

Gate Burton Energy Park Environmental Statement

Volume 3, Appendix 8-A: Ecology Legislation and Policy
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1. Introduction

1.1 Purpose of this appendix

- 1.1.1 This appendix of the Environmental Statement (ES) identifies and describes the legislation, policy and supporting guidance considered relevant to the assessment of the likely significant effects of the Scheme on ecology and nature conservation (collectively referred to as biodiversity), as reported in **ES Volume 1, Chapter 8: Ecology and Nature Conservation [EN010131/APP/3.1]**.
- 1.1.2 Legislation and policy are considered at national and local levels.
- 1.1.3 This ES appendix does not assess the Scheme against legislation and policy, instead the purpose of considering legislation and policy in the Environmental Impact Assessment (EIA) is twofold:
- to identify legislation and policy that could influence the determination of important ecological features (and therefore the significance of effects) and any requirements for mitigation; and
 - to identify legislation and policy that could influence the method for the EIA and signposting where this is dealt with in the ES. For example, a policy may require the assessment of an impact or the use of a specific method.
- 1.1.4 The following sections identify and describe the legislation, policy and supporting guidance considered specifically relevant to the biodiversity assessment (the assessment) as presented in **ES Volume 1, Chapter 8: Ecology and Nature Conservation [EN010131/APP/3.1]**.

2. International Legislation

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

3. National Legislation and Policy

3.1 Legislation

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

The Conservation of Habitats and Species Regulations 2017

- 3.1.2 The Conservation of Habitats and Species Regulations 2017 (Ref 5) (the Habitats Regulations) transposed the requirements of the EC Habitats Directive (Ref 2) and Birds Directive (Ref 1) into UK law, and provide for the designation and protection of European Sites (and adapt planning and other controls for the protection of these sites). This includes Annex I (including habitats) and Annex II (including species) for which such sites can be designated.
- 3.1.3 The Habitats Regulations (Ref 5) also provide protection for certain European Protected Species (EPS) that are listed in Schedule 2 (animals) or Schedule 5 (plants) of the Habitats Regulations (Ref 5). Provision is made for the granting of licences that permit certain acts as lawful, providing the appropriate authority is satisfied that there is no satisfactory alternative and the favourable conservation status of the species will be maintained.
- 3.1.4 The latest 2019 amendment to the Habitats Regulations (Ref 6) means that Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network, following the UK's exit from the EU. The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (Ref 6) have created a national site network on land and at sea, including both the inshore and offshore marine areas in the UK. The national site network includes:
- existing SACs and SPAs; and
 - new SACs and SPAs designated under these Regulations.
- 3.1.5 The presence of European Sites (referred to in **Chapter 8: Ecology and Nature Conservation** of the ES [EN010131/APP/3.1] as designated sites of international importance) and their relationship to the Scheme have been considered in the Habitats Regulations Assessment, [EN010131/APP/7. 2]. The presence of Annex I habitats and Annex II species, and also of any EPS, has been considered within the assessment.

Ramsar Convention

- 3.1.6 The Ramsar Convention 1971 (Ref 7) is an international treaty which includes the designation of wetlands of international importance. Government policy extends the same level of protection to Ramsar wetlands as that afforded to sites that are designated under the Habitats Directive (Ref 2).

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

Wildlife and Countryside Act 1981

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

Countryside and Rights of Way Act 2000

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

The Environment Act 2021

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

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

- 3.1.14 The EU Water Framework Directive (WFD) (Ref 4) is transposed into environmental legislation in England by the Water Environment (WFD) (England and Wales) Regulations 2017 (Ref 11). The WFD follows a holistic approach to the sustainable management of water by considering the interactions between surface water (including transitional and coastal waters, rivers, streams and lakes), groundwater and water-dependent ecosystems.

- 3.1.15 The assessment has considered the provisions of the Water Environment (WFD) (England and Wales) Regulations 2017 (Ref 11) in relation to avoiding deterioration of a water body from its current status or potential and / or not preventing future attainment of good status or potential where not already achieved.

