

Office for Environmental Protection Call for Evidence on protected sites for nature

Evidence¹ submitted by the



April 2023

I. INTRODUCTION

The Environmental Law Foundation ('**ELF**') is a legal charity. Its primary purpose is to make free legal advice and support available to members of the public who have concerns relating to the environment. In furtherance of the access to justice provisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the '**Aarhus Convention**'),² ELF enables communities throughout the UK to have equal access to the courts and to participate effectively in environmental decision making by bringing legal challenges to bad environmental decisions. We also work to make environmental legal services affordable for socially and economically disadvantaged communities.

Each year, ELF receives around 300 enquiries on environmental matters from local grassroots communities. Many of these enquiries are from members of the public who are concerned about nature protected areas that they cherish. There may be up to 20 judicial review cases each year in which members of the public receive legal advice with our assistance. For that reason, ELF welcomes the opportunity to submit evidence in support of the OEP's review of the implementation of laws for the designation and management of sites protected for nature.³

¹ Authored by Jessica Allen and Emma Montlake.

² (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

³ OEP 'Call for evidence: Protected sites for nature in England and Northern Ireland' (February 2023). Available at <<https://www.theoep.org.uk/report/call-evidence-protected-sites-nature-england-and-northern-ireland>>.

In view of the enquiries that ELF has received historically, our evidence focuses on protected areas in England. We use the phrase ‘protected area’ as that is the preferred terminology of the International Union for Conservation of Nature (**‘IUCN’**), whose guidance informs our submission, and adopt a thematic approach to the matters for consultation as follows:

- In section **II**, we set out a number of foundational concepts and principles that form the basis of our evidence.
- In section **III**, we consider the overarching legal framework for protected areas and the extent to which it is fit for purpose.
- In section **IV**, we analyse the various means of protected area management and the way in which they are adopted.
- In section **V**, we assess the governance models that have been implemented for protected areas.
- In section **V**, we highlight key grassroots case studies and the lessons that may be learned from them.
- In section **VI**, we set out some final observations.

II. KEY CONCEPTS

1. Protected areas types

A protected area is defined in article 2 of the 1992 Convention on Biological Diversity (**‘CBD’**)⁴ as “*a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives*”. Similarly, a protected area is defined in the IUCN Guidelines for Applying Protected Area Management Categories as “*a clearly defined geographical space, recognised, dedicated and managed through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values*”.⁵

The IUCN Guidelines operate as a global standard for defining and designating protected areas. The IUCN identifies six categories of protected area⁶:

⁴ (adopted 22 May 1992, entered into force 29 December 1993) 1760 UNTS 69.

⁵ N. Dudley (ed.), *Guidelines for Applying Protected Area Management Categories* (No. 21, IUCN Best Practice Protected Area Guidelines 2013), p. 8.

⁶ *ibid* ch. 2.

- I. a. **‘Strict nature reserve’** – which is a strictly protected area which has been designated in order to conserve biodiversity and/or geological or geomorphological features;⁷
 - b. **‘Wilderness area’** – which is a large unmodified area that retains its natural character and is protected and managed so as to preserve its natural condition;⁸
- II. **‘National park’** – which is a large natural or near natural area designated in order to protect large-scale ecological processes and also provides environmentally and culturally compatible scientific, education, recreational and visitor opportunities;⁹
- III. **‘Natural monument or feature’** – which is a rather small area of high visitor, historical or cultural value;¹⁰
- IV. **‘Habitat/species management area’** – which is an area dedicated to the conservation of particular species or habitats;¹¹
- V. **‘Protected landscape or seascape’** – which is an area where the interaction of people and nature over time has produced a distinct character and significant ecological, biological, cultural and scenic values, and where safeguarding the integrity of this interaction is vital to conserving nature and sustaining other values;¹²
- VI. **‘Protected area with sustainable use of natural resources’** – which is an area that conserves ecosystems and habitats as well as associated cultural values and traditional natural resource management systems.¹³

Within the European Union (‘EU’), Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (‘**Birds Directive**’)¹⁴ and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (‘**Habitats Directive**’)¹⁵ established a harmonised legal framework for the classification of endangered and migratory species and the protection of the habitats of those species in Member States. Prior to its departure from the EU, the UK designated the following EU categories of protected area:

- Special protection areas (‘**SPAs**’)
- Sites of community interest (‘**SCIs**’)

⁷ *ibid* p. 13.

⁸ N. Dudley (n. 5), p. 14.

⁹ *ibid* p. 16.

¹⁰ *ibid* p. 17.

¹¹ *ibid* p. 19.

¹² *ibid* p. 20.

¹³ *ibid* p. 22.

¹⁴ [2010] OJ L20/7.

¹⁵ [1992] OJ L206/7.

