

West Burton C (Gas Fired Generating Station)

Appendix 9A: Legislation and Planning Policy

EDF Energy (Thermal Generation) Limited

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Quality information

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Examination

| | | | | | | |
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| <u>Rev 1</u> | <u>08.04.20</u> | <u>Reference regulations amended</u> | <u>to S. Evans</u> | <u>Susan Evans</u> | <u>Associate Consultant</u> | <u>EIA</u> |
|--------------|-----------------|--------------------------------------|--------------------|--------------------|-----------------------------|------------|

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Appendix 9A – Legislation and Planning Policy

Table 1: Summary of relevant legislation

| Statute | Relevant legal requirements |
|--|--|
| <p>Wildlife and Countryside Act 1981 (as amended) (WCA) (Ref 9A-1)</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; • 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 (SSSI) and other protected areas within Great Britain.</p> |
| <p>Countryside and Rights of Way Act 2000 (CRoW) (Ref 9A-2)</p> | <p>Schedule 9 of the CRoW amends SSSI provisions of the WCA, including increased powers for their protection and management of SSSIs. These strengthened provisions extend powers for entering into management agreements; place a duty on public bodies to further the conservation and enhancement of SSSIs; increase penalties on conviction where the provisions are breached; and introduce a new offence whereby third parties can be convicted for damaging SSSIs.</p> <p>Schedule 12 of the CRoW amends the species provisions of the WCA, strengthening the legal protection for threatened species. The</p> |

| Statute | Relevant legal requirements |
|---|--|
| | provisions make certain offences 'arrestable', and create a new offence of reckless disturbance. |
| Natural Environment and Rural Communities Act 2006 (NERC) (Ref 9A-3) | The NERC places a duty on Government Departments and public authorities to have regard for the conservation of biodiversity. Section 41 includes a list of habitats and species 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. |
| The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2017 8 (the Habitats Regulations) (Ref 9A-4) | <p>The Habitats Regulations require the compilation and maintenance of a register of European sites, to include Special Area Conservations (SACs) and Special Protection Areas (SPAs) classified under Council Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive). When considering potentially damaging operations, the precautionary principle applies i.e. consent for the operations cannot be given unless it is demonstrated that there would be no adverse effect on the integrity of the European site.</p> <p>Affords protection to European Protected Species, e.g. bats and great crested newt, listed in Schedule 2. It is an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in listed animals. In certain circumstances, licences can be granted to permit some actions prohibited under the Habitats Regulations.</p> <p>Regulation 9A requires that competent authorities must take such steps in the exercise of their functions as they consider appropriate to secure the preservation, maintenance and re-establishment of sufficient diversity and area of habitat for wild birds as appropriate, and having regard to the requirements of Article 2 of the Birds Directive.</p> |
| Protection of Badgers Act 1992 (Ref 9A-5) | 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. |
| The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (Ref 9A-6) | <p>The Water Framework Directive (WFD; EC Directive 2000/60/EC) came into force in 2000 and is the most substantial piece of EU water legislation to date. At the heart of the WFD is the philosophy to 'make waterbodies better' through sustainable development for the joint benefits of aquatic habitats and the human environment.</p> <p>The WFD requires that member states achieve 'good status' for all groundwater and surface waters (rivers, lakes, transitional waters, and coastal waters). 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</p> |

| Statute | Relevant legal requirements |
|---|--|
| | <p>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.</p> <p>Any proposed developments or activities that have the potential to affect the water environment require a WFD Assessment (WFDa). 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 waterbodies. 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.</p> <p>The WFD was transposed into UK law through the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, which require the Secretary of State and the Environment Agency to exercise their relevant functions so as to secure compliance with the requirements of the WFD.</p> |
| <p>Animal Welfare Act 2006 (Ref 9A-7)</p> | <p>The Act contains the general laws relating to animal welfare. It is an offence to cause unnecessary suffering to any animal. The Act makes owners and keepers (including landowners) responsible for ensuring that the welfare of animals within their control is met.</p> |

