

**Upper Ogmore Wind Farm**  
Technical Appendix 6.1: Relevant  
Planning Policy and Legislation

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## Summaries of Relevant Policy, Legislation and Other Instruments

This section briefly summarises the legislation, policy and related issues that are relevant to the main text of Chapter 6: Ecology and Biodiversity.

### Planning Policy Wales 10

- 1.1 PPW 10 seeks to sustain and create places in which...
- the role which landscapes, the historic environment, habitats and biodiversity, the characteristics of coastal, rural or urban environments play in contributing to Distinctive and Natural places are identified, understood, valued, protected and enhanced;
  - further fragmentation of habitats is avoided, wherever possible, and green networks, corridors and connecting habitat within developed areas is protected, and enhanced;
  - sites designated for their landscape or nature conservation importance are fully considered and their special characteristics and features protected and enhanced, whilst the network of sites should be recognised as being at the heart of improving the resilience of ecosystems;
- 1.2 Paragraph 6.4.4 states that
- “It is important that biodiversity and resilience considerations are taken into account at an early stage in both development plan preparation and when proposing or considering development proposals. [.....] All reasonable steps must be taken to maintain and enhance biodiversity and promote the resilience of ecosystems and these should be balanced with the wider economic and social needs of business and local communities. Where adverse effects on the environment cannot be avoided or mitigated, it will be necessary to refuse planning permission.”
- 1.3 Paragraph 6.4.5 states that
- 1.4 “Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity. In doing so planning authorities must also take account of and promote the resilience of ecosystems....”

### TAN 5 Nature Conservation and Planning

- 1.5 Technical Advice Note (TAN) 5 supplements Planning Policy Wales and provides advice about how the land use planning system in Wales ‘should contribute to protecting and enhancing biodiversity and geological conservation.’
- 1.6 The TAN provides guidance to local planning authorities on: ‘the key principles of positive planning for nature conservation; nature conservation and Local Development Plans; nature conservation in development management procedures; development affecting protected internationally and nationally designated sites and habitats; and, development affecting protected and priority habitats and species.’
- 1.7 In section 2.4 when deciding planning applications that may affect nature conservation, ‘local authorities should:
- contribute to the protection and improvement of the environment...seeking to avoid irreversible harmful effects on the natural environment;
  - ensure that appropriate weight is attached to designated sites of international, national and local importance;
  - protect wildlife and natural features in the wider environment, with appropriate weight attached to priority habitats and species in Biodiversity Action Plans;

- ensure that all material considerations are taken into account and decisions are informed by adequate information about the potential effects of a development on nature conservation;
- ensure that the range and population of protected species is sustained;
- adopt a stepwise approach to avoid harm to nature conservation, minimise unavoidable harm by mitigation measures, offset residual harm by compensation measures and look for new opportunities to enhance nature conservation; where there may be significant harmful effects local planning authorities will need to be satisfied that any reasonable alternative sites that would result in less or no harm have been fully considered.'

1.8 At section 3.3.2 regarding Local Development Plans policies the guidance states that a policy should be included in respect of the application of the precautionary principle.

1.9 Section 4 includes specific and detailed guidance, expanding on the principles set out in 2.4, in respect of the development control process including pre-application discussions, preparing planning applications, requests for further information and ecology in respect of Environmental Impact Assessment (EIA). The broad principles of development control requirements are set out as follows:

- 'adopting the five-point approach to decision-making – information, avoidance, mitigation, compensation and new benefits;
- ensuring that planning applications are submitted with adequate information, using early negotiation, checklists, requiring ecological surveys and appropriate consultation;
- securing necessary measures to protect, enhance, mitigate and compensate through planning conditions and obligation;
- carrying out effective planning enforcement; and
- identifying ways to build nature conservation into the design of new development.'

#### **Bridgend Local Development Plan 2006 - 2021 Adopted September 2013**

1.10 The Local Development Plan (LDP) sets out the County Borough Council's policies for the development and use of land in Bridgend County Borough (BCB) up to 2021. This is the current adopted LDP which will be superseded by the replacement LDP (2018 - 2033). The current LDP will remain extant until such time as the replacement LDP, referred to below, is fully adopted.

