

Stonestreet Green Solar

Environmental Statement

Volume 4: Appendices

Chapter 9: Biodiversity

Appendix 9.1: Legislation, Planning Policy and Guidance

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APFP Regulation 5(2)(a)

Planning Act 2008

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



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Appendix 9.1: Legislation, Planning Policy and Guidance

1.1 Introduction

- 1.1.1 This Legislation, Planning Policy and Guidance Policy Summary has been prepared on behalf of EPL 001 Limited ('the Applicant') to summarise legislation, policy and supporting guidance relevant to the ecological features in relation to the Development Consent Order ('DCO') application for Stonestreet Green Solar ('the Project').
- 1.1.2 This document is **Appendix 9.1 to ES Volume 2, Chapter 9: Biodiversity (Doc Ref. 5.2)**.

1.2 Legislation

1.2.1 The following legislation is relevant to the Project:

- Environment Act 2021¹;
- Wildlife & Countryside Act 1981 (as amended)²;
- Conservation of Habitats and Species Regulations 2017 (as amended) – the 'Habitats Regulations'³;
- Natural Environment & Rural Communities ('NERC') Act 2006⁴;
- Water Environment (Water Framework Directive ('WFD')) (England and Wales) Regulations 2017⁵;
- National Parks and Access to the Countryside Act 1949 (as amended)⁶;
- Protection of Badgers Act 1992⁷;
- Wild Mammals (Protection) Act 1996⁸;
- Animal Welfare Act 2006⁹;
- The Hedgerow Regulations 1997¹⁰;
- The Salmon and Freshwater Fisheries Act 1975 (as amended)¹¹;
- The Eel Regulations 2009¹²; and
- The Invasive Alien Species (Enforcement and Permitting) Order 2019¹³.

1.2.2 A brief description of each is provided below.

Environment Act 2021

1.2.3 The Environment Act 2021 introduced a requirement for new developments to deliver a measurable 10% net gain in biodiversity, normally measured in 'biodiversity units' under DEFRA/Natural England methodology. This legal duty came into force for 'major' development projects (subject to exceptions) from 12 February 2024,

under Schedule 7a of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

- 1.2.4 It is intended the BNG will apply to all terrestrial NSIPs accepted for examination from November 2025.
- 1.2.5 Schedule 7a intends to encourage developers to avoid the most important existing habitat and focus habitat creation and enhancement where it will be most ecologically appropriate in helping to halt and reverse biodiversity decline.
- 1.2.6 The following statutory instruments, published in February 2024, provide further detail of legal duties in relation to biodiversity net gain:
- The Biodiversity Gain Site Register Regulations 2024;
 - The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024;
 - The Biodiversity Gain Requirements (Exemptions) Regulations 2024;
 - The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024;
 - The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024; and
 - The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) Regulations 2024.
- 1.2.7 The Act also introduces a new system of strategic Local Nature Recovery Strategies; places a new general duty on public bodies to conserve and enhance biodiversity; introduces Conservation Covenants as a new alternative mechanism to Section 106 Agreements for securing off-site habitat provision and other conservation measures that deliver public good; and introduces a framework for Natural England to develop Protected Site and Species Conservation Strategies.

Wildlife & Countryside Act 1981 (as amended)

- 1.2.8 This Act provides for designation and protection of Sites of Special Scientific Interest ('SSSI'), which are areas that represent the most valuable habitats in the UK for nature conservation. The Act also provides protection for certain rare or threatened species and prohibits or controls releases of non-native invasive species into the natural environment.
- 1.2.9 It also provides a mechanism for making potential wildlife offences legal through the granting of licences by the appropriate authorities (Natural England in England).

Conservation of Habitats and Species Regulations 2017 (as amended) – the 'Habitats Regulations'

- 1.2.10 The Habitats Regulations provide for the designation of sites for the protection of certain species and habitats. These are collectively termed 'European sites' and form part of a network of protected sites across the UK known as the 'national site network' ('NSN'). For ease of expression, this advice note uses the term 'European

site' for both European sites and European offshore marine sites. European sites protected by the Habitats Regulations include Special Areas of Conservation ('SAC's) and Special Protection Areas ('SPA's). Additionally, it is a matter of UK Government policy and guidance that the following sites should also be subject to a HRA, where affected by a plan or project: proposed SACs; potential SPAs; and Ramsar sites (both proposed and listed); and areas secured as sites compensating for damage to a European site.

