



Northern Ireland
Assembly

Committee for Agriculture, Environment
and Rural Affairs

OFFICIAL REPORT (Hansard)

Shared Environmental Service:
Mid and East Antrim Borough Council

22 April 2021

NORTHERN IRELAND ASSEMBLY

Committee for Agriculture, Environment and Rural Affairs

Shared Environmental Service: Mid and East Antrim Borough Council

22 April 2021

Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Ms Clare Bailey
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin
Mr Patsy McGlone

Witnesses:

Mr Paul Duffy	Mid and East Antrim Borough Council
Ms Nicola Rowles	Mid and East Antrim Borough Council

The Chairperson (Mr McAleer): I welcome, via StarLeaf, Nicola Rowles, director of development, and Paul Duffy, head of planning. I invite Nicola and Paul to brief the Committee. Then members will ask some questions. Thank you, Nicola and Paul. *[Pause.]* We are encountering a few technical difficulties here.

Ms Nicola Rowles (Mid and East Antrim Borough Council): Can you hear us now?

The Chairperson (Mr McAleer): Yes.

Ms Rowles: Perfect.

The Chairperson (Mr McAleer): Thank you, Nicola and Paul. You can take the opportunity to brief the Committee, and members will ask questions after that.

Ms Rowles: Perfect. Thank you, Chair. Good morning. I am delighted to be before the Committee this afternoon to provide you all with an overview of the Shared Environmental Service (SES). I am Nicola Rowles, director of development, and I am accompanied today by Paul Duffy, our head of planning and building control, who has direct responsibility for the Shared Environmental Service.

First, I will provide you with an overview of the role and remit of the Shared Environmental Service to offer some background on the service and, hopefully, clarify our position and any misconceptions that there may be. Following the review of public administration (RPA), our chief executive took on the role

of hosting shared environmental services in 2015. SES is a shared service between the 11 councils. It was established to support councils across NI to carry out their habitats regulations assessments (HRAs) for their planning functions. The service sits within the development directorate portfolio of Mid and East Antrim Borough Council and is under the direct management of our head of planning and building control, Paul, who is here today.

Currently, we have 10 staff employed in the service, and they have expertise in environmental assessment and ecology. The service was initially staffed by elective transfer from the Northern Ireland Environment Agency (NIEA), and those staff brought a wealth of experience and knowledge. Vacancies are filled by public recruitment, and applicants must have the relevant degree qualifications, experience and membership of professional bodies.

It is important to note that SES does not have a statutory or formal decision-making role or powers. The remit is to provide sound guidance and specialist support to allow councils to meet their statutory responsibilities as competent authorities under the habitats regulations. This work is carried out under the terms of the service-level agreement with each council. Feedback from councils up to this point has been extremely positive, and we pride ourselves on the quality, professionalism and efficiency of the service. We are funded through the Department for Communities' transfers function grant, and that grant is uplifted by a rate equivalent to councils' rate increase each year.

It is important to note that the volume of work is substantially higher than what was anticipated when SES was first established. To set it in context, NIEA was previously responsible for HRAs and received about 750 consultations per year from planning services. SES was resourced on that basis. SES, however, has received over 2,000 consultations per year from councils. That demand has, therefore, been three times the volume that SES was resourced for back in 2015. The increase in the workload is because planners are becoming more aware of the importance of protecting European sites and the risk of legal challenges if they do not do their due diligence in regards to assessments and the impacts that they might have. Bearing that in mind, we needed to look at how we could resource up to meet the demand. That was critical for us. The chief executive wrote formally to the Department for Communities to put forward a case for an increase in the transferred functions grant or a revisit of the grant awarded. That was turned down by the Department for Communities, as the Department did not feel that it had the capacity or ability to increase the transferred functions grant. Failing in the approach to the Department for Communities, the chief executive wrote to the Department for Infrastructure to put forward the case. That request was also turned down. The next stop was the Society of Local Authority Chief Executives (SOLACE). In 2020, our chief executive put the case to councils, through SOLACE, for additional funding of £8,500 a year for two years to allow SES to be adequately resourced to meet the additional pressures on the service. The additional funding request was approved. That allowed SES to add two members to the team. That additional resource will allow the service to become a lot more agile, to meet the demands, to ramp up and to be a supportive ear for our councils when they are faced with extremely complex cases.