1.11 Strategic Policy SP4 (Conservation and Enhancement of the Natural Environment) states that "*Development which will conserve and, wherever possible, enhance the natural environment of the County Borough will be favoured. Development proposals will not be permitted where they will have an adverse impact upon:*

- *The integrity of the County Borough's countryside;*
- *The character of its landscape;*
- *Its biodiversity and habitats; and*
- *The quality of its natural resources including water, air and soil."*

1.12 Policy ENV4 (Local/Regional Nature Conservation Sites) of the LDP states "*Development within or adjacent to a Local Nature Reserve (LNR), Site of Importance for Nature Conservation (SINC), or Regionally Important Geodiversity Site (RIGS), should be compatible with the nature conservation or scientific interest of the area, whilst promoting their educational role. Developments which would have an adverse impact on these sites will not be permitted unless the benefits associated with the development can be demonstrated to outweigh the harm and/or the harm can be reduced or removed by appropriate mitigation and/or compensation measures."*

- 1.13 Policy ENV5 (Green Infrastructure) states that *“Green infrastructure will be provided through the protection and enhancement of existing natural assets and the creation of new multi-functional areas of green space. Green infrastructure corridors will connect locations of natural heritage, green space, biodiversity or other environmental interest. They will be safeguarded through:*
1. *Not permitting development that compromises their integrity and therefore that of the overall green infrastructure framework;*
  2. *Using developer contributions to facilitate improvements to their quality and robustness;*
  3. *Investing in appropriate management, enhancement and restoration, and the creation of new resources.”*
- 1.14 Policy ENV6 (Nature Conservation) requires new development to: “
1. *In the first instance, retain, conserve, restore and enhance wherever possible existing:*
    - a) *Woodland;*
    - b) *Trees;*
    - c) *Hedgerows;*
    - d) *Wetlands;*
    - e) *Watercourses;*
    - f) *Ponds;*
    - g) *Green Lanes/Wildlife Corridors;*
    - h) *Geological Features;*
    - i) *Other Natural Features or Habitats.*
  2. *Where this is demonstrated not to be possible, suitable mitigation or compensatory measures will be required to secure biodiversity including future management programmes.*
  3. *Avoid or overcome harm to nature conservation assets and/or species of wildlife which may be either resident, in-situ or which can be demonstrated to have frequented habitats within the site on a migratory basis.”*

### **Replacement Bridgend Local Development Plan 2018 - 2033**

- 1.15 Once formally adopted, the replacement LDP will apply to all of BCB. The LDP was submitted for statutory review in 2017, and subject to stakeholder consultation during May 2018.

The replacement LDP will build upon the current adopted plan by expressing in land-use terms the wellbeing objectives and priorities of the Bridgend Public Services Board’s Wellbeing Plan.

### **Bridgend County Borough Local Biodiversity Action Plan**

- 1.16 The Bridgend County Borough Local Biodiversity Action Plan (Bridgend LBAP, 2014) takes an ecosystem approach by considering the value for defined Landscape Character Areas (LCA) within BCB. The value of each LCA is described in terms of the ecosystem services that it supports. The LBAP provides actions and opportunities to maintain the ecosystem services within each LCA.
- 1.17 Of relevance to Upper Ogmore, the action plan for LCA 6: Mynydd Llangeinwyr Uplands states: “
- *Sensitive management of agricultural land, particularly in the south of the region, could enhance run-off regulation by increasing water interception and infiltration through the soil. This could be achieved by remediating soil compaction and maintaining hedgerows. Restoring areas of degraded semi-natural habitat could also bring benefits for water regulation. Restoration of degraded semi-natural habitat could also bring benefits for water regulation.*
  - *Long-term vegetation carbon storage could be increased by converting the coniferous plantation to mixed woodland, by introducing broadleaved species. Avoiding clear-fell in favour of continuous cover forestry would ensure a stable level of vegetation carbon storage*

- *Protection of the peaty ridge soils from disturbance and subsequent carbon loss. Maintenance of high quality habitat.*
- *There are opportunities to promote recreation linkage across the ridge and between the surrounding valleys, allowing interactions between people and open areas.”*

1.18 Species contained within the previous 2002 LBAP are not considered individually in the current 2014 LBAP, but the habitats and landscapes that support them are.

### **Environment (Wales) Act 2016**

1.19 The Environment (Wales) Act 2016 passed into law in March 2016. Part 1 of the Act sets out Wales' approach to planning and managing natural resources at a national and local level with a general purpose linked to statutory 'principles of sustainable management of natural resources' defined within the Act.

1.20 Section 6 of the Act places a duty on public authorities to '*seek to maintain and enhance biodiversity*' so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to '*promote the resilience of ecosystems*'. The duty replaces the section 40 duty in the Natural Environment and Rural Communities Act 2006 in relation to Wales, and applies to those authorities that fell within the previous duty.

1.21 Public authorities will be required to report on the actions they are taking to improve biodiversity and promote ecosystem resilience. This is expanded on in sub-section (2):

1.22 In complying with subsection (1), a public authority must take account of the resilience of ecosystems, in particular the following aspects—

- diversity between and within ecosystems;
- the connections between and within ecosystems;
- the scale of ecosystems;
- the condition of ecosystems (including their structure and functioning);
- the adaptability of ecosystems.

