

APPENDIX G1

Ecology Planning & Legislative Context

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1 Planning and Legislative Context

The ecological assessment has been undertaken with reference to the following legislation and planning policy and guidance.

1.0 Legislation

Statutorily Protected Sites

National Nature Reserves (NNRs)

NNRs contain examples of some of the most important natural and semi-natural terrestrial and coastal ecosystems in Great Britain. They are managed to conserve their habitats or to provide special opportunities for scientific study of the habitats communities and species represented within them. NNRs are fully protected under the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981.

Sites of Special Scientific Interest (SSSIs)

SSSIs provide statutory protection for the best examples of the UK's flora, fauna, or geological or physiographical features. These sites are also used to underpin other national and international nature conservation designations. Originally notified under the National Parks and Access to the Countryside Act 1949, SSSIs have been renotified under the Wildlife and Countryside Act 1981. Improved provisions for the protection and management of SSSIs were introduced by the Nature Conservation (Scotland) Act 2004.

Ramsar Sites

Ramsar sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran, in 1971. Originally intended to protect sites of importance, especially as waterfowl habitat, the Convention has broadened its scope over the years to cover all aspects of wetland conservation and wise use, recognising wetlands as ecosystems that are extremely important for biodiversity conservation in general and for the well-being of human communities. The Convention adopts a broad definition of wetland, namely "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres". Wetlands "may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands".

Special Areas of Conservation (SAC)

SACs are designated under the EC Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora). SACs are areas that have been identified as best representing the range and variety within the European Union of habitats and (non-bird) species listed on Annexes I and II to the Directive. SACs, together with Special Protection Areas (SPAs), form the Natura 2000 network.

Special Protection Areas (SPAs)

SPAs are classified by the UK Government under the EC Birds Directive (Council Directive 79/409/EEC on the conservation of wild birds). SPAs are areas of the most important habitat for rare (listed on Annex I to the Directive) and migratory birds within the European Union. SPAs, together with SACs, form the Natura 2000 network.

1.0.1 Non-Statutory Sites

Local Wildlife Sites

Dumfries and Galloway Council have begun a process of identifying Local Wildlife Sites on account of their local conservation interest. Local Wildlife Sites, together with Local Nature Reserves and other managed reserves, which together are known as Nature Conservation Sites of Local Importance, receive protection through the Dumfries and Galloway Structure Plan (Dumfries and Galloway Council, 1999) and the Annandale and Eskdale Local Plan

(Dumfries and Galloway Council, 2006). As such, Local Wildlife Sites are a material consideration in the determination of planning applications.

1.0.2 Species Protection/Legislation Invasive weeds

Japanese knotweed *Fallopia japonica* and giant hogweed *Heracleum mantegazzianum* are listed in Schedule 9, Part II of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to plant these species or otherwise cause them to grow in the wild. Any material containing Japanese knotweed or giant hogweed is also identified as 'controlled waste' under the Environment Protection Act 1990 and must be disposed of properly at landfill.

Great Crested Newt (*Triturus cristatus*)

The great crested newt (GCN) is fully protected through its inclusion in Schedule 2 of The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in 2004 & 2007) as a European Protected Species.

Under the legislation, it is an offence to deliberately or recklessly capture, injure, kill or harass a GCN. It is also an offence to deliberately or recklessly obstruct access to or damage or destroy a breeding site or resting place of a GCN or otherwise deny it use of a place it uses for shelter and protection.

It is an offence to deliberately or recklessly disturb a GCN while it is occupying a structure or place which it uses for shelter or protection or whilst it is rearing or otherwise caring for its young. In addition it is an offence to deliberately or recklessly disturb a GCN if it is likely to significantly affect its local distribution or abundance or impair its ability survive, breed or reproduce, or rear or otherwise care for its young.

The legislation applies to great crested newts in both aquatic and terrestrial habitats and to all life stages.

Breeding Birds

All wild birds in the UK 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 the nest (whilst being built or in use) or its eggs. Bird species listed in Schedule 1 of the 1981 Act, e.g. barn owl *Tyto alba*, receive further protection which makes it an offence to intentionally or recklessly disturb these species while building a nest or in, on or near a nest containing eggs or young; or to disturb dependent young of such a bird.

Red squirrel (*Sciurus vulgaris*)

Red squirrel is fully protected through its inclusion in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take a red squirrel as well as intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a red squirrel or disturb an animal while it is occupying a structure or place which it uses for that purpose.

Badger (*Meles meles*)

Badgers receive strict protection under the Protection of Badgers Act 1992 (Scottish Version) which makes it an offence to wilfully kill, injure, take or attempt to kill, injure or take a badger or interfere with a badger sett by damaging a sett or any part thereof. It is also an offence to wilfully destroy a sett, obstruct access to a sett or disturb a badger while occupying a sett.

Water vole (*Arvicola terrestris*)

Following a severe national decline associated with habitat loss and predation by feral mink, water vole received habitat protection in 1998 through inclusion on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) in respect of Section 9(4) only. Under the legislation, it is an offence to intentionally or recklessly damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection or to disturb an animal while it is occupying a structure or place which it uses for that purpose.

