

Appendix A

Legislative Context

A1 A1 Legislative Context

A framework of international, European, national and local legislation and planning policy guidance exists to protect and conserve wildlife and habitats. This is described in the following sections. The reader will refer to the original legislation for the definitive interpretation.

A1.1 Statutory Designated Sites

A network of nationally designated sites has been established through the designation of Sites of Species Scientific Interest (SSSI) under the Wildlife and Countryside Act 1981 (as amended). The protection afforded by the Act means it is an offence to carry out or permit to be carried out any operation listed within the notification without the consent of the Statutory Nature Conservation Organisation²⁷ (Natural Resources Wales).

The protection afforded to SSSIs is used to underpin the designation of areas at a European Level. European sites comprise:

- Special Areas of Conservation (SAC) designated under the Conservation of Habitats and Species Regulations 2017 (as amended) (known as the Habitats Regulations);
- Special Protection Areas (SPA) designated under the Wildlife and Countryside Act.

Wetlands of International Importance (Ramsar sites) declared under the Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 are normally also notified as SSSIs but are only considered European sites as a matter of UK and Local Government Policy.

The Habitats Regulations transpose the requirements of Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive) in to law within England and Wales, while the Wildlife and Countryside Act transposes Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive) in the law within England and Wales. Equivalent legislation exists to transpose these directives in the law within Scotland and Northern Ireland.

The Habitats Regulations require that consideration is given to the implications of plans and projects (developments) on European sites are considered. Specifically, Regulation 61(1) states:

“A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which –

²⁷ Section 28 of the Wildlife and Countryside Act 1981 (as substituted by Schedule 9 of the Countryside and Rights of Way Act 2000).

(a) is likely to have a significant effect on a European site or European marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.”

The formal consideration of effects on European sites is therefore undertaken by the determining authority such as the Local Planning Authority.

Local Nature Reserves can be given protection against damaging operations through powers within the National Parks and Access to the Countryside Act 1949 (as amended). However, this protection is usually conveyed through inclusion of protection within local planning policy relating to these sites and other non-statutory sites such as sites of Importance for Nature Conservation.

A1.2 European Protected Species

The Habitats Regulations convey special protection to a number of species which are listed in schedule 2 of the Regulations and are referred to as European Protected Species (EPS):

- All UK resident bat species;
- All whale and dolphin species;
- Large blue butterfly (*Maculinea arion*);
- Common dormouse (*Muscardinus avellanarius*);
- Pool frog (*Rana lessonae*);
- Sand lizard (*Lacerta agilis*);
- Fisher's estuarine moth (*Gortyna borelii lunata*);
- Great crested newt (*Triturus cristatus*)
- European otter (*Lutra lutra*)
- Wild cat (*Felis silvestris*);
- Lesser Whirlpool Ram's-horn Snail (*Anisus vorticulus*)
- Smooth snake (*Coronella austriaca*);
- Sturgeon (*Acipenser sturio*);
- Natterjack toad (*Bufo calamita*); and
- All marine turtles.

Regulation 41 makes it an offence to:

- a) Deliberately capture, injure or kill any wild animal of a EPS;
- b) Deliberately disturb wild animals of such a species;
- c) Deliberately takes or destroys the eggs of such a species;

d) Damages or destroys a breeding site or resting place of such an animal.

Disturbance in the context of the offences above is disturbance which is likely to impair the ability of the animals to survive, to breed or reproduce, to nurture their young, to hibernate, to migrate; or to affect significantly the local distribution of the species.

Licences can be granted by the relevant SNCO for developments (sometime referred to as EPS Licences or Derogation Licences) providing the purposes of the licence is for “*preserving 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*”.

A1.3 UK Protected Species

The Wildlife and Countryside Act 1981 provide protection to both EPSs and other species including wild birds, water voles and reptiles.

All wild birds, their nests and eggs are protected with some rare species afforded extra protection from disturbance during the breeding season (these species are listed in Schedule 1 of the Act). It is illegal to take any wild bird or damage or destroy the nests and eggs of breeding birds. There are certain exceptions to this in respect of wildfowl, game birds and certain species that may cause damage.

Water vole receive protection under the Wildlife and Countryside Act 1981 which prohibits the killing, injuring or taking by any method.

All native reptile species in the UK are subject to partial protection from intentional or reckless killing or injury only.

Badger and their setts are protected under the Protection of Badgers Act 1992 which makes it an offence to kill, injure or take a badger, or interfere with a sett.

A1.4 Other Legislation Relating to Species

Section 6 of the Environment (Wales) Act 2016 includes a duty on all 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”. This duty applies to government bodies, local authorities and statutory undertakers.