Natural Environment and Rural Communities Act 2006

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

Protection of Badger Act 1992

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

Hedgerows Regulations 1997

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

Salmon and Freshwater Fisheries Act 1975

- 3.1.21 The Salmon and Freshwater Fisheries Act 1975 (Ref 16) relates to the protection of freshwater fish, including Atlantic Salmon (*Salmo salar*) and trout (species of *Salmo*) and their habitats.
- 3.1.22 The assessment has considered the provisions of the Salmon and Freshwater Fisheries Act 1975 (Ref 16) in relation to the risk of mortality, migration barriers, pollution and the degradation of habitats potentially resulting from the Scheme.

Eels (England and Wales) Regulations 2009

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

Animal Welfare Act 2006

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

Invasive Alien Species (Enforcement and Permitting) Order 2019

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

3.2 National Planning Policy

National Planning Policy Statements

- 3.2.1 **Chapter 8: Ecology and Nature Conservation** of the ES [EN010131/APP/3.1] takes account of the following relevant National Policy Statements (NPSs) for solar, which were ‘designated’ in 2011 and as far as they are applicable, are considered to be matters that will be important and relevant to the Secretary of State’s decision as to whether to grant a DCO for the Scheme. These NPSs are, as of September 2021, in the process of being updated and therefore, relevant sections of the draft NPSs are also included, below.
- 3.2.2 Overarching National Policy Statement for Energy (EN-1) (2011) (Ref 21), with particular reference to paragraphs 4.2.2 and 4.2.3, which provide national policy on what an ES for a Nationally Significant Infrastructure Project (NSIP) project should contain; paragraph 4.3.1 which states what the Secretary of State must, under the Conservation of Habitats and Species Regulations 2017

(Ref 5) consider when granting a development consent order; and part 5 (section 5.3) which sets out guidance on generic impacts relating to biodiversity for the applicant's assessment and decision-making on the application. The Draft Overarching National Policy Statement for Energy (EN-1) (Ref 22) (2021) includes guidance for biodiversity net gains in paragraphs 4.5.1 to 4.5.3 and generic impacts on biodiversity in Part 5.4 and that guidance has also been considered within **ES Volume 1, Chapter 8: Ecology and Nature Conservation [EN010131/APP/3.1]**.

- 3.2.3 The existing National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011) (Ref 23) does not currently set out any policy requirements specific to solar. However the Draft National Policy Statement for Renewable Energy EN-3 (2021) (Ref 24) now includes section 2.50 which sets out policy requirements specific to Solar Generation and biodiversity and these have been considered within **ES Volume 1, Chapter 8: Ecology and Nature Conservation [EN010131/APP/3.1]**.
- 3.2.4 The National Policy Statement for Electricity Networks Infrastructure (EN-5) (2011) (Ref 25) and the Draft National Policy Statement for Electricity Networks Infrastructure EN-5 (2021) (Ref 26) set out generic impacts concerning biodiversity, although these are more relevant to considerations for birds and overhead lines. However, paragraph 2.8.1 of both EN-5 (2011) and the Draft EN-5 (2021) detail biodiversity opportunities for linear electricity networks infrastructure. This has been taken to include the environmental consequences of the Grid Connection Corridor as underground cables can disturb sensitive habitats.
- 3.2.5 The relevant NPS requirements and those of the relevant draft NPS's, together with an indication of where in the ES chapter the information is provided to address these requirements, is presented in Table 1.

Table 1: Relevant NPS requirements for the assessment on biodiversity

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
NPS EN-1 (2011)		
Paragraph 4.3.1	<p>Prior to granting a development consent order, the IPC [now Planning Inspectorate, PINS] must, under the Habitats and Species Regulations, (which implement the relevant parts of the Habitats Directive and the Birds Directive in England and Wales) consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Further information on the requirements of the Habitats and Species Regulations can be found in a Government Circular. Applicants should also refer to Section 5.3 of this NPS on biodiversity and geological conservation. The applicant should seek the advice of Natural England and/or the Countryside Council for Wales, and provide the IPC with such information as it may reasonably require to determine whether an Appropriate Assessment is required. In the event that an Appropriate Assessment is required, the applicant must provide the IPC with such information as may reasonably be required to enable it to conduct the Appropriate Assessment. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects.</p>	<p>A pre-screening report for Habitats Regulations Assessment is included with this ES [EN010131/APP/3.1].</p>
Paragraph 5.3.3	<p>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.</p>	<p>Table 8-11 and Table 8-12 within Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out the likely effects on designated sites of ecological importance, protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.</p>
Paragraph 5.3.4	<p>The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.</p>	<p>Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] provides</p>

