete dearth of scientific literature⁴ delineating their benchmarks; despite enormous anecdotal evidence that frequently frames the ‘gold standard’ as somewhere on a continuum between vaguely wrong and complete bullshit.

The time has come to drain the swamp.

For this reason, I welcome the working paper’s ambition to streamline species and habitats mitigation⁵ in order to accelerate the rate at which consents can be obtained without a); any decrement in biodiversity outcomes and/or, b); the risk of day one failure because LPA officers aren’t given the resources and tools (see; BNG example above).

However, I take the position that the best strategy to achieve this is not to make wholesale changes to public and private market services, resurrect or form new branches of Government, and introducing a new tax to fund it all (a levy is a tax), especially absent convincing, objective evidence that this is the best possible course of action. This is particularly true in the context of planning, for several reasons:

Reason 1

More consents do not mean more houses. There’s no silver bullet here, and if you rank order the problems with housing delivery by magnitude of effect you probably end up with a descending list of a hundred things that has “planning system” written

³ To say nothing of the cost of capital that erodes returns (more realistically, pushes up prices to maintain margins).

⁴ Last time I checked, British bats do not use Google Calendar to remind themselves to hide away on the 31st of August at midnight. Yet regardless perfectly fine survey design and meteorological conditions, if an ecologist dares to do this three weeks into September, it’s dubbed sub-optimal and thus risks rebuttal.

⁵ That says mitigation, not protection.

somewhere near the bottom. If you then take planning and do the same exercise, I doubt very much that “species and habitats mitigation” makes the top ten. If you’re looking for the 97-99th percentile issues in net new housing supply, they probably include:

- Undercounted building costs. ([Vistry has issued three profit warnings in three months](#), wiping £180m off its guidance; and worse, it’s increasingly common to speak to SME developers where quotes to build out sites come in higher than the expected GDV!);
- Raging inflation for the last few years (see appendix); and
- And interest rates that make life harder for ~~first-time buyers~~ just about anyone that isn’t downsizing.

Reason 2

Notwithstanding the [recent FT article](#) establishing that we don’t really have a clue how many houses we are building, [recent ONS figures](#) suggest that 231,000 homes were built in 2023. If that is anything like accurate, I don’t think it is a wild assumption to make that completions must nearly double by 2026 for the government to keep its promise to build 1.5m homes by the end of this Parliament. That being the case, either FTSE builders need to consolidate even further to achieve the enormous scale necessary to keep control of costs while increasing new completions annually every year for the next four years, or, a huge resurgence in SME development is being banked upon.

SME developers tend to build out consents on smaller sites. This statement might seem superfluous, but it is actually a very practical consideration in the context of responding to the working paper’s concept of a tax on completions (howsoever that is achieved).

Presently, SME developers are getting to grips with BNG. There’s a lot of complaining on various social media platforms about how “it doesn’t work” and the government “isn’t listening”, but the reality is, it does work. The world (mostly) works in normal distributions and consequently some small percent of total sites will be absurdly expensive to develop due to their unique constraints⁶. BNG is the new normal. Move on

⁶ What you don’t hear about on social media is the non-respondent data; those equal and opposite number of applications where BNG was a breeze, and an infinitesimally fractional cost. Because of Arbtech’s scale, for every site that I see plastered on LinkedIn with someone pointing and shouting that BNG doesn’t work and it’s killing SME developer sites, I reckon I can point to ten (or 50 maybe?) that caused no delay and a nominal incremental cost. Maybe you don’t agree, but to capture the benefits of BNG across England, those ratios work for me.

and stop complaining about it is the advice I give to most people. The real-world application of that advice is, “build BNG into your site appraisals and... job done.” You’ll avoid that tiny fraction of sites that are not viable, which *de facto* eliminates any associated delays and cost.

However, what is not clear to me at all is how the average SME developer will feel – bearing in mind that in the last four years inflation, commercial finance, SDLT and BNG have increased costs, to say nothing of LDPs adoption and four NPPFs in three years) about now being taxed to fund a state-run, off-site species mitigation programme that is riotously disproportionate to the risk that most SME developer sites present.

Most⁷ SME developer sites trigger some sort of preliminary ecological assessment (“PEA”). Within that, if animals or evidence of their recent activity are absent, ecologists build a picture of what sort of species the site could support and make recommendations for further survey where appropriate⁸.

