


# Recognizing the natural heritage of landscape in the law of England and Wales

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## ABSTRACT

Natural heritage is a term that is little used in the context of environmental law, but it is essential in understanding the connections between people, nature and landscape. Protecting the natural heritage of landscape, recognizing the spatial and temporal connections between people and place, will be crucial in addressing the nature crisis. Law can provide an important means of reflecting those values and this article sets out three ways in which the law in England and Wales should be reformed to this end. First, heritage law needs revising to include the protection of tangible natural heritage features in the landscape, alongside built cultural heritage. Secondly, planning law needs to clearly articulate the more intangible values of the natural heritage in landscape for land use. Thirdly, these values and features of natural heritage in the landscape need to be protected in rules and standards (legal or otherwise) that govern management practices in a rural context, ie, in the spheres of agriculture, forestry and inland waterways.

**KEYWORDS:** landscape; heritage; nature; land use planning; agriculture and forestry.

## 1. INTRODUCTION

Natural heritage is a term that focuses attention on the idea of the natural environment as the inheritance of future generations.<sup>1</sup> It is a phrase that is little used in the context of environmental law nor has it been a major concern of heritage law, which is centred on cultural heritage. In contrast, natural heritage is essential in epitomizing the values of landscape as natural and cultural heritage. This is central, for example, to the Council of Europe's European Landscape Convention (ELC), the first international agreement on the importance of landscape signed by the UK government in 2006.<sup>2</sup>

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1 This is broad definition based on the Oxford English Dictionary definition of heritage as "That which has been or may be inherited", see <[https://www.oed.com/dictionary/heritage\\_n?tab=meaning\\_and\\_use#1764513](https://www.oed.com/dictionary/heritage_n?tab=meaning_and_use#1764513)> accessed 13 October 2025. A more detailed definition of the natural heritage of landscape will be provided in the first substantive section of this study.

2 European Landscape Convention (Florence, 2000) CETS 176, as amended by CETS 219, entered into force 2004. On the implementation of this agreement in England and Wales see (n 92).

Recognizing the natural heritage of landscape is important in fostering connections between people and nature; connections that will be crucial to our efforts to address nature's decline.<sup>3</sup> However, natural heritage, as opposed to cultural heritage, is a notion that is underexplored even in the context of landscape. Landscape studies, for example, has focused on the way nature is related to culture rather than understanding the relationship between nature and heritage.<sup>4</sup> This article seeks to address these important gaps in the literature by exploring the notion of natural heritage, its relationship to landscape, and how this might be recognized in law.

The first section of this study refers to literature in heritage and landscape studies, as well as environmental law, to establish the meaning of the natural heritage in landscape. This is defined as elements of a landscape of natural origin that reflect a significant relationship with people over time. Subsequently, the article outlines how heritage law, which is currently focused on built heritage, should be reframed to protect tangible natural heritage features and sites in the landscape, such as wildlife, woodlands, parks and allotments.<sup>5</sup> The remaining parts of the study focus on the protection of the more intangible aspects of the natural heritage in landscape. The third section discusses the need to clearly articulate these values in landscape and land use planning law and policy. Finally, given that the land use planning regime is limited to building development, the following section explores how these values should be recognized in rules and standards (legal or otherwise) that govern management practices in a rural context, ie, legal frameworks for agricultural payment systems, forestry standards and laws on the governance and management of inland waters.

The article involves consideration of a wide range of legal frameworks, which is essential in considering how to recognize the complexities of natural heritage, landscape and their relationship to one another. It also considers the current similarities and differences in England and Wales and the potential for future divergence. As a shared jurisdiction, and within the former confines of membership of the European Union (EU), the legal landscape of England and Wales is historically very similar. However, this position has been significantly impacted by the introduction of devolution in Wales, (especially after the initiation of primary law-making powers in 2011), and the UK's exit from the EU in 2020.<sup>6</sup> As a result, there is increasing divergence between the two countries in terms of law, policy and governance with respect to heritage, land use planning and environmental protection.<sup>7</sup>

A devolved approach to recognizing the natural heritage in landscape is necessary to reflect the very different past, present and futures of a country, in terms of its natural environment, social, political and economic factors, and matters of culture.<sup>8</sup> For example, England and

3 There has been a 19% reduction in terrestrial and freshwater species abundance across the UK since 1970 and 54% decrease in the distribution of flowering plant species. *State of Nature 2023* (State of Nature Partnership, 2023). The UK is also in the bottom 10% of all countries globally in the Biodiversity Intactness Index Josh Davis UK has 'led the world' in destroying the natural environment 26 September 2020 Natural History Museum.

4 See further John Wylie, *Landscape* (Routledge 2007) Chapter 4 which outlines the evolution of the literature on cultural landscapes.

5 Allotments and parks are clearly the product of human manipulation but are referred to as heritage features of natural origin because they are largely formed from biological features.

6 Devolution in Wales began with the Government of Wales Act 1998 but has taken place incrementally. The Government of Wales Act 2006 paved the way for a referendum on primary law-making powers which were introduced in 2011 and subsequently the Wales Act 2017 created a reserved powers model. The UK left the EU on 31 December 2020. On the UK's exit from the EU, most legislation derived from EU law was maintained under the European Union Withdrawal Act 2018 as retained EU law. This title was changed to assimilated law under the EU Retained Law (Revocation and Reform) Act 2023.

7 In terms of governance, of note, is the whole governance system in Wales under the Wellbeing of Future Generation (Wales) Act 2015. Environmental governance is also based on fundamentally different approaches in England and Wales as outlined in (n 26) below. The regulators for environmental protection in England are the Environment Agency, Forestry Commission England and Natural England whilst in Wales there is a single regulatory body in the form of Natural Resources Wales (NRW). The main body for heritage protection in England is Historic England whilst in Wales these duties fall to Cadw.

8 This list is adapted from the issues referred to in Elizabeth Hamin, 'Western European Approaches to Landscape Protection: A Review of the Literature' (2002) 16 *Journal of Planning Literature* 339.

Wales share some important history such as the Industrial Revolution, but they have very different natural environments epitomized by the mountainous landscapes of Wales and the undulating hills of England. Further differences are evident in the political environments of England and Wales reflecting, for example, Wales' relative position of socio-economic disadvantage and the cultural and political significance of its minority Welsh language.<sup>9</sup>

Before discussing the 'legal landscape' in detail, the study begins by exploring the notion of natural heritage and its relationship to landscape.

## 2. UNDERSTANDING NATURE, HERITAGE AND LANDSCAPE

Nature, heritage and landscape are all protean and contested concepts which can be subject to varying definitions depending on the context. Therefore, this section will explain how each term is used in different disciplinary, policy and legal scenarios. This discussion is subsequently drawn upon to elicit a definition that can be used in a legal context.

### 2.1. Cultural heritage and landscape

'Heritage' is a term most closely associated with cultural heritage rather than natural heritage. Not only is cultural heritage the predominant idea in terms of heritage, it is traditionally conceptualized around the notion of 'cultural property', such as human-made tangible objects like ancient monuments and historic buildings.<sup>10</sup> Certainly, this type of built heritage has been the focus of heritage law in England and Wales.<sup>11</sup> However, intangible heritage has become an increasing concern in heritage literature and includes, for example, symbolism, language and belief.<sup>12</sup> Thus, a useful way of thinking about cultural heritage is as an inheritance for future generations that is symbolic of the cultural identity of a group.<sup>13</sup>

In a landscape context, intangible heritage is essential in understanding how the physical landscape can have cultural significance.<sup>14</sup> However, connections to the cultural heritage in landscape have traditionally been narrowly related to its aesthetic qualities, which have inspired the representation of landscape in art and literature.<sup>15</sup> This aesthetic perspective has dominated the legal designation and protection of landscapes in Western tradition, including England and Wales.<sup>16</sup> Nonetheless, as a singular approach to valuing landscape, this focus on aesthetics is no longer supported by many commentators in aesthetic philosophy and landscape studies.<sup>17</sup> Thus, cultural geographers have studied broader notions of the cultural heritage in landscape, including the idea of landscape *as* culture.<sup>18</sup>

9 Note that these differences have been rather oversimplified but are designed to help readers who are not familiar with these counties to understand the context for this discussion.

10 This has certainly been the case in international law. See for example Silvia Borelli and Lenzerini Frederico (eds), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law* (Martinus Nijhoff 2012) iv.

11 See (n 59) onward.

12 See further Ahmad Yahaya, 'The Scope and Definitions of Heritage: From Tangible to Intangible' (2006) 12 *International Journal of Heritage Studies* 292.

13 Janet Blake, 'On Defining Cultural Heritage' (2000) 49 *ICLQ* 61.

14 *ibid* 67.

15 Indeed, aesthetic philosophers have interrogated the notion not just of landscape art, but landscape as art, see for example the view of Callicot that the Romantic idea of the picturesque 'frames nature as it were, and deposits it in galleries—the national parks', JB Callicot, *In Defense of the Land Ethic: Essays in Environmental Philosophy* (University of New York Press 1989) 242.