- 1.2.11 Under the Habitats Regulations, a Competent Authority must consider whether a development will have a likely significant effect ('LSE') on a European site, either alone or in combination with other plans or projects. Where LSE are likely and a project is not directly connected with or necessary to the management of that site(s), an appropriate assessment ('AA') is required of the implications of the plan or project for that site(s) in view of its conservation objectives.
- 1.2.12 The Habitats Regulations also provide legal protection for certain rare or threatened species of European concern - known as European Protected Species ('EPS'). Potential EPS offences can be made lawful through the granting of licences (EPS mitigation licence) by the appropriate authorities (Natural England in England).

National Parks and Access to the Countryside Act 1949 (as amended)

- 1.2.13 This Act provides for the designation of National Nature Reserves ('NNR') which are managed to conserve their habitats or for scientific study of the habitats and species represented within them. NNRs may be managed to provide public recreation that is compatible with their natural heritage interests. The Act also provides for designation of Local Nature Reserves ('LNR's) by local authorities. LNRs are managed for nature conservation and provide opportunities for research and education, or simply enjoying and having contact with nature.

Natural Environment & Rural Communities ('NERC') Act 2006

- 1.2.14 The NERC Act places a duty on public bodies and statutory undertakers to ensure due regard to the conservation of biodiversity. Section 41 of the Act requires the Secretary of State, as respects England, to publish a list of species and habitats which are of 'principal importance for the purpose of conserving biodiversity'. These lists generally reflect the species and habitats previously listed as priorities under the UK Biodiversity Action Plan.

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

- 1.2.15 The Water Framework Directive ('WFD') (Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (the 'Water Framework Directive') was adopted and came into force in 2000. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the 2017 Regulations. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 implemented the

WFD in England and Wales and were amended by the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019.

1.2.16 The overall aims and objectives of the WFD relevant to the biodiversity assessment include:

- enhancing the status and prevent further deterioration of surface water bodies, groundwater bodies and their ecosystems; and
- achieving at least good surface water status for all surface water bodies and good chemical status in groundwater bodies by 2015 (Article 4, Water Framework Directive (WFD) (2000/60/EC)) (or good ecological potential in the case of artificial or heavily modified water bodies).

1.2.17 The WFD Regulations identify the River Basin Districts ('RBD') and the processes that the responsible authorities for the implementation of the Directive should be followed to: produce the necessary River Basin Management Plans ('RBMP's); identify bodies of water within each RBD that are used, or intended to be used, for the abstraction of drinking water; and produce a register of 'protected areas' within each RBD.

Protection of Badgers Act 1992

1.2.18 The legislation aims to protect the species from persecution rather than being a response to an unfavourable conservation status, as the species is, in fact, common over most of Britain.

1.2.19 The 1992 Act makes it an offence to wilfully kill, injure, take, possess or cruelly ill-treat a badger (*Meles meles*), or to attempt to do so and to intentionally or recklessly interfere with a badger sett. A licence may be granted by Natural England to interfere with a badger sett for the purpose of development.

Wild Mammals (Protection) Act 1996

1.2.20 The Wild Mammals (Protection) Act 1996 makes it an offence for any person to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

Animal Welfare Act 2006

1.2.21 This imposes a duty of care on anyone responsible for an animal to take reasonable steps to ensure that the animal's needs are met. With regards to development, this may have implications when capture and translocation of animals is proposed as mitigation.

The Hedgerow Regulations 1997

1.2.22 In England and Wales, The Hedgerow Regulations 1997 are intended to protect important countryside hedgerows from destruction or damage. Hedgerows are assessed against a number of criteria in relation to their archaeology and history, and wildlife and landscape, from which it is determined whether a hedgerow is 'important'.