Rarely does a small site trigger more than one species assessment, and rarer still does it trigger mitigation under licence. We do thousands of PEA-like surveys and write a few hundred licences a year. What that data tells me is nuanced (receptor specific), but can be summarised as follows:

1. Baselines don’t delay anything, and the cost is fractional relative to GDV. It’s even more fractional when you factor in that BNG assessments will still need to be done. If an ecologist has to visit site to conduct a habitat condition assessment for BNG, having a quick scout about for species-specific triggers isn’t an oppressively incremental demand.
 - a. For SME/developer: fractional cost above baseline BNG work
 - b. For government/LPA: useful data (could for some species form the basis of a levy in the way that the district licencing scheme does for newts)
 - c. For biodiversity: remarkably high predictability to reduce the risk of harm
 - d. Overall, PEAs deliver a high ROI in respect to determining applications

⁷ We studied a sample of *ca.* 12k planning applications scraped from the public domain in 2024 and found a propensity to require a PEA or similar was about 0.15* the total number of applications. This figure rises to between 0.45* and 1.0* for larger and rural sites for housebuilding. However, the *mean site value* (cost of PEA-like survey, phase II surveys and licencing) was only £2k.

⁸ What qualifies as appropriate is subjective if better data (evidence of animal activity) isn’t available. Common thresholds that act as triggers for what is cringeworthy termed “potential” in the sector, but is more accurately described (by Arbtechers who wield the p-word at their peril) as “an unacceptable risk of harm” are, you guessed it, determined by best practice guidelines. Guidelines that are written by volunteer interest groups predisposed to protecting a single species as opposed to the ‘whole’. Interest groups that are run by a small number of individuals who in the aggregate of their careers probably have touchpoints with a single digit percentage of the number of sites Arbtech alone has done in the last year. Individuals that think private Facebook groups are the best forum to deliberate upon substantial and often calamitous changes to gold standard guidance.

2. While still fractional relative to GDV, a decent chunk of seasonally constricted phase II work provided limited utility relative to the delay; outside of spring/summer these surveys can result in months of delays to the process of validating or determining applications.
 - a. For SME/developer: significant cost above mandatory BNG work which would be more palatable if a consent was forthcoming
 - b. For government/LPA: exercises duty under Habitat Regs but asking for this pre-determination adds to workload for little benefit as compared to a condition of consent, all other things being equal
 - c. For biodiversity: very high predictability to reduce the risk of harm
 - d. Overall, phase II surveys deliver a much lower ROI than PEA in respect to determining applications

If all⁹ survey work was replaced with a levy, there would be no way to know what the levy needed to pay for. Just bats? Bats and newts? Reptiles and badgers? Water voles and barn owls? All of them? Or none of them? And therein lies the issue with a tax replacing the fractional cost of a PEA: I would hazard a guess that the one thing an SME developer wants even less than to pay for a PEA¹⁰, is to pay for a tax for a whole bunch of mixed species mitigation off site that might not be remotely proportionate or at all necessary.

Finally, on the subject of SME developers and their representation: In 2024, Arbtech did over 12,000 surveys and assessments around the UK. Read that again, because you missed it. Twelve. Thousand. If I had to guess, fewer than 2% of those assessments were for FTSE-listed and other volume housebuilders. So, across the board our dataset, if not the most robust and valuable in the industry is definitely one of them. Certainly, it beats the pants off any multi-disciplinary consultancy that works on a handful of mega-projects and isn't really in touch with the 'day-to-day' in the planning and development sector, let alone housing delivery via SME developers. I say this because multi-disciplinary consultancies with thousands of employees (yet few ecologists) have historically tended to be overrepresented when previous governments have consulted the private sector. Perhaps someone in government would like to take a look at this, or help us analyse and present it, so counter-balance SME developer representation going forward?

⁹ I don't hold the opinion that all species can be mitigated for in the way a district licence operates (or similar), but what follows is working on the assumption I am wrong.

¹⁰ That often as not tells them nothing is present (the risk of harm is acceptably low), or that only one species presents triggers for further survey.

Reason 3

There are (many) much lighter touch, much quicker, and much less costly things the government could do that will rationalise the planning process so as to exclude ecology in all but the most exceptional cases as a rate limiting factor for housing delivery. Much more on this later.

But, as I opened my response with, these are not the right questions to ask. At least, not yet.

The right questions to ask, in exactly this order, were:

“What is the low hanging fruit here?”