16 Hamin (n 8) 339.

17 See further Victoria Jenkins, 'In Defence of Natural Beauty: Aesthetic Obligation and the Law on the Designation of Protected Landscapes in England and Wales' (2020) 22 *Environmental Law Review* 7. Interestingly, in Wales this shift in thinking is epitomized by the use of the term *tirwedd* in the Welsh language as opposed to *tirlun*, eg, in the translation of Landscapes Wales, the organization for National Parks and National Landscapes in Wales, to *Tirweddau Cymru*. *Tirlun* focuses on the aesthetic idea of landscape whereas *tirwedd* provides a geographical perspective.

18 Jane Holder, 'Law and Landscape: The Legal Construction and Protection of Hedgerows' (1999) 62 *MLR* 100, 101.

The cultural landscape has become a centre point for the contemplation of the relationship between nature and culture.<sup>19</sup> The traditional view is that nature is a medium of culture in a landscape.<sup>20</sup> However, the object of this study is to consider how the natural environment within the landscape may be viewed as a part of our heritage rather than culture (although there are clearly important connections between the two). Before doing so it is important to understand how the values of natural resources in the landscape are currently conceptualized in law and policy in England and Wales around nature recovery, and the way that the idea of protecting nature as heritage might complement this.

## 2.2. Nature recovery and landscape

Nature recovery forms the cornerstone of government policy in England and Wales on the natural environment.<sup>21</sup> In this context, natural resources are widely defined to include not just land, water, air and wildlife but the processes that support them, recognizing the significance of ecological resilience to nature recovery.<sup>22</sup> Landscape has not conventionally been a significant feature of policies on nature recovery, but recently there has been attention to landscape scale approaches in land management in both countries.<sup>23</sup> Landscape scale approaches to environmental management have also been considered in environmental law scholarship;<sup>24</sup> and landscape ecologists have long recognized the benefits of the spatial and temporal scales of landscape in understanding its physical properties to support ecological resilience.<sup>25</sup>

In considering the relationship between nature, heritage and landscape, the connections between people and natural resources will be especially important. Policy and governance in England and Wales largely conceptualize this relationship around the notion of ecosystem services, which highlights the benefits of natural resources to human development.<sup>26</sup> The provision of ecosystem services can be related to future as well as present generations, and this intergenerational perspective provides a key element of policy and governance in both England and Wales.<sup>27</sup> In contrast, the past is much less significant. Indeed, heritage values are considered to arise only from the cultural benefits of nature, such as aesthetic enjoyment, recreation, artistic and spiritual fulfilment, and intellectual development.<sup>28</sup> This is quite opposite to a key contention of this article that we should centre attention on heritage, rather than culture, in defining the natural heritage values of landscape. This approach will inevitably

19 See further Adrian Phillips, 'The Nature of Cultural Landscapes: A Nature Conservation Perspective' (1998) 23 Landscape Research 21.

20 This is based on Carl Sauer's work on 'The Morphology of Landscape' in 1925. See further Wylie (n 4).

21 In England in 2012, a strategic policy on natural capital was developed by a newly appointed Natural Capital Committee, underlining a 25-year environment plan, see Department of Environment, Farming and Rural Affairs, *A Green Future: Our 25 Year Plan to Improve the Environment* (HM Government, 2018). This later formed the basis of a statutory system of environmental improvement in England introduced under the Environment Act 2021. In Wales, the notion of sustainable management of natural resources, introduced by the Environment (Wales) Act 2016, underlines a national natural resources policy. Welsh Government, *Natural Resources Policy* (Welsh Government 2017).

22 See for example the definition in the Environment (Wales) Act 2016 s2.

23 For example, in agriculture, see (n 131) onward.

24 See for example Chris Rodgers and Helen Kendall, 'Implementing Landscape-scale Environmental Management: Landscape Enterprise Networks' (2023) 35 JEL 87, and Justine Bell-James, 'From the Silo to the Landscape: The Role of Law in Landscape Scale Restoration of Coastal and Marine Ecosystems' (2023) 35 JEL 419.

25 Burel Francoise and Baudry Jacques (eds), *Landscape Ecology: Concepts, Methods and Applications* (Science Publishers 2004) 45.

26 'Ecosystem services are the benefits people obtain from ecosystems. These include provisioning, regulating, and cultural services that directly affect people and supporting services needed to maintain the other services'. See Millennium Ecosystem Assessment, *Ecosystems and Human Development: A Framework for Assessment* (Island Press 2005) 57.

27 This is a particular concern in Wales given the whole governance system for the wellbeing of future generations, see (n 7).

28 Rashid Hassan, Robert Scholes and Neville Ash (eds), *Ecosystems and Human Development: Current State and Trends, Volume 1* (Island Press 2005) 457. This has led to broader discussions of the value of 'biocultural heritage' Harsh Vardhan Bhati and Yaffa Epstein, 'Protection of Biocultural Heritage in the Anthropocene: Towards Reconciling Natural, Cultural, Tangible and Intangible Heritage' (2023) 35 JEL 353.

encapsulate cultural factors but without specifically needing to recognize those values in law, which is notoriously difficult.<sup>29</sup>

Before continuing with the endeavour to define natural heritage, it must be acknowledged that considering nature as heritage has the potential to be quite controversial among environmentalists. It may appear hedonistic to recognize the value of nature beyond the necessity of natural resources for human development. Indeed, even this approach is contentious among those who believe our aim should be to acknowledge our existence as part of natural systems and adopt a more fundamental reassessment of the relationship between human societies and nature.<sup>30</sup> Additionally, viewing nature as heritage might also be considered unnecessary given that the need to protect biodiversity already encourages a view of natural resources as an essential inheritance of future generations.

On the other hand, the notion of natural heritage may prove motivational to individuals who are not inspired by ideas of biodiversity and nature recovery, providing another means of incentivizing people to change their behaviour to support the natural environment. Of particular significance in this regard is the fact that heritage connects the current generation with the past as well as the rather uncertain future of the next generation.<sup>31</sup> Furthermore, valuing nature as heritage highlights our connections to nature to support our understanding of our existence as part of this. Most importantly, viewing nature as heritage does not mean that, where conflict arises, environmental imperatives cannot take precedence.<sup>32</sup> Thus, recognizing the natural heritage in landscape in law is not proposed as an alternative to the legal response to the nature crisis, but a means of augmenting current approaches to nature recovery. It is argued that this could be valuable to nature recovery given that it is apparent that the current systems for the legal protection of endangered wildlife and habitat are not working.<sup>33</sup>

### 2.3. Natural heritage and landscape

Natural heritage, in contrast to cultural heritage, is a term that is clearly underexplored.<sup>34</sup> This is surprising given that, since the 1970s, natural heritage has been included alongside cultural heritage as a key concern of the World Heritage Convention (WHC);<sup>35</sup> and the ELC has also epitomized natural and cultural heritage as the essential values of landscape.<sup>36</sup> Despite the way the terms cultural and natural heritage are used concomitantly in international agreement, they are also treated separately in efforts to protect and promote heritage. This approach has been criticized by scholars keen to explore these connections.<sup>37</sup> Of particular note is the work of Lowenthal, who highlights the following three fundamental aspects of both natural

29 Douglas Fischer, 'Can the Law Protect Landscape Values?' (2005) 9 *New Zealand Journal of Environmental Law* 1, 3. See also the comments of Holder (n 18) on this issue. This is particularly important given that the article adopts a reformist approach.

30 See for example Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books 2011).

31 See further Harrison on the relevance of heritage to the future (n 42).

32 Nor indeed that heritage is somehow detrimental to environmental protection. Melissa Baird, 'Natural Heritage: Heritage Ecologies and the Rhetoric of Nature' in Samuels Kathryn and Rico Trinidad (eds), *Heritage Keywords: Rhetoric and Redescription in Cultural Heritage* (UP Colorado 2015) 213.

33 See (n 3).

34 Some examples Baird (n 32), and Rodney Harrison and Donal O'Donnell, 'Natural Heritage' in *Understanding Heritage in Practice* (Manchester UP 2010).

35 The Convention defines natural heritage to include natural heritage features defined as physical or biological formations, geological and physiographical formations and natural sites. Convention on the Protection of World Cultural and Natural Heritage (United Nations Educational, Scientific and Cultural Organisation, 1972) Article 2. The Convention has been particularly important in the way heritage is 'perceived and managed', see Rodney Harrison, *Heritage: Critical Approaches* (Taylor & Francis 2012) 21.

36 See (n 2) Preamble.

37 David Lowenthal and Kenneth Olwig (eds), *The Nature of Cultural Heritage and the Culture of Natural Heritage* (Routledge 2006) and Rodney Harrison, 'Beyond "Natural" and "Cultural" Heritage: Toward an Ontological Politics of Heritage in the Age of Anthropocene' (2015) 8 *Heritage & Society* 24.

and cultural heritage: their importance as an inheritance for future generations; the fact that they are precious and irreplaceable; and the need to protect these forms of heritage from human threats.<sup>38</sup>

The problem with defining natural heritage as an inheritance of future generations is that this could describe all of nature. One means of narrowing down the natural resources described as heritage is to centre upon those that are endangered and/or under threat of extinction; indeed, the WHC focuses on scientific and biodiversity value in defining natural heritage.<sup>39</sup> Alternatively, the cultural value of natural resources could be emphasized; and it is notable, in this regard, that, as in a landscape context, the WHC refers to the aesthetic value of natural resources as natural heritage.<sup>40</sup> However, drawing on the work of Harrison in defining heritage, it is possible to elucidate a very different meaning of the natural heritage in landscape.

