



Net Zero
Teesside

Preliminary Environmental Information Report

Volume III - Appendices

Appendix 13A: Aquatic Ecology Legislation and
Planning Policy

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



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13A. Aquatic Ecology Legislation and Planning Policy

13.1 UK Wildlife Legislation

Water Framework Directive (England and Wales) Regulations 2017

- 13.1.1 The Water Framework Directive (WFD) (EC Directive 2000/60/EC) came into force in 2000. The WFD introduced a comprehensive river basin management planning system to protect and improve the ecological and chemical health of our rivers, lakes, estuaries, coastal waters and groundwater. At the heart of the WFD is the philosophy to “make water bodies better” through sustainable development for the joint benefits of aquatic habitats and the human environment.
- 13.1.2 The WFD requires member states to achieve “Good status” for all groundwater and surface waters (rivers, lakes, transitional waters, and coastal waters) by certain target dates. For surface water, overall status comprises two elements: "Good ecological status" and "Good chemical status". Ecological status is defined by the biological condition or health of a watercourse, in combination with water quality and physical conditions that underpin biological conditions. The classification of ecological status considers biological elements (the abundance of aquatic flora and fauna), physical habitat availability (hydromorphology), and water quality factors such as the availability of nutrients, salinity, temperature and pollution by key chemical pollutants. The biological elements used as indicators of ecological quality include fish, macroinvertebrates, macrophytes and diatoms.
- 13.1.3 Any proposed developments or activities that have the potential to affect the water environment require a WFD Assessment. Compliance with the WFD means attainment of Good ecological status, prevention of deterioration in status, and prevention of failure to achieve future attainment of good status where it is not already achieved within water bodies. However, WFD Article 4.7 provides legislation for exemption conditions that could allow implementation of schemes that cause deterioration in ecological status, for example for reasons of overriding public interest.
- 13.1.4 The WFD was originally transposed into UK law through the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003. The 2017 Regulations revoke and replace the 2003 Regulations. The 2017 Regulations serve the dual purpose of consolidating the 2003 Regulations, which had been amended a number of times, and making aspects of the Regulations more detailed and transparent.

The Wildlife and Countryside Act (1981 as amended)

- 13.1.5 This Act covers the protection of species and habitats including Sites of Specific Scientific Interest (SSSI) designated sites. The Act makes it an

offence (subject to exceptions) 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. Aquatic species protected that maybe relevant to the Proposed Development are white-clawed crayfish and some other aquatic invertebrate species.

- 13.1.6 The white-clawed crayfish is protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and it is illegal to harm, disturb and take white-clawed crayfish without a licence. This legislation means that crayfish are of a material consideration within the planning process.
- 13.1.7 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.
- 13.1.8 Part 2 of the WCA details the law regarding SSSIs and other protected areas within Great Britain.

The Convention on Wetlands

- 13.1.9 The Convention on Wetlands also known as the Ramsar Convention, is the intergovernmental treaty that provides the framework for the conservation and wise use of wetlands and their resources, including all lakes and rivers. Ramsar sites are wetlands of international importance that have been designated under the criteria of the Ramsar Convention on Wetlands for containing representative, rare or unique wetland types or for their importance in conserving biological diversity.
- 13.1.10 The designation of UK Ramsar sites has generally been underpinned through prior notification of these areas as Sites of Special Scientific Interest (SSSIs) (or Areas of Special Scientific Interest (ASSIs) in Northern Ireland). Accordingly, these receive statutory protection under the Wildlife & Countryside Act 1981 (as amended), the Nature Conservation (Scotland) Act 2004 (as amended) and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (as amended). Government and the devolved administrations have also issued policy statements relating to Ramsar sites which extend to them the same protection at a policy level as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).
- 13.1.11 While the initial emphasis was on selecting sites of importance to water birds, now non-bird features are increasingly considered, both in the selection of new sites and when reviewing existing sites.