- Special areas of conservation (**'SACs'**)

Together, these protected areas form part of the broader EU network of protected areas, known as Natura 2000. The purpose of the network *"is to enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range"* (Habitats Directive, art. 3(1)). The EU protected area types are areas dedicated to the conservation of particular species or habitats and therefore fall within IUCN category IV.

2. Governance models

The governance within and surrounding protected areas can involve various institutions, mandates, and interests at a number of levels which interact with each other. According to a report published by the IUCN on governance of protected areas,¹⁶ the principal levels of governance are:

- Global (e.g. Ramsar wetlands and UNESCO biosphere reserves)
- Multilateral/transnational/regional (e.g. Natura 2000 sites)
- Bilateral (e.g. transboundary protected areas)
- National
- Sub-national (e.g. provincial/municipal protected areas)
- Protected area system (e.g. areas governed by councils or management bodies)
- Protected area (e.g. areas governed by one or more of the rightsholders and stakeholders)
- Sub-units of a protected area
- Socio-ecological unit

In the IUCN report, it is suggested that *"the national legal framework generally retains a powerful influence on the governance and management of natural resources in general and [of] protected areas in particular"*,¹⁷ but that *"authority and responsibility can be shared at local level in ways made specific by decentralisation policies."*¹⁸ The authors therefore recommend that *"a dynamic and mutually-supportive balance among multiple actors and institutions should be sought through the powers and instruments they exercise at various levels."*¹⁹ In striking this balance, they state that *"the involvement of rightsholders and stakeholders in protected area decision-making is best secured when the national protected area legislation recognises it formally as a governance model."*²⁰

¹⁶ G. Borrini-Feyerabend et al., *Governance of Protected Areas: From understanding to action* (No. 20, IUCN Best Practice Protected Area Guidelines Series 2013), pp. 24-25.

¹⁷ *ibid* p. 26.

¹⁸ *ibid*.

¹⁹ *ibid*.

²⁰ *ibid*.

Although a range of governance models exist within and between different countries, the IUCN and the CBD consistently recognise and distinguish four broad governance types:²¹

- A. **‘Governance by government’** – which indicates that a government body holds the authority, responsibility and accountability for managing the protected area, determines its conservation objectives and develops and enforces its management plan;²²
- B. **‘Shared governance’** – which indicates that institutional mechanisms and processes that, formally and/or informally, share authority and responsibility among several actors (also referred to as **‘co-management’**);²³
- C. **‘Private governance’** – which indicates that a protected area is under individual, NGO, or corporate control and/or ownership;²⁴
- D. **‘Governance by indigenous peoples and local communities’** – which indicates that management authority and responsibility lies with indigenous peoples and/or local communities through various forms of customary or legal, formal or informal, institutions and rules.²⁵

3. Management measures

The IUCN report on governance also contemplates “[the interplay of] multiple sets of rules in different sectors and at different levels.”²⁶ As indicated in article 6(1) of the Habitats Directive, as well as the European Commission Notice on Article 6,²⁷ measures for the management of protected areas may include:

- **‘Statutory measures’** – which often take a form prescribed in law and set requirements in relation to activities that can be allowed, restricted, or prohibited in an area;
- **‘Administrative measures’** – which make provision for the adoption of conservation measures for the authorisation of activities in the area;
- **‘Contractual measures’** – which involve establishing contracts or agreements between management authorities and landowners or users of land.

III. LEGAL FRAMEWORK FOR PROTECTED AREAS

²¹ *ibid* p. xiii.

²² G. Borrini-Feyerabend et al. (n. 16), p. 30.

²³ *ibid* p. 32.

²⁴ *ibid* p. 36.

²⁵ N. Dudley (n. 5) p. 26.

²⁶ *ibid* p. 26.

²⁷ European Commission, ‘Managing Natura 2000 sites: The provisions of Article 6 of the “Habitats” Directive 92/43/EEC’ [2018] OJ C33/1, pp. 22-25.

1. Types of protected areas

Wilderness areas: The legal framework in England permits the designation of protected areas within all IUCN categories other than wilderness areas (I.b). Wilderness areas are large unmodified areas which retain their natural character and are protected and managed so as to preserve their natural condition. Such areas differ from nature reserves in that there is an emphasis on protecting the natural character of the whole area, as opposed to its particular features. Moreover, protecting an area in its natural state necessarily precludes human activities of any kind. Although human activities may be prohibited or restricted in a nature reserve,²⁸ the complete prohibition of human activity is rare. ELF considers that there is a strong case for designating wilderness areas – for example, where an important or unique ecosystem is degraded and in decline. This is a missing piece of the jigsaw of protected areas recommended under the IUCN. Indeed, as more areas of land are being rewilded, through organisations such as Rewilding UK and by private landowners such as the Knepp estate, ELF would suggest that a wilderness category should be considered as a new category.