Harrison suggests that our understanding of heritage should be governed by concerns for materiality, connectivity and dialogue to focus on a notion of heritage that emphasizes active engagement with the past in the present rather than the preservation of the inert, distant and old.<sup>41</sup> From this perspective, heritage is viewed as emerging from the relationship between people, objects, places and practices; albeit they relate to nature or culture.<sup>42</sup> It follows from Harrison's view of heritage that we should understand natural heritage in the landscape as the elements of a landscape of natural origin that reflect a significant relationship with people over time; thus allowing them to engage with their connections to nature in the present, with reference to the past, and to view those connections as an inheritance for future generations.

Drawing on broad definitions of natural resources in England and Wales, it is clear that the elements of natural origin in the heritage of landscape should be defined widely to include wildlife, habitat, physiographical and geological features, and the processes that support all of these.<sup>43</sup> Meanwhile, the literature in heritage studies suggests that heritage should be considered to include intangible as well as tangible heritage.<sup>44</sup> Indeed, the relationship between the tangible and intangible elements of the natural heritage in a landscape are inextricably linked. For example, stories and folklore associated with trees and woodlands are essential in understanding the enduring relationship between people and these features of natural origin in the landscape.<sup>45</sup> Finally, the spatial and temporal contexts for this understanding must be judged on a case-by-case basis. However, viewing the nature in landscape as heritage will provide a greater concentration on a local perspective in some circumstances given the importance of this scale in connecting people and place.<sup>46</sup> This will be quite distinct from the emphasis on national significance in current heritage and biodiversity laws.

## 2.4. Participation in decision making around natural heritage

It is a central premise of this article that there should be rights to participation in decision making for ordinary citizens to both improve the quality of decision making and increase

38 David Lowenthal, 'Natural and Cultural Heritage' in Lowenthal and Olwig, *ibid.*, 79–91 and 83–84.

39 See (n 35).

40 *ibid.*

41 Rodney Harrison, *Heritage: Critical Approaches* (Taylor & Francis Group 2012) 238.

42 *ibid.* 237. Harrison notes that 'creative engagement' with the past in the present also helps us to consider our role in the production of the future, see *ibid.* 240.

43 See (n 22).

44 See (n 12).

45 See (n 76).

46 See Victoria Jenkins, 'Protecting the Natural and Cultural Heritage of Local Landscapes: Finding Substance in Law and Legal Decision Making' (2018) 73 *Land Use Policy* 73.



the legitimacy of those decisions. Participation has been recognized as essential in all aspects of scholarship related to the protection of natural heritage in the landscape, ie, heritage and landscape studies and scholarship in environmental law.

First, Harrison notes that given that his notion of heritage is inherently dialogical, participation of lay people alongside experts is essential in heritage decision making processes to ensure that new knowledge and ways of thinking are created.<sup>47</sup> This is in contrast to the dominant position in cultural heritage that it is, and should be, viewed as a technical process which is about applying science or management techniques to the identification and preservation of tangible objects.<sup>48</sup> Nevertheless, Harrison's views are supported by emerging literature on sustainable heritage management and the interpretation of heritage.<sup>49</sup> Thus, the need for participation in decision making around the natural heritage of landscape fits with the idea that, in future, heritage protection will likely be 'more open, diverse, inclusive, representative and creative'.<sup>50</sup>

Secondly, landscapes are a physical construct that has been shaped by land management practices and development, but also exist as a social construct.<sup>51</sup> Indeed, a landscape is defined in the ELC as 'an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors'.<sup>52</sup> Democratization has also been a feature of the literature in landscape studies given the importance of the relationship between people and place to the notion of landscape.<sup>53</sup> In a landscape context, as with heritage, participation is considered essential to improve the quality of decision making as well as providing for legitimacy in decision making, reinforcing local identities and supporting social justice.<sup>54</sup>

Finally, participation has been recognized in environmental law scholarship to be a means of both improving the substantive outcomes of decision making and the procedural legitimacy of those processes.<sup>55</sup> Indeed, the importance of participation in environmental decision making is exemplified by the Aarhus Convention.<sup>56</sup> There has also long been attention to participatory rights in land use planning as a means of increasing the democratic legitimacy of those decisions and environmental law scholars have demonstrated how participation can impact on the substance of those decisions with respect to both landscape values and environmental outcomes.<sup>57</sup>

In summary, this section asserts that the natural heritage in landscape should be understood as a means of reflecting a significant relationship between the elements of natural origin in a

47 Harrison (n 41) 243.

48 Smith, for example, refers to the technical management processes that emerged at national and international level in the 1960s and 1970s. Laurajane Smith, *Uses of Heritage* (Routledge 2006) 5.

49 See for example Ilaria Rosetti and others, 'Heritage and Sustainability: Regulating Participation' (2022) *Sustainability* 14, and Alison Hems and Marion Blockley, *Heritage Interpretation* (Routledge 2005).

50 Harrison (n 41) 243.

51 This has emerged as part of the development of a humanist perspective in geography in the late 20th century. On this renaissance in landscape geography see Kenneth Olwig, 'Landscape: The Lowenthal Legacy' 2003 93 *Annals of the Association of American Geographers* 871.

52 See (n 2) Article 5.

53 Shelley Egoz and others (eds), *Defining Landscape Democracy: A Path to Spatial Justice* (Edward Elgar 2018). A human rights perspective has also been considered in conceptualizing landscape, given the emphasis on human experience in defining landscape Shelley Egoz, 'The Right to Landscape and the European Landscape Convention' in Karsten Jorgensen and others (eds), *Mainstreaming Landscape Through the European Landscape Convention* (Routledge 2016).

54 Michael Jones, 'Landscape Democracy: More Than Public Participation?' 16–28 in Egoz, *Defining Landscape Democracy*, ibid.

55 See for example the discussion in Maria Lee and Carolyn Abbott, 'The Usual Suspects? Public Participation Under the Aarhus Convention' (2003) 66 *MLR* 80.

56 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (United Nations Economic Commission for Europe 1998). Although it is noted that the rationale behind this agreement seems to be that the very act of participation will result in environmental improvements which is debatable, see ibid.

57 Maria Lee and others, 'Public Participation and Climate Change Infrastructure' *JEL* (2013) 25, and Maria Lee, 'Knowledge and Landscape in Wind Energy Planning' (2017) *Legal Studies* 3.

landscape and people over time. Furthermore, decision making processes in this regard should include rights for ordinary citizens to contribute their local knowledge with the aim of improving both the substance and legitimacy of those decisions. The following section outlines how we might recognize features of natural origin in the landscape in heritage law.

### 3. RECOGNIZING NATURAL HERITAGE FEATURES IN THE LANDSCAPE IN HERITAGE LAW

Heritage law in England and Wales currently focuses on the identification and protection of 'heritage assets' of built origin.<sup>58</sup> Thus, heritage law largely ignores tangible physical elements and sites in the landscape originating in nature that might be viewed as natural heritage features in the landscape. This section constructs an argument for the recognition of such natural heritage assets as part of heritage law.

#### 3.1. Protecting cultural heritage features in the landscape: the current law

England and Wales have historically adopted a shared approach to the designation and protection of heritage assets of built origin in the form of scheduled ancient monuments and listed buildings of national significance from a cultural heritage perspective.<sup>59</sup> There has also been increasing attention to the relationship between these cultural heritage assets and the landscape, in terms of their surroundings. This is acknowledged in a specific duty to have regard to the setting of listed buildings in land use planning decisions.<sup>60</sup> In addition, the relationship between built heritage and landscape has been supported by conservation areas in England and Wales. Conservation areas are designated for their national significance in terms of their character or appearance of architectural or historic interest.<sup>61</sup> Thus, notably even local areas of heritage value are only designated if they have national significance. Conservation areas are of note with respect to landscape because they adopt a wide perspective.<sup>62</sup> Nevertheless, except for the preservation of trees, conservation areas aim to protect features of built origin.<sup>63</sup>

The inclusion of earthworks as possible scheduled monuments is the only reference to features of natural origin in heritage law;<sup>64</sup> whilst historic battlefields and registered parks and gardens are referred to in heritage policy.<sup>65</sup> With these limited exceptions heritage law currently conceptualizes 'heritage assets' around built heritage and its relationship to its surroundings. The remainder of this section will argue that we should recognize the importance of natural heritage features in the landscape in heritage law to provide a holistic approach to the conservation of natural and cultural heritage.

58 This approach dates back to the preservation of ancient monuments in the 19th century in the Ancient Monuments Protection Act 1882 and is clearly in line with the predominant view of cultural heritage as tangible property.

59 The value of ancient monuments is conceptualized around their historical and archaeological value whilst listed buildings are designated for their historic or architectural value (in England, Ancient Monuments and Archaeological Areas Act 1979 s1 and Planning (Listed Buildings and Conservation Areas) Act 1990 s1; and in Wales Historic Environment (Wales) Act 2023 ss 2 and 76. The criteria for scheduled monuments are included in policy rather than law.

60 Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(1) and Historic Environment (Wales) Act 2023 s 96. This has also recently been extended to a wider range of heritage assets in England, including scheduled ancient monuments and World Heritage Sites. Levelling Up and Regeneration Act 2023 s102.