Table 2: Summary of Relevant National and Local Planning Policy and Associated Guidance

| Document | Relevant policies | Purpose |
|--|---|---|
| National Planning Policy Framework (NPPF) (Ref 9A-8) | Section 15 | The NPPF published in July 2018 and updated in February 2019 sets out the commitment of the UK Government to minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the wider 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, Where impacts are unavoidable, compensation may be required. |
| Bassetlaw Core Strategy and Development Management Policies Development Plan Document (DPD) (Ref 9A-9) | DM9: Green Infrastructure; Biodiversity; Geodiversity; Landscape; Open Spaces and Sports Facilities | To ensure that development proposals support the Council's strategic approach to the delivery, protection and enhancement of multi-functional Green Infrastructure. To safeguard habitats and species populations by requiring that development proposals do not adversely affect or result in the loss of ecological features of importance, including protected trees and hedgerows, ancient woodlands, statutory and non-statutory nature conservation designations, and protected/notable habitats and species. |
| Draft Bassetlaw Local Plan (Ref 9A-10). | Strategic Objective 5 | BDC is currently in the early stages of preparing a new Local Plan for the District and began consulting on a Draft Bassetlaw Local Plan in January 2019. Strategic objective 5 (Conserve the District's distinctive historic built and natural environments) states: "The variety of distinctive historic and natural environments throughout Bassetlaw will be conserved and, where possible, enhanced for the enjoyment of future generations of residents and visitors alike. This will include making the most efficient use of land wherever appropriate." |

| Document | Relevant policies | Purpose |
|--|---|--|
| Sturton Ward Neighbourhood Plan 2015 – 2030 (Ref 9A-11) | Policy 2: Conservation and Enhancement of Existing Natural Features | Policy 2 seeks to protect and enhance designated wildlife sites and retain features of high conservation value including mature trees, hedgerows, species-rich grasslands, ponds and wetlands, and woodlands. The policy also introduces or safeguards boundary treatments that are sympathetic to maintaining and enhancing biodiversity on new development or as part of alterations to existing development. Incorporating native species of tree and shrub and provision of bat boxes is particularly encouraged. |
| Overarching National Policy Statement (NPS) for Energy (EN-1) (Ref 9A-12) | Part 5.3: Biodiversity and geological conservation | <p>The NPS sets out national policy for energy infrastructure. 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.</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> |
| Local Biodiversity Action Plan (LBAP) for Nottinghamshire (published 1998) (Ref 9A-13) | - | <p>Provides the local nature conservation strategy for identifying threats to habitats and species within the county and setting out the actions necessary to conserve them.</p> <p>Although now somewhat out of date, the LBAP provides context to inform identification of threatened/uncommon habitats and species within the county. The LBAP identifies priorities for conservation and enhancement but confers no particular legislative or policy protection to the habitats and species identified (but in some cases this is provided through related legislation and policy). See Table 3 for a review of potentially relevant LBAP habitats and species.</p> |
| Natural England and Defra Standing Advice | Protected sites and species | Guidance has been published covering protected sites, habitats and species. This includes guidance on providing and protecting wild bird habitats to |

| Document | Relevant policies | Purpose |
|---|-------------------|--|
| <p>[published 06.10.14; website accessed 08.02.19: https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications]</p> | | <p>address legal requirements set out in the Habitats Regulations.</p> <p>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 would be lost. |

Table 3: Screening of Nottinghamshire LBAP habitats and species for relevance to the Proposed Development

| Habitat or Species Action Plan | Relevant / Potentially Relevant to Proposed Development? | Comments |
|--|--|---|
| Habitat Action Plans | | |
| Canals | x | Not present. |
| Ditches | ✓ | A drainage ditch is present within the footprint of the southern drainage connection corridor. |
| Eutrophic and Mesotrophic Standing Water | ✓ | Flooded gravel pits are present within West Burton Power Station Local Wildlife Site (LWS) adjacent to the Site. |
| Farmland: Arable farmland, arable field margins and improved grassland | x | Not present. |
| Fens, marshes and swamps | x | Not present as narrowly defined for the purposes of the LBAP, but see reedbed (below) which is a related habitat. |
| Hedgerows | x | Not present. |
| Lowland calcareous grassland | x | Not present. |
| Lowland dry acid grassland | x | Not present. |
| Lowland heathland | x | Not present. |
| Lowland neutral grassland | ✓ | Areas of seeded semi-improved neutral grassland are present in landscaped areas around the Site. |
| Lowland wet grassland | x | Not present. |
| Mixed ash-dominated woodland | x | Not present. |
| Oak-birch woodland | x | Not present. |
| Parkland and wood pasture | x | Not present. |

