

Gate Burton Energy Park

EN010131

Habitat Regulation Assessment
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Prepared for:

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1. Introduction

1.1 Overview

- 1.1.1 This Habitat Regulations Assessment (HRA) – pre-Screening Report has been prepared on behalf of Gate Burton Energy Park Limited (the ‘Applicant’). The Applicant is seeking development consent for the construction, operation and decommissioning of a new solar farm (hereafter referred to as the Scheme), comprising the installation of solar photovoltaic (PV) panels, on-site battery storage (referred to as the Battery Energy Storage System (BESS)). Please refer to **ES Volume 1, Chapter 2: The Scheme [EN010131/APP/3.1]** for full details of the Scheme.
- 1.1.2 A Development Consent Order (DCO) is required for the Scheme as it falls within the definition and thresholds for a Nationally Significant Infrastructure Project (NSIP) under Sections 14(1)(a) and 15(2) of the Planning Act 2008 (Ref 1).
- 1.1.3 The Scheme is located to the east of Gate Burton, Lincolnshire. The location of the Scheme is presented in **ES Volume 2: Figure 1-1 and Figure 1-2 [EN010131/APP/3.2]**. The Site covers an area of approximately 824 hectares (ha).

1.2 Legislative and Policy Context

- 1.2.1 As part of the environmental assessment it is necessary to consider whether the proposed Scheme is likely to have a significant effect on areas that have been internationally designated for nature conservation purposes (termed ‘European Sites’). European sites are protected under the Conservation of Habitats and Species Regulations 2017 (relevant to England and Wales) (the 2017 Regulations) (Ref 2). The UK left the European Union (EU) on 31 January 2020 under the terms set out in the European Union (Withdrawal Agreement) Act 2020 (the Withdrawal Act) (Ref 13). However, the most recent amendments to the Habitats Regulations, the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (Ref 3), make it clear that the need for HRA continues to apply. Whilst those 2019 Regulations make changes to the Habitats regime and terminology; much of the impact of those changes does not yet have a practical effect, particularly the introduction of the term ‘national site network’, given the short passage of time since the end of the transition period. As such, this document uses the term ‘European sites’ to refer to Natura 2000 sites.
- 1.2.2 Although Ramsar sites are not part of the network of designated sites. Paragraph 181 of the National Planning Policy Framework (NPPF) in England extends Ramsar sites the same level of protection as Special Protection Areas (SPAs) and Special Conservation Areas (SACs). As such, any reference to the European Sites below should be considered to also include Ramsar sites.

- 1.2.3 Over the years, the phrase HRA has come to describe the overall process set out in the 2017 Regulations, from the screening for Likely Significant Effects through to identification of Imperative Reasons of Overriding Public Interest (IROPI). This has arisen in order to distinguish the overall process from the individual stage of Appropriate Assessment. Throughout this Report the term HRA is used for the overall process and restricts the use of Appropriate Assessment to the specific stage of that name.
- 1.2.4 The legislative basis for Appropriate Assessment is the 2017 Regulations (Ref. 2). Regulation 63 of the 2017 Regulations states that: “*A competent authority, before deciding to ... give consent for a plan or project which is likely to have a significant effect on a European site ... must make an appropriate assessment of the implications for the plan or project in view of that site’s conservation objectives ... The competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site*”. In the case of the Scheme, the competent authority is the Department for Business, Energy and Industrial Strategy, as the relevant Secretary of State.

1.3 Purpose of this document

- 1.3.1 The purpose of this document is a pre-screening exercise to determine whether the Scheme would be subject to HRA. This assessment considers:
- whether the Scheme is directly connected with or necessary for the conservation management of a European Site; or
 - risks having a significant effect on a European Site on its own or in combination with other proposals.
- 1.3.2 The scope and extent of this document has been determined by a combination of comments provided in the Scoping Opinion (included as **ES Volume 3: Appendix 1-B [EN010131/APP/3.3]**), ongoing engagement with consultees including Natural England, and professional judgement. Regard has also been given to the Planning Inspectorate’s (PINS) Advice Note Ten: Habitats Regulations Assessment relevant to nationally significant infrastructure projects, Version 8 (November 2017).