61 In England, Planning (Listed Buildings and Conservation Areas) Act 1990 s69 and, in Wales, Historic Environment (Wales) Act 2023 Part 4.

62 See Fischer (n 29).

63 Town and Country Planning Act 1990 s211.

64 See Schedule of Monuments created under Ancient Monuments and Archaeological Area Act 1979, s1 and Historic Environment (Wales) Act 2023 s3.

65 Historic England and Cadw both keep a list of historic assets, see <<https://historicengland.org.uk>> and <<https://cadw.gov.wales/advice-support/cof-cymru>> accessed 13 October 2025. Most of these are protected through land use planning policies, see (n 69).



### 3.2. Protecting natural heritage features in the landscape in heritage law and policy

Natural heritage features in the landscape include wildlife, physiographical or geological features, and certain habitat types. These are currently safeguarded through wildlife and habitat laws in England and Wales focused on protecting biodiversity.<sup>66</sup> As one might expect, these regimes make no reference to the heritage value of these assets. It could be argued that protecting endangered wildlife and habitats through biodiversity laws is sufficient to ensure that natural heritage features in the landscape will be retained for future generations. However, preserving wildlife as part of our natural heritage, ie, with reference to the way it reflects the connections between people and nature over time, will focus attention on species that are not currently endangered but are of national significance to the natural heritage in landscape, such as the robin.<sup>67</sup> There will be other species that have significance at a local scale, but it is proposed that should be taken into consideration in designating sites for the protection of local natural heritage in the landscape.<sup>68</sup>

In addition, to protecting wildlife as natural heritage, this study asserts that we should safeguard certain habitat types in heritage law where they reflect a significant relationship to people over time. There are presently two main ways in which we protect vulnerable habitats: through site designation or by listing certain habitat types and attempting to safeguard them everywhere. Since the early 2000s, in both England and Wales, there has been a system of listing habitat types of principal importance to be protected through land use planning policy and a mechanism for reporting.<sup>69</sup> This rather limited approach has recently been augmented by a system in land use planning for preserving lists of 'irreplaceable habitat' as part of initiatives to increase biodiversity through development.<sup>70</sup>

Irreplaceability is not just important in the context of biodiversity protection it is considered central to the protection of natural and cultural heritage.<sup>71</sup> There are many types of habitats that may be considered of national significance, not just to biodiversity but to the relationship between people and nature over time. Indeed, this has been recognized, since the 1990s, in the law on hedgerows. Regulations were introduced in England and Wales following increasing concerns about the disappearance of hedgerows as a result of more intensive methods of arable agriculture.<sup>72</sup> These regulations protect hedgerows of more than 30 years old that make an important contribution to either wildlife and landscape or archaeology and history.<sup>73</sup> Another example of a natural feature in the landscape that has value from both a biodiversity and heritage perspective is ancient woodland.

Ancient woodlands are included in lists of 'irreplaceable habitat' and are, thus, subject to some protection through land use planning systems in England and Wales.<sup>74</sup> In this instance,

66 Wildlife and Countryside Act 1981 and Conservation of Species and Habitats Regulations 2017 SI 2017/1012.

67 The robin was voted Britain's favourite bird in an RSPB survey in 2023, see <<https://www.rspb.org.uk/whats-happening/news/whats-your-favourite-bird>> accessed 13 October 2025. It is also often depicted in stories and art, especially with respect to the winter months in England and Wales. There may be other species that are particularly relevant in either England or Wales.

68 See text following (n 83).

69 Environment (Wales) Act 2016 ss 6–7 and Natural Environment and Rural Communities Act 2006 40–41. Welsh Government, *Planning Policy Wales: Edition 12* (Welsh Government, Part 6) and Department for Levelling Up Housing and Communities, *National Planning Policy Framework* (2024) 55–56.

70 In England, this system is referred to as Biodiversity Net Gain and is statutory and quantitative under the Environment Act 2021 ss 98–101. In Wales, it is referred to as Net Benefits for Biodiversity and is policy-based and qualitative and set out in *Planning Policy Wales* Part 6 *ibid*.

71 See Lowenthal (n 38).

72 Hedgerows Regulations 1997 SI 1997/1160. See further Holder (n 18) 106.

73 Hedgerows Regulations 1997/1160 s4 and Schedule 1. However, the operation of this legislation has been heavily criticized. See for example, Interim Environmental Protection Assessor for Wales, *The Protection of Hedgerows in Wales* (2025).

74 Planning Policy Wales (n 69) 149 and the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 SI 2024/48.

they are protected for their biodiversity value. The more mature a woodland the greater its significance in this respect and ancient woodlands are also clearly endangered as they cover only 2.4 per cent of land in the UK.<sup>75</sup> However, trees and woodlands can also form an important of the natural heritage in landscape as people may have a longstanding connection to their history. For example, Sherwood Forest was once part of a vast royal hunting ground and is most notable to many people as the place of the stories of Robin Hood, one of the most celebrated English fairy tales.<sup>76</sup> Ancient woodlands, which have existed since the 1600s, are particularly important in this respect.<sup>77</sup>

It is proposed that heritage law should include the preservation of habitat types of national significance to the relationship between people and nature over time as essential features of natural heritage in the landscape. This would include and expand upon the protection of certain habitat types as ‘irreplaceable habitat’ through the land use planning regime, e.g. ancient woodlands. The benefits of protecting certain habitat types as heritage rather than their importance to biodiversity is highlighted by recent proposals to introduce Environment Development Plans (EDPs) in England.<sup>78</sup> EDPs will replace site-based evaluation and protection of some vulnerable species and habitats in a land use planning context with a strategic approach that signals a move from the existing mitigation hierarchy to compensatory measures. With its traditional focus on built heritage, the protection of cultural heritage through land use planning centres on the prevention and mitigation of damage and the notion of compensation features little in this context. In a new legal framework for heritage protection that includes features of natural origin in the landscape this preventative approach would also be applied to wildlife and habitats that represent a connection between people and nature over time.

Habitat law in England and Wales includes not just the protection of listed habitat types everywhere, but the designation of sites of special significance due to their support for the protection of endangered species, physiographical and geological features, and/or inclusion of rare and vulnerable habitat types. The system mainly serves to protect sites of national significance, such as Sites of Special Scientific Interest (SSSIs) and Special Areas of Conservation.<sup>79</sup> However, there is also a legal designation for local nature reserves<sup>80</sup>—whilst local wildlife sites in England, and Sites of Nature Conservation Interest (SINCs), in both countries, are protected through land use planning policy.<sup>81</sup> It is clear that these local sites carry less weight in land use planning decisions when compared to sites designated for their national significance under biodiversity law.<sup>82</sup> Both national and local sites for nature recovery may be significant to the natural heritage in landscape but local sites are particularly important in connecting people with nature. Therefore, it is proposed that heritage law should safeguard habitat types of national significance everywhere, but local sites that are important to the natural heritage in landscape, ie, to the relationship between people and nature over time.

75 Jona Razzaque and Claire Lester, ‘Why Protect Ancient Woodland in the UK’ *Rethinking the Ecosystem Approach* (2021) 10 TEL 135, 137.

76 Robin Hood: Legendary Hero, *Britannica* available at <<https://www.britannica.com/topic/Robin-Hood>> accessed 13 October 2025.

77 Indeed, some ancient woodlands may be older than the 1600s, but this is when mapping of woodlands began. Carwyn Graves, *Tir: The Story of a Welsh Landscape* (Calon 2024) 32.

78 Planning and Infrastructure HL Bill (2024–25) [134].

79 Wildlife and Countryside Act 1981 s28 and Conservation of Species and Habitats Regulations 2017 SI 2017/1012 Part 2. The latter also includes Special Protection Areas for birds.

80 National Parks and Access to the Countryside Act 1949 s21.

81 See further discussion in Antonia Layard and others, ‘Protecting Everyday Nature’ (2024) 36 JEL 275.

82 Jenkins (n 46).

In addition to local sites for nature recovery, there are presently several sites of natural origin in the local landscape that are protected through disparate provisions for their historic or amenity value. Public parks, for example, were created in the Victorian era as a response to the need to provide for the physical and mental health of the urban poor;<sup>83</sup> and many are now included in a register of historic parks and gardens that are safeguarded through national planning policies.<sup>84</sup> Local councils have also had a statutory duty to make land available for the growing of food in allotments since the end of the 19th century.<sup>85</sup> All these sites could form part of the new regime, where they are representative of a connection between people and nature over time, but it would also encompass new local sites that meet these criteria. An example could be a stretch of local canal that holds significance to people who live and work in an area because of their associations with its history as an industrial waterway, but also features of natural origin in the landscape, such as species of plant and animal that inhabit these spaces (irrespective of whether they are endangered). Thus, local people might point to connections to birds, such as the moorhen, kingfisher, heron and even the mallard duck; and plant species, such as bullrushes, ragwort and purple loosestrife.

### 3.3. Reframing the notion of ‘heritage assets’ to protect features of natural origin in the landscape

A central contention of this study is that heritage law should be reframed to encompass the identification and protection of natural, as well as cultural, heritage features in the landscape. This should encompass wildlife, physiographical or geological features, and certain habitat types as well as local sites within the landscape. Rather than have arbitrary indicators of historic value for these features in the landscape, such as the time of the introduction of species to the country, the age of hedges or the depth of peat, heritage value would be assessed with reference to the way these features reflect a significant relationship between people and nature in the landscape over time.