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
Paragraph 5.3.6	<p>In having regard to the aim of the Government’s biodiversity strategy the IPC should take account of the context of the challenge of climate change: failure to address this challenge will result in significant adverse impacts to biodiversity. The policy set out in the following sections recognises the need to protect the most important biodiversity and geological conservation interests. The benefits of nationally significant low carbon energy infrastructure development may include benefits for biodiversity and geological conservation interests and these benefits may outweigh harm to these interests. The IPC may take account of any such net benefit in cases where it can be demonstrated.</p>	<p>information on how the project has taken advantage of opportunities to conserve and enhance biodiversity.</p> <p>Chapter 6: Climate Change of the ES [EN010131/APP/3.1] includes the climate change assessment for the Scheme.</p>
Paragraph 5.3.7	<p>As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4); where significant harm cannot be avoided, then appropriate compensation measures should be sought.</p>	<p>Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out information on how the development has sought to avoid significant harm to biodiversity. Chapter 3: Alternatives and Design Evolution of the ES [EN010131/APP/3.1] explains how the alternative options for the Scheme were considered during design development.</p>
Paragraph 5.3.8	<p>In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.</p>	<p>The appropriate weight has been attached to designated sites in the ecological assessment presented in Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1].</p>
Paragraph 5.3.9	<p>The most important sites for biodiversity are those identified through international conventions and European Directives. The Habitats Regulations provide statutory protection for these sites but do not provide statutory protection for potential Special Protection Areas (pSPAs) before they have been classified as a Special Protection Area. For the purposes of considering development proposals affecting them, as a matter of policy the Government wishes pSPAs to be considered in</p>	<p>Both Chapter 8: Ecology and Nature Conservation and the HRA Pre-screening Report of the ES [EN010131/APP/7.2] consider pSPAs and Ramsar sites, where relevant.</p>

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	the same way as if they had already been classified. Listed Ramsar sites should, also as a matter of policy, receive the same protection.	
Paragraph 5.3.10	Many SSSIs are also designated as sites of international importance and will be protected accordingly. Those that are not, or those features of SSSIs not covered by an international designation, should be given a high degree of protection. All National Nature Reserves are notified as SSSIs.	The assessment provided in Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] reflects the high degree of protection afforded to SSSIs and National Nature Reserves.
Paragraph 5.3.11	Where a proposed development on land within or outside an SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted. Where an adverse effect, after mitigation, on the site's notified special interest features is likely, an exception should only be made where the benefits (including need) of the development at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs. The IPC should use requirements and/or planning obligations to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest.	Section 8.8 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out the potential effects on designated sites of ecological importance, including SSSIs. This concludes, that with careful Scheme design and embedded mitigation, there will be no adverse effects on SSSIs.
Paragraph 5.3.13	Sites of regional and local biodiversity and geological interest, which include Regionally Important Geological Sites, Local Nature Reserves and Local Sites, have a fundamental role to play in meeting overall national biodiversity targets; contributing to the quality of life and the well-being of the community; and in supporting research and education. The IPC should give due consideration to such regional or local designations. However, given the need for new infrastructure, these designations should not be used in themselves to refuse development consent.	Section 8.8 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out the potential effects on designated sites of ecological importance, including sites of regional and local biodiversity interest. This concludes, that with careful Scheme design and embedded mitigation, there will be no adverse effects on these sites.
Paragraph 5.3.14	Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. The IPC should not grant development consent for any development that would result in its loss or deterioration unless the	Section 8.7.6 and Table 8-7 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] presents the identified ancient woodland sites and details

