



Preliminary Environmental Information Report

Volume III - Appendices

Appendix 12A: Legislation and Planning Policy Relevant to Terrestrial Ecology

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)



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12A. Legislation and Planning Policy Relevant to Terrestrial Ecology (excluding ornithology)

Table 12A-1: Summary of Relevant Legislation

Statute	Relevant legal requirements
<p>The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations)</p>	<p>Consolidates the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations came into force on 30th November 2017.</p> <p>The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.</p> <p>Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.</p> <p>The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities. Licenses may be granted for a number of purposes (such as science and education, conservation, preserving public health and safety), but only after the appropriate authority is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild population of the species concerned.</p> <p>The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipelines, transport and works, and environmental controls (including discharge consents under water pollution legislation). Special provisions are also made as respects general development orders, special development orders, simplified planning zones and enterprise zones.</p>
<p>Wildlife and Countryside Act 1981 (as amended) (WCA)</p>	<p>Part 1 of the WCA affords general protection to all species of wild bird, and specific protection to flora and fauna listed in Schedules 1 (birds protected by special penalties), 5 (other animals), and 8 (flora, fungi and lichens). It is an offence (subject to exceptions) to:</p> <ul style="list-style-type: none"> kill, injure, or take any wild bird;

Statute	Relevant legal requirements
	<ul style="list-style-type: none"> • take, damage or destroy the nest of any wild bird while that nest is in use or being built; • take or destroy an egg of any wild bird; • disturb any wild bird listed on Schedule 1 of the WCA while nesting, or disturb the dependent young of such a bird (e.g. quail); • kill, injure or take any wild animal listed on Schedule 5 (e.g. bats, great crested newt, common lizard); • damage, destroy or obstruct places used for shelter or protection by wild animals listed on Schedule 5 and covered by Part 4A of the WCA (e.g. bats and great crested newt); • intentionally disturb wild animals listed in Schedule 5, and covered by Part 4A of the WCA, that are occupying places of shelter and protection (e.g. bats and great crested newt); and • pick, uproot or destroy any plant, fungi or lichen listed in Schedule 8. <p>In certain circumstances, licences can be granted to permit some actions prohibited under the WCA.</p> <p>Schedule 9 provides lists of non-native flora and fauna that it is an offence to release or cause to spread in the wild. Of primary relevance in the context of proposed developments are flora e.g. invasive non-native plant species.</p> <p>Part 2 of the WCA details the law regarding Sites of Special Scientific Interest (SSSIs) and other protected areas within Great Britain.</p>
The Hedgerow Regulations 1997	Does not apply to acts of hedgerow removal covered by the process for granting planning permission. However, it retains value as part of the process for determining the relative value of specific hedgerows/ hedgerow networks and requirements for appropriate mitigation.
Countryside & Rights of Way Act 2000 (CRoW)	<p>The Act places a duty on Government Departments to have regard for the conservation of biodiversity and maintain lists of species and habitats for which conservation steps should be taken or promoted, in accordance with the Convention on Biological Diversity.</p> <p>Schedule 9 of the Act amends SSSI provisions of the Wildlife and Countryside Act 1981, including provisions to change SSSIs and providing increased powers for their protection and management.</p> <p>Schedule 12 of the Act amends the species provisions of the WCA, strengthening the legal protection for threatened species. The provisions make certain offences 'arrestable', create a new offence of reckless disturbance, confer greater powers to police and wildlife inspectors, and enable heavier penalties on conviction of wildlife offences.</p>
Natural Environment and Rural Communities Act 2006 (NERC)	Through Section 40 of the Act, a legal duty is placed on Government Departments and public authorities to have regard for the conservation of biodiversity. This 'biodiversity duty' includes, but is not restricted to, habitats and species of principal importance for nature conservation in England published by the Government in accordance with the requirement set through Section 41 of the Act. Protecting and enhancing England's Section 41 habitats and species is considered key to delivering the Government's Biodiversity 2020 Strategy (see Table 10A.2).