Decisions on the designation of natural heritage assets in the landscape will require the involvement of experts in heritage and ecology/natural environment as well as ordinary citizens. Presently, rights to participate in the designation of listed buildings in England, and listed buildings and scheduled monuments in Wales, are extended only to individuals who have special knowledge or interest in their history or archaeology.<sup>86</sup> This is arguably an outdated approach;<sup>87</sup> and, certainly in the context of natural heritage assets in the landscape, ordinary citizens would need to be included in decision making.

Once designated, a robust system of protection for these natural heritage features in the landscape will also be required. Currently, built heritage assets are protected through the authorization of works to ancient monuments and listed buildings; backed by criminal penalties.<sup>88</sup> This should be extended to natural heritage assets. However, in this context there would need to be greater specificity around the kind of ‘works’ that could be damaging to

83 Hazel Conway ‘Public Parks and their Conservation’ in Marion Harney (ed), *Gardens and Landscapes in Historic Building Conservation* (John Wiley and Sons 2014) 193–205.

84 Historic parks and gardens are included in a special register in England and in Wales (Historic Buildings and Ancient Monuments Act 1953 s8C) and Ancient Monuments and Archaeological Areas Act 1979 s41(A), respectively (and referred to in national heritage lists at n 70 above). They are subsequently protected through *Planning Policy Wales* 130 and the *National Planning Policy Framework* 61 (n 69).

85 The Allotment Act 1887 s22. Allotments are now regulated by the Allotment Acts of 1908 to 1950.

86 Planning (Listed Buildings and Conservation Areas) Act 1990 s1 and Historic Environment (Wales) Act 2023, ss5 and 78.

87 See (n 50).

88 In England, Planning (Listed Buildings and Conservation Areas) Act 1990 Chapter 2 and Ancient Monuments and Archaeological Areas Act 1972 ss2 and 28; in Wales, Historic Environment (Wales) Act 2023 Chapters 2 and 3.

different assets. Whilst outright destruction is easily dealt with, there may be other specific activities that threaten different aspects of our natural heritage, such as draining peatlands or netting hedgerows to exclude nesting birds. The activities subject to permitting would, therefore, need to be agreed and clearly defined in legislation and explained in guidance in relation to each type of asset. There are also strong presumptions against development affecting cultural heritage in land use planning policy, which should be mirrored for natural heritage assets.<sup>89</sup>

Finally, in heritage law and biodiversity law, there are provisions for the management of assets to ensure their protection. The legal framework for heritage protection currently provides for voluntary action and allows for the involvement of individuals with special knowledge or interest in an asset.<sup>90</sup> There are more stringent measures with respect to sites designated under biodiversity law. Here the private landowner alone is tasked with any necessary actions and must enter into a management agreement to this end.<sup>91</sup> Ongoing management will be essential to the continued preservation of natural heritage assets. Thus, it is posited that, as in biodiversity law, there will need to be a legal framework for the careful negotiation of management agreements with respect to these assets.

#### 4. RECOGNIZING NATURAL HERITAGE VALUES ACROSS THE LANDSCAPE

Protecting natural heritage features and their place in the landscape is only one element of a comprehensive approach to recognizing the natural heritage of landscape in law. The other essential aspect is safeguarding the more intangible natural heritage values across the landscape rather than individual features within it. Following the UK's signature to the ELC, there has been much attention to the preservation of landscape values in land use planning policy and practice;<sup>92</sup> but there is yet to be a clear articulation of the meaning of natural heritage in this context or in landscape law. Furthermore, a narrow focus on land use planning, which applies only to building development, ignores the significance of management practices in rural environments to the natural heritage in landscape, ie, with respect to agriculture, forestry and inland waters. Management practices in these spheres are not generally subject to regulation but are influenced by legal frameworks for financial incentives and other rules and standards. These frameworks also need to adopt and reflect a coherent approach to the recognition of the natural heritage in the landscape. This builds on existing work on the recognition of traditional indigenous or local knowledge and practice as cultural heritage.<sup>93</sup>

89 See Planning Policy Wales 129 onward and the National Planning Policy Framework 60 (n 69).

90 Planning (Listed Buildings and Conservation Areas) Act 1990 s26A and Historic Environment (Wales) Act 2023 113. This is also extended to ancient monuments in Wales. Historic Environment (Wales) Act 2023 s25.

91 For example, once a landowner is given formal notice of the designation of a Site of Special Scientific Interest, they must agree a management scheme with the relevant government agency and comply with this. Otherwise, they risk the imposition of a management notice, contravention of which is a criminal offence. Wildlife and Countryside Act 1981 ss28J-28P.

92 Natural England published a series of guidelines on implementing the ELC in 2009 to which they still refer *European Landscape Convention Guidance Part 1: What Does It Mean for Your Organisation* (Natural England 2009); *European Landscape Convention Guidance Part 2: Integrating the Intent of the ELC into Plans, Policies and Strategies* (Natural England 2009); and *European Landscape Convention Guidance Part 3: Preparing an ELC Action Plan* (Natural England 2009). In Wales there are no specific guidelines on how the ELC should be implemented, see <<https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/advice-for-developers/?lang=en>> accessed 13 October 2025.

93 This is considered important to the achievement of global goals with respect to the climate and nature crises See for example the Coastal Tales project sponsored by the UNESCO-MOST Bridges initiative that is considering how heritage practice in fishing can inform policy responses to climate change in the future, see <<http://bridges.earth/projects/coastal-tales/1>> accessed 13 October 2025.

#### 4.1. Protecting the natural heritage of landscape from development

Landscape law in England and Wales centres on the designation and management of ‘special landscapes’, referred to as National Parks and National Landscapes. These are designated and managed for their aesthetic value; defined in terms of natural beauty.<sup>94</sup> This aesthetic view of the value of these landscapes is now being challenged in the light of imperatives for nature recovery.<sup>95</sup> Even in the 1990s, it was acknowledged that natural beauty should be interpreted to include aspects of cultural heritage and wildlife;<sup>96</sup> but there has, nevertheless, been little debate about the specific contribution of these ‘special landscapes’ to natural heritage.<sup>97</sup> This study asserts that landscape law should recognize and reflect the significance of natural heritage, with the detailed frameworks reflecting the differing priorities in England and Wales.

The values of ‘special landscapes’ are protected through strong presumptions against development in land use planning policy in both England and Wales.<sup>98</sup> Outside these ‘special landscapes’, the safeguarding of what might be referred to as local landscapes relies, in both countries, on a broad spatial, policy-based approach in land use planning.<sup>99</sup> This is underlined by evidence produced as part of a process of Land Use Character Assessment (LCA).<sup>100</sup> LCA assimilates evidence on the natural, cultural/social and perceptual/aesthetic values of landscape at different scales, thus encompassing a range of issues that are relevant to the natural heritage in landscape.<sup>101</sup> However, once again, there is room for improvement in LCA in England and Wales in the articulation of the meaning and means of preservation of natural heritage in the landscape.

A final point of note on the land use planning system and protection of the values of the natural heritage of landscape is the role of legal requirements for Environmental Impact Assessment (EIA).<sup>102</sup> The main EIA regulations apply to certain infrastructure projects and require an assessment of their likely significant environmental effects to be taken into consideration in land use planning decisions.<sup>103</sup> Despite its name, the EIA regime extends to cultural heritage and landscape, including architectural and archaeological aspects.<sup>104</sup> Nevertheless, the current system adopts a sectoral approach to cultural heritage, landscape and other aspects of environmental protection. There are also several widely recognized limitations to the EIA process, not least the bias resulting from the onus on the developer to collate the necessary environmental information.<sup>105</sup>

94 These legal designations date back to the National Parks and Access to the Countryside Act 1949. National Parks are designated for their natural beauty and opportunities for access to recreation (National Parks and Access to the Countryside Act 1949). National landscapes are referred to in law Areas of Outstanding Natural Beauty (AONBs) and designated only for their contribution to natural beauty (Countryside and Rights of Way Act 2000 s82).

95 Jenkins (n 17).

96 National Parks and Access to Countryside Act 1949 S5 as amended by the Environment Act 1995 s61(1).

97 This did not feature in the recent reviews of special landscapes in England and Wales. *Future Landscapes Delivering for Wales: The Review of Areas of Outstanding Natural Beauty and National Parks in Wales* (Welsh Government 2017) and Julian Glover, *Landscapes Review* (Department for Environment, Food and Rural Affairs 2019). These reports highlight the potential differences in key issues related to special landscapes in England and Wales.

98 *Planning Policy Wales* 140 and *National Planning Policy Framework* 54 n 7 above.

99 See further Jenkins (n 46).

100 Christine Tudor, *An Approach to Landscape Character Assessment* (Natural England 2014). See also LANDMAP in Wales <<https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/evidence-to-inform-development-planning/?lang=en>> accessed 13 October 2025.

101 See for example, Tudor, *ibid* 9.

102 EIA was introduced on an England and Wales basis in the 1980s further to an EU Directive. The relevant regulations are now Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 SI 2017/567 and the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 SI 2017/571. Note there are also specific regulations for forestry and agriculture that will be discussed below (n 115).

103 *ibid*.

104 *ibid* Schedule 4 of both sets of regulations.