- A) Probably using the s.113 of the Environment Act or the forthcoming Planning Bill to amend the Habitats Regulations¹¹, facilitating a lot of low-risk sites to be dealt with by way of a “super-PEA” for BNG, habitats and species mitigation, and the balance of outcomes through conditions of planning consent. I would argue that the rarest and most vulnerable habitats and species would still require seasonally constrained surveys pre-determination, and a licence. But, I would also argue that most such conditions of consent could be dealt with by way of a joined up ‘landscape and ecology mitigation and enhancements plan’ (catchy, right!) that would dovetail beautifully with biodiversity net gain plan (in time, they might become one document). This way, every developer at every scale could get a super-PEA survey done and know to a certainty that they will get planning consent on that basis. Speaking frankly, I’m not sure what else is necessary given the objectives in the working paper were to speed the delivery of planning consents (and reduce costs). Any objections or concerns from the interested public or LPA consultees could be bult into the conditions of consent¹².

“Who are the protagonists within or adjacent to the planning process that don’t share the common goal of the government, developers and professional ecologists in both the private and public sectors (to build more homes and deliver better outcomes for nature)?”

¹¹ That we are now in a post-Brexit Britain, it makes little sense to have European derived legislation govern our species and habitats mitigation.

¹² Perhaps, at the risk of obfuscating my point, the developer could then elect for themselves to pay a levy (which would be calculated based upon the “red flags” for risk of harm to species in the super-baseline, or discharge the conditioning of consent via surveys and/or a landscape and ecology mitigation and enhancements plan? If developers get to choose, they certainly have less to complain about!

- A) – Small groups of gatekeeping, protectionists embedded deep in trade organisations and charities that sit around the periphery of ecological consultancy but don't contribute meaningfully to outcomes other than to constantly ratchet up the cost and effort involved in getting anything done. The government could take a view whether it dilutes their influence going forwards by producing its own advice.¹³

“In respect to species and habitats mitigation, what evidence is available to support or invalidate, a); how it is done now, and b); how we propose to do it?”

- A) – Hundreds of thousands of ecology reports, perhaps a million or more, that are data rich but presently unexploited. It would also take very little time to mandate that certain data from ecology assessments must be submitted in 2025 and 2026 (giving two years of data) to the government or an organisation managing that data on behalf of the government (Arbtech!) to allow for rapid decision making to be rolled out in 2026 and beyond.

“How do we get this broadly correct so that we don't end up with an enormous amount of effort spent being precisely wrong?”

- A) – Objectives > Study Design & Data > Strategy > Tactics

The broad **objective** of the working paper is to reduce barriers to planning consents caused by ecology without any decrement in biodiversity protection outcomes, nationally.

To decide how to achieve that objective that broad, you need to design a **study** and collate and process **data**. The results of the study (which may have several trials and pilots within it) will act like a map and compass. However, that the objective is national and the instrument would be an Act of Parliament, the study needs to be very robust and the data set large, longitudinal, and reliable.

The (proposed) **strategy** is to take a district licencing/BNG style approach to species mitigation.

The **tactics**, which are what I would describe are the working paper's main themes, are the various methods employed that all actors (LPAs, consultants,

¹³ To take this a step further, the advice and any updates should be consulted on a periodic basis and any such changes are only made on the basis of meticulous, persuasive data.

developers, government, Natural England, etc) will use to operationalise the strategy.

Sun Tzu wrote, “Tactics without strategy are the noise before defeat”, or words to similar effect. The working paper refers to ‘strategies’, but they seem deficient and even intractable to those of us in the ecology sector (public and private), absent a robust study designed to parse out, “in what circumstances might [insert strategy] be appropriate?” and more importantly, “when it would [insert tactics] do more harm than good?”

Let’s look at an example that we can easily conceptualise, and not complicate matters by nearly guaranteeing that a substantial fraction of people reading this will react with raging cognitive dissonance because they read the word “newt”. I’m going to go with barn owls. Unless the legal protection around barn owls is reduced, what should a developer do in the following scenario? Let’s say our developer has paid the levy (instead of doing a survey and then obtaining a licence) and finds an active barn owl roost on site at the worst possible time, immediately before demolition. Should she, a); stop¹⁴, b); carry on regardless, or c); something else? As you can see, it’s frustrating difficult to answer questions like that without the answer lacking substance because there is no expedient data on deliberate roost disruption and barn owl dispersal.