- 1.2.23 Being ‘important’ makes it an offence to remove these hedgerows without planning permission or specific approval. The Regulations only apply to hedgerows adjacent to land in agricultural/horticultural use. A hedgerow may be classified as ‘Important’ for archaeological/historical reasons, or according to Wildlife and Landscape criteria. To be classified as ‘important’ under the Wildlife and Landscape criteria, the hedgerow must be over 30 years old and should comprise at least one of several listed criteria.

The Salmon and Freshwater Fisheries Act 1975 (as amended)

- 1.2.24 This legislation provides protection of freshwater fish, including salmon (*Salmo salar*), trout species and their habitats.
- 1.2.25 The assessment (**ES Volume 4, Appendix 9.7: Assessment of Effects (Doc Ref. 5.4)**) has considered the Act in relation to any potential for impacts upon fish utilising the East Stour River, noting that avoidance of impacts upon the East Stour River will avoid impacts upon its associated migratory fish populations.

Eels (England and Wales) Regulations 2009

- 1.2.26 The Eels (England and Wales) Regulations 2009 implement EC Council Regulation (1100/2007) (the EC Eel Regulation)¹⁴, with the aim of halting and reversing the decline in the European eel (*Anguilla Anguilla*).
- 1.2.27 As per the Salmon and Freshwater Fisheries Act, the assessment (**ES Volume 4, Appendix 9.7: Assessment of Effects (Doc Ref. 5.4)**) has taken these regulations into account as part of the East Stour River

The Invasive Alien Species (Enforcement and Permitting) Order 2019

- 1.2.28 This legislation imposes restrictions on species of animals and plants listed in Schedule 2 of the Act or listed as ‘Species of Special Concern’. These are species which pose a risk of adverse impacts across the UK and EU, such that targeted action across the UK and EU is required. Restrictions applying to these species mean they cannot not be imported, kept, bred, transported, sold, used or exchanged, allowed to reproduce, grown or cultivated, or released into the environment. Under certain circumstances a Species Control Order can be served on a landowner to require the removal of a given species (see Infrastructure Act 2015).

1.3 Planning Policy

National Policy

- 1.3.1 The following national planning policy is relevant to the Project:
- Overarching National Policy Statement (NPS) for Energy (NPS EN-1) (November 2023)¹⁵;
 - National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) (November 2023)¹⁶;

- National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (November 2023)¹⁷; and
- The National Planning Policy Framework (NPPF) (2023)¹⁸.

National Policy Statements

- 1.3.2 This assessment takes account of the following relevant National Policy Statements ('NPS's) for energy. On 17 January 2024, NPS for Energy (NPS EN-1), NPS for Renewable Energy Infrastructure (NPS EN-3), and NPS for Electricity Networks Infrastructure (NPS EN-5) came into force. This means that these NPSs are the relevant National Policy Statements that have effect.
- 1.3.3 While the primary basis for making decisions on applications for development consent is the relevant NPSs, other matters which the SoS may consider to be important and relevant in decision making may include the NPPF, Planning Practice Guidance ('PPG') (Department for Levelling Up, Housing and Communities, 2024¹⁹) and development plan policies of the "Host" local authorities.
- 1.3.4 NPS EN-1 states in paragraph 4.1.12 that *"other matters that the Secretary of State may consider both important and relevant to their decision-making may include Development Plan documents or other documents in the Local Development Framework"*. However, paragraph 4.1.15 also states that *"In the event of a conflict between these or any other documents and an NPS, the NPS prevails for the purposes of Secretary of State decision making given the national significance of the infrastructure"*.
- 1.3.5 Section 5.4 of NPS EN-1 sets out the matters to be considered in the assessment of any likely significant biodiversity and geological conservation impacts of the Project. The NPS requires that the assessment of biodiversity impacts should be reported in the ES and:
- that it should *'clearly set out any effects on internationally, nationally, and locally designated sites of ecological or geological conservation importance (including those outside England), on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats'* (paragraph 5.4.17) and
 - *'show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests'* (paragraph 5.4.19); and
 - *'the design process should embed opportunities for nature inclusive design' and Energy infrastructure projects have the potential to deliver significant benefits and enhancements beyond Biodiversity Net Gain, which result in wider environmental gains (see Section 4.6 on Environmental and Biodiversity Net Gain). The scope of potential gains will be dependent on the type, scale, and location of each project. .'* (paragraph 5.4.21).
- 1.3.6 NPS EN-3, at paragraph 2.5.2 states *'Proposals for renewable energy infrastructure should demonstrate good design, particularly in respect of landscape and visual amenity, opportunities for co-existence/co-location with other marine and terrestrial*

uses, and in the design of the project to mitigate impacts such as noise and effects on ecology’.

