

# Gate Burton Energy Park

Preliminary Environmental Information Report

Volume 3: Appendix 8-A: Legislation and Policy

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Gate Burton Energy Park Limited

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# 1. Introduction

## 1.1 Purpose of this appendix

- 1.1.1 This appendix of the PEI Report identifies and describes the legislation, policy and supporting guidance considered relevant to the assessment of the likely significant effects of the Scheme on ecology and nature conservation (collectively referred to as biodiversity), as reported in **PEI Report, Volume 1: Chapter 8: Ecology and Nature Conservation**.
- 1.1.2 Legislation and policy are considered at national and local levels.
- 1.1.3 This PEI Report appendix does not assess the Scheme against legislation and policy, instead the purpose of considering legislation and policy in the PEI Report and the EIA is twofold:
- a. To identify legislation and policy that could influence the determination of important ecological features (and therefore the significance of effects) and any requirements for mitigation; and
  - b. To identify legislation and policy that could influence the method for the EIA and signposting where this is dealt with in the PEI Report. For example, a policy may require the assessment of an impact or the use of a specific method.
- 1.1.4 The following sections identify and describe the legislation, policy and supporting guidance considered specifically relevant to the biodiversity assessment (the assessment) as presented in **PEI Report, Volume 1: Chapter 8: Ecology and Nature Conservation**.

## 2. International Legislation

- 2.1.1 The following international legislation is relevant to the assessment of the impacts of the Scheme on biodiversity.
- 2.1.2 European Union and global biodiversity targets are partly delivered through a range of legislative measures, which place obligations on Member States to protect biodiversity and the natural environment. In relation to wildlife and nature conservation, three key Directives relevant to the Scheme have been adopted by the European Union, namely:
- a. Directive 2009/147/EC on the conservation of wild birds (Ref 6-1) Birds Directive);
  - b. Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) (Ref 6-2); and
  - c. Regulation (EU) 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (IAS) (Ref 6-3).
- 2.1.3 These Directives provide for the protection of animal and plant species of European importance and the habitats which support them, particularly through the establishment of a network of protected sites, called Natura 2000 sites.
- 2.1.4 Further relevant legislation includes Directive 2000/60/EC (Water Framework Directive) (Ref 6-4), under which Member States are required to protect and improve their inland and coastal waters.

## 3. National Legislation and Policy

### 3.1 Legislation

- 3.1.1 Relevant legislation relating to nature conservation in England, planning policy and other guidance relating to biodiversity and pertinent to the DCO Site is summarised below.

#### The Conservation of Habitats and Species Regulations 2017

- 3.1.2 The Conservation of Habitats and Species Regulations 2017 (Ref 6-5) (the Habitats Regulations) (as amended) transposed the requirements of the EC Habitats Directive (Ref 6-2) and Birds Directive (Ref 6-1) into UK law, and provide for the designation and protection of European Sites (and adapt planning and other controls for the protection of these sites). This includes Annex I (including habitats) and Annex II (including species) for which such sites can be designated.
- 3.1.3 The Habitats Regulations (Ref 6-5) also provide protection for certain European Protected Species (EPS) that are listed on Schedule 2 (animals) or Schedule 5 (plants) of the Habitats Regulations (Ref 6-5). Provision is made for the granting of licences that permit certain acts as lawful, providing the appropriate authority is satisfied that there is no satisfactory alternative and the favourable conservation status of the species will be maintained.
- 3.1.4 The latest 2019 amendment to the Habitats Regulations (Ref 6-6) (the 2019 Regulations) means that Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network, following the UK's exit from the EU. The 2019 Regulations (Ref 6-6) have created a national site network on land and at sea, including both the inshore and offshore marine areas in the UK. The national site network includes:
- Existing SACs and SPAs; and
  - New SACs and SPAs designated under these Regulations.
- 3.1.5 The presence of European Sites (referred to in **PEI Report Volume 1, Chapter 8: Ecology and Nature Conservation** as designated sites of international importance) and their relationship to the Scheme have been considered in the Habitats Regulations Assessment, included in **PEI Report Volume 3: Appendix 8-E**. The presence of Annex I habitats and Annex II species, and also of any EPS, has been considered within the assessment.

