



# SUNNICA ENERGY FARM

EN010106

Volume 6

6.2 Appendix 14A: Relevant Legislation and Policy for Air Quality

APFP Regulation 5(2)(a)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009



Planning Act 2008

**The Infrastructure Planning  
(Applications: Prescribed Forms and  
Procedure) Regulations 2009**

## **Sunnica Energy Farm**

**Environmental Statement  
Appendix 14A: Relevant Legislation and Policy for Air Quality**

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# 1 Introduction

## 1.1 Purpose of this appendix

- 1.1.1 This ES appendix identifies and describes the legislation, policy and supporting guidance considered relevant to the assessment of the likely significant air quality effects of the Scheme. Legislation and policy are considered at national and local levels.
- 1.1.2 This ES appendix does not assess the Scheme against legislation and policy instead the purpose of considering legislation and policy in the EIA is twofold:
- a. to identify legislation and policy that could influence the sensitivity of receptors (and therefore the significance of effects) and any requirements for mitigation; and
  - b. to identify legislation and policy that could influence the methodology of the EIA. For example, a policy may require the assessment of an impact or the use of a specific methodology.
- 1.1.3 The following sections identify and describe the legislation, policy and supporting guidance considered specifically relevant to the air quality assessment.

## 2 International Legislation, Policy and Guidance

### 2.1 Legislation

- 2.1.1 The UK is no longer a member of the European Union. EU legislation as it applied to the UK on 31 December 2020 is now a part of UK domestic legislation, under the control of the UK's Parliaments and Assemblies, and is published on [legislation.gov.uk](http://legislation.gov.uk).
- 2.1.2 Some types of EU legislation such as Regulations and Decisions, are directly applicable as law in an EU Member State. This meant that, as a Member State, these types of legislation applied automatically in the UK, under section 2(1) of the European Communities Act 1972 (UK Parliament, 1972), without any further action required by the UK. These types of legislation are published by the Publications Office of the European Union on the EUR-Lex website. This legislation is now published on [legislation.gov.uk](http://legislation.gov.uk) as 'legislation originating from the EU'.
- 2.1.3 Other types of EU legislation, such as Directives, are indirectly applicable, which means they require a Member State to make domestic implementing legislation before becoming law in that State. In the UK this was often achieved by making Statutory Instruments rather than passing primary legislation. This implementing legislation has always been published on [legislation.gov.uk](http://legislation.gov.uk).
- 2.1.4 EU legislation which applied directly or indirectly to the UK before 11.00 p.m. on 31 December 2020 has been retained in UK law as a form of domestic legislation known as 'retained EU legislation'. This is set out in sections 2 and 3 of the European Union (Withdrawal) Act 2018 (UK Parliament, 2018). Section 4 of the 2018 Act ensures that any remaining EU rights and obligations, including directly effective rights within EU treaties, continue to be recognised and available in domestic law after exit.
- 2.1.5 The Clean Air for Europe (CAFE) programme consolidated and replaced (with the exception of the 4th Daughter Directive) preceding directives with a single legal act, the Ambient Air Quality and Cleaner Air for Europe Directive 2008/50/EC (hereafter referred to as the 'EU Air Quality Framework Directive') (Ref 1). This directive is transcribed into UK legislation by the Air Quality Standards Regulations 2010 (Ref 2) which came into force on 11th June 2010. The 2010 Regulations were amended by the Air Quality Standards Regulations 2016 (Ref 3), which came into force on 31st December 2016. The limit values defined therein are legally-binding and are considered to apply everywhere (with the exception of the carriageway and central reservation of roads and any locations where the public do not have access).

## 3 National Legislation, Policy and Guidance

### 3.1 Legislation

- 3.1.1 The pollutants of concern for this assessment are particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) and nitrogen dioxide (NO<sub>2</sub>). Pollutant standards relate to health-based ambient pollutant concentrations in the air. Objectives incorporate target dates (all of which have now passed).
- 3.1.2 The provisions of Part IV of the Environment Act 1995 establish a national framework for air quality management, which requires all local authorities in England, Scotland and Wales to conduct local air quality reviews. Section 82(1) of the Act requires these reviews to include an assessment of the current air quality in the area and the predicted air quality in future years. The Environment Act 1995 also outlines measures to be taken by local planning authorities in relation to meeting the standards and objectives. Should the reviews indicate that the objectives prescribed in the UK Air Quality Strategy (AQS) (Ref 4) and the Air Quality (England) Regulations (Ref 5, Ref 6) will not be met, the local authority is required to designate an Air Quality Management Area (AQMA). Action must then be taken at a local level to ensure that air quality in the area improves. This process is known as 'local air quality management' or LAQM.