But there is *some* data. The volume of data Arbtech’s possession is enormous. In the public domain it is even bigger. However, again, there isn’t any sensible aggregation of this to enable strategies to be developed without them being insufficient in one or many ways, and therefore difficult to convince people of their value (the only measured for which, is how well they satisfy the original objective).

One solution is Arbtech. We are recruiting now for full-stack AI developers to help us build a variety of platforms to increase efficacy across the business. One of these tools will scrape our own systems and then the public domain, to aggregate vast data that can then be analysed¹⁵, to arrive at accurate and reliable propensities for species presence/probable-absence (or to determine the type of levy and price). To make this easier going forward, one very costless and simple tactic the government could employ, for example, would be to

¹⁴ And do what exactly? If the answer is “stop, and get a licence” then the working paper’s argument about streamlining unconvincing at best, and reads more like a method of imposing yet another tax on what is already the most economically extractive activity in the UK; developing lands into buildings.

¹⁵ E.g. geography * site type and size * species * habitat quality * proximate landscape * you name it.

introduce a mandatory results table in an appendix to all ecology reports submitted with planning applications, highlighting 'Red Flags' for risk of harm to various species. This should be in a strictly controlled format so that in future the aggregation of ever more data becomes less resource intensive and could be used to drive better policy decisions, faster.

For all these reasons, I am of the firm belief that barring the simple, quickly implemented and relatively costless suggestions I have set out above, any attempt at a major intervention to habitats and species mitigation without an appropriate study of data to first inform the strategy and then operationalise that into discrete tactics would be reckless.

b) Which environmental obligations do you think are most suited to this proposed model and at what geographic scale?

For an intervention to receive substantial support from relevant stakeholders, it must be grounded in a theory.

Theory is a term used quite loosely in everyday language, but in science it has a very specific meaning: it is the most comprehensive and best demonstrated explanation as to the effect of one thing (the dependent variable) upon a change in one or more other things (independent variables). In other words, a strong theory is powerfully predictive.

In this way, theories are remarkably similar to common sense: they are both the product of empiricism. This means they are testable through observation and importantly, falsifiable if new, contrarian data appears.

The possibility of new, contrarian data arising is extremely pertinent to the question I am attempting to answer: We simply don't have the understanding to be delivering off-site species mitigation on a massive scale that could very well turn out some time later (too late) to have been directionless, or outright detrimental to the goal of supporting nature recovery.

I am therefore advocating for rigorous empirical support¹⁶ in order to form a comprehensive theory that delineates between those species and habitats can be displaced in the way the proposed model describes and those that cannot.

¹⁶ Evidence that is reliable (reproducible) and valid (measures what it should measure, and not something else).

The time, energy, cost and political capital that must be spent to amend legislation; to form new government departments; to devise a system to tax developers; and then to procure nature recovery on their behalf, is extraordinary¹⁷. To run the risk of having to reverse course or issue an endless series of retreating guidance updates a year or two into the intervention would be imprudent. I also posit that this would further harm SME developer confidence and thus be counterproductive to the goal of housing delivery.

In summary, the answer to the question (at least in respect to species mitigation) is: None of them, at any scale, unless it forms part of a well-designed study that can help inform a theory.

c) How if at all could the process of developing a Delivery Plan be improved to ensure confidence that they will deliver the necessary outcomes?

“Confidence” is an interesting choice of noun.

Confidence is derived from a reduction in uncertainty.

Uncertainty can be reduced *apriori* but is more robustly achieved through empirical data.

At the risk of sounding like a broken record, there is nothing at all about this working paper’s proposals that remotely compensates for/has intrinsic logic that is commensurately powerful so as to replace the stack of undeniable proof that is data, resulting from a well-designed study.

TL;DR

Answered in response to (a) and (b).

d) Are there any additional specific safeguards you would want to see to ensure environmental protections and / or a streamlined developer experience?

Turning this question on its head. What if there are already too many safeguards?

The mitigation licensing system for various protected species could be radically improved without resorting to a tax to fund a wholesale district licence scheme that is

¹⁷ Especially when you think back to the big list of things that speeds up housing delivery, rank ordered by magnitude of effect.

unlikely (on the best available evidence) to be suitable for a variety of species, including but not limited to e.g. bats and rare reptiles (list is not exhaustive).

Natural England's mitigation licensing team is chronically underfunded. Part of the delays caused by the licensing process is the time it takes to get a decision from Natural England, especially during or just after summer (peak season).