The Conservation of Habitat and Species Regulations 2010

- 13.1.12 These regulations enact the European Habitats Directive (92/43/EEC) in England and Wales, which affords special protection to designated habitats and species. The regulations introduce licensing requirements for developments that may have an impact on European species.
- 13.1.13 The Habitats Directive provides the protection of key habitats and species considered of European importance. Annex II and V of Habitats Directive states the preservation, protection and improvement of the quality of the

environment, including the conservation of natural habitats, wild fauna and flora, are an essential objective of general interest pursued by the community. Specific to the Proposed Development are the freshwater habitats that include standing and running water that are of Principal Importance in England and several aquatic species such as fish, aquatic invertebrates and macrophytes.

- 13.1.14 The Regulations place a duty on the Secretary of State (SoS) to propose a list of sites which are important for either habitats or species (listed in Annexes I and II of the Habitats Directive respectively) to the European Commission. Once the Commission and EU Member States have agreed that the sites submitted are worthy of designation, they are identified as Sites of Community Importance (SCIs). The EU Member States must then designate these sites as SACs within six years.
- 13.1.15 The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb animals listed in Schedule 2. However, these actions can be made lawful through the granting of licenses by the appropriate authorities. Licenses may be granted for several 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.

Natural Environment and Rural Communities Act 2006

- 13.1.16 The NERC Act places a duty on Government Departments and public authorities to have regard for the conservation of biodiversity. Habitats and species of Principle Importance for nature conservation in England are listed pursuant to Section 41. This list is to be used by decision-makers, including local authorities, to guide the implementation of their duties under Section 40 of the NERC to have regard to the conservation of biodiversity in England, when carrying out their normal functions. This list includes several freshwater habitats and species.

The Bern Convention (1979)

- 13.1.17 The Bern Convention (1979) also known as the Convention on the Conservation of European Wildlife and Natural habitats aims to ensure conservation and protection of all wild plant and animal species and their natural habitats (listed in Appendices I and II of the Convention), to increase cooperation between contracting parties, and to afford special protection to the most vulnerable or threatened species (including migratory species). Several species listed in Appendix II may be present within the proposed Site boundary.

The Salmon and Freshwater Fisheries Act (1975)

- 13.1.18 The Salmon and Freshwater Fisheries Act ((1975), as amended under the Environment Act 1995) aims to protect all migratory and freshwater fish stocks, with a specific focus on salmon and trout, from activities that could result in direct mortality, barriers to migration and degradation of habitats.

Migratory and freshwater species are expected to be present within the proposed Site boundary.

- 13.1.19 This Act is the primary legislation in England and Wales that specifies a requirement to provide measures that will prevent the entry of biota into a water abstraction. Section 14 of this Act requires the fitting of screens or other devices that prevent the entry of salmonid smolts or adults into water intakes where the water is frequented by¹ migratory salmonids (meaning salmon or sea trout).

The Eels (England and Wales) Regulations 2009

- 13.1.20 The Eels (England and Wales) Regulations 2009 (The Regulations) came into force on 15 January 2010 to support the UK in implementing EC Council Regulation (1100/2007) (the EC Eel Regulation). Under this European Regulation, the UK must take actions to halt and reverse the decline in the European eel stock, aiming to meet a target set for the number of mature adult eels leaving each river basin to return to spawn at sea.
- 13.1.21 The EC Eel Regulation requires UK to consider eel passage. The EA have prepared Eel Management Plans for Defra/Welsh Government for each River Basin District in England and Wales. These outline the current situation and how we intend to achieve the EC target. The Regulations give us powers to help achieve this target. Part 4 of the Regulations provide the EA with new powers to ensure safe passage for eel and requires the provision of screening to be considered for eels.

13.2 National Planning Policy

National Policy Statements

- 13.2.1 The overarching National Policy Statement (NPS) for Energy (EN-1) (Department for Energy and Climate Change (DECC), 2011) sets out national policy for energy infrastructure. Part 5.3 relates to biodiversity and states that where development is subject to EIA, the ES should clearly set out the effects on internationally, nationally and locally designated nature conservation sites, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. It also requires that the applicant shows how the project has taken advantage of opportunities to conserve and enhance biodiversity.