#### Ramsar Convention

- 3.1.6 The Ramsar Convention 1971 (Ref 6-7) is an international treaty which includes the designation of wetlands of international importance. Government policy extends the same level of protection to Ramsar wetlands

as that afforded to sites that are designated under the Habitats Directive (Ref 6-2).

- 3.1.7 Consideration has been given in the assessment to the presence of any Ramsar wetlands.

### **Wildlife and Countryside Act 1981**

- 3.1.8 The Wildlife and Countryside Act (WCA) 1981 (as amended) (the Act) (Ref 6-8) is a primary piece of UK wildlife legislation, protecting birds, other animals and plants (including vascular plants, bryophytes, lichens and fungi), allowing for the designation of protected areas including Sites of Special Scientific Interest (SSSIs) and promoting protections for such designated areas. The Act (Ref 6-8) also defines a list of invasive non-native species, making it illegal to spread them in the wild.
- 3.1.9 Designated sites, protected flora and fauna and invasive species covered by the Act (Ref 6-8) that will be affected by the Scheme have been considered in the assessment.

### **Countryside and Rights of Way Act 2000**

- 3.1.10 The Countryside and Rights of Way Act 2000 (Ref 6-9) extends powers relating to the protection and management of SSSIs. This includes powers for entering management agreements, placing a duty on public bodies to further the conservation and enhancement of SSSIs, increasing penalties for conviction, and appeal processes for the notification, management and protection of SSSIs. It also introduced the offence of 'reckless' disturbance of threatened species.
- 3.1.11 The legislative provisions relating to designated sites and flora and fauna affected by the Scheme have been considered in the assessment.

### **The Environment Act 2021**

- 3.1.12 The Environment Act 2021 (Ref 6-10) was originally published by the UK Government in October 2019 and enacted into law in November 2021.
- 3.1.13 The Environment Act 2021 sets out the UK Government's objectives to restore natural habitats and increase biodiversity and includes proposals to make Biodiversity Net Gain (BNG) a mandatory requirement for development in England. Once the relevant provisions come into effect, The Environment Act will require all development schemes to achieve a minimum 10% net gain in biodiversity units relative to the site's baseline biodiversity value.

### **Water Environment (Water Framework Directive (WFD)) (England and Wales) Regulations 2017**

- 3.1.14 The EU Water Framework Directive (WFD) (Ref 6-4) is transposed into environmental legislation in England by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (Ref 6-11) (the



2017 Regulations). The WFD follows a holistic approach to the sustainable management of water by considering the interactions between surface water (including transitional and coastal waters, rivers, streams and lakes), groundwater and water-dependent ecosystems.

- 3.1.15 The assessment has considered the provisions of the 2017 Regulations (Ref 6-11) in relation to avoiding deterioration of a water body from its current status or potential and / or not preventing future attainment of good status or potential where not already achieved (**PEI Report Volume 3: Appendix 9-B**).

### **Natural Environment and Rural Communities Act 2006**

- 3.1.16 Section 40 of the Natural Environment and Rural Communities Act 2006 (Ref 6-12) (NERC Act) places a duty on public authorities in England to conserve biodiversity, which includes restoring or enhancing species populations or habitat.
- 3.1.17 In England, Section 41 of the NERC Act (Ref 6-12) requires the Secretary of State for Environment to publish and maintain a list of habitats and species that are of 'principal importance' for the purpose of conserving biodiversity and are regarded as conservation priorities under the UK Post-2010 Biodiversity Framework (Ref 6-13).
- 3.1.18 The occurrence of habitats and Species of Principal Importance (SPI) has been identified in the assessment through a desk study and field surveys, and the design of the Scheme includes measures for their conservation and enhancement.