I will pass over to Paul Duffy, head of planning and building control. He will take you through, in more detail, the operational delivery and complexities that are faced by SES.

Mr Paul Duffy (Mid and East Antrim Borough Council): The requirements for habitats regulations assessments are set out in the habitats regulations. Councils, as planning authorities, are responsible for carrying out appropriate assessments under the regulations on planning applications where development is likely to have a significant impact on a designated European site in Northern Ireland. The term "European site" has been retained following the end of the EU transition, and it refers to special areas of conservation (SACs) and special protection areas (SPAs). Only the most significant and important areas in Northern Ireland are granted those designations.

The SES is consulted on planning applications that affect European sites. When undertaking an appropriate assessment, the council must consult with DAERA and have regard to any representations made by it through NIEA. The advice provided by NIEA informs the assessment undertaken by SES. Therefore, the work that SES carries out on behalf of councils is complementary to rather than a duplicate of the role of the Department as a statutory consultee. On completion of the HRA, SES issues a response to the relevant council. It is a matter for the council, as the competent authority, to review the assessment and to adopt it.

Since the establishment of SES to the end of 2020, SES has responded to consultations on over 6,000 planning applications. In the majority of cases — approximately 99% — it has advised that the application met the requirements of the regulations. SES has no formal decision-making responsibility.

It exists to provide informed advice to councils, which retain the ultimate decision-making authority as the planning authority and the competent authority for the purposes of the habitats regulations.

European sites are located throughout Northern Ireland. It is, therefore, inevitable that there may be effects on the sites from agricultural development. Ammonia levels at the majority of the designated sites in Northern Ireland exceed the levels at which significant damage occurs. DAERA implements an operational protocol whereby projects that can demonstrate that their process contribution of ammonia is less than 1% of the critical levels for European sites are deemed acceptable. For well over two years, DAERA has accepted that its operational protocol does not necessarily meet the requirements of the habitats regulations.

In July 2019, SES shared its internal guidance on how it assesses ammonia-emitting projects. In preparing that guidance, SES was influenced by recent case law in the Netherlands, which found that threshold levels for ammonia that were being treated as being insignificant were contrary to the habitats directive. The levels being treated as being insignificant in the Netherlands were considerably lower than the equivalent being applied in Northern Ireland. SES was also influenced by the fact that DAERA had previously advised that the critical levels of ammonia at which ecological damage occurs had already been exceeded at 98% of Northern Ireland's special areas of conservation. The internal guidance indicated that SES would further assess applications with process contributions greater than 0.1% of critical levels.

In October 2019, the Ulster Farmers' Union (UFU) sought leave for a judicial review of the SES's internal guidance. The legal challenge arose from the Ulster Farmers' Union perceiving that SES had unlawfully adopted a new and more stringent threshold. However, SES did not set a threshold for ammonia emissions; rather, the guidance provided a trigger for further assessment. The guidance was considered necessary to provide clarity on how SES would assess ammonia-emitting projects. The application for leave to apply for a judicial review was resolved by mutual agreement in March 2020 and involved SES withdrawing its guidance, pending the outcome of an ongoing review by DAERA of its operational protocol for assessing ammonia-emitting projects.

At that time, the chief executive of NIEA indicated that the updated protocol would be issued for public consultation in a matter of weeks. In the meantime, the SES agreed to assess each ammonia-emitting project on its merits. Where no adverse effect can be determined, responses to that effect are issued. Where issues arise, they have been referred to DAERA, in its role as the statutory nature conservation body for Northern Ireland.