2. Methods

2.1 Approach

- 2.1.1 This pre-screening assessment has been undertaken with reference to the general European Commission guidance on HRA (Ref 5), general guidance on HRA published by the UK government in July 2019 (Ref 6) and PINS Advice Note 10 (Ref 7).
- 2.1.2 The UK left the EU on 31 January 2020 under the terms set out in the Withdrawal Act. The Withdrawal Act retains the body of existing EU-derived law within our domestic law. As such this assessment of Likely Significant Effects (LSEs) takes account of relevant EU case law (for instance, the *Holohan* (Ref 8) and *People over Wind* cases (Ref 9), discussed below.
- 2.1.3 Image 1 below outlines the stages of HRA according to PINS Advice Note 10 (Ref 7). Note that whilst Image 1 shows all the stages of the HRA process, this Report only discusses the pre-screening process (i.e. up to Stage 1).
- 2.1.4 Whilst the HRA decisions must be taken by the competent authority, the information needed to undertake the necessary assessments must be provided by the Applicant. The information needed for the competent authority to establish whether there are any LSEs from the Scheme is therefore provided in this Report.

2.2 Designated Sites Scoped into HRA

- 2.2.1 There is no guidance that dictates the general physical scope of an HRA document. Guidance published by the Environment Agency (Ref 10) recommends that for large power generation developments greater than 50MW, a radius search of 15km should be used when identifying relevant European designated sites which may be affected by the development. The Environmental Statement (ES) has considered a distance of 10km as appropriate, based on the likely impacts during construction and operation of a solar farm, compared with other large power generation developments, such as coal and gas fired power stations.
- 2.2.2 Additionally, a radius of 30km should be used for any European site for which bats are a qualifying feature (Ref 11).