### **Protection of Badger Act 1992**

- 3.1.19 The Protection of Badgers Act 1992 (Ref 6-14) provides specific legislation to protect Badgers (*Meles meles*) from cruelty. The protection of Badgers through best working practices, including the legal requirement for licences from Natural England (where required), has been considered as part of the assessment.

### **Hedgerow Regulations 1997**

- 3.1.20 The Hedgerow Regulations 1997 (Ref 6-15) introduced protection for countryside hedgerows that are defined as 'important' because they meet specific wildlife or landscape criteria or are of particular significance due to the length of time they have existed. The assessment has evaluated hedgerows potentially affected by the Scheme by way of field survey, to determine whether any qualify as important under the ecological criteria.

### **Salmon and Freshwater Fisheries Act 1975**

- 3.1.21 The Salmon and Freshwater Fisheries Act 1975 (Ref 6-16) (as amended) relates to the protection of freshwater fish, including Atlantic Salmon (*Salmo salar*) and trout (species of *Salmo*) and their habitats.

- 3.1.22 The assessment has considered the provisions of the Salmon and Freshwater Fisheries Act 1975 (Ref 6-16) in relation to the risk of mortality, migration barriers, pollution and the degradation of habitats potentially resulting from the Scheme.

### Eels (England and Wales) Regulations 2009

- 3.1.23 The Eels (England and Wales) Regulations 2009 (the Eel Regulations) (Ref 6-17) came into force on 15 January 2010 to support the UK in implementing EC Council Regulation (1100/2007) (the EC Eel Regulation) (Ref 6-18), which aimed to halt and reverse the decline in the European Eel (*Anguilla anguilla*) stocks, aiming to meet mature adult European Eel biomass escapement targets to sea of 40% relative to that expected in the absence of anthropogenic impacts.
- 3.1.24 The assessment has considered the provisions of the Eel Regulations (Ref 6-17) in relation to safe and unobstructed passage for Eel, and consideration regarding channel alterations, river crossings and culverting.

### Animal Welfare Act 2006

- 3.1.25 The Animal Welfare Act 2006 (Ref 6-19) protects vertebrate animals from harm. The provisions of the Animal Welfare Act 2006 (Ref 6-19) have been taken account of within the assessment by ensuring the welfare of any animals potentially affected by the Scheme are considered.

### Invasive Alien Species (Enforcement and Permitting) Order 2019

- 3.1.26 The Invasive Alien Species (Enforcement and Permitting) Order 2019 (Ref 6-20) came into effect on 1st October 2019. This implemented the EU Invasive Alien Species Regulation 1143/2014 (Ref 6-3) on the prevention and management of invasive alien plant and animal species in England and Wales, including the relevant licenses, permits and rules for keeping invasive alien species.
- 3.1.27 If it is not a species of special concern, then the Wildlife & Countryside Act 1981, as amended (Section 14, Schedule 9) (Ref 6-8) still applies.

## 3.2 National Planning Policy

### National Planning Policy Statements

- 3.2.1 **PEI Report Volume 1, Chapter 8: Ecology and Nature Conservation** takes account of the following relevant National Policy Statements (NPSs) for solar, which were 'designated' in 2011 and as far as they are applicable, are considered to be matters that will be important and relevant to the Secretary of State's decision as to whether to grant a DCO for the Scheme. These NPSs are, as of September 2021, in the process of being updated and therefore, relevant sections of the draft NPSs are also included below, where relevant.