Planning policy makes it clear that planning permission should be granted only for projects that will not have an adverse effect on protected sites. The habitats regulations require councils to take a precautionary approach, with the legal test being that it is beyond reasonable scientific doubt that the proposal will not have a lasting adverse effect. Where DAERA indicates that a proposal meets its operational protocol but SES cannot determine that there will be no adverse effect on site integrity or where there is reasonable scientific doubt as to that, SES advises councils to consult NIEA on the draft appropriate assessment and to ask NIEA, in its role as a statutory nature conservation body, to advise whether it agrees with the findings of the draft assessment. Since April 2020, DAERA has now been consulted on 24 such applications. However, to date, it has not responded on any of those outstanding consultations.

I will pass back to Nicola to finish the presentation.

Ms Rowles: Thanks, Paul, for the overview. For nearly a year, those 24 cases have been sitting with DAERA, with no further decisions or consultation on them. We also still await an operational protocol.

Our chief executive felt that it was critical at that point that we engage with DAERA to get a sense of the time frame for processing the outstanding applications and a specific date for the new operational protocol and ammonia strategy. Our chief executive met Minister Poots last summer to discuss the challenges that SES faces when assessing intensive agricultural cases. At that time, SES had a backlog of approximately 80 cases. At the meeting, our chief executive gave a commitment to Minister Poots that SES would clear the backlog within 12 weeks, which we have done on the basis that the new protocol would come into play and the consultation would be out. The chief executive regularly engaged with Minister Poots to provide him with an update on progress with clearing the backlog. Any ongoing delays in processing applications are due to the failure of DAERA to respond to the 24 that have been consulted on.

The chief executive formally wrote again to Minister Poots on 24 November 2020 seeking clarity on when the respective councils would receive a decision on the outstanding applications and requesting an update on the new operational protocol on ammonia as part of the wider strategy. We were informed that that would happen and commence in early autumn 2020, but we are still in the same position. On 4 December, SES received an update from DAERA advising that the work on the draft Northern Ireland ammonia strategy was in its final stages and would be completed by the end of the year and issued for public consultation. We are, however, still no further forward with that. The chief executive formally wrote to Minister Lyons on 18 February 2021 to once again request an update on the operational protocol and the outstanding cases. We still await a response on the outstanding cases. You can therefore see how councils waiting for a decision or further support are beginning to become frustrated, and we are becoming frustrated about not having the final stages of a new draft protocol. To date, DAERA still has not published the draft ammonia strategy. The Department continues to base consultation responses on the outdated operational protocol. That causes great uncertainty in the planning process and leads to delays in the applications affected. We really look forward to learning the outcome of DAERA's review of the operational protocol and the launch of consultation on the NI ammonia strategy.

It is really important that a pragmatic approach is taken to supporting the agri-sector. For us, in Mid and East Antrim, it is viewed as a priority growth and emerging sector, with the growth potential to create high-value jobs and to stimulate economic growth. That is key for us. We want to work in partnership. We would welcome more detailed information on the sensitivity of European sites and the capacity for development around them, as well as advice on the efficiency, environmental impacts and new technologies and approaches to the reduction of ammonia.

When DAERA issues its updated approach, SES hopes to be able to adopt and apply it, with a similar approach to it, to the appropriate assessment of planning applications. In the meantime, in the absence of an updated approach, we will assess applications on the information and evidence available in order to support councils to make decisions that are fair and consistent, while complying with the regulations.

That brings our oral evidence to an end. I hope that you have found it informative. We are now happy to take questions.

The Chairperson (Mr McAleer): Thank you, Nicola and Paul, for that detailed briefing and for the written briefing that you provided to us in advance of the meeting. A number of members want to ask questions.

Can you appreciate the applicant's point of view? They see that there is the Northern Ireland Environment Agency and also the SES. I know, from making representations on behalf of applicants locally, even for residential houses, that there seems to be a tick-tacking going on between the council, SES and NIEA. Sometimes, it can become very confusing and frustrating. Do you appreciate that? How can that be made more efficient? Do you understand how that can result in delays and confusion for people?