105 This is a central conclusion of Jane Holder, *Environmental Assessment: The Regulation of Environmental Decision Making* (OUP 2005). For further criticism of the system of EIA see Office for Environmental Protection, *A Review of the Implementation of Environmental Assessment Regimes in England* (Office for Environmental Protection 2023).



Whilst the inclusion of heritage concerns in EIA is to be welcomed, this should specifically acknowledge the natural heritage in landscape. The problems in the system also need to be addressed before its impact in this regard will be evident. EIA in England is set to change dramatically further to a framework for reporting on outcomes for environmental protection introduced by the Levelling Up and Regeneration Act 2023 (LURA 2023).<sup>106</sup> This will address some of the problems of EIA and continues to include reference to cultural heritage and landscape, but in the same sectoral fashion.<sup>107</sup> Therefore, there is still a need to reconsider the role of EIA more generally in protecting the natural heritage of landscapes; in Wales as well as England.

Land use planning law, including EIA, is undoubtedly crucial to the protection of the values of the natural heritage in landscape. However, the land use planning system only applies to development, defined largely with reference to building development, and is thus mainly applicable to the urban environment.<sup>108</sup> In the rural environment, management practices in agriculture, forestry and inland waters are not, generally, included in the definition of development in the land use planning system.<sup>109</sup> Yet these activities are crucial in shaping the natural heritage in rural landscapes. Thus, it is a central contention of this study that other rules and standards (legal or otherwise) must also reflect and protect these values.

#### 4.2. Protecting the natural heritage in rural landscapes: agriculture, forestry and water management

Most of our endangered wildlife and habitat that is protected through biodiversity laws exists in rural environments; whilst heritage law protects built cultural heritage assets in these spaces such as, bridges and aqueducts on inland waterways and some farm buildings in agricultural landscapes. Preserving natural heritage features in these landscapes through heritage law, as outlined above, will be important; but there is also a pressing need to articulate and reflect the natural heritage of these landscapes in the management processes that help to shape them. A major problem in this regard is the lack of regulation of decision making in comparison to land use planning. An important exception is the operation of EIA in this context.

Separate EIA regulations exist for afforestation/deforestation and agricultural activities that impact semi-natural and uncultivated land which were introduced in England and Wales on a devolved basis.<sup>110</sup> However, these regulations were all modelled on EIA in the context of infrastructure and, therefore, suffer from the same problems in terms of protecting the natural heritage in landscape, ie, there is a dichotomy between cultural heritage and environmental concerns and the systems have been subject to important criticisms.<sup>111</sup> There are, nonetheless, other rules and standards that have significant potential in helping to protect the natural

<sup>106</sup> Levelling Up and Regeneration Act 2023 Part 6. This will need to be implemented by further regulations.

<sup>107</sup> Levelling Up and Regeneration Act 2023 s152. The risks and opportunities presented by the new regime were outlined by the Office for Environmental Protection. See further letter to the Secretary of State from the OEP 9 June 2023. This points out the importance of including landscape and waterscape character in the new regime, see Letter to the Rt Hon Michael Gove MP from the Office for Environmental Protection, Response to Environmental Outcomes Reports: A New Approach to Environmental Assessment 9 June 2023 <<https://www.theoep.org.uk>> accessed 13 October 2025.

<sup>108</sup> Town and Country Planning Act 1990 s55. This also includes material change of use of land and engineering and mining operations. A Bill is soon to be laid before the Senedd with respect to the consolidation of Welsh law on planning, but the definition of development will remain the same. Planning (Wales) Senedd Bill HC (2025–26).

<sup>109</sup> *ibid.*

<sup>110</sup> Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 SI 2017/565 (EIA Agriculture Wales Regulations) and Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006, SI 2006/2522 (EIA Agriculture England Regulations). Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 SI 1999/2228 (EIA Forestry Regulations).

<sup>111</sup> See (n 107).



heritage in landscape, ie, agricultural payments systems, forestry standards and inland water governance and management.

#### 4.2.1. Protecting heritage practice in agricultural payment systems

Farming practices have been heavily influenced by rules on the provision of state subsidy. It is generally acknowledged that this has been pivotal in the development of intensive agriculture with widespread negative effects on the quality of the natural environment.<sup>112</sup> The demise of nature under modern farming practice was supported for many years by a focus on food production under the Common Agricultural Policy of the EU, which governed agricultural subsidy in England and Wales.<sup>113</sup> Whilst some changes were introduced from the 1990s to support environmental protection;<sup>114</sup> the UK's exit from the EU has resulted in a more fundamental reshaping of agricultural subsidy to achieve environmental outcomes.<sup>115</sup> This has taken place in England and Wales on a devolved basis.<sup>116</sup>

A devolved approach to agricultural payment systems is important because the nature of farming is constrained by the natural conditions in which it takes place, and these are quite different in the two countries.<sup>117</sup> The differences in farming in England and Wales also influence the values associated with the natural heritage in the landscape. For example, in Wales, small scale sheep farming in the uplands is a traditional way of life and is strongly associated with the Welsh language.<sup>118</sup> Meanwhile, the more productive arable farming landscape in the lowlands of England has created a natural heritage that is celebrated in art and literature, such as the Cotswolds landscapes which became a fascination of the Arts and Crafts movement in the late Victorian period.<sup>119</sup>

The new agricultural payment schemes may be focused on environmental outcomes, but they have the potential to incentivize traditional management practices that are also significant to the preservation of the natural heritage of landscape. An important example of this is the management of semi-natural dry grassland as hay meadow.<sup>120</sup> Hay meadows provide a rich habitat for wildlife, but the significance of meadows to people over time is also illustrated by the enduring significance of their depiction in Romantic poetry, such as that of Wordsworth. Hay meadows have reduced by 97% in England and Wales since the 1930s; their demise caused by the use of silage to feed cattle and sheep, which is more reliable and productive.<sup>121</sup> The knowledge and expertise involved in maintaining hay meadows can be viewed as an important element of heritage practice as well as supporting nature recovery. What is not advocated is viewing any kind of 'traditional practice' that is destructive of nature as something to be conserved, such as the cutting of peat or heather and grass burning.<sup>122</sup>

112 David Elias, *Shaping the Wild: Wisdom from a Welsh Hill Farm* (Calon 2023) 9–10. Intensive agriculture involves, for example, hedgerow removal, drainable of marshlands and wood reclamation. Bryn Green, *Countryside Conservation* (George Allen and Unwin 1981) 77.

113 Ludvine Petetin and Mary Dobbs, *Brexit and Agriculture* (Routledge 2022) 9.

114 *ibid* 9–14.

115 *ibid* Chapter 3.

116 Agriculture Act 2020 and Agriculture (Wales) Act 2023.

117 See further Kate Devenish, *The Farming Sector in Wales: Research Briefing* (Senedd Research 2022) and Eloise Uberoi and others, *English Farm Statistics: Challenges, Farm Types and Regions* (House of Commons Library 2023).

118 Noragh Jones, *Living in Rural Wales* (Gomer 1993) 52.

119 Bernard Jennings 'A Longer View of the Wolds' in Joan Thirsk (ed) *The English Rural Landscape* (OUP 2000) 62–77, 75.

120 See <<https://www.nationaltrust.org.uk/our-cause/nature-climate/nature-conservation/hay-meadow-conservation>> accessed 13 October 2025.

121 See for example the references to meadows in Tintern Abbey.

122 Heather and grass burning is now regulated in England and Wales. The Heather and Grass etc. Burning (England) Regulations 2021 SI 2021/158 and Heather and Grass etc. Burning (Wales) Regulations 2008 SI 2008/1081. The cutting of peat is not specifically banned in either country, but land use planning policy in England states that there should be no new sites or extensions to existing ones National Planning Policy Framework (n 69) 63. In Wales, there is a strong presumption in Planning Policy Wales against peat extraction (n 69) 117.

To incentivize the protection of the natural heritage in landscape in agricultural payment systems, it will be necessary to (i) refer to these values in the objectives set out in the legislation; and (ii) reflect those values in the detailed rules that underline the payment systems. In Wales, the Agricultural (Wales) Act 2023 includes an objective on conserving and enhancing landscapes and the historic built environment, but makes no mention of the natural heritage of landscape.<sup>123</sup> Subsequently, the detailed rules on payments, referred to as the Sustainable Farming Scheme (SFS) in Wales, conceptualizes the values of heritage around built cultural heritage features, such as scheduled and ancient monuments and farm buildings.<sup>124</sup> Interestingly, the protection of 'landscape features' is also discussed with reference to built heritage, such as stone walls and slate fences.<sup>125</sup> Indeed, there is only one reference to natural heritage in the SFS in the context of the importance of hedgerow creation and restoration.<sup>126</sup>

In contrast to Wales, the Agricultural Act 2020, as it applies to England, includes a specific aim related to 'managing land or water in a way that maintains, restores or enhances cultural or natural heritage'.<sup>127</sup> However, the values of the natural heritage in landscape are still not clearly articulated in the detailed payment rules referred to as the Sustainable Farming Incentive (SFI) in England.<sup>128</sup> In the SFI, hedgerows, woodland, ditches, rivers and streams are described as landscape or heritage features, but it is not entirely clear which is considered to be which.<sup>129</sup> Furthermore, the main provisions in relation to heritage relate to rather disparate actions in terms of weatherproofing buildings, managing historic and archaeological features on farmland and maintaining water bodies.<sup>130</sup> Thus, although the attention to natural heritage in the legislative objectives of agricultural payment schemes in England is to be welcomed, there is still some work to do to translate this into something meaningful within the SFI.