Local Wildlife Sites: Local Wildlife Sites ('LWS') are local non-statutory designations that may be managed by partnerships of local authorities, nature conservation charities, national agencies, and local nature experts.²⁹ LWS often provide ecological corridors and are an important part of the local nature landscape. Yet, despite their crucial importance for wildlife, their protection is currently dependent on the goodwill of the landowner(s). Local planning authorities ('LPAs') report that they are powerless to intervene when landowners damage or clear a LWS. The only way an LPA may intervene is if the action of the landowner is 'development' and therefore triggers the planning process.³⁰ As a result, ELF would strongly encourage the OEP to consider the possibility of providing LWS with a legal footing.

Natural monuments: Moreover, in reviewing protected area typologies, ELF would encourage the OEP to draw inspiration from France – where it is possible to designate natural monuments and sites of particular artistic, historical scientific, legendary or aesthetic interest as 'classified and registered sites' (*sites classés et inscrits*). A renowned and often-visited classified or registered site may even be declared a 'Grand Site of France', which must have a management plan.³¹ The designation of natural monuments or features in England would fill a gap in protection that is not otherwise available for entire rivers and watercourses, for example.

²⁸ National Parks and Access to the Countryside Act 1949 ('NPAC Act'), s. 20(2).

²⁹ The Wildlife Trusts, 'A short guide to Local Wildlife Sites' (2016). Available at: <<https://www.wildlifetrusts.org/sites/default/files/2018-05/LocalWildlifeSites%20ShortGuide.pdf>>.

³⁰ Town and Country Planning Act 1990, s. 55.

³¹ French Environment Code ('FE Code'), art. L341-15-1.

2. Means of designation

Most protected areas are designated in orders issued by SSEFRA, with the exception of nature reserves and SSSIs. Nature reserves are simply designated in a declaration,³² while SSSIs are identified in notifications sent to landowners.³³ ELF considers that there is a need for greater transparency in the designation of protected areas and greater publicity of those designations. As such, ELF invites the OEP to consider whether there ought to be a uniform, published instrument for the designation of protected areas – including nature reserves and SSSIs.

3. Consultation

The support of stakeholders at all levels is crucial to the success of area protection and management. In accordance with the Aarhus Convention, public participation ought to be a central part of the designation process in England.

As it stands, national agencies and government bodies have key roles in the designation of protected areas. Natural England is competent to propose various protected areas – namely national parks, nature reserves, AONBs, and SSSIs.³⁴ This competence is shared with local authorities, in the case of nature reserves,³⁵ and with SSEFRA, in the case of national parks.³⁶ SSEFRA is also exclusively responsible for the designation of Natura 2000 sites.³⁷

Provision is made for open public participation only in the designation of AONBs and SSSIs. Any draft order proposing or varying an AONB and any notification designating or varying a SSSI must be published specifically in at least one local newspaper.³⁸ AONB orders are also published in the London Gazette.³⁹ Conversely, consultation on the designation of nature reserves and Natura 2000 sites is restricted to landowners.⁴⁰

By contrast, in Sweden, the scope of stakeholder consultation is more comprehensive and generally involves members of the public. For example, in designating a national park, the Swedish Environmental Protection Agency (*Naturvårdsverket*, '**SEPA**') must allow representations to be made by local organisations and corporations, landowners, and land users. A similar process of consultation exists for nature and culture reserves (*naturreservat/ kulturreservat*),⁴¹

³² NPAC Act, s. 19(1).

³³ Wildlife and Countryside Act 1981 ('**WAC Act**'), s. 28.

³⁴ NPAC Act, s. 6(1); Countryside and Rights of Way Act 2000 ('**CROW Act**'), s. 83(3); WAC Act, s. 28(1).

³⁵ NPAC Act, s. 19(1).

³⁶ NPAC Act, s. 6(2).

³⁷ Conservation of Habitats and Species Regulations 2017 ('**CHS Regulations**'), reg. 13(1).

³⁸ CROW Act, s. 83(2); WAC Act, s. 28(3).

³⁹ CROW Act, s. 83(2).

⁴⁰ NPAC Act, s. 15A(2)(a); NERC Act, s. 7(1); CHS Regulations, reg. 16(1)-(3).

⁴¹ Förordning (1998:1252) om områdesskydd enligt miljöbalken m.m. ('**Area Protection Ordinance**'), § 24.

natural monuments (*naturminne*),⁴² and Natura 2000 sites.⁴³ Uniquely, landowners and members of the public even have a right to propose the designation of nature and culture reserves themselves.⁴⁴

Similarly, in France, a public inquiry is part of the designation process for the majority of protected areas. The legal principle of parallelism of forms mandates that a public inquiry is also part of any abolishment process. One of few exceptions to the public inquiry process are Natura 2000 sites.