Mr Duffy: I appreciate that. NIEA and SES have different roles in the process. SES's role in the planning process is very narrow. It is limited to ensuring that proposed developments comply with the legal requirements of the habitats regulations. Ultimately, the legal position and the scientific evidence available indicate that the operational protocol that NIEA continues to operate is not compliant with the habitats regulations. That is where the problem lies. There is a tension between DAERA's operational protocol and the legal and scientific position. SES has to provide objective scientific advice to councils as to whether they are compliant with the regulations. NIEA has acknowledged that its operational protocol is outdated and has undertaken a review. Until such times as that review is concluded and the ammonia strategy and operational protocol that DAERA is bringing forward are available to us, the situation remains unsatisfactory, because there is that tension between the two. The sooner that the matter is resolved and we can take a consistent approach, the better. Whilst that tension that I referred to remains, the clarity is not there, and that is where the confusion arises.

The Chairperson (Mr McAleer): When the 0.1% was introduced, it more or less put a block on any development in relation to agriculture. I know that because I live in the west, where there are a fair few SACs and areas of special scientific interest (ASSIs). We even had a situation where farmers could not replace like with like. They could not even replace sheds or infrastructure with other, more efficient infrastructure because of the 0.1%. We have a contradiction between, on the one hand, quite correctly

wanting to protect our natural habitats and, on the other hand, the requirement to produce food. Did you consult on introducing that more stringent 0.1% threshold?

Mr Duffy: First, there is a misconception that the 0.1% brought a halt to the vast majority of agricultural activity or planning applications: it did not. I made a point of stressing that approximately 99% of planning applications that SES undertook were approved. As Nicola and I referred to, there are currently 24 applications sitting with DAERA. We are actually talking about very small numbers. That needs to be put into context.

The other thing is that the 0.1% was not a threshold; it was a trigger at which SES would require further assessment. It was not that anything above 0.1% was unacceptable; it was a trigger at which further assessment would be carried out. In our council, eight applications fell between 1% and 0.1%. Of the eight about which SES had concerns initially, three were subsequently approved, one was refused and the remaining ones are with NIEA. There has been a misconception that the 0.1% put a halt to agricultural development, but it did not.

Your further question was about whether that was consulted on. SES is not a decision-making body. It does not produce policy or legislation. That is a matter for government. SES's internal guidance was the interpretation of legislation. That did not constitute either a new legislative provision or new policy. In that context, it was not considered that public consultation was necessary. Indeed, public consultation could have been construed as misleading, because it would have implied that it was a new policy or legislative changes that were being consulted on, which would have been inaccurate. SES was not responsible for making decisions on policy or legislation. It was only guidance on how it was undertaking an assessment and, therefore, that was not consulted on.

The Chairperson (Mr McAleer): OK. Thanks for that. Who is SES accountable to, Paul?

Mr Duffy: Ultimately, SES is accountable to each of the 11 councils. It is a shared service that provides the councils with its expert scientific advice. It tries to provide as objective advice as possible. It is a matter for the decision makers, which are the individual planning authorities in each of the councils, to decide what weight they want to attach to SES's advice. SES's advice is one of a number of material considerations that the planning authority will have to take into consideration when it is making a decision. In some instances, the planning authority may decide to set that aside.

You raised the example of a farm looking to introduce new development but SES still having a concern with that. You have to appreciate that, on a lot of the protected sites — as I said, in 98% of special areas of conservation — the background levels of ammonia at which significant damage occurs are already exceeded. Where the conservation status of the habitat is already unfavourable, it is very difficult to introduce an activity that will generate further ammonia.

Now, if the ammonia that an existing facility generates is already being calculated in the background ammonia levels and they propose a replacement system that will reduce that, the net reduction can be taken into consideration and will be a material consideration in making a decision. However, if the background levels are already highly exceeded and even the new technology might not be enough to bring those below the levels at which no damage is caused, SES needs to let that council know that the proposal is reducing background levels but is still not bringing them below the levels required under the habitats directive. It would then be a matter for that individual council to say, "Look, if we do not approve this, the fallback position will be worse. If we approve it, we will get an improvement to the situation even though it is still not complying with the habitats directive". A council may decide that. They are the decision makers.

