

Appendix A

Legislative and policy context

There are a number of pieces of legislation, regulations and policies specific to ecology which underpin this assessment. These may be applicable at a European, National or Local level. References to legislation are given as a summary for information and should not be construed as legal advice.

Birds Directive

The European Community Council Directive on the Conservation of Wild Birds (79/409/EEC), normally known as the Birds Directive, sets out general rules for the conservation of all naturally occurring wild birds, their nests, eggs and habitats. It was superseded by the 'new' Birds Directive (2009/147/EC) which generally updated the previous directive.

These requirements are interpreted into English law by the Wildlife and Countryside Act 1981 (as amended) with regard to protection of birds, and the Conservation of Habitats and Species Regulations 2010 with regard to the registration and regulation of Special Protection Areas.

Habitats Directive

The European Community Council Directive on the Conservation of Natural Habitats of Wild Fauna and Flora (92/43/EEC), normally known as the Habitats Directive, aims to protect the European Union's biodiversity. It requires member states to provide strict protection for specified flora and fauna (i.e. European Protected Species) and the registration and regulation of Special Areas of Conservation.

These requirements are interpreted into English law by the Conservation of Habitats and Species Regulations 2010 with regard to European Protected Species and the registration and regulation of Special Areas of Conservation.

Conservation of Habitats and Species Regulations 2010

The Conservation of Habitats and Species Regulations 2010 interpret the Birds Directive and Habitats Directive into English and Welsh law. For clarity, the following paragraphs consider the case in England only, with Natural England given as the appropriate nature conservation body. In Wales, the Countryside Council for Wales is the appropriate nature conservation body.

Special Protection Areas and Special Areas of Conservation are defined in the regulations as a 'European site'. The Regulations regulate the management of land within European sites, requiring land managers to have the consent of Natural England before carrying out management. Byelaws may also be made to prevent damaging activities and if necessary land can be compulsorily purchased to achieve satisfactory management.

The Regulations define competent authorities as public bodies or statutory undertakers. Competent authorities are required to make an appropriate assessment of any plan or project they intend to permit or carry out, if the plan or project is likely to have a significant effect upon a European site. The permission may only be given if the plan or project is ascertained to have no adverse effect upon the integrity of the European site. If the competent authority wishes to permit a plan or project despite a negative assessment, imperative reasons of over-riding public interest must be demonstrated, and there should be no alternatives to the scheme. The permissions process would involve the Secretary of State and the option of consulting the European Commission. In practice, there will be very few cases where a plan or project is permitted despite a negative assessment. This means that a planning application has to be assessed by the Local Planning Authority, based on information provided by the applicant, and the assessment must either decide that it is likely to have no significant effect on a European site or ascertain that there is no adverse effect upon the integrity of the European site.

Government policy is for Ramsar sites (wetlands of global importance) to be treated as if they were European sites within the planning process.

Appropriate Assessment

Appropriate Assessment is required in certain instances under the Conservation of Habitats and Species Regulations 2010. Regulation 61 says that

61.—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-

(a) is likely to have a significant effect on a European site or a European offshore marine site

(either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of the site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(3) The competent authority shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority may specify.

(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

The competent authority is typically the local planning authority. The Appropriate Assessment contains the information the council require for the purposes of their assessment under the Habitat Regulations.

The Habitat Regulations also are applicable to local authority land use plans and policies. If a policy or plan is likely to have a significant effect upon a European site, the permission may only be given if the policy or plan is ascertained to have no adverse affect upon the integrity of the European site. This approach gives rise to a hierarchy of plans each with related appropriate assessments. For example, the appropriate assessment of a Regional Spatial Strategy will affect policies within a Core Strategy, which will then need its own appropriate assessment, and so on.

European Protected Species

European Protected Species of animals are given protection from deliberate capture, injuring, killing, disturbance or egg taking / capturing. Their breeding sites or resting places are also protected from damage or destruction, which does not have to be deliberate. A number of species are listed as European Protected Species, with those most likely to be considered in planning applications being bats, dormouse, great crested newt and otter. Natural England may give a licence for actions that are otherwise illegal, subject to them being satisfied on the three tests of no alternatives, over-riding public interest, and maintenance of the species in favourable condition.

European Protected Species of plant are also listed and given protection. These species are generally very rare and unlikely to be present in proposed development sites.