Reflecting the values of natural heritage in the landscape in the SFI and SFS will be important, but its effect will be limited by the fact that the schemes are voluntary and apply at the farm level, which will result in a patchwork approach from a landscape perspective. Wider landscape scale initiatives are supported, in England, under the Landscape Recovery programme, but this is allied solely to nature recovery outcomes and does not mention heritage.<sup>131</sup> In Wales, landscape scale action will be encouraged through collaborative action, for example, between several farms. In this context, one of the examples given for the outcomes of collaborative action in Wales is protecting and enhancing access to the historic environment and the restoration of historic landscape features.<sup>132</sup> However, there is no detail as to what this would mean in practice and, hence, whether it would support the protection of the natural heritage of landscape.

It is clear from this discussion that there is a significant opportunity to reflect and protect the natural heritage of landscape in new approaches to financial incentives in agriculture and wider land management. There has been more significant progress in this regard in voluntary standards governing forestry and woodland management.

123 Agriculture (Wales) Act 2023 s8.

124 Welsh Government, *Sustainable Farming Scheme 2026: Scheme Description* (Welsh Government, 2026). Although it also includes registered parks and gardens. Universal Action 11: Historic Environment.

125 *ibid.*

126 *ibid.*

127 Agriculture Act 2020 s 1(1) (c).

128 Department of Environment, Food and Rural Affairs, *Expanded Sustainable Farming Incentive Offer from Summer 2024* (Department of Environment, Food and Rural Affairs 2024).

129 *ibid* 68.

130 *ibid* 365 onward.

131 See for example the aims of the first round and second rounds, see <<https://defra.farming.blog.gov.uk/2022/02/01/landscape-recovery-first-round-now-open-for-applications>> accessed 13 October 2025.

132 See (n 124).

#### 4.2.2. Protecting natural heritage in forestry and woodland management

Forestry and woodlands are essential features of the natural heritage in rural landscapes. Much of this forestry takes the form of conifer plantations which were historically managed solely for timber supply for the economic needs of the country.<sup>133</sup> However, in recent years there has been attention to the need to deliver for carbon storage, flood prevention and amenity.<sup>134</sup> Crucially, there has also been a growing understanding that conifer plantations do not necessarily deliver for nature.<sup>135</sup> These concerns are currently being addressed through the UK Forestry Standard (UKFS).<sup>136</sup> This is a voluntary standard, but a lot of forestry is under the direct control of the Forestry Commission in England and Natural Resources Wales (NRW) in Wales, and the UKFS must be applied in these areas.<sup>137</sup>

Today, the UKFS focuses on sustainable forest management, balancing environmental concerns, productivity and the social functions of woodlands. In achieving the standard forestry planning must pay attention to: biodiversity, climate change, the historic environment, landscape, people, soil and water.<sup>138</sup> There is much to be applauded in the UKFS in recognizing the importance of forestry management to woodland heritage, including the need to protect ancient woodlands, veteran trees and management traditions.<sup>139</sup> However, there is little to relate the importance of woodland heritage to the wider values of natural heritage in the landscape. For example, when referring to the relationship between forests and landscape, the UKFS emphasizes landscape character but mentions natural heritage only in the context of visual sensitivities.<sup>140</sup>

As with agricultural payments systems, the UKFS could also do more to promote practices, such as thinning, selective felling and spontaneous regeneration as necessary to protect the natural heritage in landscape as well as nature recovery.<sup>141</sup> In developing the approach to the protection of the natural heritage in landscape, it is arguable that the UKFS should pay more attention to the devolved contexts, as there are importance differences, such as the prevalence of wet woodland in England rather than Wales.<sup>142</sup>

A final issue of note is the increasing incentivization for tree planting in England and Wales in response to climate change.<sup>143</sup> Conservationists have expressed concerns that this may not result in the 'right tree in the right place' from an ecological perspective.<sup>144</sup> A singular focus on tree planting from the perspective of climate change may also be problematic to efforts to protect the natural heritage in landscape. For example, planting trees on peatlands would significantly endanger this important element of the natural heritage in landscape.<sup>145</sup> At present, the

133 It is estimated, for example, that 15% of the land in Wales is woodlands but that at least half of this is conifer plantations, see Elias (n 112) 45. See further on the history of forestry Nerys Owen, 'Forestry and the Challenge of Post-Industrial Transformation: A Study of Upland Mid Wales' in Paul Milbourne (ed) *Rural Wales in the 21st Century: Society Economy and Environment* (University of Wales Press 2011) 258–274.

134 Elias (n 112) 69.

135 *ibid.*

136 *The UK Forestry Standard: The Government's Approach to Sustainable Forestry* (2023). The introduction of the UKFS, in 1998, marked a significant change in forestry practice, emphasizing its role in meeting social and environmental objectives—not just providing timber. This is not the only standard that applies to forestry another important example is the UK Woodland Assurance Standard.

137 Since its creation in 1919, the work of the Forestry Commission as a state forestry service means it has control of much of the forestry plantations in England whilst the role is now carried out by NRW in Wales. Owen (n 133).

138 See n (141) 1.

139 *ibid* 58 onward.

140 *ibid* 68.

141 For further details of these practices see Elias (n 112) 68.

142 This type of woodland is most significant in the Norfolk and Suffolk Broads and the Cheshire Meres and Mosses. See further <<https://www.woodlandtrust.org.uk/trees-woods-and-wildlife/habitats/wet-woodland/>> accessed 13 October 2025.

143 See for example the Welsh Government's commitment to create a National Forest, <<https://www.gov.wales/national-forest>> accessed 13 October 2025.

144 Elias (n 112) 41.

145 Victoria Jenkins and Jonathan Walker, 'Maintaining, Enhancing and Restoring the Peatlands of Wales: Unearthing the Challenges of Law and Sustainable Land Management' (2022) 34 JEL 163.

regulation of tree planting relies on the system of EIA, which does not apply to all tree planting, and, as outlined above, is currently problematic in protecting the natural heritage in landscape.<sup>146</sup> The UKFS also covers tree planting and recognizes the complexities of the benefits of forests to climate change mitigation; however, this also fails to clearly articulate the impacts of tree planting on the natural heritage of landscape.<sup>147</sup> Tree planting may well be the subject of greater regulation in the future and any new regimes should consider the implications for the natural heritage in landscape as well as climate change and nature recovery.<sup>148</sup>

#### 4.2.3. *Protecting the natural heritage of landscape through the management of inland waters*

Blue infrastructure, such as rivers, canals, reservoirs and lakes, form an essential part of the natural heritage in rural landscapes; often providing an important connection between urban and semi-rural areas.<sup>149</sup> The management of inland waters takes many different forms and has shaped the natural heritage of landscape in a multitude of ways. For example, water collection and extraction for water supply has driven the creation of reservoirs; whilst streams have been drained or diverted, and stretches of rivers straightened as part of agricultural practice.<sup>150</sup> Some of the natural heritage provided by inland waters is part of the shared history of England and Wales, such as the use of canals for the transport of goods in the Industrial Revolution. However, the significance of other aspects of blue infrastructure as natural heritage in the landscape is more specific to the countries' natural environment and/or history. For example, the cultural landscape of the Lake District, which has gained international recognition from the World Heritage Convention;<sup>151</sup> and, in Wales, the flooding of the valley of Cwm Trewern to create a reservoir to meet the demands of water supply in England.<sup>152</sup> However, the richness and complexities of the natural heritage provided by the landscapes of inland waters in England and Wales, has gained little recognition in legal regimes that affect their governance and management.

The role of the Canal and River Trust (CRT) is particularly important in recognizing the natural heritage in the landscape of inland waters. This is a charitable trust that has responsibility for managing over 2000 miles of navigable inland waterways.<sup>153</sup> As such it is responsible for safeguarding designated features under heritage and biodiversity laws in these spaces. If a new approach to the protection of natural heritage features in landscape through heritage law was introduced, the role of CRT would be crucial in operationalizing that regime in the context of inland waterways. There is also more that could be done by CRT to recognize the impact of its work on the wider values of the natural heritage in landscapes and to support management practices, based on local knowledge of ways to protect the natural heritage in the landscape of inland waterways. The latter would build on the work it is currently

<sup>146</sup> See (n 112).

<sup>147</sup> See (n 136) 40 onward. Notably, it mentions the significance of ancient woodlands to climate change because they have the highest sustained levels of carbon. See (n 136) 43.

<sup>148</sup> Traditionally, the focus has been on tree felling with a licencing system introduced by the Forestry Act 1967. This system is still in operation today.

<sup>149</sup> The relationship between water and heritage has been recognized by international organizations including the International Union on the Conservation of Nature, Closer ties between water and culture highlighted at World Heritage Meeting, *IUCN News* (4 July 2018) <<https://iucn.org/news>> accessed 13 October 2025. See specifically in England and Wales the work of the Canal and River Trust, see <<https://canalrivertrust.org.uk>> accessed 13 October 2025. The connections between urban and rural areas in England and Wales are often facilitated by active travel routes that follow canals and rivers (see further Active Travel (Wales) Act 2013 and policy measures in England, see <<https://www.activetravelengland.gov.uk>> accessed 13 October 2025).