Ultimately, it is up to the individual councils. All that SES is doing is providing the best possible advice that enables that council to make an informed decision on the application. That may be the reason why it decides, "Although it is still contrary to the regulations, it actually improves the situation. If we continue improving the situation, we will gradually get the levels down". That would be a valid reason for a council to look at SES's advice and say, "We have considered it, but we are not going to attach determining weight to it".

The Chairperson (Mr McAleer): OK. Thank you, Paul.

Mr Irwin: Thank you for your presentation. I want to touch on similar issues to those raised by the Chair. It is bizarre that, in some circumstances, a farmer wants to do a new build and reduce emissions but is not allowed to do so. That is an issue. You said that, under a challenge by the Ulster

Farmers' Union, you agreed to withdraw your guidance. If you agreed to withdraw your guidance, did it not revert to the original guidance? If not, why not?

Mr Duffy: Ultimately, SES has to provide sound guidance to councils that complies with the habitats regulations. NIEA has, for over two years now, publicly acknowledged that its operational protocol does not comply with the habitats regulations. Therefore, if SES continued to apply DAERA's operational protocol in every situation, it would not be fulfilling its role, which is to ensure that it advises planning authorities on whether or not planning applications are contrary to the regulations. The protocol being operated by DAERA is out of date. It is reviewing it. Every time that we ask, we are told that it is in its final stages and will be published. We were told that it would be published in the autumn last year. Then, we were told that it would be published before the end of the year. Then, we were told that it would be published in the spring. That cycle keeps on going. In the meantime, planning decisions still have to be made. We have not reverted to the guidance. We have to look at each case on a case-by-case basis and to make the best informed decision that we can.

Mr Irwin: You clearly withdrew your guidance. You did not feel confident about going into court with the guidance that you had, so you withdrew that guidance and left quite a number of farmers in limbo.

Mr Duffy: No. The guidance was withdrawn because, at that time, we were given a commitment by the chief executive of NIEA that the updated operational protocol would be published in four to six weeks. When you know that the situation is being updated, decisions have to be made as to whether going into a judicial review, which will be complex as it is in a specialist area and will use up a lot of public money to defend, is the best use of public money. Given the reassurance that we had been given by NIEA that its policy was going to be published in a matter of weeks and the fact that we knew that any judicial review would run into hundreds of thousands of pounds of public money, I think that the correct decision was to reach agreement with the Ulster Farmers' Union and not proceed, and that is what we did.

Mr Irwin: If one were looking in from the outside, one would say that you were not confident in the guidance that you had given, otherwise, you would have been quite happy to go into court because it would have been the Ulster Farmers' Union's problem if it was wrong. I know of one farm whose application has emissions at 0.3%. Your guidance is 0.1%. This guy is sitting in limbo because he is at 0.3%. That is very low, yet he has been sitting in limbo for a year and a half to two years.

Mr Duffy: I do not know the details of that and would not want to get into a specific case. However, SES is turning around consultations in a matter of weeks. If that application is sitting in limbo, it is not with SES; it is with NIEA.

Mr Irwin: NIEA was happy with it. It went to you, and you sent it back to him.

Mr Duffy: That is a requirement in the regulations. NIEA is the statutory nature conservation body in Northern Ireland. It is a statutory consultee in the planning process. The regulations require us to consult NIEA. SES will have undertaken the appropriate assessment. Its findings will have been that it could not be satisfied beyond reasonable doubt. In that situation, the legislation requires SES to consult NIEA again.

As I mentioned, there are 24 applications sitting with NIEA. Some of those have been sitting with NIEA for over a year. NIEA has not responded to them. We, on behalf of the 11 councils, have been pushing for NIEA to respond to those consultations. It is a statutory consultee. It has a legal requirement to consult. It should provide a response within 21 days. At the minute, NIEA is advising councils that:

"in the absence of DAERA comment, no inference can be made on DAERA's position with regard to environmental impacts. It is the responsibility of the planning authority to ensure that all risks to the environment and environmental legislation requirements have been considered".