Wildlife and Countryside Act 1981

The Wildlife and Countryside Act 1981 has been amended many times, including by the Countryside and Rights of Ways Act 2000. It contains provisions for the notification and regulation of Sites of Special Scientific Interest, and for protected species.

The Regulations regulate the management of land within Sites of Special Scientific Interest, requiring land managers to have the consent of Natural England before carrying out management.

All public bodies are defined as 'S28G' bodies, which have a duty to further the nature conservation of Sites of Special Scientific Interest in the undertaking of their functions. In practice, this prevents planning applications being permitted if they would harm a Sites of Special Scientific Interest as it would be a breach of that duty.

The Act makes it an offence to intentionally kill, injure, or take any wild bird, take, damage or destroy the nest of any wild bird while that nest is in use or being built, or take or destroy an egg of any wild bird. Special

penalties are available for offences related to birds listed on Schedule 1, for which there are additional offences of disturbing these birds at their nests, or their dependent young.

The Act makes it an offence to intentionally kill, injure or take any wild animal listed on Schedule 5, and prohibits interference with places used for shelter or protection, or intentionally disturbing animals occupying such places. Some species have lesser protection under this Act, for example white-clawed crayfish, common frog and toads are protected from sale only, and reptile species other than smooth snake and sand lizard are protected from intentional killing or injury but they are not protected from disturbance and their habitat is not protected. It is also an offence to intentionally pick, uproot or destroy any wild plant listed in Schedule 8.

National Planning Policy Framework

The National Planning Policy Framework dated March 2012 (NPPF) replaces previous Government Policy in relation to nature conservation and planning, which was set out in Planning Policy Statement 9. Paragraph 109 of the NPPF says that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible.

Paragraph 113 describes policy for designated sites, where Local Planning Authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Further policy is within paragraph 118, where Local Planning Authorities should aim to conserve and enhance biodiversity when determining planning applications by applying the following principles:

- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- opportunities to incorporate biodiversity in and around developments should be encouraged;
- planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss.
- Paragraph 115 adds protection to biodiversity within areas designated for their landscape value. It says that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads.

Government circular 'Biodiversity And Geological Conservation – Statutory Obligations and their Impact Within the Planning System' referenced ODPM 06/2005 and Defra 01/2005 has not been replaced and remains valid. It sets out the legislation regarding designated and undesignated sites and protected species, and describes how the planning system should take account of that legislation. It does however pre-date the NERC Act 2006 (see below) which includes a level of protection for a further list of habitats and species regardless of whether they are on designated sites or elsewhere.

Natural Environment and Rural Communities (NERC) Act 2006

This Act includes a list of habitats and species of principal importance in England. Local Authorities are required to consider the needs of these habitats and species when making decisions such as on planning application.

Local Planning Authority's planning policy

The Local Planning Authority has policies relating to biodiversity conservation.

Species Legislation

The following table provides an overview of legislation with regard to species.

Protected Species	Legislation			
	Wildlife & Countryside Act, 1981	The Conservation of Habitats and Species Regulations, 2010	Natural Environment & Rural Communities (NERC) Act, 2006	Protection of Badgers Act, 1992
Plants (certain 'rare' species)	✓	✓ ⁶	✓	
Invertebrates (certain 'rare' species)	✓	✓ ⁷	✓	
White-clawed Crayfish	✓		✓	
Great Crested Newt, Natterjack Toad, Pool Frog	✓	✓	✓	
Other amphibians	✓ ⁸		✓	
Sand Lizard, Smooth Snake	✓	✓ ⁹	✓	
Other reptiles	✓ ¹⁰		✓	
Breeding Birds	✓	✓	✓	
Wintering Birds (certain 'rare' species)	✓	✓	✓	
Bats	✓	✓	✓	
Dormouse	✓	✓	✓	
Water Vole	✓		✓	
Otter	✓	✓	✓	
Badger				✓

6 Nine species present in the UK with very specialised habitat requirements are European Protected Species

7 Fisher's Estuarine Moth, Large Blue Butterfly and Lesser Whirlpool Ram's-horn Snail are European Protected Species

8 The four other native amphibian species (smooth and palmate newts, common frog and common toad) are protected against trade only under this act.

9 Smooth Snake and Sand Lizard are European Protected Species

10 The four other native reptile species (common lizard, slow worm, grass snake and adder) are protected against intentional killing, injuring and trade under this act.