### 3.2 Policy

#### The UK Air Quality Strategy

- 3.2.1 The UK Air Quality Strategy (Ref 4) identifies nine ambient air pollutants that have the potential to cause harm to human health and two for the protection of vegetation and ecosystems. The Strategy defines objectives for these pollutants that aim to reduce the impacts of these pollutants to negligible levels. The objectives are not mandatory but rather targets that local authorities should try to achieve.

#### Clean Air Strategy

- 3.2.2 In 2019, the UK government released its Clean Air Strategy 2019 (Ref 7) part of its 25 Year Environment Plan. LAQM focus in recent years has primarily related to nitrogen dioxide (NO<sub>2</sub>), and its principal source in the UK, road traffic. However, the 2019 Strategy broadens the focus to other areas, including domestic emissions from wood burning stoves and from agriculture. This shift in emphasis is part of a goal to reduce the levels of fine particulate matter (PM<sub>2.5</sub>) in the air to below the World Health Organisation guideline level; lower than the current objective.
- 3.2.3 Air Quality Strategy Objectives are shown in **Table 3-1**.

**Table 3-1 Key Air Quality Strategy Objectives**

Pollutant	Objective	Averaging Period	Maximum Permitted Exceedances
Nitrogen Dioxide (NO <sub>2</sub> )	200 µg/m <sup>3</sup>	1 hour	18 times per year (i.e. 99.79 <sup>th</sup> percentile)
	40 µg/m <sup>3</sup>	Annual	-
Particulate Matter (PM <sub>10</sub> )	40 µg/m <sup>3</sup>	Annual	-
	50 µg/m <sup>3</sup>	24-hour	35 times per year (i.e. 90.4 <sup>th</sup> percentile)
Particulate Matter (PM <sub>2.5</sub> )	25 µg/m <sup>3</sup>	Annual	-

### National Policy Statements

3.2.4 The Scheme’s proposed energy generating technology is not currently specifically referenced by a National Policy Statement (NPS) however in lieu of a technology specific NPS, the EIA takes account of the following NPSs, which 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:

- a. Overarching National Policy Statement for Energy (EN-1) (Ref 8),
- b. National Policy Statement for Renewable Energy Infrastructure (EN-3) (Ref 9), and
- c. National Policy Statement for Electricity Networks Infrastructure (EN-5) (Ref 10).

3.2.5 The NPSs set out the Government’s energy policy, the need for new infrastructure and guidance for determining an application for a DCO. The NPSs include specific criteria and issues which should be covered by applicants’ assessments of the effects of their scheme, and how the decision maker should consider these impacts.

3.2.6 The relevant NPS requirements, together with an indication of where in the ES chapter the information provided to address these requirements, are provided in **Table 3-2**. NPS EN-3 and EN-5 do not contain requirements relevant to the air quality assessment for this Scheme. Therefore, **Table 3-2** only lists relevant NPS requirements from NPS EN-1.