- 1.3.7 NPS EN-3 sets out impacts for consideration in regard to biodiversity, ecological, geological conservation and water management within paragraphs 2.10.75 to 2.10.92.
- 1.3.8 NPS EN-3, at paragraph 2.10.77, confirms that the assessment of impact from solar farms on biodiversity may need to include: *‘habitats, ground nesting birds, wintering and migratory birds, bats, dormice, reptiles, great crested newts, water voles and badgers’.*
- 1.3.9 Paragraph 2.10.70 of NPS EN-3 advises that assessments 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.
- 1.3.10 Applicants should consider earthworks associated with construction compounds, access roads and cable trenching (paragraph 2.10.71).
- 1.3.11 In regard to the impact of security and lighting, paragraph 2.10.82 states *“Applicants 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 considered to minimise impact. If lighting is necessary, it should be minimised and directed away from areas of likely habitat.”*
- 1.3.12 The NPS EN-3 emphasises the potential to increase the biodiversity value of a site through land management and enhancement. Paragraph 2.10.89 states that: *‘Solar farms have the potential to increase the biodiversity value of a site, especially if the land was previously intensively managed. In some instances, this can result in significant benefits and enhancements beyond Biodiversity Net Gain, which result in wider environmental gains which is encouraged’;*
- 1.3.13 Note that the biodiversity paragraphs (2.9.3 to 2.9.6) NPS EN-5 details the risk and mitigation associated with birds and overhead power lines, which is not applicable to the Project.
- 1.3.14 Furthermore, NPS EN-5 outlines the opportunities for the linear nature of electricity networks 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 environmental enhancements’* within paragraph 2.5.1. The policy details the risk (paragraphs 2.9.3 to 2.9.6) and mitigation (paragraphs 2.10.2 to 2.10.4) associated with birds and overhead power lines.

National Planning Policy Framework (NPPF)

- 1.3.15 In addition to primary legislation, the government adopted the National Planning Policy Framework in December 2023. Within the NPPF, Chapter 15 is headed *‘Conserving and enhancing the natural environment’* (Paragraphs 180 - 184).

1.3.16 Of relevance are the following statements:

'Planning policies and decisions should contribute to and enhance the natural and local environment by... minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures' (Paragraph 180).

1.3.17 Paragraph 181 states that:

'Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.'

1.3.18 To protect and enhance biodiversity and geodiversity, plans should:

'Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation (Paragraph 185a);
and

'promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.'
(Paragraph 185b).

1.3.19 When determining planning applications, local planning authorities should apply the following principles (Paragraph 186):

- a) *if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) *development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of The Site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) *development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*

- d) *development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.'*

1.3.20 In addition to the above, Paragraph 187 of NPPF confirms that the following should be afforded the same protection as sites that are included within the definition at Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (as amended) (SACs, Sites of Community Importance, SPAs and any relevant Marine Sites (which are collectively referred to as 'habitats sites' in the NPPF)):

- 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 habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'*

1.3.21 Paragraph 188 states that:

'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.'

1.3.22 This statement applies to the assessment of effects in relation to all confirmed, possible, potential and/or proposed designated sites of international importance.

Local Planning Policy

1.3.23 The following local planning policies (Ashford Borough Council ('ABC') Local Plan)²⁰ are relevant to the Project:

- Policy ENV1 – Biodiversity;
- Policy ENV3a – Landscape Character and Design; and
- Policy ENV5 – Protecting Important Rural Features

1.3.24 The requirements of these policies that are relevant to ecology are set out below.

1.3.25 Policy ENV1 states that:

'Proposals that conserve or enhance biodiversity will be supported. Proposals for new development should identify and seek opportunities to incorporate and enhance biodiversity. In particular, development should take opportunities to help connect and improve the wider ecological networks.'