National Planning Policy Framework 2019

- 13.2.2 The NPPF states the commitment of the UK Government to minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity. 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. Protected or notable habitats and species can be a material consideration in planning decisions and may therefore

make some sites unsuitable for particular types of development, or if development is permitted, mitigation measures may be required to avoid or minimise impacts on certain habitats and species, or where impact is unavoidable, compensation may be required.

- 13.2.3 Paragraph 5 explains that “The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework).” Therefore, the summary of the paragraphs of the NPPF provided below may possess relevance for the Proposed Development, for example in interpreting the NPS documents referred to above, they do not directly apply to the Proposed Development.
- 13.2.4 Paragraph 170 states that “Planning policies and decisions should contribute to and enhance the natural and local environment by...minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures”.
- 13.2.5 Paragraph 171 states that “Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.”
- 13.2.6 Paragraph 174 states that “To protect and enhance biodiversity and geodiversity, plans should:
- a. Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and
 - b. promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity”.
- 13.2.7 Paragraph 175 states that “When determining planning applications, local planning authorities should apply the following principles:
- 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 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.”

13.3 Local Planning Policy

13.3.1 A summary of local planning policy relevant to nature conservation are detailed here. These provide a summary of relevant local planning policies, for the precise wording of each specific policy please refer to the source document.

Redcar & Cleveland Local Plan (Adopted May 2018)

Policy N4 Biodiversity and Geological Conservation

13.3.2 Policy for the protection of local, national and international priority species and habitats and promote their restoration, re-creation and recovery.

13.3.3 Detrimental impacts of development on biodiversity and geodiversity, whether individual or cumulative, should be avoided. Enhancement of biodiversity and ecological features as a result of development should consider net gains where possible. Reference and weight are given to internationally designated sites such as Teesmouth and Cleveland Coast Area SPA, and nationally designated sites, habitats and species.

13.3.4 Support will be given to high quality schemes that enhance nature conservation and management, preserve the character of the natural environment and maximise opportunities for biodiversity and geological conservation.

13.3.5 Development that is likely to have an adverse impact on nationally important SSSI sites, including broader impacts on the national network and combined effects with other development, will not normally be allowed. Where an adverse effect on the site's notified interest features is likely, an exception will only be made where:

- the benefits of the development, at this site, clearly outweigh both any adverse impact on the features of the site that makes it of special scientific interest, and any broader impacts on the network of SSSIs;
- no reasonable alternatives are available; and
- mitigation, or where necessary compensation, is provided for the impact.

13.3.6 Development that is likely to have an adverse impact on Local Sites (Local Wildlife Sites and Local Geological Sites) or Local Nature Reserves will only be approved where:

- the benefits clearly outweigh any adverse impact on the site;
- no reasonable alternatives are available; and
- mitigation, or where necessary compensation, is provided for the impact.

13.3.7 The policy also sets out protection of ecological features of value as wildlife corridors and other habitat networks such as river corridors. The River Tees and neighbourhood water courses provide an important role as wildlife corridors. The biodiversity and habitat of water courses should be maintained and enhanced, and opportunities sought to improve the water environment.

Policy N2 Green Infrastructure

13.3.8 Sets out support for development which protects and improves the green infrastructure network of the region. Reference to the ‘green wedge between Wilton Works and Redcar, extending North to the coast.’

EN4 sites of Importance for Nature Conservation (SINC)

13.3.9 Sets out the Authority’s policy that development should not negatively impact on Sites of Interest for Nature Conservation (SINCs, now Local Wildlife Sites LWS).

CS10 Environmental protection and Enhancement

13.3.10 Stockton-on-Tees Core Strategy Development Plan (2010) sets out the Authority’s policy to protect Teessmouth and Cleveland Coast SPA, Saltholme, Seal Sands and Billingham and that development should protect and enhance biodiversity. Sets out policy of protecting and enhancing the existing green ‘wedges’ and green infrastructure.