1.23 Section 7 concerns biodiversity lists and the duty to take steps to maintain and enhance biodiversity. It replaces the duty in section 42 of the NERC Act 2006. The Welsh Ministers will publish, review and revise lists of living organisms and types of habitat in Wales, which they consider are of key significance to sustain and improve biodiversity in relation to Wales.

1.24 The Welsh Ministers must also take all reasonable steps to maintain and enhance the living organisms and types of habitat included in any list published under this section, and encourage others to take such steps.

### **European protected species (Animals)**

1.25 The Conservation of Habitats and Species Regulations 2017 (as amended) consolidates various amendments that have been made to the 2010 and original (1994) Regulations which transposed the EC Habitats Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Council Directive 92/43/EEC) into national law.

1.26 “European protected species” (EPS) of animal are those which are shown on Schedule 2 of the Conservation of Habitats and Species Regulations 2010 (as amended). They are subject to the provisions of Regulation 43 of those Regulations. All EPS are also protected under the Wildlife and Countryside Act 1981 (as amended). Taken together, these pieces of legislation make it an offence to:

- a. Intentionally or deliberately capture, injure or kill any wild animal included amongst these species

- b. Possess or control any live or dead specimens or any part of, or anything derived from a these species
  - c. deliberately disturb wild animals of any such species
  - d. deliberately take or destroy the eggs of such an animal, or
  - e. intentionally, deliberately or recklessly damage or destroy a breeding site or resting place of such an animal, or obstruct access to such a place
- 1.27 For the purposes of paragraph (c), disturbance of animals includes in particular any disturbance which is likely—
- a. to impair their ability—
    - i. to survive, to breed or reproduce, or to rear or nurture their young, or
    - ii. in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
  - b. to affect significantly the local distribution or abundance of the species to which they belong.
- 1.28 Although the law provides strict protection to these species, it also allows this protection to be set aside (derogated) through the issuing of licences. The licences in Wales are currently determined by Natural Resources Wales. In accordance with the requirements of the Regulations (2010), a licence can only be issued where the following requirements are satisfied:
- a. The proposal is necessary ‘to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment’
  - b. ‘There is no satisfactory alternative’
  - c. The proposals ‘will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.’

#### ***Definition of breeding sites and resting places***

- 1.29 Guidance for all European Protected Species of animal, including bats and great crested newt, regarding the definition of breeding and of breeding and resting places is provided by The European Council (EC) which has prepared specific guidance in respect of the interpretation of various Articles of the EC Habitats Directive.<sup>1</sup> Section II.3.4.b) provides definitions and examples of both breeding and resting places at paragraphs 57 and 59 respectively. This guidance states that ‘The provision in Article 12(1)(d) [of the EC Habitats Directive] should therefore be understood as aiming to safeguard the ecological functionality of breeding sites and resting places.’ Further the guidance states: ‘It thus follows from Article 12(1)(d) that such breeding sites and resting places also need to be protected when they are not being used, but where there is a reasonably high probability that the species concerned will return to these sites and places. If for example a certain cave is used every year by a number of bats for hibernation (because the species has the habit of returning to the same winter roost every year), the functionality of this cave as a hibernating site should be protected in summer as well so that the bats can re-use it in winter. On the other hand, if a certain cave is used only occasionally for breeding or resting purposes, it is very likely that the site does not qualify as a breeding site or resting place.’

#### **Competent authorities**

- 1.30 Under Regulation 7 of the Conservation of Habitats and Species Regulations 2017 (as amended) a “competent authority” includes “any Minister of the Crown..., government department, statutory undertaker, public body of any description or person holding a public office.
- 1.31 In accordance with Regulation 9, “a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the [Habitats and Birds] Directives. This means for instance that when considering

<sup>1</sup> Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. (February 2007), EC.

development proposals a competent authority should consider whether EPS or European Protected Sites are to be affected by those works and, if so, must show that they have given consideration as to whether derogation requirements can be met.

### Birds

- 1.32 All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs. In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to disturb them whilst they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.
- 1.33 The Conservation of Habitats and Species Regulations 2017 (as amended) places duties on competent authorities (including Local Authorities and National Park Authorities) in relation to wild bird habitat. These provisions relate back to Articles 1, 2 and 3 of the EC Directive on the conservation of wild birds (2009/147/EC, 'Birds Directive'<sup>2</sup>) (Regulation 10 (3)) requires that the objective is the 'preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive...' Regulation 10 (7) states: 'In considering which measures may be appropriate for the purpose of security or contributing to the objective in [Regulation 10 (3)] Paragraph 3, appropriate account must be taken of economic and recreational requirements'.
- 1.34 In relation to the duties placed on competent authorities under the 2017 Regulations, Regulation 10 (8) states: 'So far as lies within their powers, a competent authority in exercising any function [including in relation to town and country planning] in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).'