Ultimately, the whole reason that we consult with NIEA is because it is the statutory nature conservation body. It is its role to advise on these matters. When NIEA does not respond, it leaves councils in a very difficult position. Councils cannot make an informed decision without having had a consultation response.

Mr Irwin: OK. It just seems strange that you blame NIEA and it blames you. Thank you.

Ms Rowles: William, that is why we are here today: to clarify that we do not have any decision-making powers. We are waiting patiently for the new protocol and the new strategy. Hopefully, that will allow us all to move forward, and the 24 applications that are sitting there will be pushed through the process and get decisions.

Mr Irwin: Hopefully, that works out sooner rather than later.

Ms Rowles: Yes.

Mrs Barton: Thank you for your presentation. Like the two members who have spoken, I have reservations about some of the work that is being carried out. If I may say so politely, it appears that you are just another tier of bureaucracy through which planning applications have to jump. That concerns me. I represent the west. I am from Fermanagh. I know of a number of applications that are being held up again [*Inaudible owing to poor sound quality.*] How much consultation have you done with the representatives of those who put in planning applications — the agents who represent applicants? How much have you consulted them, and have you held open meetings and briefings and things like that so that they are aware of your role and what you require? That is the first thing.

Secondly, how open are you to the idea of applicants phoning you up and saying, "Look, what is the problem here? How can we resolve it sensibly?"?

Mr Duffy: First and foremost, we are happy to meet any agents. For example, we met the Ulster Farmers' Union and gave a full explanation, in advance, of our internal guidance and of how we assessed applications. We have probably met most of the agents who are responsible for submitting planning applications relating to intensive livestock farming, anaerobic digesters and the like, and we have gone through the process with them.

We try to be as helpful and open as possible. When there is an application and there are mitigation measures — for example, where ammonia levels are exceeded and there are steps that could significantly reduce them — we are happy to take them into account in the assessment and let them be built into the modelling. DAERA is ultimately responsible for agriculture, and it should provide advice on the mitigations that farmers can introduce to reduce ammonia levels. That is why we would welcome the ammonia strategy. It should have a holistic role, relating to how we can manage and reduce ammonia levels in Northern Ireland. Without that, we are in an unsatisfactory situation. Until that is resolved, the uncertainty remains. That outcome is needed to move things on.

We are quite open and willing to meet people, and we have done that throughout the process.

Mrs Barton: Is that the case for an individual agent for an individual farmer who applies for planning permission?

Mr Duffy: Yes. We normally recommend that, in the first instance, they contact the relevant planning authority. That should be their first point of contact. We do meet them, speak to them and provide advice regularly.

Mrs Barton: Is your telephone number readily available if they want to speak to you?

Mr Duffy: Our numbers are available, yes.

Ms Rowles: They are online.

Mrs Barton: I know that, once or twice, there have been difficulties in getting through. I am glad to hear that that has been resolved.

I represent a border area. You are talking about ammonia. One does not know which way the wind physically blows and what that creates in relation to the 0.1%. What are your thoughts on that? [*Inaudible owing to poor sound quality.*]

Mr Duffy: The habitats regulations specifically apply to designated sites in Northern Ireland. We are, therefore, primarily concerned with the sites that fall within our jurisdiction, but we are mindful that there are protected sites within the 7.5 kilometres in the Republic. Where they are within that, we try to make sure that the appropriate assessment considers that.

There is also a requirement for planning applications to undertake environmental impact assessments. Those assessments allow transboundary issues to be considered more so than the habitats regulations. The habitats regulations apply only to sites in Northern Ireland, but wider concerns with transboundary issues should be picked up under the environmental impact regulations.

Mrs Barton: OK. Thank you.

Mr Blair: I thank Nicola and Paul for the information that they have given us and for the opportunity to question them. Some of the issues that I intended to raise have been covered. There are certainly issues with processes and getting up-to-date advice protocols from the NIEA.