ELF is firmly of the view that there is scope to improve public consultation in the designation of protected areas in England, and even to introduce a process by which members of the public may propose the designation of certain (if not all) of those areas. Local communities are uniquely situated to appreciate the true range of species in their area, for example. There may also be significant local support for designating a larger area than is initially proposed.

III. PROTECTED AREA MANAGEMENT

1. Types of measure

a. Statutory measures

Duties: In England, a number of statutory duties are set out in primary legislation on protected areas. For example, there are duties on public bodies and officials to further the conservation and enhancement of AONBs and SSSIs.⁴⁵ For SSSIs, this duty requires public bodies to notify Natural England before they authorise any potentially damaging activities.⁴⁶ Overarching duties such as these should be imposed uniformly on the actor(s) responsible for managing all types of protected areas.

Byelaws: Primary legislation also confers powers on national agencies to adopt binding regulations for certain protected areas following their designation. For example, Natural England may issue byelaws for nature reserves, SSSIs, and Natura 2000 sites in order to prohibit, restrict, or permit activities within protected areas.⁴⁷ Proposed byelaws must be publicised for a period of time prior to adoption in order to allow for representations to be made. Failing to comply with byelaws, without lawful excuse, is usually a criminal offence punishable by a fine. The fact that byelaws are binding and enforceable makes them an effective tool in the management of protected areas that ELF considers should be available in respect of all types.

⁴² Swedish Environmental Code (Miljöbalken (1998:808) ('SE Code'), ch. 7, § 10.

⁴³ Area Protection Ordinance, § 17.

⁴⁴ SE Code, ch. 7, § 4.

⁴⁵ CROW Act, s. 85(1); WAC Act, s. 28G.

⁴⁶ WAC Act, ss. 28H and 28I.

⁴⁷ NPAC Act, s. 20(2) and (3); WAC Act, s. 28R(1) and (2); CHS Regulations, reg. 32(1).

Land charges: The creation of a land charge over a protected area is a type of measure which is rather unique to England. Specifically, in the context of Natura 2000 sites, entries into the Natura 2000 register establish local land charges.⁴⁸ Moreover, SSEFRA may issue a special nature conservation ('**SNC**') order specifying activities which would likely destroy or damage the site.⁴⁹ The SNC order operates as a land charge pursuant to which SSEFRA may serve a stop notice on any individual proposing to carry out a specified activity which has not been notified or authorised.⁵⁰ In ELF's view, other protected areas ought to be registered (on which, see below) and the establishment of a corresponding land charge would help to secure the protection of the area through changes in land ownership.

Interim protection: In addition to widening the use of the above statutory measures, it is noteworthy that French legislation provides interim protection to areas pending their designation as a national nature reserve or a classified or registered site. The owner of land within a proposed nature reserve is not allowed to modify the site for a period of 15 months,⁵¹ while the owner of a site which has been proposed for classification or registration is prohibited from modifying the site for a period of 12 months.⁵² To the extent that there is not already a policy or practice with such effect, ELF would advocate for the introduction of a similar legislative mechanism whereby an area is protected on an interim basis pending its formal and final designation as a protected area.

b. Administrative measures

Registers: Although SSEFRA is legally required to compile a register of Natura 2000 sites,⁵³ ELF is not aware of any other legal duty to compile a register of specific protected areas. Compiling a register of each type of protected area is a simple measure which would ensure that there is better publication, access to information, and accountability for those charged with the management of protected areas.

Management plans: England has made provision for a type of management instrument for national parks (management plan, development plan), AONBs, and SSSIs (management scheme/management notice).⁵⁴ National park authorities and local authorities or conservation boards must review management plans for national parks and AONBs at least every five years.⁵⁵ While the national park and AONB plans must be taken into account as material considerations in planning decision making, however, it is important to acknowledge that they are not binding instruments. We also see management plans routinely out of date for protected sites.

⁴⁸ CHS Regulations, reg. 17(4).

⁴⁹ CHS Regulations, reg. 27(1).

⁵⁰ CHS Regulations, regs. 27(4) and 28.

⁵¹ FE Code, art. L332-6.

⁵² FE Code, art. L341-7.

⁵³ CHS Regulations, reg. 17(1).

⁵⁴ Environment Act, s. 66(1); CROW Act, s. 89(1)-(3); WAC Act, ss. 28J and 28K.

⁵⁵ Environment Act, s. 66(4); CROW Act, s. 89(7) and (9).