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	benefits (including need) of the development, in that location outweigh the loss of the woodland habitat. Aged or ‘veteran’ trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided. Where such trees would be affected by development proposals the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons why.	of veteran trees. The Scheme will not result in the loss or deterioration of ancient woodland or ‘veteran’ trees.
Paragraph 5.3.18	The applicant should include appropriate mitigation measures as an integral part of the proposed development. In particular, the applicant should demonstrate that: <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 	Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out information on how the development will minimise working areas during construction, follow best practice during construction and operation to avoid or minimise disturbance or damage to species or habitats, restore habitats following construction activities and enhance existing habitats and create new biodiverse habitats. [EN010131/APP/7.10]; and Framework CEMP [EN010131/APP/7.3].
Paragraph 5.3.20	The IPC will need to take account of what mitigation measures may have been agreed between the applicant and Natural England (or the Countryside Council for Wales) or the Marine Management Organisation (MMO), and whether Natural England (or the Countryside Council for Wales) or the MMO has granted or refused or intends to grant or refuse, any relevant licences, including protected species mitigation licences.	Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out the mitigation measures embedded within the Scheme design. Consultation with NE has informed these mitigation measures.
NPS EN-5 (2011) and Draft NPS EN-5 (2021)		
Paragraph 2.8.1	When planning and evaluating the proposed development’s contribution to environmental and biodiversity net gain, it will be important – for both the Applicant and the Secretary of State – to supplement the generic	A Biodiversity Net Gain (BNG) assessment is included in Appendix 8-M of the ES [EN010131/APP/3.1].

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	<p>guidance set out in EN-1 (Section 4.5) with recognition that the linear nature of electricity networks infrastructure allows excellent opportunities to: i) reconnect important habitats via green corridors, biodiversity stepping zones, and reestablishment of appropriate hedgerows; and/or ii) connect people to the environment, for instance via footpaths and cycleways constructed in tandem with biodiversity enhancements.</p>	
Draft NPS EN-1 (2021)		
Paragraph 4.5.1	<p>Environmental net gain is an approach to development that aims to leave the natural environment in a measurably better state than beforehand. Applicants should therefore not just look to mitigate direct harms, but also consider whether there are opportunities for enhancements. Biodiversity net gain is an essential component of environmental net gain. Projects should consider and seek to incorporate improvements in natural capital, ecosystem services and the benefits they deliver when planning how to deliver biodiversity net gain.</p>	<p>Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] provides information on how the project has taken advantage of opportunities to enhance biodiversity. The layout of these enhancement and mitigation areas are presented in Figure 2-4 of the ES [EN010131/APP/3.2] and Outline Landscape Masterplan in Annex A of the Outline LEMP [EN010131/APP/7.10], which is secured pursuant to the OLEMP. A Biodiversity Net Gain Assessment [EN010131/APP/7.9] has been undertaken which concludes that the Scheme will provide a net gain.</p>
Paragraph 4.5.2	<p>Although achieving biodiversity net gain is not an obligation for projects under the Planning Act 2008, energy NSIP proposals should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity where possible. Applicants are encouraged to use the most current version of the Defra biodiversity metric to calculate their biodiversity baseline and inform their biodiversity net gain outcomes and to present this data as part of their application. Biodiversity net gain should be applied in conjunction with the mitigation hierarchy and does not change or replace existing environmental obligations.</p>	<p>Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out how the Scheme has been designed to follow the mitigation hierarchy. A Biodiversity Net Gain assessment, using Defra's Metric 3.1, has also been prepared and is included as Appendix 8-M of the ES [EN010131/APP/3.1].</p>
Paragraph 5.4.4	<p>The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological</p>	<p>Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] and the</p>

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	<p>conservation interests. As set out in Section 4.6, the design process should embed opportunities for nature inclusive design. The applicant is encouraged to consider how their proposal can contribute towards Biodiversity Net Gain in line with the ambition set out in the 25 Year Environment Plan. Energy infrastructure projects have the potential to deliver significant benefits and enhancements beyond Biodiversity Net Gain, which result in wider environmental gains. The scope of potential gains will be dependent on the type, scale, and location of each project.</p>	<p>OLEMP demonstrate that the Scheme has taken advantage of opportunities to conserve and enhance biodiversity in line with the 25-Year Environment Plan (Ref 33). A Biodiversity Net Gain assessment has also been prepared and is included as Appendix 8-M of the ES [EN010131/APP/3.1].</p>
<p>Paragraph 5.4.5</p>	<p>The government’s 25 Year Environment Plan marked a step change in ambition for wildlife and the natural environment. The Secretary of State should have regard to the aims and goals of the government’s 25 Year Environment Plan and any relevant measures and targets. In doing so, the Secretary of State should also take account of the context of the challenge of climate change: failure to address this challenge will result in significant adverse impacts to biodiversity. The policy set out in the following sections recognises the need to protect and enhance biodiversity and geological conservation interests. The benefits of nationally significant low carbon energy infrastructure development may include benefits for biodiversity and geological conservation interests and these benefits may outweigh harm to these interests. The Secretary of State may take account of any such net benefit in cases where it can be demonstrated.”</p>	<p>Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] has been produced with regard to the aims and goals of the 25 Year Environment Plan (Ref 33).</p>
<p>Paragraph 5.4.6</p>	<p>As a general principle, and subject to the specific policies below, development should at the very least aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.2 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought. 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 the Secretary of State will give significant weight to any residual harm.</p>	<p>The assessment within Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out information on how the development has not led to significant harm to biodiversity.</p>