The briefing paper tells me that there were 97 intensive agriculture-related applications in 2020. There are two things. First, has there been an increase in those types of applications, and has that led to a subsequent increase in the amount of technical and detailed scientific advice that you have to provide, which, therefore, impacts resources?

Mr Duffy: Yes, I think that —

Mr Blair: Sorry, Paul; I want to ask the questions together. Secondly, have you identified any trend or rate of increase in those applications over a period of years — for example, five years or 10 years — that could substantiate that resource drain?

Mr Duffy: Going back to the first question, which is linked to the second, there has been a significant increase in planning applications for intensive livestock. That is directly linked to the Department's Going for Growth strategy, which was all about increasing productivity and the number of livestock on farms in Northern Ireland. That increase in intensive livestock planning applications can be directly linked to that strategy, and it is why issues such as ammonia have come to the fore. Before that strategy was prepared and launched, ammonia was not really on anybody's radar.

As environmental issues come to light, they trigger more consultations. Since the transfer of planning functions in 2015, we have noticed an ongoing increase in the number of consultations that we receive.

Mr Blair: Yes, and those would be on matters such as intensive pig farming in the Antrim and Newtownabbey area, for example. You will be aware of that; it has hit the headlines once or twice.

Mr Duffy: Yes, it is poultry farming, pig farming and cattle housing. That is where the issues with ammonia come from in the applications.

Mr Blair: OK. Thanks for that.

Mr M Bradley: Thank you, Nicola and Paul. Paul, it is good to see you again. You have not changed a bit [*Laughter.*] I say that tongue-in-cheek.

I have major concerns about the levels of ammonia on our land, in our waterways and those that are airborne. In planning terms, I perceive a lack of progress on new technologies that are being developed to separate fluids from solids on farms. I am also concerned that there is a disparity between DAERA's assessment of the amount of ammonia on our land and that of Shared Environmental Service. That is across Northern Ireland; indeed, habitats are under threat of destruction and could take years to recover, if at all. Some species and plants may never recover and could be lost.

Paul, you highlighted the fact that ammonia levels in Northern Ireland are in the high 90s in percentage terms. Is that not an alarm bell that shows that that requires urgent attention?

Ms Rowles: It is.

Mr Duffy: It is. There are reduction targets, but those have not been met either. It is an urgent matter, but I have to emphasise that the responsibility for ammonia levels and the impact of ammonia on the environment lies with DAERA. That is not SES's role; SES's role is to ensure that development complies with the regulations. It is not to go out there and control ammonia. That is for the ammonia

strategy, which DAERA will bring forward and, hopefully, consult on shortly. That is the holistic approach to how Northern Ireland reduces ammonia levels in the countryside.

The levels are fairly high. They are a lot higher in Northern Ireland than in England, Scotland, Wales or the Republic of Ireland. We have by far the highest levels of ammonia.

Mr M Bradley: The Chairman said that farmers are willing to change practices, an issue that was highlighted by William and, probably, Rosemary. He also spoke about replacing old and outdated buildings and, with them, old and outdated methods. Is there not an onus on us to help farmers who want to evolve farming practices by using new technologies to reduce ammonia at source? Is that due to a lack of clarity from NIEA and the lack of a good ammonia strategy being in place?

Ms Rowles: Yes.

Mr Duffy: SES would welcome advice from DAERA on new technologies and the best farm management practices to reduce ammonia. A lot can be done, and, hopefully, we will move down that route. That is how the issue will be addressed. The ammonia strategy has still not been published or implemented. We need that to bring down the levels.

Ms Bailey: Thanks very much for being here with us today. We have been waiting quite a while to hear from you, so I am glad that you are here. I put on record that any feedback that I get on, or reports that I hear about, SES is that the advice that it gives to councils and councillors is second to none, extremely professional and that SES knows the business —

Mr Duffy: Sorry, we have lost Clare.

Ms Rowles: I have lost Clare.

The Chairperson (Mr McAleer): Philip, can you jump in, please, before Clare comes back, because you were looking in as well? Sorry about that.

