To:

1. Dr Mary-Ann Stephenson, Chair of the EHRC
2. John Kirkpatrick, Chief Executive
3. Adam Sowerbutts, Director, Legal
4. Regulatory Requests Team

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Re: Urgent request for regulatory consideration – Public Sector Equality Duty and Policies N1 and N2 of the August 2026 National Planning Policy Framework

29th September 2026

Dear

Dr Mary-Ann Stephenson,

Mr John Kirkpatrick

Mr Adam Sowerbutts,

Request for urgent consideration under sections 31 and 32 Equality Act 2006

I write on behalf of The Lifescape Project, an environmental and rewilding charity whose work includes the use of law, science and economics to protect and restore nature.

We ask the Equality and Human Rights Commission to consider urgently whether the Ministry of Housing, Communities and Local Government

("MHCLG") and/or the Secretary of State complied adequately with the Public Sector Equality Duty ("PSED") under section 149 of the Equality Act 2010 when adopting Policies N1 and N2 of the revised National Planning Policy Framework ("NPPF"), published on 17 August 2026.

We recognise that MHCLG has published a PSED assessment alongside the new NPPF. Our concern does not arise from the absence of an equality assessment. Rather, it arises because the Government's own published assessment identifies a potentially significant adverse equality consequence of the new biodiversity net gain policy, but it is not apparent from the publicly available material how that identified consequence was adequately addressed, mitigated or reconciled with the decision to proceed with the policy in its present form. As research consistently shows, and the Government has accepted, the lack of green space in large numbers of neighbourhoods across England is a significant problem for mental and physical health, climate adaptation and biodiversity. The lack of quality green space is also an issue disproportionately affecting people from black, Asian and minority ethnic populations, who are more than twice as likely as a white person to live within the areas most deprived for green space (see p62 of https://policy.friendsoftheearth.uk/sites/default/files/documents/2020-10/Green_space_gap_full_report_1.pdf) The Government has committed to the public having access to green space within a 15 minute walk from home. As at 2023, 47 of 103 (46%) of the bottom third of deprived LAs were in the bottom third for amount of natural area per person (p.21, /www.wcl.org.uk/assets/uploads/img/files/Mapping_access_to_nature_in_England_01.05.23.pdf)."https://www.wcl.org.uk/assets/uploads/img/files/Mapping_access_to_nature_in_England_01.05.23.pdf). Undermining the ability of local planning authorities to make BNG improvements above the 10% statutory minimum impedes their ability to improve access to nature. Axiomatially this restriction will impact disadvantages most as they have the most improvements to deliver (ibid. p62)

We therefore ask the Commission to consider using its statutory regulatory powers, including, if appropriate, a formal assessment under section 31 of the Equality Act 2006.

The policy change

The Environment Act 2021 introduced a statutory biodiversity net gain ("BNG") regime under which qualifying developments are generally required to achieve a biodiversity gain of at least 10%.

The 10% figure is a statutory minimum. Prior to the revised NPPF, a number of local planning authorities had adopted or were developing policies requiring higher levels of BNG where local evidence justified doing so.

Policy N1(2) of the new NPPF now provides that development plans should only set BNG standards exceeding the statutory requirement where they relate to specific site allocations and are fully justified and deliverable.

Policy N2(3) goes further in relation to individual planning decisions. Although development may voluntarily provide greater biodiversity enhancement, a higher level should only be required where it is contained in an up-to-date development-plan policy for a specific site allocation. Decision-makers are instructed not to give weight to other development-plan policies requiring biodiversity gains beyond the statutory framework.

The Framework took effect immediately for decision-making on 17 August 2026. Annex A provides that materially inconsistent existing development-plan policies should be given very limited weight unless they fall within the stated exception.

The Government's own equality assessment

Of particular importance to this referral is MHCLG's Public Sector Equality Duty Assessment on changes to the NPPF, published with the Framework.

The assessment recognises that the natural-environment policies can have indirect effects on people with the protected characteristics of age, disability and race. It records that improved access to nature may particularly benefit disabled and older people and says that people from ethnic-minority backgrounds are less likely to have sufficient green infrastructure close to their homes and may suffer disproportionately from adverse effects on health, wellbeing and climate resilience.

Crucially, the assessment then considers the BNG policy itself

It acknowledges that limiting BNG enhancement above the statutory level may restrict increased access to nature in certain areas and that respondents were concerned that the policy could reduce additional biodiversity enhancement.

MHCLG then expressly recognises that this may reduce opportunities for enhanced provision in areas of greatest need, including places where "communities with protected characteristics currently experience poorer access to nature."

This is therefore not simply an equality concern being raised retrospectively by Lifescape. The potential differential effect was expressly identified by the Department itself before the policy was adopted.