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
Paragraph 5.4.8	Important sites for biodiversity are those identified through international conventions and the Habitats Regulations. The Habitats Regulations set out sites for which an HRA will assess the implications of a plan or project, including Special Areas of Conservation and Special Protection Areas. As a matter of policy, the following should be given the same protection as sites covered by the Habitat’s Regulations: (a) potential Special Protection Areas and possible Special Areas of Conservation; (b) listed or proposed Ramsar sites; and (c) sites identified, or required, as compensatory measures for adverse effects on other HRA sites.	Both Chapter 8: Ecology and Nature Conservation and the HRA Pre-screening Report of the ES [EN010131/APP/7.2] consider pSPAs, pSACs, Ramsar sites (listed or proposed) and sites identified, or required, as compensatory measures for adverse effects on other HRA sites, where relevant.
Paragraph 5.4.10	Development on land within or outside a SSSI, 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 (including need) 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 SSSIs. The Secretary of State should use requirements and/or planning obligations to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site’s biodiversity or geological interest.	Table 8-5 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out the potential effects on designated sites of ecological importance, including SSSIs. This concludes, that with careful Scheme design and embedded mitigation, there will be no adverse effects on SSSIs.
Paragraph 5.4.12	Sites of regional and local biodiversity and geological interest, which include Regionally Important Geological Sites, Local Nature Reserves and Local Wildlife Sites, are areas of substantive nature conservation value and make an important contribution to ecological networks and nature’s recovery. They can also provide wider benefits including public access (where agreed), climate mitigation and helping to tackle air pollution. National planning policy expects plans to identify and map Local Wildlife sites, and to include policies that not only secure their protection from harm or loss but also help to enhance them and their connection to wider ecological networks. The Secretary of State should give due consideration to such regional or local designations. However, given the need for new nationally significant infrastructure, these	Section 8.8 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out the potential effects on designated sites of ecological importance, including sites of regional and local biodiversity interest. This concludes, that with careful Scheme design and embedded mitigation, there will be no adverse effects on these sites.

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	designations should not be used in themselves to refuse development consent. Development will still be expected to comply with the biodiversity and geological conservation requirements set out in this NPS.	
Paragraph 5.4.14	Development proposals provide many opportunities for building-in beneficial biodiversity or geological features as part of good design. When considering proposals, the Secretary of State should maximise such opportunities in and around developments, using requirements or planning obligations where appropriate. This can help towards delivering biodiversity net gain. Wider ecosystem services and benefits of natural capital should also be considered when designing enhancement measures.	Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] provides information on how the project has taken advantage of opportunities to enhance biodiversity. A Biodiversity Net Gain assessment has also been prepared [EN010131/APP/7.9], which demonstrates that the Schemes provides a net gain.
Paragraph 5.4.18	<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 • the timing of construction has been planned to avoid or limit disturbance to birds during the breeding season • 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 • mitigation measures should take into account existing habitats and should generally seek opportunities to enhance them, rather than replace them. Where practicable, mitigation measures should seek to create new habitats of value within the site landscaping proposals 	Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] sets out information on how the development will minimise working areas during construction, follow best practice during construction and operation to avoid or minimise disturbance or damage to species or habitats, restore habitats following construction activities and enhance existing habitats and create new biodiverse habitats. [EN010131/APP/7.10]; Framework CEMP [EN010131/APP/7.3].
Paragraph 5.4.19	Applicants should consider producing and implementing a Biodiversity Management Strategy as part of their development proposals. This could include provision for biodiversity awareness training to employees and	The management of Biodiversity throughout the life of the Scheme is covered by the following documents, included within the ES: the OLEMP [EN010131/APP/7.10];