Mr McGuigan: Thanks, Chair. Paul said that DAERA sets the policy, and we are all awaiting the ammonia strategy to put this in place. In Nicola's contribution, however, she said that, while they are waiting for that, they hoped — I cannot remember the exact words that she used — that the strategy would be sensible, workable and that it would take the importance of the agri-food business into account. In your view, Nicola, what is that sensible strategy/approach?

Ms Rowles: As Paul said, it is all about the mitigations that can be put in place. We are hopeful that the new ammonia strategy will outline techniques and even incentivise farmers. You cannot say that there is a problem without creating a solution. If you are to move forward pragmatically and collaboratively, it is about working together to find those solutions. It is about educating the farming community and making sure that farmers are aware that this is an issue and that they know what they need to do to mitigate that issue or the techniques that they can apply to their businesses to drive it forward and bring those levels down. That is what I mean: it should be a collaborative approach.

Mr Duffy: If there is to be growth, it has to be sustainable, and we need a holistic approach to do that. At the moment, it is being done very much on a piecemeal basis, which is not satisfactory.

The Chairperson (Mr McAleer): I will get Clare back in.

Ms Bailey: Thank you very much, Chair. Apologies for my technology. I will fly through it.

You said that SES is accountable to the 11 councils to which it gives advice. It gets its funding from DFC, works within DFI Planning and is upheld by DAERA's and NIEA's policies under habitats regulations assessments (HRAs). To whom does it report?

Ms Rowles: It reports to Mid and East Antrim Borough Council. SES sits within the development directorate and is effectively directly accountable to Mid and East Antrim Borough Council. Under that, it is a shared service across the 11 councils, but ultimate responsibility currently sits with Mid and East Antrim Borough Council.

Ms Bailey: Do you get reports from SES?

Ms Rowles: Yes, we get regular reports. Paul manages the staff. I meet Paul regularly, and he feeds back on progress, applications, finance and all the variables around managing the service.

Ms Bailey: OK. How long have you been aware that our SPAs and SACs are breaching the HRAs, particularly in relation to ammonia levels?

Mr Duffy: It came to light in June 2018 during a DAERA stakeholder forum on ammonia, at which DAERA officials delivered a PowerPoint presentation. That is when we became aware of the ammonia levels.

Ms Bailey: What action was then taken?

Mr Duffy: There was a European Court of Justice ruling in the Netherlands around the same time, which ruled that the levels of ammonia that were acceptable at that stage in the Netherlands were no longer acceptable and no longer compliant with the regulations. NIEA levels here were higher than that. At that time, we had meetings with NIEA officials to discuss the problem and the protocol. The Assembly was not in operation at that time, and NIEA officials said that they could not amend the NIEA protocol in the absence of a Minister. That ultimately led to internal guidance being published by SES, because we had to provide advice to councils so that they could ensure that they were complying with the habitats regulations.

Ms Bailey: We know that Northern Ireland is in breach of regulations. I think that 98% of our SACs and SPAs are breaching the habitats regulations, with that being up to 400% year-on-year. We have been made aware of that, and people have been well informed of the facts since 2018. The Department's figures show that, linked to this problem, up to 500 or 600 people died prematurely every year in Northern Ireland. When the Northern Ireland Environment Link operates an ammonia protocol that, it has openly admitted, is not legally proofed, does SES take account of the cumulative effect in an area when it advises on planning applications, or is it stringently focused on the planning application? If that application goes ahead, resulting in the problem being exacerbated, who is open to risk under the habitats regulations?

Mr Duffy: The cumulative impact is part and parcel of the appropriate assessment that SES carries out on individual planning applications. The ultimate responsibility rests with DAERA. It is responsible for ammonia levels and their impact on the environment and public health. That is where the responsibility for updating policy and bringing forward the strategy announcements lies, so it is ultimately in its remit, not SES's remit. SES's remit is solely to assess planning applications under the habitats regulations, which includes a cumulative assessment.

Ms Bailey: To be clear —

The Committee Clerk: May I get in for a second? We are no longer broadcasting, and the meeting is no longer in public session.