| Habitat or Species Action Plan | Relevant / Potentially Relevant to Proposed Development? | Comments |
|------------------------------------|--|--|
| Planted coniferous woodland | x | Not present. |
| Reedbed | ✓ | A small area of reedbed (definable as swamp for the purposes of Phase 1 Habitat survey) is present along the northern drainage connection corridor. More extensive reedbeds are present adjacent to the Site within West Burton Reedbed LWS to the south-east. |
| Rivers and streams | ✓ | The River Trent is present to the east of the Site. |
| Urban and post-industrial habitats | x | Not present. |
| Wet broad-leaved woodland | ✓ | Secondary wet woodland is present in association with flooded former gravel pits in West Burton Power Station LWS adjacent to the Site. |
| Species Action Plans | | |
| Atlantic salmon | x | Not relevant as the River Trent would not be impacted. |
| Barn owl | x | Not identified during breeding bird surveys at the Site. No habitat suitable for nesting was found. |
| Bats | ✓ | Foraging bats recorded in association with habitats within and adjacent to the Site. |
| Black Poplar | x | Not present. |
| Deptford Pink | x | Not present. |
| Dingy Skipper | x | Habitats within the Site are not suitable for this species. |
| Grizzled Skipper | x | Habitats within the Site are not suitable for this species. |
| Harvest mouse | x | Habitats within the Site are sub-optimal and of very limited extent such that presence is unlikely. |

| Habitat or Species Action Plan | Relevant / Potentially Relevant to Proposed Development? | Comments |
|---|--|--|
| Nightjar | x | Habitats within the Site are not suitable for this species. |
| Nottingham autumn crocus and Nottingham spring crocus | x | There is no reasonable likelihood of the habitats present supporting this species given their composition and origins. |
| Otter | ✓ | There are desk study records in the local area and terrestrial habitats to be affected adjacent to the River Trent could be used by the species. No evidence of otter was found during site surveys. |
| Water vole | x | Habitats within the Site are sub-optimal for this species and no evidence of presence has been found. |
| White-clawed crayfish | x | No suitable habitat present in the Site for this species. |

9.1 References

- Ref 9A-1 HM Government (1981) Wildlife and Countryside Act 1981.
- Ref 9A-2 HM Government (2000) Countryside and Rights of Way Act 2000.
- Ref 9A-3 HM Government (2006) Natural Environment and Rural Communities Act 2006.
- Ref 9A-4 HM Government (2018) The Conservation of Habitats and Species ~~and Planning (Various Amendments) (England and Wales) Regulations 2017~~ (as amended)⁸.
- Ref 9A-5 HM Government (1992) Protection of Badgers Act 1992.
- Ref 9A-6 HM Government (2017) The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- Ref 9A-7 HM Government (2006) Animal Welfare Act 2006.
- Ref 9A-8 Ministry of Housing, Communities and Local Government (2019) National Planning Policy Framework.
- Ref 9A-9 Bassetlaw District Council (2011) Bassetlaw Core Strategy and Development Management Policies Development Plan Document (DPD).
- Ref 9A-10 Bassetlaw District Council (2019) Draft Local Plan.
- Ref 9A-11 Sturton Ward Planning Group (2015) Sturton Ward Neighbourhood Plan 2015 – 2030.
- Ref 9A-12 Department of Energy and Climate Change (2011) Overarching National Policy Statement for Energy (EN-1).
- Ref 9A-13 The Nottinghamshire Biodiversity Action Group (1998) Local Biodiversity Action Plan for Nottinghamshire.