Our concern

Section 149 of the Equality Act 2010 requires a public authority, when exercising its functions, to have due regard to the need to eliminate prohibited conduct, advance equality of opportunity between those who share protected characteristics and those who do not, and foster good relations.

Government guidance emphasises that compliance involves conscious consideration of the equality aims while decisions are being made and that contemporaneous records are ordinarily the clearest means of demonstrating compliance.

The published assessment acknowledges the potentially adverse consequence of the BNG restriction. On the face of the published material, however, we have not been able to identify a specific mitigation for that identified BNG-related risk.

The assessment ultimately recommends proceeding with the NPPF and states more generally that mitigations have been incorporated into the policy. It also says that equality impacts will be monitored.

That gives rise to a number of questions which we respectfully suggest merit regulatory examination:

1. What evidence did the decision-maker have concerning the geographical distribution of communities experiencing poorer access to nature and their relationship with protected characteristics?
2. Was there an assessment of which existing or proposed local BNG policies above 10% operated in, or were intended to benefit, those communities?
3. Was the likely loss or reduction of additional biodiversity provision resulting specifically from N1(2) and N2(3) quantified or otherwise assessed?
4. What specific mitigating measure was adopted in response to the equality risk expressly identified in the assessment?

5. Was consideration given to alternatives, such as permitting higher locally determined BNG requirements where supported by robust local ecological, equality and viability evidence?
6. Was consideration given to transitional protection for existing adopted local plans which had already undergone examination and equality assessment?
7. What material was placed before the relevant Minister concerning this particular equality impact when the decision to adopt N1 and N2 was taken?
8. How will the Department's proposed monitoring identify adverse effects quickly enough to prevent inequalities becoming embedded through planning permissions granted in the meantime?

We do not invite the Commission simply to substitute its policy judgment for that of Government. The question is whether the statutory process of giving due regard was adequate in circumstances in which the Government itself identified the possibility that the policy could diminish environmental benefits in communities already experiencing unequal access to nature.

Evidence of immediate practical effect

The issue is not hypothetical. The Local Government Association has described N1 and N2 as the "BNG local cap", explaining that the policies restrict requirements exceeding 10% and prevent decision-makers giving weight to general local policies requiring higher BNG.

Mole Valley District Council provides an immediate concrete example. Its adopted Local Plan Policy EN9 requires 20% BNG. Following publication of N1(2), the Council has publicly stated that planning applications will now be required to meet only the statutory 10% minimum.

The Government's consultation response itself records materially divided views on N1. Of the 992 respondents answering Question 179, 21% strongly agreed and 21% strongly disagreed, with a further 17% partly disagreeing. The Government acknowledged arguments that restricting higher local BNG could constrain local ambition and reduce BNG's contribution to wider nature recovery.

The Government nevertheless retained the overall direction of N1 and stated that further implementation guidance would be provided.

Urgency

We ask the Commission to treat the matter as urgent.

The NPPF became operative for development-control purposes immediately on 17 August 2026. Planning authorities across England are making decisions now. Planning applications are being determined, appeals are proceeding and local plans are being prepared or amended while authorities and stakeholders are working through the consequences of the new policy.

Once a planning permission has been granted on the basis of the new framework, the opportunity to secure the additional biodiversity enhancement that would previously have been required may have unquantifiable impacts on local plans and LNRSs.

Moreover, the equality concern identified in MHCLG's own assessment is intrinsically geographical. If higher local BNG requirements were particularly valuable in communities already experiencing poor access to nature, a series of individual planning decisions may cumulatively entrench precisely the inequality which the assessment identified.

A monitoring exercise undertaken after significant numbers of permissions have been granted would not necessarily constitute an effective mitigation.

Action requested

We respectfully ask the Commission to:

- treat this letter as a request for use of its regulatory powers;
- consider whether a section 31 assessment of MHCLG's compliance with section 149 is appropriate;
- seek from MHCLG the underlying equality evidence, ministerial submissions and decision-making material relating specifically to N1 and N2;
- examine what mitigation, if any, was adopted in response to the identified potential adverse BNG equality impact;
- consider whether urgent engagement with MHCLG is appropriate while planning decisions continue to be taken;
- consider whether any compliance or other regulatory action within the Commission's powers is warranted; and
- advise Lifescape whether there is further evidence which would assist the Commission in determining whether to take action.

The Commission is expressly empowered to assess the manner and extent of a public authority's compliance with the PSED under section 31 of the Equality Act 2006 and, where appropriate following assessment, to issue a compliance notice under section 32.

We would be pleased to provide the relevant NPPF documents, MHCLG's published equality assessment and further publicly available evidence concerning the impact of N1 and N2 on local authorities.

Given the immediate operation of the new policies, we would be grateful if the Commission could acknowledge this referral and indicate as soon as practicable whether it will consider it for urgent regulatory action.

Yours faithfully,

Anthony Robinson



Legal Director

The Lifescape Project