Otter (*Lutra lutra*)

Otter is fully protected through its inclusion in Schedule 2 of The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in 2004 & 2007) as a European Protected Species.

Under the legislation, it is an offence to deliberately or recklessly capture, injure, kill or harass an otter. It is also an offence to deliberately or recklessly obstruct access to or damage or destroy a breeding site or resting place of an otter or otherwise deny it use of a place it uses for shelter and protection.

It is an offence to deliberately or recklessly disturb an otter while it is occupying a structure or place which it uses for shelter or protection or whilst it is rearing or otherwise caring for its young. In addition it is an offence to deliberately or recklessly disturb an otter if it is likely to significantly affect its local distribution or abundance or impair its ability survive, breed or reproduce, or rear or otherwise care for its young.

Bats

All British bat species are fully protected through their inclusion in Schedule 2 of The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in 2004 & 2007) as a European Protected Species.

Under the legislation, it is an offence to deliberately or recklessly capture, injure, kill or harass any species of British bat. It is also an offence to deliberately or recklessly obstruct access to or damage or destroy a breeding site or resting place of any bat or otherwise deny it use of a place used for shelter and protection.

It is an offence to deliberately or recklessly disturb any bat while it is occupying a structure or place which it uses for shelter or protection or whilst it is rearing or otherwise caring for its young. In addition it is an offence to deliberately or recklessly disturb a bat if it is likely to significantly affect its local distribution or abundance or impair its ability survive, breed or reproduce, or rear or otherwise care for its young.

1.0.3 National Planning Policy

National Planning Policy in Scotland is set out in a series of Scottish Planning Policy (SPP) documents that identify the key priorities for the planning system. Prior to the publication of SPPs, national planning policy was set out in a series of National Planning Policy Guidelines (NPPGs). Existing NPPGs have continued relevance to decision making, until such time as they are replaced by a SPP. A series of Planning Advice Notes (PANs) provide supplementary advice on good practice.

NPPG 14: Natural Heritage

NPPG 14 (www.scotland.gov.uk) sets out the Government's national policies on Natural Heritage; including biodiversity and nature conservation.

Paragraph 20 of NPPG 14 states that "*the presence of a protected species or habitat is a material consideration in the assessment of development proposals. Planning authorities should take particular care to avoid harm to species or habitats protected under the 1981 Act or European Directives, or identified as priorities in the UK Biodiversity Action Plan.*"

Paragraph 50 of NPPG 14 states that "*Trees and woodlands are of great importance, both as wildlife habitats and in terms of their contribution to landscape character and quality, and hedgerows and shelterbelts are important features of the landscape in some parts of the country. Significant areas of Scotland have suffered environmental degradation as a result of progressive deforestation and past industrial activity and the expansion of woodland cover can make an important contribution to their rehabilitation. Planting with native species and the encouragement of natural regeneration can often offer the greatest benefits in terms of the natural heritage.*"

Paragraph 51 of NPPG 14 states that "*planning authorities should seek to protect trees, groups of trees and areas of woodland where they have natural heritage value or contribute to*

the character or amenity of a particular locality. Ancient and semi-natural woodlands have the greatest value for nature conservation.”

Paragraph 52 of NPPG 14 states that “*opportunities should be taken to secure new woodland planting in development schemes. Under Section 159 of the Town and Country Planning (Scotland) Act 1997 planning authorities have a duty to ensure that, whenever appropriate, planning permissions make adequate provision for the preservation or planting of trees. Where development involves the loss of trees, permission should normally be conditional on a replanting scheme with trees of appropriate species in appropriate numbers.*”

Paragraph 56 of NPPG 14 states that “*developers should be encouraged to incorporate existing ponds, watercourses or wetlands as positive environmental features in development schemes, and to identify suitable opportunities for creating new water or wetland features. They should generally be encouraged to seek alternatives to extensive culverting or canalisation, as these greatly reduce the ecological and amenity value of watercourses and culverting can also increase the risk of flooding.*”

1.1 **Local Planning Policy**

The Dumfries and Galloway Structure Plan (Dumfries and Galloway Council, 1999) contains policies relating to ecology and nature conservation.

Policy E6

Policy E6 (Conservation of Habitats and Species) of the Structure Plan states that “*when assessing development proposals, the Council will seek to ensure that the impact on any habitat which is valued for its nature conservation interests is fully considered. Particular attention will be given to those habitats and species which are identified in Circular 6/1995 , but which do not fall within the boundaries of national or international nature conservation designations.*”

The Adopted Annandale and Eskdale Local Plan (Dumfries and Galloway Council, 2006) contains policies relating to ecology and nature conservation.

General Policy 46 (Nature Conservation Sites of Local Importance) of the Local Plan states that “*development proposals which are likely to affect the sites identified by the Council as Nature Conservation Sites of Local Importance will be considered against Structure Plan Policy E6.*”

1.2 **References**

Dumfries and Galloway Council. 1999. *Dumfries and Galloway Structure Plan*. December 1999.

Dumfries and Galloway Council. 2006. *Adopted Annandale and Eskdale Local Plan*. October 2006.

<http://www.scotland.gov.uk/Publications/1999/01/nppg14>. NPPG 14: Natural Heritage. Viewed on 11th December 2006.