By contrast, in Spain, general and area-specific management plans have been implemented more widely and with binding effect. The general management plans, entitled the Master Plan of the Network of National Parks and the Master Plan of the Network of Marine Protected Areas, are drawn up by the Ministry for the Ecological Transition and the Demographic Challenge (*Ministerio para la Transición Ecológica y el Reto Demográfico*, ‘**MITECO**’) in collaboration with the autonomous communities, any other competent authorities, and members of the public.⁵⁶ The plans are implemented by royal decree (*real decreto*) and therefore binding in nature. General management plans set out a strategic and harmonious framework of objectives, procedures, guidelines, and criteria relating to matters such as conservation, cooperation, management, planning, and funding.

Area-specific management plans are also drawn up for:

- national parks (plan for use and management, national resource management plan);⁵⁷
- natural parks (plan for use and management, national resource management plan);
- reserves (national resource management plans);⁵⁸
- marine protected areas;⁵⁹
- Natura 2000 sites.⁶⁰

The relevant laws clarify that plans for use and management and national resource management plans are also binding instruments.

Management instruments are also used in France for the majority of protected areas, namely:

- national parks (park charter);⁶¹
- nature parks (park charter);⁶²
- marine nature parks (marine management plan);⁶³
- classified and registered sites (management plan);⁶⁴
- CELRL sites (management plan);

⁵⁶ Ley 30/2014 de Parques Nacionales (‘**NP Law**’), art. 19(3).

⁵⁷ Ley 42/2007 del Patrimonio Natural y de la Biodiversidad (‘**NHB Law**’), arts. 31(5) and 36(1)-(2); NP Law, arts. 20(1) and 8(2).

⁵⁸ NHB Law, art. 36(1)-(2).

⁵⁹ NHB Law, art. 33(2).

⁶⁰ NHB Law, arts. 43(3) and 46(1)(a).

⁶¹ FE Code, art. L331-4-1.

⁶² FE Code, art. L333-1.

⁶³ FE Code, art. R334-5.

⁶⁴ FE Code, art. L341-15-1.

- Natura 2000 sites (document of objectives, Natura 2000 charter).⁶⁵

ELF supports the use of management plans for all types protected areas, as they set out a coherent scheme for area management and identify metrics by which area management can be effectively monitored and reviewed. Such plans should have a binding effect and be supported by mechanisms for the monitoring and review thereof.

Zoning: Zoning is often considered to be an essential component of protected area management because it recognises that certain zones of a protected area may require stricter or additional management measures than others. It is not surprising, therefore, that zoning techniques are widely applied in marine and terrestrial areas in other countries. In France, for example, a detailed zoning regime exists for national parks and regional nature parks. This regime comprises core areas and strict integral reserves, located within a park, and areas of adherence, located outside of a park.⁶⁶ Zones are often defined at the designation stage but may also be defined at a later stage. In either case, they will be set out in the management instruments. In this context, ELF is concerned that zoning techniques are not widely applied in England (if at all).

Ecological corridors: Ecological corridors are critical for preventing habitat fragmentation, helping to protect and restore biodiversity and maintain genetic diversity in wildlife populations. They also prevent decision makers from taking a too localised view of area protection. ELF is not aware of any legal provision for the establishment of ecological corridors in England, though has happened informally at the local level. Introducing a legal provision for ecological corridors would encourage their use on a wider scale. In this regard, ELF would encourage the OEP to consider the position in France, where provision is made for the creation of ecological corridors between protected areas and other territorial areas. Distinct from protected areas, green and blue belts (*trames vertes et bleues*) are land planning tools that must be incorporated into local planning policy and form part of wider regional ecological coherence schemes.⁶⁷

c. Contractual measures

Contractual measures are generally used where protected areas are designated on privately owned land.

Agreements: In the case of nature reserves, Natural England negotiates nature reserve agreements with private landowners during the designation process.⁶⁸ These

⁶⁵ FE Code, arts. R414-8-1 and R414-12.

⁶⁶ FE Code, arts. L331-1, L331-16 and L331-1.

⁶⁷ FE Code, art. L371-1.I.

⁶⁸ NPAC Act, s. 15A(2)(a); Natural Environment and Rural Communities Act 2006 ('**NERC Act**'), s. 7(1).

agreements set out any obligations or restrictions on land use, required enhancement works and/or financial compensation. As for SSSIs, Natural England seeks to conclude a management agreement after notifying the landowner or occupier of the designation, but provision is made for management schemes or notices where this is not possible.⁶⁹ Natural England may also conclude management agreements with owners of land within or adjacent to a Natura 2000 site, in addition to implementing the various statutory and administrative measures available.⁷⁰

Compulsory purchase: Where a nature reserve agreement cannot be reached or is breached, Natural England has a power to acquire land compulsorily for designation as a nature reserve.⁷¹ This compulsory purchase power operates as a safety net that may be suitably extended to the other protected area types discussed above.