Proposals should safeguard features of nature conservation interest and should include measures to retain, conserve and enhance habitats, including BAP (Priority) habitats, and networks of ecological interest, including ancient woodland, water features, ditches, dykes and hedgerows, as corridors and stepping stones for wildlife. Development that will have an adverse effect on the integrity of European protected Sites, including the Wye and Crundale Special Area of Conservation and the Dungeness, Romney Marsh and Rye Bay Ramsar and SPA sites, alone or in combination with other plans or projects, will not be permitted. Any proposal capable of affecting designated interest features of European sites should be subject to Habitats Regulations Assessment screening.

Development that will have an adverse effect on nationally designated sites, including the borough's Sites of Special Scientific Interest and National Nature Reserves, will not be permitted unless the benefits, in terms of other objectives including overriding public interest, clearly outweigh the impacts on the special features of the site and broader nature conservation interests and there is no alternative acceptable solution.

Development should avoid significant harm to locally identified biodiversity assets, including Local Wildlife Sites, Local Nature Reserves and the Ashford Green Corridor as well as priority and locally important habitats and protected species. The protection and enhancement of the Ashford Green Corridor is one of the key objectives of the Plan and therefore all proposals coming forward within or adjoining the Ashford Green Corridor should comply with Policy ENV2 in the first instance.

Where harm to biodiversity assets cannot be avoided, appropriate mitigation will be required in line with a timetable to be agreed with the Local Authority. Normally any mitigation measures will be required to be delivered on-site, unless special circumstances dictate that an off-site model is more appropriate. A financial contribution - in lieu of on-site mitigation - will only be considered in very exceptional circumstances and where it is demonstrated that the proposed mitigation is deliverable and effective.

Opportunities for the management, restoration and creation of habitats in line with the opportunities identified for the Biodiversity Opportunity Areas (BOAs) and targets set out in the Kent Biodiversity Strategy will be supported.'

1.3.26 Policy ENV3a states that development proposals shall demonstrate particular regard to the following landscape characteristics, proportionately, according to the landscape significance of the site:

- a) Landform, topography and natural patterns of drainage;*
- b) The pattern and composition of trees and woodlands;*
- c) The type and composition of wildlife habitats;*
- d) The pattern and composition of field boundaries;*

- e) *The pattern and distribution of settlements, roads and footpaths;*
- f) *The presence and pattern of historic landscape features;*
- g) *The setting, scale, layout, design and detailing of vernacular buildings and other traditional man made features;*
- h) *Any relevant guidance given in the Landscape Character SPD;*
- i) *Existing features that are important to and contribute to the definition of the local landscape character shall be retained and incorporated into the proposed development; and,*
- j) *Any non-designated, locally-identified, significant landscape features justified in a Parish Plan or equivalent document.*

1.3.27 Policy ENV5 states that:

All development in the rural areas of the Borough shall protect and, where possible, enhance the following features:

- a) *Ancient woodland and semi-natural woodland;*
- b) *River corridors and tributaries;*
- c) *Rural lanes which have a landscape, nature conservation or historic importance;*
- d) *Public rights of way; and,*
- e) *Other local historic or landscape features that help to distinguish the character of the local area.*

1.4 Guidance

1.4.1 The following regional, county or local guidance is relevant to the Project:

- Kent Biodiversity Strategy²¹; and
- Designation criteria for Kent Local Wildlife Sites²² ('LWS's).

1.4.2 The Kent Biodiversity Strategy *'aims to deliver, over a 25 year period, the maintenance, restoration and creation of habitats that are thriving with wildlife and plants and ensure that the county's terrestrial, freshwater, intertidal and marine environments regain and retain good health'*. The Strategy has identified 17 priority habitats and 13 priority species which have targets for 2025 assigned within the strategy.

1.4.3 The Designation criteria for Kent Local Wildlife Sites²¹ provides a benchmark for habitats or species importance, abundance or distribution that would potentially qualify as a LWS and therefore could be assessed as important at a 'county' level.

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