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	contractors so as to avoid unnecessary adverse impacts on biodiversity during the construction and operation stages.	Framework CEMP [EN010131/APP/7.3], Framework OEMP [EN010131/APP/7.4], Framework Decommissioning Environmental Management Plan Strategy (Framework DEMP) [EN010131/APP/7.5], all of which are secured via the DCO.
Paragraph 5.4.22	The Secretary of State should consider what appropriate requirements should be attached to any consent and/or in any planning obligations entered into, in order to ensure that any mitigation or biodiversity net gain measures, if offered, are delivered and maintained. Any habitat creation or enhancement delivered for biodiversity net gain should generally be maintained for a minimum period of 30 years.	The management of Biodiversity throughout the life of the Scheme is covered by the following documents, included within the ES: the OLEMP [EN010131/APP/7.10]; Framework CEMP [EN010131/APP/7.3], Framework OEMP [EN010131/APP/7.4] and the Framework DEMP [EN010131/APP/7.5], all of which are secured via the DCO.
Draft NPS EN-3		
Paragraph 2.50.2	The applicant's ecological assessments should identify any ecological risk from developing on the proposed site. Issues that may need assessment include habitats, ground nesting birds, wintering birds, bats, dormice, reptiles, great crested newts, water voles and badgers. The use of an advising ecologist during the design process can ensure that adverse impacts are mitigated, and biodiversity enhancements are maximised, although this is a decision for the individual applicant. The assessment may be informed by a 'desk study' of existing ecological records, an evaluation of the likely impacts of the solar farm upon ecological features, and should specify mitigation to avoid or minimise these impacts, and any further surveys required.	The assessment provided in Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] considers relevant protected species and appropriate mitigation.
Paragraph 2.50.4	The assessment should consider how security and lighting installations may impact on the local ecology. Where pole mounted CCTV facilities are proposed the location of these facilities should be carefully	The assessment provided in Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] considers indirect effects on ecological receptors, throughout.

Relevant NPS paragraph reference	Requirement of the NPS	Where in the ES chapter is information provided to address this
	considered in order to minimise impact. If lighting is necessary, it should be minimised and directed away from areas of likely habitat.	Section 8.9.5 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] addresses lighting throughout.
Paragraph 2.50.5	The assessment should consider how site boundaries are managed. If any hedges/scrub are to be removed, further surveys may be necessary to account for impacts. Buffer strips between perimeter fencing and hedges may be proposed, and the construction and design of any fencing should account for enabling mammal, reptile and other fauna access into the site if required to do so in the ecological report.	The assessment provided in Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1] considers site boundaries, with the majority of boundaries retained and buffered, as presented in Section 8.9 of Chapter 8: Ecology and Nature Conservation of the ES [EN010131/APP/3.1]. Furthermore, the fence design will include gaps at strategic locations to allow small mammals to pass through, which will maintain connectivity for such species.
Paragraph 2.50.7	The applicant's assessment may be accompanied by a Flood Risk Assessment. This will need to consider the impact of drainage. As solar PV panels will drain to the existing ground, the impact will not in general be significant. Where access tracks need to be provided, permeable tracks should be used, and localised Sustainable Drainage Systems (SuDS), such as swales and infiltration trenches, should be used to control any run-off where recommended. Given the temporary nature of solar PV farms, sites should be configured or selected to avoid the need to impact on existing drainage systems and watercourses. Culverting existing watercourses/drainage ditches should be avoided. Where culverting for access is unavoidable, it should be demonstrated that no reasonable alternatives exist and where necessary it will only be in place temporarily for the construction period.	Section 8.9 of Chapter 8: Ecology and Nature Conservation and Section 9.7.57 of Chapter 9: Water Environment of the ES [EN010131/APP/3.1]. Additional information of flood risk is contained within Appendix 9-C: Flood Risk Assessment of the ES [EN010131/APP/3.2].
Paragraph 2.50.8	The assessment should consider enhancement, management, and monitoring of biodiversity. Solar farms have the potential to increase the biodiversity value of a site, especially if the land was previously intensively managed. In some instances, the increase in biodiversity	A Biodiversity Net Gain assessment has also been prepared [EN010131/APP/7.9], which demonstrates that the Schemes provides a net gain. Furthermore, the OLEMP [EN010131/APP/7.10] details how the Scheme will be managed and monitored.