- 3.2.2 Overarching National Policy Statement for Energy (EN-1) (2011) (Ref 6-21), with particular reference to paragraphs 4.2.2 and 4.2.3, which provide national policy on what an ES for a Nationally Significant Infrastructure Project (NSIP) project should contain; paragraph 4.3.1 which states what the Secretary of State must, under the Conservation of Habitats and Species Regulations 2017 consider when granting a development consent order; and part 5 section 5.3 which sets out guidance on generic impacts relating to biodiversity for the applicant's assessment and decision-making on the application. The Draft Overarching National Policy Statement for Energy (EN-1) (Ref 6-22) (2021) includes guidance for biodiversity net gains in paragraphs 4.5.1 to 4.5.3 and generic impacts on biodiversity in Part 5.4 and that guidance has also been considered within **PEI Volume 1, Chapter 8: Ecology and Nature Conservation**.
- 3.2.3 The Draft National Policy Statement for Renewable Energy Infrastructure EN-3 (2021) (Ref 6-23) now includes sections 2.47 to 2.54 (inclusive) which set out policy requirements specific to Solar Generation and these have been considered within **PEI Volume 1, Chapter 8: Ecology and Nature Conservation**.
- 3.2.4 Part 2.7 of the National Policy Statement for Electricity Networks Infrastructure (EN-5) (2011) (Ref 6-24) sets out generic impacts concerning biodiversity, although these are more relevant to considerations for birds and overhead lines. However, paragraph 2.8.9 of EN-5 (2011) details biodiversity considerations when choosing an underground electricity line. This includes the environmental consequences as underground cables can disturb sensitive habitats.

## National Planning Policy Framework

- 3.2.5 The National Planning Policy Framework (NPPF), (Ref 6-25) states 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.
- 3.2.6 It specifies the obligations that the Local Authorities and the UK Government have regarding statutory designated sites and protected species under UK and international legislation and how this it to be delivered in the planning system.
- 3.2.7 Planning Practice Guidance (Ref 6-26), with specific reference to the Environmental Impact Assessment and Natural Environment categories, was also reviewed for further guidance and interpretation on the NPPF.

## 4. Local Planning Policy

- 4.1.1 Local planning policy has been considered when assessing potential ecological constraints and opportunities identified by the desk study and field surveys; and when assessing requirements for further survey, design options and ecological mitigation. The local planning policy relevant to the Scheme consists of:
- a. Central Lincolnshire Local Plan 2012-2036 (adopted April 2017) (Ref 6-27) with particular reference to: Policy LP19 – Renewable Energy Proposals, Policy LP20 – Green Infrastructure Network; and Policy LP21 - Biodiversity and Geodiversity;
  - b. Bassetlaw District Council Core Strategy and Development Management Policies (DPD) (Ref 6-28), with reference to Policy DM9 - Green Infrastructure; Biodiversity & Geodiversity; Landscape; Open Space & Sports Facilities; and
  - c. Draft Bassetlaw Local Plan 2020-2038 (Publication version Second Addendum (May 2022) (Ref 6-29).
- 4.1.2 With regards to enhancing and protecting biodiversity and connectivity, these policies require consideration of the impacts on biodiversity by assessing protected species and habitats that could be impacted by the Scheme. Consideration of sites of international, national and local importance is also necessary. Development proposals should be controlled through avoidance, on-site management and on-site mitigation. Proposals likely to have an adverse effect on a designated site will not be permitted unless the benefits of the development clearly outweigh the harm to the nature conservation value of the site. If such benefits exist, the developer will be required to demonstrate that impacts will be avoided and impacts that cannot be avoided will be mitigated on-site. Policies state that species and habitats should be protected from pollution, where appropriate.
- 4.1.3 The following neighbourhood plans were also reviewed for their relevance to biodiversity and have been considered when assessing opportunities for design options and ecological mitigation:
- a. Rampton & Woodbeck Neighbourhood Plan, 2019-2037 (Ref 6-30) with particular reference to Policy 10 (The Protection of the Parish Landscape); and
  - b. Sturton Ward Neighbourhood Plan (Review) (Ref 6-31) Policies 2a (Protecting the landscape character, significant green gaps and key views) and 2b (Enhancing Biodiversity).

