

## **Regulation of standards in environmental mitigation associated with development**

Developments are required to mitigate for unavoidable environmental impacts from their actions and this mitigation delivery is set out in a range of supposedly legally binding documents (such as planning conditions) prior to the granting of planning consent. However, for a variety of reasons this mitigation usually fails to deliver what it is required to enable effective discharge of the planning conditions. As a result the natural environment continues to subsidise development growth and profit and continues to be increasingly eroded. A new system is required to ensure that the mitigation is properly delivered and the quality of the natural environment is maintained, or indeed enhanced. This requirement also applies to cases where the developer needs to compensate for residual impacts that remain after mitigation is designed.

The main reasons why mitigation is failing to be delivered are:

- The Environmental Statement, which would normally reference the list of mitigation tasks, gets forgotten once planning consent is given;
- Breaks in continuity through staff changes at both the developer and planning authority level result in a break down in understanding between parties;
- The developer purposefully waters down the mitigation actions on the grounds of cost;
- A lack of appetite and resources for effective enforcement and monitoring on the part of the planning authority. The developer therefore considers mitigation to be a low priority and breaches of the mitigation plan go unpunished.

These reasons have remained the case since the early work of Treweek and Thompson in the mid 1990's which identified the major gap between expected provision of mitigation and its actual delivery on the ground. There is no evidence that the situation has improved at all in the intervening period.

So, there is a general need to improve the system by ensuring that planning authorities commit to proper and effective enforcement of environmental mitigation so that the erosion of the natural environment is halted. We believe that this can only be achieved by more effective accountability on the part of the planning authority and more effective regulation of developments. A 'voluntary' approach, as the current system has become, is clearly ineffective at protecting the natural environment.

We therefore propose that a 'measure' for the protection and enhancement of the natural environment should be developed as part of the planning and development control sector, which would form a Public Service Agreement (PSA) between government and local authorities. In keeping with other PSA's the development mitigation PSA for the environment would have a target. Alongside this there should be an independent auditor that audits the planning authorities compliance with environmental commitments made at the time of planning consent for each development. The system must be open, transparent and reportable. The auditor would operate in the same way as Ofsted regulates standards in education for the benefit of students or Ofwat regulates the water industry for the benefit of its customers. 'Ofstenv' (The Office for Standards in

Environmental Mitigation) would regulate planning authorities to ensure environmental mitigation for development activities is enforced, monitored and delivered.

The process would work as follows:

1. The planning authority would consent to a development having assessed its impact and considered the proposed mitigation solutions.
2. The mitigation actions required to off-set the impacts would be listed in detail in a 'Schedule of Environmental Commitments'. This schedule would become legally binding on the part of the developer and planning authority.
3. The developer would pay a bond prior to the onset of development to ensure the mitigation measures can be paid for and would assume no responsibility for delivery (which is usually where the watering down takes place). Without the bond in place the development could not proceed. The bond would be used by a third party to assume the responsibility for the mitigation delivery.
4. The regulatory body would make random checks on planning authorities to investigate the compliance of specific developments with their schedule of environmental commitments. By assessing a reasonable number of schedules, with the option of appropriate site visits (perhaps by competent registered assessors such as ecologists who would make a brief report on findings), the authority would score 'outstanding, good, satisfactory, inadequate' and these scores would be aggregated across the country in order to construct the overall score which would be assessed against the PSA target.

The overriding benefits of this approach are:

- mitigation would be properly designed and costed at the outset
- removing the burden from the developer would remove the watering down effect and ensure all the required mitigation is delivered
- it gives greater guarantees to the developer
- it embraces the idea of off-setting and habitat banking whereby mitigation and compensation requirements for multiple developments could be pooled to create large-scale natural environment resources
- it places greater onus on the planning authority to enforce the mitigation, and through drawdown of the bond would provide authorities with more resources to ensure the job is done effectively
- it would drive up standards within a relatively short period of time leading to a rapid halting of the erosion of natural environmental capital

The only 'disbenefit' to the developer is some increase in cost. However, this could be factored in to the development uplift value on the land so it is unlikely that the developer would suffer significantly in economic terms. In fact, it is conceivable that the extra guarantees to the developer would result in lower costs in the long term

since the mitigation delivery would be undertaken by a separate party. If this third party delivery route were embraced then the developer, *together with the planning authority*, would be responsible for setting out the brief for the mitigation and overseeing the appointment of the delivery company. Otherwise there is a risk that the cheapest contractor would be selected only to hit delivery problems down the line.

At present, the natural environment is subsidising development growth and profit and we need a system in which land users are required to pay the true cost of the use of that land. We know that the cost of returning the natural capital to our landscapes in Britain, which have been eroded by development and other uses, would be astronomically large. We cannot continue to erode this capital.

We believe that the above model would provide a substantial improvement to the way in which mitigation is planned and delivered, and that the benefits would far outweigh the small increase in delivery cost. However, when compared to the option of 'retrofitting' restoration to landscapes degraded by years of development, even the cost argument becomes irrelevant.

Professor David Hill  
[dhill@environmentbank.com](mailto:dhill@environmentbank.com)

27 November 2008