Statute	Relevant legal requirements
Protection of Badgers Act 1992	Makes it an offence to kill or take a badger, to cruelly ill-treat a badger, or to interfere with a badger sett, including disturbing a badger while it is occupying a sett. In certain circumstances, licences can be granted to permit some actions prohibited under the Act.
Environmental Protection Act 1990	This broad ranging legislation includes provisions relating to the controlled weed species Japanese knotweed and giant hogweed for a special mention. The Act places a 'Duty of Care' on the producer and anyone they employ to dispose of soil or other material contaminated with Japanese knotweed or giant hogweed. Controlled waste can only be taken to licensed landfill sites who must deal with it in an appropriate way.

Table 12A-2: Summary of relevant national and local planning policy and associated guidance

Statute	Relevant policies	Purpose
Overarching National Policy Statement for Energy (EN-1)	Part 5.3: Biodiversity and geological conservation	<p>Sets out national policy for energy infrastructure. Where the development is subject to Environmental Impact Assessment (EIA) the applicant should ensure that the Environmental Statement (ES) clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.</p> <p>Requires that the applicant shows how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.</p>
	Applicant's assessment -paragraph 5.3.3	'Where the development is subject to EIA the applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The applicant should provide environmental information proportionate to the infrastructure where EIA is not required to help the IPC consider thoroughly the potential effects of a proposed project.'
	Applicant's assessment -paragraph 5.3.4	'The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.'
	Biodiversity within Developments - paragraph 5.3.15	'Development proposals provide many opportunities for building-in beneficial biodiversity or geological features as part of good design. When considering proposals, the Infrastructure Planning Commission (IPC) should maximise such opportunities in and around developments, using requirements or planning obligations where appropriate.'
	Mitigation - paragraph 5.3.18	<p>'The applicant should include appropriate mitigation measures as an integral part of the proposed development. In particular, the applicant should demonstrate that:</p> <ul style="list-style-type: none"> ● during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works; ● during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements; ● habitats will, where practicable, be restored after construction works have finished; and ● opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals.'

Statute	Relevant policies	Purpose
	Mitigation - paragraph 5.3.19	'Where the applicant cannot demonstrate that appropriate mitigation measures will be put in place the IPC should consider what appropriate requirements should be attached to any consent and/or planning obligations entered into.'
Fossil Fuel Electricity Generating Infrastructure (EN-2)	Part 2.5: Air quality and emissions	This National Policy Statement (NPS), taken together with the Overarching National Policy Statement for Energy (EN-1), provides the primary basis for decisions by the IPC on applications it receives for nationally significant fossil fuel electricity generating stations.
	IPC decision making - paragraph 2.5.6	'In considering whether to grant consent, the IPC should take account of likely environmental impacts resulting from air emissions and that in the case of SO _x , NO _x or particulates in particular, it follows the advice in EN-1 on interaction with the EA's regulatory processes.'
Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)	Part 2.21: Gas and Oil Pipelines Impacts: Biodiversity, Landscape and Visual	This National Policy Statement (NPS), taken together with the 'Overarching National Policy Statement for Energy' (EN-1), provides the primary basis for decisions by the IPC on applications it receives for gas supply infrastructure and gas and oil pipelines.
	Applicant's assessment - paragraph 2.21.3	'The ES should include an assessment of the biodiversity and landscape and visual effects of the proposed route and of the main alternative routes considered (see Section 5.9 of EN-1). The application should also include proposals for reinstatement of the pipeline route as close to its original state as possible and take into account any requirements for agreements with the landowner to access areas for aftercare and management work. Where it is unlikely to be possible to restore landscape to its original state, the applicant should set out measures to avoid, mitigate, or employ other landscape measures to compensate for, any adverse effect on the landscape.'
	Mitigation - paragraph 2.21.6	'In circumstances where the habitat to be crossed contains ancient woodland, trees subject to a Tree Preservation Order, or hedgerows subject to the Hedgerows Regulations 1997, the applicant should consider whether it would be feasible to use horizontal direct drilling under the ancient woodland or thrust bore under the protected tree or hedgerow and the IPC should consider requiring this, where not included in the proposal.'
National Planning Policy Framework (NPPF)	Section 15: Conserving and Enhancing the Natural Environment	The NPPF sets out the Government's planning policies for England and how these are to be applied, and identifies overarching objectives, including environmental (such as protecting and enhancing our natural environment and improving biodiversity). It states 'planning decisions should contribute to and enhance the natural and local environment' and that when determining planning applications the following principles should be applied: 'a) if significant harm to biodiversity 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; b) development on land within or outside a