**Table 3-2 Relevant NPS requirements for the air quality assessment**

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	NPS EN-1	
Paragraph 5.2.6	Where the project is likely to have adverse effects on air quality the applicant should undertake an assessment of the impacts of the proposed project as part of the Environmental Statement (ES).	<b>Chapter 14: Air Quality</b> of this Environmental Statement [EN010106/APP/6.1]
Paragraph 5.2.7	The ES should describe: <ul style="list-style-type: none"> <li>▪ any significant air emissions, their mitigation and any residual effects distinguishing between the project stages and taking account of any significant emissions from any road traffic generated by the project;</li> <li>▪ the predicted absolute emission levels of the proposed project, after mitigation methods have been applied;</li> <li>▪ existing air quality levels and the relative change in air quality from existing levels</li> </ul>	<b>Chapter 14: Air Quality</b> of this Environmental Statement [EN010106/APP/6.1]. Description of air emissions, absolute emission levels, relative change: Section 14.7 (Assessment of Likely Impacts and Effects), Mitigation measures:14.6 (Embedded Mitigation) and 14.9 (Mitigation Measures), Residual effects taking account of mitigation:14.10 (Residual Effects)
Paragraph 5.2.9	The [Secretary of State] should generally give air quality considerations substantial weight where a project would lead to a deterioration in air quality in an area, or leads to a new area where air quality breaches any national air quality limits. However air quality considerations will also be important where substantial changes in air quality levels are expected, even if this does not lead to any breaches of national air quality limits.	<b>Chapter 14: Air Quality</b> of this Environmental Statement [EN010106/APP/6.1], Section14.10 – Residual Effects
Paragraph 5.2.10	In all cases the [Secretary of State] must take account of any relevant statutory air quality limits. Where a project is likely to lead to a breach of such limits the developers should work with the relevant authorities to secure appropriate mitigation measures to allow the proposal to proceed. In the event that a project will lead to non-compliance with a statutory limit the [Secretary of State] should refuse consent.	<b>Chapter 14: Air Quality</b> of this Environmental Statement [EN010106/APP/6.1] No exceedances of the air quality limits are predicted.
Paragraph 5.2.11 – 5.2.13	The [Secretary of State] should consider whether mitigation measures are needed both for operational and construction emissions over and above any which may form part of the project application. A construction management plan may help codify mitigation at this stage. In doing so the [Secretary of State] may refer to the conditions and advice in the Air Quality Strategy96 or any successor to it.	<b>Chapter 14: Air Quality</b> of this Environmental Statement [EN010106/APP/6.1], <b>Table 14-13</b>

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	The mitigations identified in Section 5.13 on traffic and transport impacts will help mitigate the effects of air emissions from transport.	

## Draft National Policy Statements

- 3.2.7 The Government is currently reviewing and updating the Energy NPSs. It is doing this in order to reflect its policies and strategic approach for the energy system that is set out in the Energy White Paper (December 2020), and to ensure that the planning policy framework enables the delivery of the infrastructure required for the country's transition to net zero carbon emissions. As part of the Energy NPS review process, the Government published a suite of Draft Energy NPSs for consultation on 6 September 2021. These include the following Draft NPSs, which are expected to be important and relevant to the Secretary of State's decision, and have therefore been taken into account by the EIA:
- a. Draft Overarching National Policy Statement for Energy (EN-1) (Draft NPS EN-1),
  - b. Draft National Policy Statement for Renewable Energy (EN-3) (Draft NPS EN-3), and
  - c. Draft National Policy Statement for Electricity Networks Infrastructure (EN-5).
- 3.2.8 Where the relevant Draft NPS contain requirements that differ from the requirements of the NPSs, **Table 3-3** indicates where the information to address these requirements is provided within the ES Chapter.

**Table 3-3 Relevant Draft NPS requirements for the air quality assessment**

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	Draft NPS EN-1	
Paragraph 5.2.9	In all cases, the Secretary of State must take account of any relevant statutory air quality limits. Where a project is likely to lead to a breach of such limits the applicant should work with the relevant authorities to secure appropriate mitigation measures to allow the proposal to proceed. In particular, where a project is located within, or in close proximity to, a Local Air Quality Management Area or Clean Air Zone, applicants should engage with the relevant local authority to ensure the project is compatible with the local air quality plan. In the event that a project will lead to non-compliance with a statutory limit the Secretary of State should refuse consent.	The Scheme is not located in or near to an AQMA or Clean Air Zone, and air quality limits are not in danger of being exceeded. Therefore mitigation measures are not required.

### **National Planning Policy Framework (NPPF)**

- 3.2.9 The NPPF sets out the Government's planning policies for England and how these should be applied. Paragraph 5 of the NPPF goes on to confirm that the NPPF may be a matter that is both important and relevant for the purposes of assessing DCO applications. The EIA for the Scheme therefore has regard to the relevant policies of the NPPF as part of the overall framework of national policy.
- 3.2.10 The relevant NPPF paragraphs, together with an indication of where in the ES chapter the information is provided to address these requirements, are provided in **Table 3-4**.