13.3.11 Redcar and Cleveland Borough Council Local Validation Checklist (2015) states that: *“Information should be provided on existing biodiversity interest and possible impacts. Where proposals are being made for mitigation and / or compensation measures information to support those proposals will be required. Where appropriate, accompanying plans should indicate any significant wildlife habitats or features and the location of habitats of any protected species. Information will also be required relating to protected species, any potential impacts and any mitigation proposals. This information might form part of an Environmental Statement, where one is necessary.”*

13.3.12 Tees Valley Green Infrastructure Strategy (2008) 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.

Stockton-on-Tees Local Plan (Adopted January 2019)

Policy ENV5 – Preserve, Protect and Enhance Ecological Networks, Biodiversity and Geodiversity

13.3.13 The council will protect and enhance the biodiversity resources within the Borough. Development proposals will be supported where there is evidence, they are enhancing local nature conservation and biodiversity.

13.3.14 The council will preserve, restore and re-create priority habitats and support in the recovery of priority species.

13.3.15 Ecological networks and wildlife corridors will be protected, enhanced and extended.

13.3.16 Sites designated for nature conservation will be protected and, where appropriate enhanced.

13.3.17 Development that is likely to have an adverse impact on International designated sites will be subject to an Appropriate Assessment. Development requiring Appropriate Assessment will only be allowed where:

- the proposal would not result in adverse effects on the site's integrity; and
- there are no alternatives and the development is of overriding public interest, appropriate compensatory measures must be secured.

13.3.18 Development that is likely to have an adverse impact on nationally designated sites will only be allowed if:

- the benefits of the development, clearly outweigh both any adverse impact on the features of the site and any broader impacts on the network of SSSIs;
- no reasonable alternatives are available; and
- mitigation, or where necessary compensation, is provided for the impact.

13.3.19 Development that is likely to have an adverse impact on Local Sites will only be approved where the benefits of the development clearly outweigh the harm to the conservation interest of the site and no reasonable alternatives are available. Mitigation or compensatory measures will be required.

13.3.20 Development proposals should seek to achieve net gains in biodiversity.

13.3.21 Habitat creation should consider the existing habitats and species.

13.3.22 Existing trees, woodlands and hedgerows which are of nature conservation value will be protected wherever possible.

Policy ENV6 – Green Infrastructure, Open Space, Green Wedges and Agricultural Land

13.3.23 The council will protect, create and enhance green infrastructure and it should be integrated where possible into new developments.

13.3.24 Development within 'Green wedges' will only be supported where it would not adversely impact biodiversity.

Policy ENV7 - Ground, Air, Water, Noise and Light Pollution

13.3.25 Any development proposals that may result in groundwater or surface water pollution will require suitable prevention measures. Potentially polluting developments will not be sited near to sensitive areas unless satisfactory mitigation measures can be demonstrated.

- 13.3.26 Ground and surface water quality are required to improve in line with the requirements of WFD. Developments will not be permitted unless it can be demonstrated that there are no significant adverse impacts to water quality.
- 13.3.27 Support will be given to improve the quality of the water environment by supporting ecological improvements along riparian corridors, protecting natural water bodies from modifications and supporting improvement of heavily modified water bodies (including de-culverting and removal of fish barriers).

13.4 Local Biodiversity Action Plan (BAP)

- 13.4.1 The Tees Valley Biodiversity Action Plan provides information on the local biodiversity action plan priority habitats and species across both Stockton-on-Tees and Redcar and Cleveland. This includes a suite of aquatic habitats and species that are important at a local level including 'reedbeds', 'rivers and streams' and 'ponds lakes and reservoirs' which have the potential to provide important habitat for priority species including water violet (*Hottonia palustris*), bullhead (*Cottus gobio*), salmon (*Salmo salar*), brown trout (*Salmo trutta*), European eel (*Anguilla anguilla*), brook lamprey (*Lampetra planeri*), river lamprey (*Lampetra fluviatilis*) and sea lamprey (*Petromyzon marinus*).