Relevant NPS paragraph reference

Requirement of the NPS

Where in the ES chapter is information provided to address this

caused by the repurposing of previously developed or intensely managed land for solar generation may equate to a net positive impact.

Paragraph 2.5.10

Proposed enhancements should take account of the above factors and as set out in Section 5.4 of EN1 and aim to achieve environmental and biodiversity net gain in line with the ambition set out in the 25 Year Environment Plan. This might include maintaining or extending existing habitats and potentially creating new important habitats, for example by instating: cultivated strips/plots for rare arable plants, rough grassland margins, bumble bee plant mixes, and wild bird seed mixes. It is advised that an ecological monitoring programme is developed to monitor impacts upon the flora of the site and upon any particular ecological receptors (e.g., bats and wintering birds). Results of the monitoring will then inform any changes needed to the land management of the site, including, if appropriate, any livestock grazing regime.

The OLEMP **[EN010131/APP/7.10]** details habitat creation, proposed within the Order limits to increase biodiversity and how the Scheme will be managed and monitored.

National Planning Policy Framework

- 3.2.6 The National Planning Policy Framework (NPPF), (Ref 27) states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity.
- 3.2.7 It specifies the obligations that the Local Authorities and the UK Government have regarding statutory designated sites and protected species under UK and international legislation and how this it to be delivered in the planning system.
- 3.2.8 Planning Practice Guidance (Ref 28) was also reviewed for further guidance and interpretation on the NPPF.

4. Local Planning Policy

4.1.1 Local planning policy has been considered when assessing potential ecological constraints and opportunities identified by the desk study and field surveys; and when assessing requirements for further survey, design options and ecological mitigation. The local planning policy relevant to the Scheme consists of:

- Central Lincolnshire Local Plan 2012-2036 (adopted April 2017) (Ref 29) with particular reference to: Policy L19 – Renewable Energy Proposals, Policy LP20 – Green Infrastructure Network; and Policy LP21 - Biodiversity and Geodiversity;
- Bassetlaw District Council Core Strategy and Development Management Policies (DPD) (Ref 30), with reference to Policy DM9 - Green Infrastructure; Biodiversity & Geodiversity; Landscape; Open Space & Sports Facilities;
- Rampton & Woodbeck Neighbourhood Plan Policy 10 (The protection of the Parish landscape) (Ref 31); and
- Sturton Ward Neighbourhood Plan (Review) Policies 2a (Protecting the landscape character, significant green gaps and key views) and 2b (Enhancing biodiversity) (Ref 32).

4.1.2 With regards to enhancing and protecting biodiversity and connectivity, these policies require consideration of the impacts on biodiversity by assessing protected species and habitats that could be impacted by the Scheme. Consideration of sites of international, national and local importance is also necessary. Development proposals should be controlled through avoidance, on-site management and on-site mitigation. Proposals likely to have an adverse effect on a designated site will not be permitted unless the benefits of the development clearly outweigh the harm to the nature conservation value of the site. If such benefits exist, the developer will be required to demonstrate that impacts will be avoided and impacts that cannot be avoided will be mitigated on-site. Policies state that species and habitats should be protected from pollution, where appropriate.

5. Other Guidance

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

The 25-Year Environment Plan

- 5.1.2 In early 2018, the Government published its 25 Year Environment Plan (Ref 33) to provide guidance on its new approach to managing the environment. The plan promotes a natural capital approach that recognises the wider value of the environment and its contribution, such as food, clean water and air, wildlife, energy, wood, recreation and protection from hazards. The plan seeks to embed a net environmental gain principle for development to deliver environmental improvements locally and nationally.