Statute	Relevant policies	Purpose
		<p>Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest; c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.'</p> <p>Irreplaceable habitats are defined as 'habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.'</p>
<p>Redcar and Cleveland Local Plan (2018)</p>	<p>Policy SD1: Sustainable Development</p>	<p>'When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. We will always work proactively with applicants to secure developments that improve the economic, social and environmental conditions in the area. In seeking positive outcomes, we will work jointly with applicants to find solutions that enable proposals to be approved wherever possible.</p> <p>Planning proposals that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood development plans) will be approved without delay, unless material considerations indicate otherwise.'</p>
	<p>Policy SD4: General Development Principles</p>	<p>In assessing the suitability of a site or location, development will be permitted where it will not (amongst other requirements) result in the unacceptable loss or significant adverse impact on important open spaces or environmental, built or heritage assets which are considered important to the quality of the local environment; or, result in an adverse effect on the integrity of a Natura 2000 site, either alone or in combination with other plans or projects.</p>
	<p>Policy LS4: South Tees Spatial Strategy</p>	<p>In relation to the natural environment the Council and its partners will aim to:</p> <ul style="list-style-type: none"> • protect European sites, and safeguard and improve sites of biodiversity interest particularly along the River Tees and the estuary and encourage integrated habitat creation and management; • enhance the environmental quality of the River Tees and coastline; and

Statute	Relevant policies	Purpose
		<ul style="list-style-type: none"> encourage improvements to access, interpretation and wildlife conservation and biodiversity across the area.
	Policy N2: Green Infrastructure	Sets out support for development which protects and improves the green infrastructure network of the region. Particular reference to the ' <i>open area between Wilton Works and Redcar, extending North to the coast.</i> '
	Policy N4: Biodiversity & Geological Conservation	<p>Sets out policy support for protection and enhancement of biodiversity and ecological features as a result of development. Biodiversity and geodiversity should be considered at an early stage in the development process, with appropriate protection and enhancement measures incorporated into the design of development proposals, recognising wider ecosystem services and providing net gains wherever possible. Detrimental impacts of development on biodiversity and geodiversity, whether individual or cumulative, should be avoided. Where this is not possible mitigation, or lastly compensation, must be provided as appropriate. Proposals will be considered in accordance with the status of biodiversity and geodiversity sites within the hierarchy.</p> <p>Particular reference and weight are given to internationally designated sites such as Teesmouth and Cleveland Coast Special Protection Area (SPA), and nationally designated sites, habitats and species. The policy also sets out protection of ecological features of particular value as wildlife corridors such as river corridors and hedgerows.</p>
Redcar and Cleveland South Tees Area Supplementary Planning Document (SPD) (2018)	Development Principle STDC7	Sets out expectations for natural environment protection and enhancement, including the requirement to comply with Redcar and Cleveland Local Plan Policy N4
Stockton-on-Tees Local Plan (2019)	Policy ENV5: Preserve, Protect and Enhance Ecological Networks, Biodiversity and Geodiversity	<p>The Council will protect and enhance the biodiversity and geological resources within the Borough. Development proposals will be supported where they enhance nature conservation and management, preserve the character of the natural environment and maximise opportunities for biodiversity conservation particularly in or adjacent to Biodiversity Opportunity Areas in the River Tees Corridor, Teesmouth and Central Farmland Landscape Areas.</p> <ol style="list-style-type: none"> The Council will preserve, restore and re-create priority habitats alongside the protection and recovery of priority species. Ecological networks and wildlife corridors will be protected, enhanced and extended. A principal aim will be to link sites of biodiversity importance by avoiding or repairing the fragmentation and isolation of natural habitats. Sites designated for nature or geological conservation will be protected and, where appropriate enhanced, taking into account the following hierarchy and considerations:

Statute	Relevant policies	Purpose
		<p>a. Internationally designated sites – Development that is not directly connected with or necessary to the management of the site, but which is likely to have a significant effect on any internationally designated site, irrespective of its location and when considered both alone and in combination with other plans and projects, will be subject to an Appropriate Assessment. Development requiring Appropriate Assessment will only be allowed where:</p> <ul style="list-style-type: none"> i. It can be determined through Appropriate Assessment, taking into account mitigation, the proposal would not result in adverse effects on the site’s integrity, either alone or in combination with other plans or projects; or ii. as a last resort, where, in light of negative Appropriate Assessment there are no alternatives and the development is of overriding public interest, appropriate compensatory measures must be secured. <p>b. Nationally designated sites - Development that is likely to have an adverse effect on a site, including broader impacts on the national network of Sites of Special Scientific Interest (SSSI) and combined effects with other development, will not normally be allowed. Where an adverse effect on the site’s notified interest features is likely, a development will only be allowed where:</p> <ul style="list-style-type: none"> i. the benefits of the development, at this site, clearly outweigh both any adverse impact on the sites notified interest features, and any broader impacts on the national network of SSSI’s; ii. no reasonable alternatives are available; and ii. mitigation, or where necessary compensation, is provided for the impact. <p>c. Locally designated sites: Development that would have an adverse effect on a site(s) will not be permitted unless the benefits of the development clearly outweigh the harm to the conservation interest of the site and no reasonable alternatives are available. All options should be explored for retaining the most valuable parts of the sites interest as part of the development proposal with particular consideration given to conserving irreplaceable features or habitats, and those that cannot readily be recreated within a reasonably short timescale, for example ancient woodland and geological formations.</p> <p>Where development on a site is approved, mitigation or where necessary, compensatory measures will be required in order to make development acceptable in planning terms.</p> <p>4. Development proposals should seek to achieve net gains in biodiversity wherever possible. It will be important for biodiversity and geodiversity to be considered at an early stage in the design process so that harm can be avoided and wherever possible enhancement achieved (this will be of particular importance in the redevelopment of previously developed land where areas of biodiversity should be retained and recreated alongside any remediation of any identified contamination). Detrimental impacts of development on biodiversity and geodiversity, whether individual or cumulative should be avoided. Where this is not possible, mitigation and lastly compensation, must be provided as appropriate. The Council will</p>

Statute	Relevant policies	Purpose
		<p>consider the potential for a strategic approach to biodiversity offsetting in conjunction with the Tees Valley Local Nature Partnership and in line with the above hierarchy.</p> <ol style="list-style-type: none"> 5. When proposing habitat creation it will be important to consider existing habitats and species as well as opportunities identified in the relevant Biodiversity Opportunity Areas. This will assist in ensuring proposals accord with the 'landscape scale' approach and support ecological networks. 6. Existing trees, woodlands and hedgerows which are important to the character and appearance of the local area or are of nature conservation value will be protected wherever possible. Where loss is unavoidable, replacement of appropriate scale and species will be sought on site, where practicable.
	<p>Policy ENV6: Green Infrastructure, Open Space, Green Wedges and Agricultural Land</p>	<ol style="list-style-type: none"> 1. Through partnership working, the Council will protect and support the enhancement, creation and management of all green infrastructure to improve its quality, value, multi-functionality and accessibility in accordance with the Stockton-on-Tees Green Infrastructure Strategy and Delivery Plan. 2. Where appropriate, development proposals will be required to make contributions towards green infrastructure having regard to standards and guidance provided within the Open Space, Recreation and Landscaping SPD or any successor. Green infrastructure should be integrated, where practicable, into new developments. This includes new hard and soft landscaping, and other types of green infrastructure. Proposals should illustrate how the proposed development will be satisfactorily integrated into the surrounding area in a manner appropriate to the surrounding townscape and landscape setting and enhances the wider green infrastructure network. 3. The Council will protect and enhance open space throughout the Borough to meet community needs and enable healthy lifestyles. The loss of open space as shown on the Policies Map, and any amenity open space, will not be supported unless: a. it has been demonstrated to be surplus to requirements; or b. the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or c. the proposal is for another sports or recreational provision, the needs for which, clearly outweigh the loss; or d. the proposal is ancillary to the use of the open space; and e. in all cases there would be no significant harm to the character and appearance of the area or nature conservation interests. 4. Development within green wedges will only be supported where: <ol style="list-style-type: none"> a. it would not result in physical or visual coalescence of built-up areas; b. it would not adversely impact on local character or the separate identity of communities; c. it would not adversely impact on recreational opportunities; and d. it would not adversely impact on biodiversity. 5. Development proposals will be expected to demonstrate that they avoid the 'best and most versatile' agricultural land unless the benefits of the proposal outweigh the need to protect such land for agricultural purposes. Where significant development of agricultural land is demonstrated to be necessary, proposals will