<sup>150</sup> On rivers and agriculture, see Green (n 112) 77.

<sup>151</sup> See <<https://www.lakedistrict.gov.uk/caringfor/whs/useful-documents>> accessed 13 October 2025.

<sup>152</sup> Trywern: the stories behind drowned village Capel Celyn, *BBC News* (5 March 2023).

<sup>153</sup> See <<https://canalrivertrust.org.uk>> accessed 13 October 2025.

undertaking that nurtures traditional practices associated with the protection of built heritage, such as the restoration of canal locks.<sup>154</sup>

In terms of protecting the natural heritage values in the wider landscapes of inland waters there will be several other agencies whose role may be significant. The governance of inland waters is complex and relies on agencies responsible for a range of activities from water quality and supply to water pollution and flooding.<sup>155</sup> None of these organizations are tasked with considering the natural heritage in the landscapes of inland waters in their work. The water industries are responsible for the supply and quality of drinking water and their strategic priorities refer only to social and environmental matters without specific reference to heritage.<sup>156</sup> In contrast, the legal framework for the governance of flood risk management, which involves a range of different organizations, does include the preservation of cultural heritage and landscape as important objectives.<sup>157</sup> However, the separate references to the landscape and cultural heritage are notable; and there is no specific reference to natural heritage in this context.

Finally, Natural England and Natural Resources Wales are responsible for operating a comprehensive system of river basin management, which was introduced further to the EU Water Framework Directive in 2000.<sup>158</sup> This centres on achieving good ecological and chemical status of surface and ground waters and makes no specific reference to heritage or landscape.<sup>159</sup> However, the aims of river basin management are to be met through a system of integrated plans that recognizes the contribution of multiple stakeholders in managing rivers in pursuit of these aims and allows for their participation.<sup>160</sup> This participatory approach may present an opportunity to include views on the natural heritage values of these landscapes, but to ensure that this is the case this aim needs to be included as an essential objective of the system in the legal framework.

In a recent report, the UK Government has identified the need for better strategic planning for water management on an all-Wales basis and with a river basin approach in England.<sup>161</sup> Although largely focused on the need to provide better regulation of financial investment and pollution by the private water industry, this demonstrates increased attention to the governance and management of inland waters that could provide an opportunity to consider how this might be reframed to protect the natural heritage in these landscapes.

### 4.3. Participation in the protection of the natural heritage in landscape

The participation of ordinary citizens should be an essential element of all laws and other rules and standards related to the protection of the natural heritage that exists across the landscape.

<sup>154</sup> The focus of works is currently on complying with legislation to clear waterways for navigation and for people using canal and river paths. Thus, there is no thought to how this might draw on local knowledge to ensure an approach that is more protective and, indeed, restorative of nature and heritage, see <<https://canalrivertrust.org.uk/our-cause/looking-after-canal-and-rivers>> accessed 13 October 2025.

<sup>155</sup> Private water companies are responsible for water supply and water quality. The Environment Agency in England and NRW in Wales regulate water pollution. The Environment Agency/NRW and local authorities all have a role to play in flood prevention.

<sup>156</sup> Water Industry Act 1991 ss2A and 2B, respectively. Therefore, it is little surprise that the wider legislative frameworks in which these industries operate also make no mention of this, ie, Water Industry Act 1991 and Water Resources Act 1991. This also applies to the more recent Water Act 2014.

<sup>157</sup> Cultural heritage is included alongside the environment in defining ‘risks’. Flooding works may also be carried out in the interests of the conservation of landscape, as well as the preservation of cultural heritage and people’s enjoyment of the natural environment or cultural heritage (Flood and Water Management Act 2010 s2 and ss 38–39, respectively).

<sup>158</sup> Directive (EC) 2000/60 of the European Parliament and of the Council of 23 October 2000 establishing a *framework* for Community action in the field of *water policy* [2000] OJ L 327/2000 (the Water Framework Directive). The relevant regulations are the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 SI 2017/40 (WFD Regulations).

<sup>159</sup> Ibid. WFD Regulations, reg 3 (with reference to the objectives of the Directive).

<sup>160</sup> William Howarth, ‘Aspirations and Realities under the Water Framework Directive: Proceduralisation, Participation and Practicalities’ (2009) 21 JEL 391.

<sup>161</sup> Jon Cunliffe, *Independent Water Commission Report* (UK Government 2025).



Land use planning law has a long tradition of public participation in decision making;<sup>162</sup> and participation is also essential to LCA.<sup>163</sup> In the wider context of land and inland water management, the inclusion of participatory rights will be challenging because of the pre-eminence of individual property rights. Participation is particularly problematic in the context of agriculture in England and Wales. For example, the detailed implementation of the SFI and SFS relies on agreements between government agencies and landowners and provides no means of participation or, indeed, transparency. However, arguably scale matters, and there could be greater representation of community views in the development of Landscape Recovery Schemes in England and collaborative agreements in Wales.

In contrast to agriculture, participation is a key feature of the UKFS which requires organizations to seek a wide range of views in forestry planning which are usually also made available for public comment.<sup>164</sup> However, as noted above, the UKFS is voluntary and does not create legal rights. Legal rights to participation are not entirely excluded from agricultural and forestry practice because this is a key requirement of the EIA regime.<sup>165</sup> On the other hand, and as mentioned, this only applies to specific aspects of agriculture and forestry management and is not clearly focused on the protection of natural heritage in the landscape. Notably, participation is a key feature of statutory planning in river basin management which operates at a broad landscape scale. This reflects the need to adopt a holistic, flexible and partnership approach to sustainable water management in the light of complex ownership issues.<sup>166</sup> River basin management operates at a very large scale, which may be problematic in connecting people with the natural heritage in their local landscape, but it is informed by catchment-based approaches that operate on a devolved basis and at a smaller spatial scale.<sup>167</sup>

The discussion here demonstrates the need to carefully consider the different contexts for participation in the spheres of land and inland water management. Nevertheless, there may be opportunities for cross-sectoral learning from the statutory and non-statutory regimes outlined here.

## 5. CONCLUSIONS

Nature is in crisis, and to understand and respond appropriately to this people need to feel connected to nature. Landscape provides an important perspective in thinking about those connections because it presents a dynamic representation of the associations between people and their natural surroundings over time. Viewing nature as part of the heritage in landscape, drawing on the spatial and temporal connections between people and place, should help to capture peoples' imagination to inspire real change in their behaviour. This study asserts that protecting the natural heritage in landscape can provide an important means of

162 The first attempt to provide a participative approach in land use planning in England and Wales is widely dated back to the Skeffington Report in 1969. Ministry of Housing and Local Government, *People and Planning: Report of the Committee on Public Participation* (HMSO 1969).

163 Andrew Butler and Ulla Berglund, 'Landscape Character Assessment as an Approach to Understanding Public Interests within the European Landscape Convention' (2012) 39 *Landscape Research* 219.

164 See (n 136) 91.

165 Applications for consent for certain projects on semi-natural land or involving afforestation/deforestation must be publicized and any representations made must also be taken into account in decision making. Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 SI 2017/565 regs 11 and 15. Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006, SI 2006/2522 regs 12 and 16. Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 SI 1999/2228 regs 13 and 16.

166 Howarth (n 160).

167 See further information from DEFRA on Catchment Partnerships <<https://environment.data.gov.uk/catchment-planning/v/c3-plan/CatchmentPartnerships>> accessed 13 October 2025, and in Wales on Opportunity Catchments <<https://naturalresources.wales/about-us/what-we-do/strategies-plans-and-policies/area-statements/sector-specific-information/area-statements-and-opportunity-catchments/?lang=en>> accessed 13 October 2025.



supporting nature recovery alongside approaches focused on the protection of biodiversity and ecological resilience.

Law will play a significant role in reflecting contemporary concerns for the natural heritage in landscape. Thus, this article outlines how we might achieve this in the law of England and Wales. It provides a definition of the natural heritage in landscape that is appropriate to a legal context, ie, elements of natural origin in the landscape that reflect a significant relationship with people over time, and asserts that ordinary citizens must be given a role in any decision-making processes in this regard to improve the quality of decision making and increase the legitimacy of those decisions.

In terms of legal change, there are several key recommendations. First, heritage law needs to be reframed to cover the protection of tangible natural heritage features in the landscape alongside built cultural heritage. This includes wildlife and habitat types of national significance to the relationship between people and nature over time and sites that reflect those connections at a local level. Secondly, the more intangible natural heritage values of landscape need to be clearly articulated in laws for the designation and management of 'special landscapes' and in land use planning law and policy for the protection of landscapes everywhere. Finally, rules and standards (legal or otherwise) with respect to management practices that are crucial in shaping the natural heritage of rural landscapes must also reflect these values. This includes revising legal frameworks for agricultural payment systems, forestry standards, and laws related to the governance and management of inland waters.

This article is intended to form the basis of further reflection and debate, both scholarly and within the relevant policy communities, with a view to law reform. Opportunities to reframe laws and standards will inevitably be facilitated by the UK's exit from the EU and the recent change of UK government. However, a key contention of this study is that any changes must reflect the significance of the devolved context in Wales and the differences in the social, environmental, political and cultural conditions in England and Wales.

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