Ideal solutions¹⁸ to this problem should be scalable, relatively quick to implement, cost the government little or nothing, and not create highly skilled, labour-market shortages that will cause spikes wage inflation and thus knowledge work (consultancy) costs.

Immediate and obvious options include:

- i. Charge more money to process applications (and hire more staff).
- ii. Offer a paid, pre-app and/or fast track service and charge a premium (and hire more staff).
- iii. Enable the licencing process to run concurrently with the planning process instead of in series.
- iv. Create a private market. Offer consultants (that prepare mitigation licence applications) the ability to assess them¹⁹. There are very simple firewalls that could be put in place to avoid anyone marking their own work (if you work on the planning application, you can't consult on the LPA response; if you write the licence, you can't assess it, etc).
- v. Enable creative, experimental²⁰ approaches to mitigation to be trialled and perhaps even part-funded (and collect the data).
- vi. Publish standard guidance for the most common mitigation situations to avoid any delays in the preparation, application, assessment and licencing process.
- vii. Remove the arbitrary period that someone must hold a licence before they can author applications or undertake licenced work. (It's two to three years, and there is no logic or justification for a minimum period if the requisite experience²¹ has been gained).

¹⁸ Ideal solutions should be what Jeff Bezos refers to as "two-way doors." That is, you can take action on a decision and reverse it with relative ease. Changing legislation and re-writing the script for how species mitigation is done in the UK with little or no evidence is a one-way door. You can reverse it, but

¹⁹ London Borough of Greenwich is a client of Arbtech. I devised a system that allows applicants eager to get a decision to have one rapidly. LBG get a quote from us, send it to the applicant (who approves it and pays us directly), and we provide the feedback on their application and incumbent ecologist's work to LBG. We'd love to do this with more LPAs, and Natural England.

²⁰ Something that is both novel and useful.

²¹ A single of Arbtech's senior ecologists obtains around **200** bat licences every year for our clients. I've yet to meet anyone outside of our business claiming to do more than 20, and most write fewer than five. Each year, this ecologist is **40Xing** the average, and that accumulated experience-advantage is compounding every year. She is by a long, long way, the most experienced licence-holder in the UK. Yet, when she provided a reference this year for a junior colleague to get the most basic of licences, before we

- viii. Redesign the mitigation licence application document suite so that AI can do the bulk of the assessment process.
- ix. Insist on post-development monitoring so that real-time data can inform updates to policy and standing advice.²²
- x. Ensure that archives of mitigation licences and post-development monitoring are organised so that AI can: create theories; predict the likelihood of a proposed mitigation's success; suggest new mitigation techniques that are evidenced (data-led) but presently unexplored; identify networks of connectivity so that site-specific mitigation is in some useful way proximate to large networks of other, richer habitats (list is not exhaustive).
- xi. Put an end to ecologists having to do (literally) years of voluntary work for gatekeeping organisations and set up a for-profit training programme that supports ecologists to gain credentials from basic survey licences right up to being able to write and assess licences for developers.²³

e) Do you support a continued role for third parties such as habitat banks and land managers in supplying nature services as part of Delivery Plans?

It is not a hard argument to make that if the government progresses with the proposals in the working paper without pause, then the Delivery Plans must be delivered through the private sector, rather like BNG.

I do not believe there will be optimal outcomes for developers and nature in a system where the state is in receipt of taxes (levy), procures its own services to fund nature restoration (both compulsory purchasing land and owning the supply chain that returns it to nature), marks its own homework (maintenance and monitoring), and develops feedback mechanisms so that outcomes continually improve over time for a given unit of spend²⁴.

- Private markets must work, and if given the right regulatory freedoms, tend to lead to greater outcome effectiveness. (Better outcomes for developers and nature).

Perhaps a wider concern though, is that procurement processes to fund nature

pushed back, Natural England initially asked for “more evidence” of the junior consultant’s experience.

²² PDM used to be a thing and slowly has died away. I can’t figure out why anyone thought it would be a good idea to chop the feedback loop out of the system.

²³ Because of our scale, Arbtech has a kind of in-house, bat licence factory. We are also on the hunt to expand our company-owned landholdings and acquire or build structures that can host various bat species to further accelerate our in-house training. Sadly, you kind of have to work at Arbtech to take advantage of this.