## 5. Other Guidance

- 5.1.1 Guidance documents relevant to the assessment of the impacts of the Scheme on biodiversity include:

### The 25-Year Environment Plan

- 5.1.2 In early 2018, the Government published its 25 Year Environment Plan (Ref 6-32) to provide guidance on its new approach to managing the environment. The plan promotes a natural capital approach that recognises the wider value of the environment and its contribution, such as food, clean water and air, wildlife, energy, wood, recreation and protection from hazards. The plan seeks to embed a net environmental gain principle for development to deliver environmental improvements locally and nationally.

### Biodiversity 2020

- 5.1.3 Biodiversity 2020 (Ref 6-33) was published in August 2011, building on the Natural Environment White Paper and setting out the strategic direction for biodiversity policy to 2020 on land (including rivers and lakes) and at sea in England. In the 25 Year Environment Plan the Government committed to publish a new strategy for nature building upon Biodiversity 2020, and to evaluate the current Strategy to learn lessons that can strengthen the future strategy.
- 5.1.4 Biodiversity 2020 established a new global vision for biodiversity, including a set of strategic goals and targets to drive action. It outlines the Government's vision for the natural environment, shifting the emphasis from piecemeal conservation action towards a more integrated landscape-scale approach.

### Natural England and Department for Environment, Food and Rural Affairs (Defra) Standing Advice (protected species)

- 5.1.5 Standing advice from Natural England and Defra (Ref 6-34) provides guidance on protected and notable species and includes reference to the best practice approaches to survey, mitigation and compensation. Guidance is also provided on the procedure for obtaining protected species licences.
- 5.1.6 This advice has informed the planning of surveys and the approach to mitigating impacts upon protected species, including where necessary the requirement for Natural England mitigation licences.

### UK Post 2010 Biodiversity Framework

- 5.1.7 The UK Biodiversity Action Plan (UKBAP) (Ref 6-35) was launched in 1994 and established a framework and criteria for identifying species and habitat types of conservation concern and remains an important reference material which has been considered within **PEI Report Volume 1, Chapter 8: Ecology and Nature Conservation**. The UKBAP was subsequently

succeeded by the UK Post-2010 Biodiversity Framework (July 2012) (Ref 6-13). The UK list of priority species and habitats (of which there are 943 priority species and 56 priority habitats in England), however, remains an important reference source and has been used to help draw up statutory lists of priority habitats and species in England, Scotland, Wales and Northern Ireland. For the purpose of this assessment, the UK BAP is still used as one of the criteria to assist in assigning national value to an ecological receptor.

- 5.1.8 The UK Post-2010 Biodiversity Framework is relevant within England in the context of Section 40 of the NERC Act 2006 (Ref 6-12), meaning that Priority Species and Habitats are material considerations in planning. These habitats and species are identified as those of conservation concern due to their rarity or a declining population trend.
- 5.1.9 The objectives of this UK Post-2010 Biodiversity Framework (Ref 6-13) have been included in **PEI Report Volume 1, Chapter 8: Ecology and Nature Conservation** through the consideration of habitats and SPIs.

### **Biodiversity Guidance for Solar Developments**

- 5.1.10 Biodiversity Guidance for Solar Developments (Ref 6-36) provides guidance to planners and the solar industry on how biodiversity can be supported on solar farms.

### **Mitigating biodiversity impacts associated with solar and wind energy development: Guidelines for project developers**

- 5.1.11 The document, Mitigating biodiversity impacts associated with solar and wind energy development: Guidelines for project developers (Ref 6-37), aims to provide practical support for solar and wind energy developments by effectively managing risks and improving overall outcomes related to biodiversity and includes guidance and reference for the approach to impacts on biodiversity and mitigation.

### **Birds of Conservation Concern (BoCC)**

- 5.1.12 The Birds of Conservation Concern (BoCC) (Ref 6-38) is an assessment of the conservation status of all regularly occurring British birds. The lists (Red, Amber and Green), that indicate the level of conservation importance for each species, are derived from quantitative assessments from standardised criteria. The assessment is based on the most up-to-date evidence available, and criteria include conservation status at global and European levels and, within the UK: historical decline, trends in population and range, rarity, localised distribution and international importance. The lists are drawn together by the UKs leading bird conservation organisations, including the Royal Society for the Protection of Birds (RSPB) and British Trust for Ornithology (BTO).