### Badger

- 1.35 Badger is protected under the Protection of Badgers Act 1992. It is not permitted to wilfully kill, injure, take, possess or cruelly ill-treat a badger, or to attempt to do so; or to intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it. A badger sett is defined in the legislation as "a structure or place, which displays signs indicating current use by a badger".
- 1.36 ODPM Circular 06/2005<sup>3</sup> provides further guidance on statutory obligations towards badger within the planning system. Of particular note is paragraph 124, which states that "The likelihood of disturbing a badger sett, or adversely affecting badgers' foraging territory, or links between them, or significantly increasing the likelihood of road or rail casualties amongst badger populations, are capable of being material considerations in planning decisions."
- 1.37 Natural England provides Standing Advice<sup>4</sup> (adopted in Wales), which is capable of being a material consideration in planning decisions. Natural England recommends mitigation to avoid impacts on badger setts, which includes maintaining or creating new foraging areas and maintaining or creating access (commuting routes) between setts and foraging/watering areas.

### Reptiles

- 1.38 All native reptile species receive legal protection in Great Britain under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). Viviparous lizard, slow-worm, grass snake and adder are protected against killing, injuring and unlicensed trade only. Sand lizard and smooth snake receive

<sup>2</sup> 2009/147/EC Birds Directive (30 November 2009. European Parliament and the Council of the European Union.

<sup>3</sup> ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

<sup>4</sup> <http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/specieslinks.aspx>

additional protection as “European Protected species” under the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) and are fully protected under the Wildlife and Countryside Act 1981 (as amended).

- 1.39 All six native species of reptile are included as ‘species of principal importance’ for the purpose of conserving biodiversity under Section 7 of the Environment (Wales) Act 2016.
- 1.40 Current Natural England Guidelines for Developers<sup>5</sup> (adopted in Wales) states that ‘where it is predictable that reptiles are likely to be killed or injured by activities such as site clearance, this could legally constitute intentional killing or injuring.’ Further the guidance states: ‘Normally prohibited activities may not be illegal if ‘the act was the incidental result of a lawful operation and could not reasonably have been avoided’. Natural England ‘would expect reasonable avoidance to include measures such as altering development layouts to avoid key areas, as well as capture and exclusion of reptiles.’
- 1.41 The Natural England Guidelines for Developers state that ‘planning must incorporate two aims where reptiles are present:
- To protect reptiles from any harm that might arise during development work;
  - To ensure that sufficient quality, quantity and connectivity of habitat is provided to accommodate the reptile population, either on-site or at an alternative site, with no net loss of local reptile conservation status.’

#### **Water vole**

- 1.42 Water vole is protected under the Wildlife and Countryside Act 1981 (as amended). This makes it an offence to kill, injure or take any water vole, damage, destroy or obstruct access to any place of shelter or protection that the animals are using, or disturb voles while they are using such a place. Water vole is listed as a Species of Principal Importance under the provisions of the Environment (Wales) Act 2016.

#### **Invasive non-native species**

- 1.43 An invasive non-native species is any non-native animal or plant that has the ability to spread causing damage to the environment.
- 1.44 Under the Wildlife and Countryside Act 1981 (as amended) it is an offence to release, or to allow to escape into the wild, any animal which is not ordinarily resident in and is not a regular visitor to Great Britain in a wild state or is listed under Schedule 9 of the Act.
- 1.45 It is an offence to plant or otherwise cause to grow in the wild invasive non-native plants listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended).

#### **Japanese knotweed**

- 1.46 It is an offence to plant or cause the spread of Japanese knotweed in the wild under the Wildlife and Countryside Act 1981 (as amended). All waste containing Japanese knotweed comes under the control of Part II of the Environmental Protection Act 1990.
- 1.47 The Environment Agency has produced “The Knotweed Code of Practice”, which provides guidance on how to manage Japanese knotweed legally on development sites<sup>6</sup>. This document provides ecological information on Japanese knotweed, details of how to prevent its spread, how to manage Japanese knotweed and information on disposal. Natural Resources Wales refers to

<sup>5</sup> English Nature, 2004. *Reptiles: guidelines for developers*. English Nature, Peterborough.  
<http://publications.naturalengland.org.uk/publication/76006?category=31018>

<sup>6</sup> *Managing Japanese knotweed on development sites: the knotweed code of practice* (2006). Environment Agency.  
<https://www.gov.uk/government/publications/japanese-knotweed-managing-on-development-sites>. See also 2013 Code of Practice update.

Environment Agency guidance in respect of landowners responsibilities in Wales and to the Wildlife and Countryside Act 1981 (as amended).