²⁴ If successive governments had a good track record in this regard, then we wouldn’t be here in the first place.

restoration using the vast sums of money that would be taxed out of GDV (and thus chipped from land values in future) would have to be phenomenally well set up to cope with the speed at which they must deliver. No government wants a repeat of the s.106 payments debacle ([£8bn in unspent contributions](#)). Moreover, if nature recovery and halting the decline in biodiversity is a key priority for the government, it cannot be unspent. It must be spent. And for reasons best explained by reference to [Birmingham Council's bankruptcy](#) last year, these funds certainly should not sit with local authorities that have junk-status credit.

In pressing ahead without a private sector solution, the government by tackling one problem would immediately create a new one: how to spend hundreds of millions of pounds, immediately, in a way that is demonstrably better than it is spent today, without the bureaucracy of administering that spend slowing down the very process (planning) that the new process was designed to speed up (tax and spend to fund nature).

- Private markets that deliver acceptable returns on capital tend to attract competition, leading to greater outcome efficiency (Less time and less cost for a given unit of outcome).

f) How could we use new tools like Environmental Outcomes Reports to support this model?

EORs are not an appropriate tool for the scale of all but a tiny minority of very large development projects.

Such projects typically take years to ideate and deliver and therefore should not be unduly held up by species mitigation. Further, the cost for species mitigation if building a new town or power station may in absolute terms appear significant, but relative to the project's GDV it will still be small and owing to scale economies (assuming no one commissions another £100m bat tunnel) the cost should actually be even more fractional than on smaller sites.

g) Are there any other matters that you think we should be aware of if these proposals were to be taken forward, in particular to ensure they provide benefits for developments and the environment as early as possible?

I would again turn that question on its head and ask, how confident is the government that a problem exists at all?

For example, I recently used the social media platform, LinkedIn, to ask a question along these lines:

*“From the most recent **million** planning applications/appeals, show me ten that cite protected species as an **unresolvable** reason for refusal/dismissal.”*

I have 12.5k connections. The post had 15k views. Many people engaged with it, but no one answered the call. And, even if someone had, that’s still only 0.001%.

I would then ask, if a problem exists, how confident is the government that it cannot be resolved by some combination of the things I have suggested throughout this ‘open letter’.

Summary

As someone that take his own sites through planning and occasionally builds things (both in the UK and now in Spain), the three biggest concerns for me and I suspect by extension all developers are: cost, delay and uncertainty. Probably in reverse order.

Costs are manageable; they can be chipped from land values, fractional to the extent they don’t matter, or support price increases. Ignoring the extreme ends of the long tail (which will always exist, especially when people buy sites unconditionally with little or no ecology diligence) costs *per se* aren’t really an issue.

Delays are actually more costly than what people traditionally think of as “costs”, because as the project scale increases so does the cost of capital in absolute terms (and on small projects, financing costs tend to be higher so the absolute value is lower but the relative value is greater).

Delays can be combatted by a); making changes to the licencing system and b); not demanding so much data to validate and determine applications where the incremental data doesn’t change the outcome for biodiversity if appropriately dealt with through conditions of consent (and perhaps using a district licencing scheme for some species and habitats, where that is demonstrably appropriate).

Uncertainty is the biggest killer. This could be reduced markedly by some combination of the costs and delays measures above, plus enabling a ‘super-PEA’ survey to give

developers **certainty** that their project will be consented²⁵, moving most if not all the 'Red Flags' it throws up to conditions of consent, scaled as follows:

1. Do nothing.
2. Precautionary working measures.
3. Landscape and ecology mitigation and enhancement plan.
4. District licencing for some species.
5. Express mitigation under licence using government's standard advice.
6. Seasonally constrained phase II survey and customised mitigation under licence.

It's not perfect, but getting the balance right between nature recovery and housing delivery never will be.

Everything I have said is open to criticism, but I firmly believe that some of these ideas would help the government deliver the objectives of the working paper cheaper, more robustly, years faster, and in the event that they are shown to be inadequate are easily reversible, at least relative to the "tax and spend" proposals contained therein.

This has been thrown together in the late evenings and therefore it is probably riddled with typos. For that I apologise.

Thank you for bearing with me for 6,400 words.

I welcome your thoughts.



R.

²⁵ That many planning professionals are paid (and developers are financed) on the basis of the RIBA Plan of Work, getting a guaranteed consent on the basis of a super-PEA would probably be supported by planning professionals as much as it would be welcomed by developers, looking to reduce uncertainty.

Appendix

Inflation