Conservation covenants: The new conservation covenant regime under the Environment Act 2021 provides “Responsible Bodies” with an additional tool to encourage landowners to pursue better land management practices, albeit that it is entered into voluntarily by the landowner and sits above any nature designations.

In general, ELF does not advocate for the wider use of contractual measures in protected area management. Contractual measures are voluntary, binding only on those who are party to them, and while they may impose strict liability for breaches thereof, there is greater scope for contractual measures to be escaped.

2. Process of adoption

In England, management measures are adopted primarily by national agencies, but may also be adopted by government bodies or designated governance bodies. For example, Natural England is able to adopt byelaws for nature reserves, SSSIs, and Natura 2000 sites,⁷² and all management instruments for SSSIs. Similarly, park authorities and local authorities or conservation boards are responsible for adopting measures for national parks and AONBs respectively.⁷³

Some provision is made for stakeholder consultation during the process of adopting management measures for national parks and AONBs, but in neither case does the consultation extend to members of the public. For example, AONB management plans are sent only to Natural England and SSEFRA.⁷⁴ As discussed above, ELF hopes to see an increase in public involvement in protected area management, which includes the development of management measures, as members of the local community will often have valuable insights, ideas, and experience to offer.

⁶⁹ WAC Act, ss. 28J and 28K.

⁷⁰ CHS Regulations, r. 20(1) and (2).

⁷¹ NPAC Act, ss. 17(1)-(2) and 18(1).

⁷² NPAC Act, s. 20(1); WAC Act, s. 28R(1) and (2); NPAC Act, s. 20(2) and (3); CHS Regulations, r. 32(1) and (4).

⁷³ NPAC Act, s. 11A(1); CROW Act, s. 86(1) and (6).

⁷⁴ CROW Act, s. 90(1) and (2).

IV. GOVERNANCE OF PROTECTED AREAS

Most protected areas in England are subject to models of ‘governance by government’. Governance is generally centralised in the competent national agency, such as Natural England. National parks are less centralised in that they have separate administrative bodies, known as national park authorities, which are composed of paid staff as well as unpaid members appointed by local and national government.

The key issue with a system predicated on government governance is that the institutions are highly vulnerable to funding cuts and resource shortages. Local authorities, national agencies, and environmental regulators have all been subject to such critical funding cuts as a result of austerity measures and on-going public finance concerns. ELF has seen expertise lost, whilst monitoring and enforcement by regulators has fallen drastically. Without proper funding for these institutions, local and national decline will continue.

Consequently, ELF is more interested in the limited provision that is made for local community governance. Specifically, SSEFRA may establish conservation boards for AONBs, which are composed of members of the local community.⁷⁵ In 2004, conservation boards were established for the Chilterns and Cotswolds AONBs. However, since then, no other boards have been established. That is despite there being 34 AONBs in England.⁷⁶ ELF supports not only the establishment of more conservation boards for AONBs, but also the development of similar governance models for other protected areas. Local community governance allows communities to assume some level of control over how their environments are managed – supporting social cohesion, health, and well-being.

ELF have had some good environmental outcomes as a result of community governance initiatives:

- **River Ouse:**⁷⁷ A Rights of River Ouse motion was passed by Lewes Council on 23 February 2023. The motion: (1) acknowledges the role of Rights of Nature in changing our interactions with local waterways and as a tool through which the health and wellbeing of the River Ouse can be addressed; and (2) confirms that the Council will, in collaboration with local stakeholders, work to produce a 'Declaration of the rights of the River Ouse' for adoption by the Council within

⁷⁵ CROW Act, s. 86(1) and (6).

⁷⁶ Natural England, ‘Guidance on areas of outstanding natural beauty (AONBs): designation and management’ (18 June 2018). Available online at <[⁷⁷ G. Foster, ‘Lewes leads the way on rights of rivers’ \(*Sussex Bylines*, 18 March 2023\) <<https://sussexbylines.co.uk/lewes-leads-the-way-on-rights-of-rivers/>>.](https://www.gov.uk/guidance/areas-of-outstanding-natural-beauty-aonbs-designation-and-management#:~:text=There%20are%2034%20AONBs%20in,England%2C%20Wales%20and%20Northern%20Ireland.>https://www.gov.uk/guidance/areas-of-outstanding-natural-beauty-aonbs-designation-and-management#:~:text=There%20are%2034%20AONBs%20in,England%2C%20Wales%20and%20Northern%20Ireland.>”.></p></div><div data-bbox=)

two years. This was a community driven initiative originating from a 'Love our Ouse Festival' where local people were invited to consider what a 'Declaration of Rights of the River' should include. A motion was subsequently drafted and put before the Lewes Council and passed with cross-party support. The focus is now on consensus building in the local community to understand what the 'Declaration on the Rights of the River Ouse' should look like and how governance should work moving forward. Consultations are ongoing with local people and other stakeholders, including the Environmental Agency and local community groups.