Biodiversity 2020

- 5.1.3 Biodiversity 2020 (Ref 34) was published in August 2011, building on the Natural Environment White Paper and setting out the strategic direction for biodiversity policy to 2020 on land (including rivers and lakes) and at sea in England. In the 25 Year Environment Plan the Government committed to publish a new strategy for nature building upon Biodiversity 2020, and to evaluate the current Strategy to learn lessons that can strengthen the future strategy.
- 5.1.4 Biodiversity 2020 established a new global vision for biodiversity, including a set of strategic goals and targets to drive action. It outlines the Government's vision for the natural environment, shifting the emphasis from piecemeal conservation action towards a more integrated landscape-scale approach.

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

- 5.1.5 Standing advice from Natural England and Defra (Ref 35) provides guidance on protected and notable species and includes reference to the best practice approaches to survey, mitigation and compensation. Guidance is also provided on the procedure for obtaining protected species licences.
- 5.1.6 This advice has informed the planning of surveys and the approach to mitigating impacts upon protected species, including where necessary the requirement for Natural England mitigation licences.

UK Post 2010 Biodiversity Framework

- 5.1.7 The UK Biodiversity Action Plan (UKBAP) (Ref 36) was launched in 1994 and established a framework and criteria for identifying species and habitat types of conservation concern and remains an important reference material which has been considered within **ES Volume 1, Chapter 8: Ecology and Nature Conservation [EN010131/APP/3.1]**. The UKBAP was subsequently succeeded by the UK Post-2010 Biodiversity Framework (July 2012) (Ref 13).

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

- 5.1.8 The UK Post-2010 Biodiversity Framework is relevant within England in the context of Section 40 of the NERC Act 2006 (Ref 12), meaning that Priority Species and Habitats are material considerations in planning. These habitats and species are identified as those of conservation concern due to their rarity or a declining population trend.
- 5.1.9 The objectives of this framework (Ref 13) have been included in **ES Volume 1, Chapter 8: Ecology and Nature Conservation [EN010131/APP/3.1]** through the consideration of habitats and SPIs.

Biodiversity Guidance for Solar Developments

- 5.1.10 The document, *Biodiversity Guidance for Solar Developments* (Ref 37) provides guidance to planners and the solar industry on how biodiversity can be supported on solar farms.

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

- 5.1.11 The document, *Mitigating biodiversity impacts associated with solar and wind energy development: Guidelines for project developers* (Ref 38), aims to provide practical support for solar and wind energy developments by effectively managing risks and improving overall outcomes related to biodiversity and includes guidance and reference for the approach to impacts on biodiversity and mitigation.

Birds of Conservation Concern (BoCC)

- 5.1.12 The Birds of Conservation Concern (BoCC) (Ref 39) is an assessment of the conservation status of all regularly occurring British birds. The lists (Red, Amber and Green), that indicate the level of conservation importance for each species, are derived from quantitative assessments from standardised criteria. The assessment is based on the most up-to-date evidence available, and criteria include conservation status at global and European levels and, within the UK: historical decline, trends in population and range, rarity, localised distribution and international importance. The lists are drawn together by the UKs leading bird conservation organisations, including the Royal Society for the Protection of Birds (RSPB) and British Trust for Ornithology (BTO).
- 5.1.13 The list of BoCC Red and Amber bird species has been used to inform the approach to mitigating impacts upon notable bird species and those of highest conservation concern.

Lincolnshire and Nottinghamshire Biodiversity Action Plan

- 5.1.14 The Lincolnshire Biodiversity Action Plan (Ref 40) and the Nottinghamshire Biodiversity Action Plan (Ref 41) set out action plans for Lincolnshire and Nottinghamshire and provide context for local priority habitat and species.

6. References

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- Ref 3. Regulation (EU) 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (the IAS Regulation) (2014).
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- Ref 5. HMSO (2018). Conservation of Habitats and Species Regulations 2017 (as amended). HMSO, London. [REDACTED]
- Ref 6. HMSO (2019) The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. HMSO, London
- Ref 7. Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat. United Nations Educational, Scientific and Cultural Organization (1971).
- Ref 8. HMSO (1981). The Wildlife & Countryside Act 1981. HMSO, London.
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- Ref 24. DECC (2021) Draft National Policy Statement for Renewable Energy Infrastructure (EN-3), Available at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015236/en-3-draft-for-consultation.pdf.
- Ref 25. DECC (2011) National Policy Statement for Electricity Networks Infrastructure (EN-5), Available at: <https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure>.
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- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015238/en-5-draft-for-consultation.pdf
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