Statute	Relevant policies	Purpose
		be expected to demonstrate that they have sought to use areas of lower quality land in preference to that of a higher quality.'
	Policy SD5: Natural, Built and Historic Environment	Sets out the principles to ensure the conservation and enhancement of the environment alongside meeting the challenge of climate change.
	Policy SD8: Sustainable Design Principles	Sets out the principles to ensure new developments are designed to the highest possible standard, taking into consideration the context of the surrounding area
Biodiversity 2020: A strategy for England's wildlife and ecosystem services	-	Sets out the strategic direction of the Government for biodiversity policy for the next decade on land (including rivers and lakes) and at sea, and how international commitments will be implemented.
Planning Practice Guidance: Natural Environment as issued by Ministry of Housing, Communities and Local Government (2019)	-	Explains key issues in implementing policy to protect and enhance the natural environment, including local requirements.
Standing Advice issued by Defra and Natural England (2016)	Protected sites and species	<p>Guidance has been published covering protected sites, habitats and species. This includes guidance on providing and protecting wild bird habitats to address legal requirements set out in the Habitats Regulations. The purpose of standing advice is to guide decision-makers on the determination of proposals with potential to affect protected sites, habitats and species. The guidance sets out responsibilities and minimum requirements for survey and mitigation, including the need to consider objectives for no net loss and provision of net gain. Where impacts cannot be avoided, then planning applications should be determined with regard to ensuring:</p> <ul style="list-style-type: none"> • no more habitat is lost than is replaced (no net loss); • as a minimum like-for-like habitat replacements; • consideration of options to secure better alternative habitat in terms of quality or area, compared to what will be lost.
Standing Advice issued by the Forestry Commission and Natural England (2016)	Ancient woodland, ancient trees and veteran trees	Identifies considerations for developments affecting ancient woodland, ancient trees and veteran trees.

Statute	Relevant policies	Purpose
Stockton-on-Tees Supplementary Planning Document 1: Sustainable Design Guide (2011)	-	Provides additional guidance on the requirements of Stockton-on-Tees policies, including design principles for green infrastructure and ecology.
Tees Valley Green Infrastructure Strategy (2008)	-	The strategy States that: 'Green infrastructure should be fundamental to the planning of major new development and re-development schemes...'. It also states that new development should protect and enhance wildlife sites and corridors where possible and management should promote wildlife linkages.
Redcar and Cleveland's Green Space Strategy 2006-2016 (2006)	-	The purpose of the strategy is to set out requirement to deliver positive and lasting change to the borough's stock of green spaces, for the benefit of people and the environment (including ecology).
A Biodiversity Audit of the North East (2001)	-	The audit provides information on those species and habitats which occur within the North East Region that are regionally, nationally or internationally important, to support planning for the conservation of biodiversity.
Priority Habitats and Species in the Tees Valley (2012)	-	Updates information on priority habitats and species within the Tees Valley to support planning for the conservation of biodiversity.

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