- **Council requirement to assess sewage impacts of proposed development:**⁷⁸ ELF supported a local councillor in a campaign to reduce local water pollution by Southern Water. A motion was put to Lewes District Council requiring the utility company to properly assess the sewage impacts of each new proposed development. The motion was passed by the Council on 23 May 2022. It means that, for the first time, Southern Water is required to make clear the impact of any new development on sewage discharge into local rivers. Areas affected by sewage discharge in the area include Lewes Brooks which is a SSSI home to rare snails, flies, moths, and water beetles.

V. KEY ELF GRASSROOTS CASE STUDIES

1. Planning enquiries

As mentioned, many of the enquiries that ELF receives are within the context of land development and planning applications. One reason for that trend is because English planning laws allow the mitigation of harm to displace the actual protection of nature. For example, ELF often sees measures such as Suitable Alternative Natural Green Space ('**SANGS**') used as a means of absorbing recreational and other environmental impacts on nationally protected areas. Habitats Assessments are undertaken, the environmental impacts of the development are acknowledged, but mitigation is dealt with by way of an alternative green site or a payment system set up by the LPA for developer contributions. Whilst a balance needs to be struck, it seems far too easy for developers to deal with their impacts on protected sites through off-site measures.

The examples below highlight the importance of reinforcing laws for protecting areas in England, and reiterate concerns with respect to the capacity, resources, and skills of the national agencies and public bodies responsible for implementing those laws:

⁷⁸ ELF, 'Council requirement to assess sewage impacts of proposed development' (elflaw.org, 13 June 2022) <<https://elflaw.org/news/council-requirement-to-assess-sewage-impacts-of-proposed-development/>>.

- Slurry Lagood Pit:** ELF was contacted in April 2022 by an individual concerned about proposals to site a huge slurry pit close to a local SAC and SSSI in Llanybri, Carmarthen, Wales.⁷⁹ The proposed site for the slurry storage was little more than 400m away from a Marine Special Protected Area ('**MSPA**'), a saltmarsh, and near to a SSSI buffer zone. It was also close to watercourses discharging into the SAC/SSSI. It is increasingly recognised that slurry is a highly polluting substance that kills fish, plants and other wildlife and causes eutrophication if it reaches a watercourse. ELF submitted a letter of objection on behalf of residents to Natural Resources Wales and the LPA, highlighting the need to adopt the precautionary principle as an overriding requirement when triggered by the CHS Regulations. ELF argued that the precautionary principle was triggered here given the proximity of the MSPA. As a result, Carmarthenshire County Council refused permission for the slurry holding pit. A failure to provide an ammonia assessment on the likely impact upon the Carmarthen Bay and Estuaries SAC and Taf Estuary SSSI, situated within 500 metres of the site and noted for features sensitive to ammonia, was one of the reasons given for refusal.
- Challenge to decision by South Downs National Park Authority**⁸⁰ – After a high-profile media campaign, the owners of the Coastguard Cottages at the Cuckmere Haven in Sussex were granted planning permission to extend and renew sea defences to increase the life of the cottages for 85 years. However, the development risked irreversible, catastrophic environmental damage to protected marine habitat of the chalk reef, which is a Marine Conservation Zone and SSSI. Sussex Wildlife Trust ('**SWT**') and Natural England had put in strong objections against the proposals but had been ignored. With assistance from ELF, SWT investigated the position further and found that although the development had been screened as requiring an Environmental Impact Assessment ('**EIA**'), an EIA had not in fact been undertaken. What had purported to be an EIA was not and, accordingly, the impacts of the development had not been properly assessed. A member of our pro-bono network drafted a Pre-Action Protocol ('**PAP**') which was then sent by ELF. Following receipt of the PAP letter, South Downs National Park Authority agreed that there had been a failure to undertake an EIA and consented to the decision being quashed. The interested parties, Cuckmere Haven SOS, and the owners of the cottage also agreed.

2. Local wildlife site enquiries

⁷⁹ ELF, 'Slurry lagoon refused permission' (*elflaw.org*, 4 July 2022) <<https://elflaw.org/news/slurry-lagoon-refused-permission/>>.

⁸⁰ ELF, 'Sussex Wildlife Trust and ELF - Standing up for Nature' (*elflaw.org*, 5 October 2021) <<https://elflaw.org/news/sussex-wildlife-trust-and-elf-standing-up-for-nature/>>.