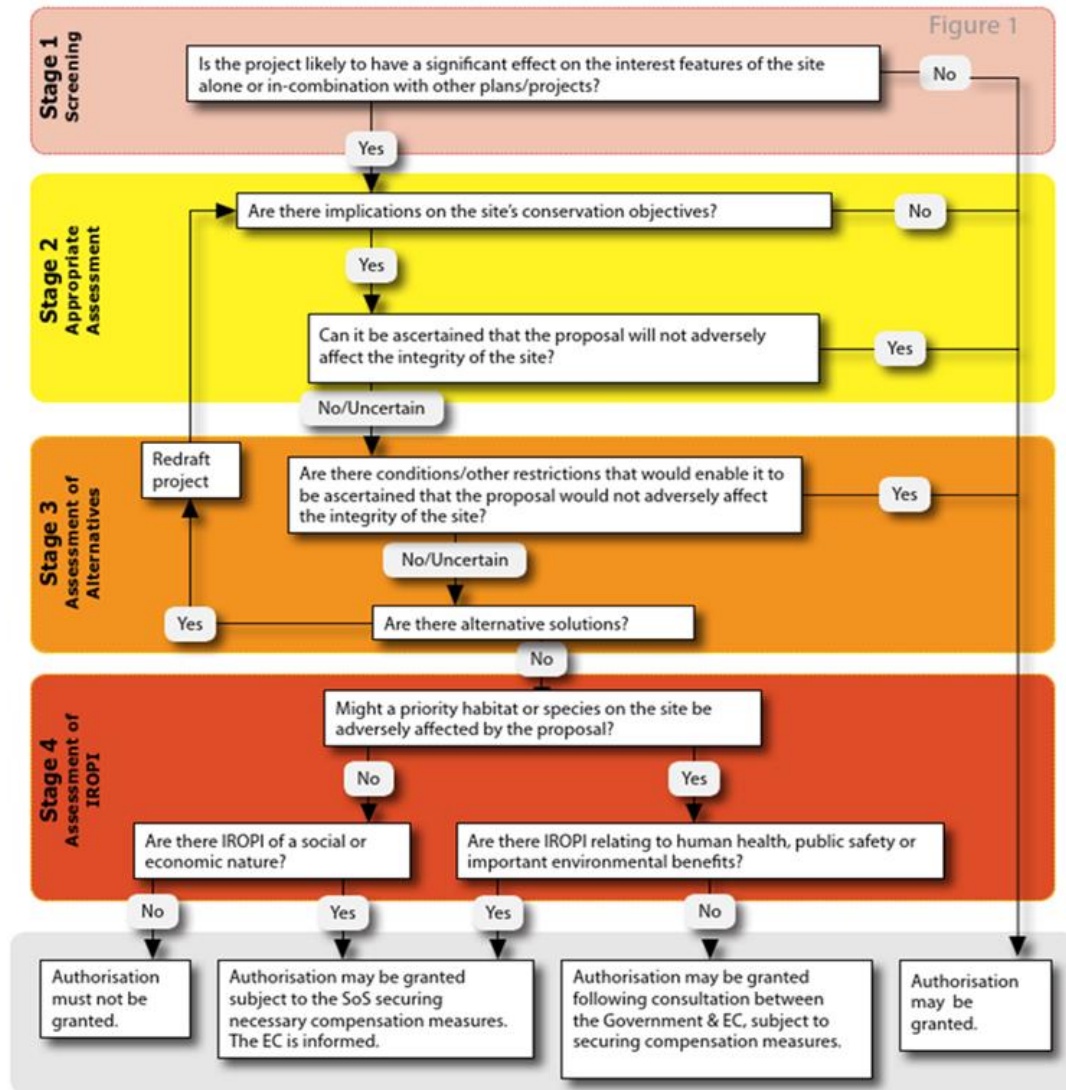


Image 1. Four Stage Approach to Habitats Regulations Assessments of Projects

3. Baseline Evidence and Gathering

- 3.1.1 No European Sites are present within 10 km of the Scheme. The nearest European site to the Scheme, Birklands & Bilhaugh SAC is located approximately 17.9 km from the Scheme and is designated for Old acidophilous Oak woods with *Quercus robur* on sandy plains.
- 3.1.2 No SACs with bats as a qualifying feature were identified within 30km of the Scheme.
- 3.1.3 Paragraph 4.9 of PINS Advice Note 10, as well as guidance from the Department for Business, Energy and Industrial Strategy requires an evaluation of the potential for the Scheme to require other consents which could also require a HRA by different competent authorities, and a statement as to whether the Scheme boundary overlaps with devolved administrations or other European Economic Area (EEA) States (Ref 12). It is confirmed that the Scheme boundary does not overlap with areas of devolved administrations or with those of other EEA States. It is also the case that no parallel consents are required for the Scheme which would require additional HRA to be undertaken.

3.2 In Combination Effects with other Plans or Projects

- 3.2.1 PINS Advice Note 10: Habitat Regulations Assessment relevant to Nationally Significant Infrastructure Projects (Ref 7) states that in assessing in combination effects the following projects should be considered:
- Projects that are under construction.
 - Permitted application(s) not yet implemented.
 - Submitted application(s) not yet determined.
 - All refusals subject to appeal procedures not yet determined.
 - Projects on the National Infrastructure's programme of projects.
 - Projects identified in emerging development plans, recognising that much information on relevant proposals will be limited and the degree of uncertainty which may be present.
- 3.2.2 As no European sites have been identified in this report, no in combination effects have been identified.

4. No Significant Effects Statement

4.1.1 The baseline evidence gathering has not identified any European Sites within a search area where they may be impacted by the construction, operation and decommissioning of the proposed Solar and Energy Storage Park and/or Grid Connection Corridor as described within Chapter 2 of the ES [EN010131/APP/3.1]. As such, this pre-screening Report has concluded that there are no European Sites to be taken forward to Stage 1 – Screening for Likely Significant Effects.

4.1.2 Therefore:

- the Scheme is NOT directly connected with or necessary for the conservation management of a European Site; and
- DOES NOT risk having a significant effect on a European Site on its own or in combination with other proposals.

4.1.3 On this basis it can be concluded that there will be No Significant Effects to European Sites either from the construction, operation and decommissioning of the Scheme or in combination with other plans and projects.

5. References

- Ref 1. HMSO (2008) The Planning Act 2008. Available at:
https://www.legislation.gov.uk/ukpga/2008/29/pdfs/ukpga_20080029_en.pdf
- Ref 2. Anon. (2018). Conservation of Habitats and Species Regulations 2017 (as amended). HMSO, London.
- Ref 3. HMSO. (2019). The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. HMSO, London.
- Ref 4. National Planning Policy Framework. Department for Communities and Local Government. (2012 – last updated in July 2021). Available at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf.
- Ref 5. European Commission. (2001). Assessment of plans and projects significantly affecting Natura 2000 Sites: Methodological Guidance on the Provisions of Article 6(3) and 6(4) of the Habitats Directive.
- Ref 6. Ministry of Housing, Communities & Local Government. (2019). Appropriate Assessment. Available at: <https://www.gov.uk/guidance/appropriate-assessment>.
- Ref 7. The Planning Inspectorate. (2017). Habitats Regulations Assessment. Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/06/Advice-note-10v4.pdf>.
- Ref 8. Holohan ruling (C-461/17).
- Ref 9. People Over Wind and Sweetman v Coillte Teoranta (C-323/17).
- Ref 10. Environment Agency. (2016). Air emissions risk assessment for your environmental permit. Available at: <https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit>.
- Ref 11. Collins, J. (ed.) (2016) Bat Surveys for Professional Ecologists Good Practice Guidelines 3rd Edition. The Bat Conservation Trust, London.
- Ref 12. Department for Business, Energy and Industrial Strategy. (2021). Guidelines on the assessment of transboundary impacts of energy developments on Natura 2000 sites outside the UK
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408465/transboundary_guidelines.pdf
- Ref 13. European Union (Withdrawal) Act 2018 Available at:
<https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>