5.1.13 The list of BoCC Red and Amber bird species has been used to inform the approach to mitigating impacts upon notable bird species and those of highest conservation concern.

## Lincolnshire and Nottinghamshire Biodiversity Action Plan

- 5.1.14 The Lincolnshire Biodiversity Action Plan (Ref 6-39) and the Nottinghamshire Biodiversity Action Plan (Ref 6-40) set out action plans for Lincolnshire and Nottinghamshire and provide context for local priority habitat and species.
- 5.1.15 In Lincolnshire, a Local Nature Recovery Strategy (Ref 6-41) is proposed to update and replace the Lincolnshire BAP, however, details of this are still emerging and for the purposes of this PEI Report, the Lincolnshire BAP is used to provide context on local priority habitats and species.



## 6. References

- REF 6-1 EC (2009). Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version). EC, Brussels.
- REF 6-2 EC (1992). Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. EC, Brussels.
- REF 6-3 Regulation (EU) 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (the IAS Regulation) (2014).
- REF 6-4 EC (2000). Directive 2000/60/EC of the European parliament and of the council of 23 October 2000 establishing a framework for Community action in the field of water policy. Official Journal of the European Communities, Brussels
- REF 6-5 HMSO (2018). Conservation of Habitats and Species Regulations 2017 (as amended). HMSO, London.
- REF 6-6 HMSO (2019) The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. HMSO, London
- REF 6-7 Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat. United Nations Educational, Scientific and Cultural Organization (1971).
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- REF 6-21 Department of Energy and Climate Change (DECC), (2011) Overarching National Policy Statement for Energy (EN-1).
- REF 6-22 DECC (2021) Draft Overarching National Policy Statement for Energy (EN-1).
- REF 6-23 DECC (2021) Draft National Policy Statement for Renewable Energy Infrastructure (EN-3).
- REF 6-24 DECC (2011) National Policy Statement for Electricity Networks Infrastructure (EN-5).
- REF 6-25 National Planning Policy Framework 2021.
- REF 6-26 Planning Practice Guidance
- REF 6-27 Central Lincolnshire Local Plan. (2012-2036)
- REF 6-28 Bassetlaw District Council (2011). Core Strategy and Development Management Policies DPD

- REF 6-29 Bassetlaw District Council (2022). Draft Bassetlaw Local Plan 2020-2038 (Publication version Second Addendum (May 2022).
- REF 6-30 Rampton and Woodbeck Neighbourhood Plan Steering Group (2022): Rampton & Woodbeck Neighbourhood Plan, 2019-2037.
- REF 6-31 Bassetlaw District Council (2022): Sturton Ward Neighbourhood Plan (Review).
- REF 6-32 HMSO. (2018). A Green Future: Our 25 Year Plan to Improve the Environment.
- REF 6-33 DEFRA (2011). Biodiversity 2020: A strategy for England's wildlife and ecosystem services.
- REF 6-34 Protected species and development: advice for local planning authorities (2014).
- REF 6-35 Anon. (1994). UK Biodiversity Action Plan.
- REF 6-36 BRE (2014) Biodiversity Guidance for Solar Developments. Eds G E Parker and L Greene
- REF 6-37 Bennun, L., van Bochove, J., Ng, C., Fletcher, C., Wilson, D., Phair, N., Carbone, G. (2021). Mitigating biodiversity impacts associated with solar and wind energy development. Guidelines for project developers. Gland, Switzerland: IUCN and Cambridge, UK: The Biodiversity Consultancy
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- REF 6-39 Lincolnshire Biodiversity Partnership (2011). Lincolnshire Biodiversity Action Plan. (2011-2020) 3<sup>rd</sup> edition.
- REF 6-40 Nottinghamshire Biodiversity Action Group (2008). Local Biodiversity Action Plan.
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