Although the OEP's consultation focuses on the legal framework for protected areas, ELF also wants to take the opportunity to highlight the difficulties experienced by local people in relation to non-statutory protected areas that may be designated at the local level, including LWS and Sites of Nature Conservation Interest ('**SNCI**').

- **Clive Vale LWS:** ELF assisted residents opposing an in-principle planning application on a LWS in Hastings to remove the LWS designation and build nine new homes. The site, which forms part of the Clive Vale LWS, was a high value, wooded stream valley with significant wildlife interest. Sadly, the site has been regularly cleared by the landowner – including in 2021, when the clearance was followed by an ecological survey and a planning application in principle submitted thereafter. ELF wrote an objection letter to the LPA on behalf of residents. This raised serious issues such as the irreparable harm which development will cause to the LWS, the amenity of local residents using the wildlife site, and loss of an important wildlife corridor. ELF also raised concerns regarding the inadequacy of the preliminary ecological appraisal, which failed adequately to assess the species onsite as surveys were undertaken outside of the optimum survey seasons. The LPA refused the application on 29th March 2022 quoting the reasons for refusal as *“harm to the local environment by virtue of the loss of valued open green space with a Local Wildlife Site designation and consequent net loss of biodiversity”*.⁸¹ Unfortunately, residents have been in touch recently in light of a new application for planning permission for the development houses on the site. Residents are raising similar objections submitted in response the first application.
- **Woodcock Hill LWS:** Since 2006, ELF has been involved in the case of Woodcock Hill in Borehamwood, which is a registered Town and Village Green and registered as a LWS. This much-loved green space was recently subject to a full planning inquiry as the landowner, Taylor Wimpy, sought to de-register the village green so they could develop the site for housing. It became evident during the inquiry that, in view of the site's designation as an LWS, the applicant had an incentive to degrade the site. Taylor Wimpey openly admitted that they would oversee the decline of the nature value of the LWS by preventing access to the site and preventing nature conservation at the site, such that the site would lose its nature value and public interest would diminish. A developer landowner is more able to develop land if the site has less nature value.
- **Brighton and Hove Local Plan:** ELF recently assisted SWT in their efforts to persuade the planning inspector examining the draft local plan to remove LWS from site allocations. SWT fought to persuade the inspector that there was a duty on the Council to safeguard these sites under paragraph 179 of the NPPF.

⁸¹ ELF, 'Hastings Local Wildlife Site saved from development' (elflaw.org, 6 April 2022) <<https://elflaw.org/news/hastings-local-wildlife-site-saved-from-development/>>.

Unfortunately, the local plan was approved with the contested allocations in October 2022. The consequence is that almost half of Brighton and Hove's LWS will be now built upon. Once they are gone, they are gone forever.

- **Failure to designate a local nature reserve:** ELF is currently assisting local residents in Dover in relation to the non-fulfilment of a Section 106 obligation negotiated by Dover District Council in 2006 to designate a Local Nature Reserve. The Council is now supporting for a massive leisure development in the area, known as the 'Inland Surf Lagoon' in Betteshanger Country Park. The development area, which covers 15 hectares, is already subject to compensatory measures in respect of nesting turtle doves due to the previous development. Those compensatory measures will be disrupted by the leisure development. The development area also contains the second largest colony of lizard orchids in the country. It is proposed that the majority of the Schedule 8 plants be translocated to another site in order for the development to take place, but both the Council's ecologist and local botanists have raised serious concerns that any translocation will be bound to fail. ELF has put in an objection on behalf of local people.

The Woodcock Hill example is something that ELF encounters regularly. LWS that are held by private landowners may be degraded in order to promote urban development. There is little that the LPA can do to intervene as clearing habitat is not, in and of itself, a form of development. In addition, the Dover example further demonstrates that, in instances where the highest protections are afforded to rare species, development is frequently being dealt with by mitigation measures and the laws are not working. Any development that has a likely effect on turtle doves, for example, should not be entertained at all. Yet it is commonplace for developers to spend many thousands of pounds on expensive ecological consultants in a bid to justify development. ELF would again highlight that local nature sites are often overlooked in the spectrum of protected areas and that better protection is urgently required.

VI. FINAL OBSERVATIONS

As it stands, ELF would hesitate to say that the laws on protected areas and their implementation are working well. It is well known that the UK is one of the most nature depleted countries in the world and many of our most protected sites are in unfavourable status. The UK Government's own statistics note a net decrease in the number of SSSIs in favourable condition – down from 44.0% in 2003 to 38.2% in March 2022. Only 14% of our rivers reaching good ecological status. These statistics speak for themselves and demonstrate that, without the strengthening and expansion of the current legal framework, we will see further decline in the condition of our most important and protected areas.