**Table 3-4 Relevant NPPF requirements for the air quality assessment**

Relevant NPPF paragraph reference	Requirement of the NPPF	Where in the ES chapter is information provided to address this
Paragraph 174	<p>Planning policies and decisions should contribute to and enhance the natural and local environment by:</p> <p>a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);</p> <p>.....</p> <p>e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and</p> <p>f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.</p>	<p>Section 14.6 of <b>Chapter 14: Air Quality</b> of this ES <b>[EN010106/APP/6.1]</b> sets out mitigation measures pertaining to air quality.</p>
Paragraph 186	<p>Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.</p>	<p>Section 14.6 of <b>Chapter 14: Air Quality</b> of this ES <b>[EN010106/APP/6.1]</b> assesses the effects of the Scheme on air quality, including its potential to lead to a breach of any statutory air quality limits.</p>

## **Guidance**

- 3.2.11 The National Planning Practice Guidance (NPPG) (Ref 11) was published on the 24th June 2014 to provide more in-depth guidance to the NPPF.
- 3.2.12 The NPPG notes that air quality assessments should include the following information (paragraph 5):
- a. The existing air quality in the study area (existing baseline);
  - b. The future air quality without the Scheme in place (future baseline); and
  - c. The future air quality with the Scheme in place (with mitigation).
- 3.2.13 Paragraph 7 states that assessments need to be proportionate to the nature and scale of development proposed and the potential impacts (taking into account existing air quality conditions), and because of this, assessments are likely to be location specific.

## 4 Local Legislation, Policy and Guidance

### 4.1 Policy

4.1.1 The following local policy is relevant to the assessment of air quality effects of the Scheme.

**Table 4-1 Local policy relevant to the air quality assessment**

Relevant Document	Relevant policies
East Cambridgeshire District Council Local Plan Adopted April 2015 (Ref 13)	Policy ENV9: Pollution
Forest Heath District Council Core Strategy Adopted 2010 (Ref 14)	Policy CS4: Reduce Emissions, Mitigate and Adapt to future Climate Change
Forest Heath and St Edmundsbury Local Plan: Joint Development Management Policies Document (last updated February 2015) (Ref 15)	Policy DM14: Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards Policy DM45: Transport Assessments and Travel Plans Policy DM46: Parking Standards

### 4.2 Guidance

4.2.1 When determining the significance of the air quality assessment results with the Scheme, this assessment follows the non-statutory best practice guidance relating to air quality and development control published by Environmental Protection UK (EPUK) and the Institute of Air Quality Management (IAQM) (Ref 12). The guidance ensures that air quality is adequately considered during land-use planning and development control process and is applicable to assessing the effect of changes in exposure of members of the public consequential to residential and mixed-use developments. This is of particular importance in urban areas where air quality is of a poorer standard. The guidance states that: *“Land-use planning can play a critical role in improving local air quality. At the strategic level, spatial planning can provide for more sustainable transport links between the home, workplace, educational, retail and leisure facilities, and identify appropriate areas for potentially polluting industrial development. For an individual development proposal, there may be associated emissions from transport or combustion processes providing heat and power.”*

4.2.2 Other guidance relevant to the assessment includes the section relating to Protecting Residential Amenity of the East Cambridgeshire District Council Supplementary Planning Documents Renewable Energy Development (Commercial Scale) which was adopted in October 2014.

## 5 References

- Ref 1 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.
- Ref 2 H.M. Government, "The Air Quality Standards Regulations 2010," 2010
- Ref 3 H.M. Government, "The Air Quality Standards (Amendment) Regulations 2016," 2016
- Ref 4 Department for Environment Food and Rural Affairs (Defra) (2007). The Air Quality Strategy for England, Scotland, Wales and Northern Ireland.
- Ref 5 H.M. Government (1972). European Communities Act 1972
- Ref 6 H.M. Government (2018). European Union (Withdrawal) Act 2018
- Ref 7 European Commission, "The Clean Air for Europe (CAFE) Programme: Towards a Thematic Strategy for Air Quality," 4 May 2001.
- Ref 8 Department of Energy and Climate Change (2011) Overarching National Policy Statement for Energy (EN-1)
- Ref 9 Department of Energy and Climate Change (2011) National Policy Statement for Renewable Energy Infrastructure (EN-3)
- Ref 10 Department of Energy and Climate Change (2011) National Policy Statement for Electrical Networks Infrastructure (EN-5)
- Ref 11 Ministry of Housing, Communities & Local Government (MHCLG) (2021) National Planning Policy Framework
- Ref 12 IAQM (2014). Guidance on the assessment of dust from demolition and construction. Institute of Air Quality Management.
- Ref 13 East Cambridgeshire District Council Local Plan Adopted April 2015.
- Ref 14 Forest Heath District Council Core Strategy Adopted 2010
- Ref 15 Forest Heath and St Edmundsbury Local Plan: Joint Development Management Policies Document (last updated February 2015)