To assist in complying with this duty, public authorities must have regard to relevant evidence provided in the State of Natural Resources Report and any relevant area statement for an area in which the authority exercises functions, as well as having regard to the list of living organisms and habitats published under Section 7 of the Act. Species and habitats listed on Section 7 are considered to be of Principal Importance for the conservation of biological diversity.

The Environment (Wales) Act 2016 replaces the NERC Act 2006; Section 6 replaces Section 40 of the NERC Act and Section 7 replaces the Section 42 lists.

Appendix B

Photographs

B1 Habitat Photographs



Photograph 1 – Showing semi-natural broadleaved woodland habitat.



Photograph 2 – Showing ephemeral/short perennial habitat.



Photograph 3 – Showing marshy grassland habitat.



Photograph 4 – Showing standing water habitat.



Photograph 5 – Showing heathland habitat.



Photograph 6 – Showing acid grassland and scattered scrub.

B2 Target Note Photographs



Photograph 1 – Showing a badger outlier sett (TN4).



Photograph 2 – Showing tree with two bat boxes (TN24).



Photograph 3 – Showing a railway bridge that may have bat roost suitability (TN26).



Photograph 4 – Showing small mustelid prints (TN35).



Photograph 5 – Showing potential mink scat (TN36).



Photograph 6 – Showing wax cap (TN46).

Appendix C

Soil Sampling Technical Note



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28th April 2020

TECHNICAL NOTE – Nant Helen - Investigation of Soils within Planted Ancient Woodland Site.

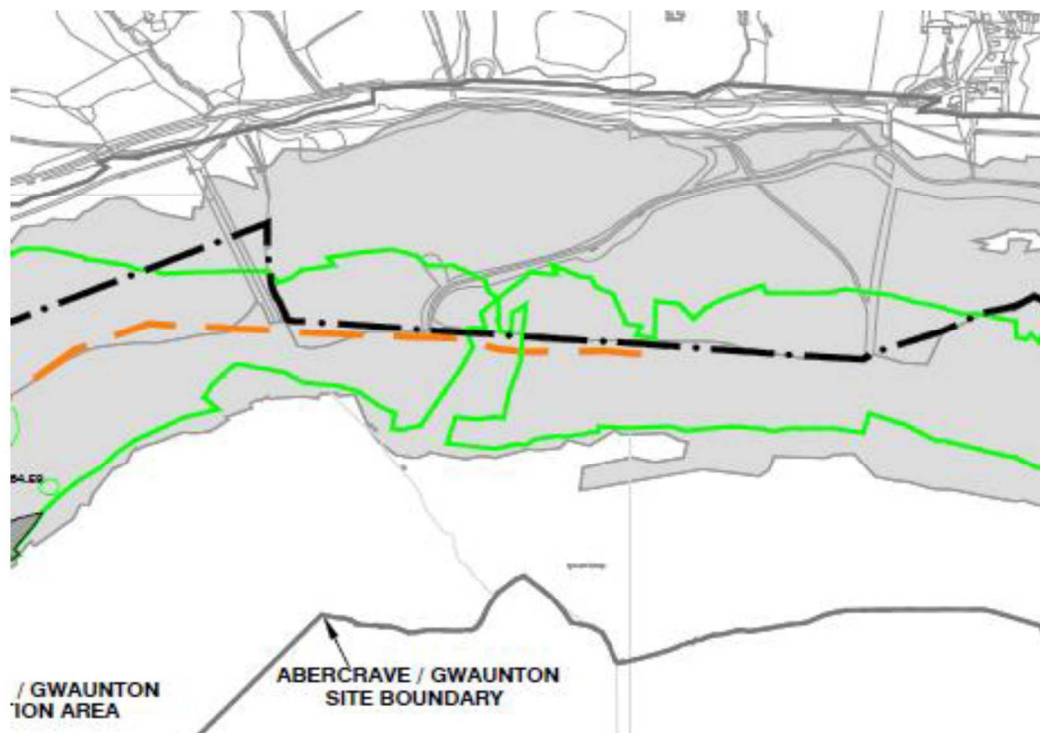
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Background

A Planted Ancient Woodland Site (PAWS) was reported in the draft NANT HELEN COMPLEMENTARY RESTORATION EARTHWORKS EIA (Section 7.14.4) as occurring within the proposed location of an embankment to be built (see EIA Figure 7.4).

The PAWS and the proposed embankment are located within the excavation area of the former Abercraive / Gwaunton surface mine with the mined area no longer having any coal (the grey shadowed fill in the following extract from Figure 14.01 (Celtic Energy, Nant Helen Remainder EIA, 2011)).

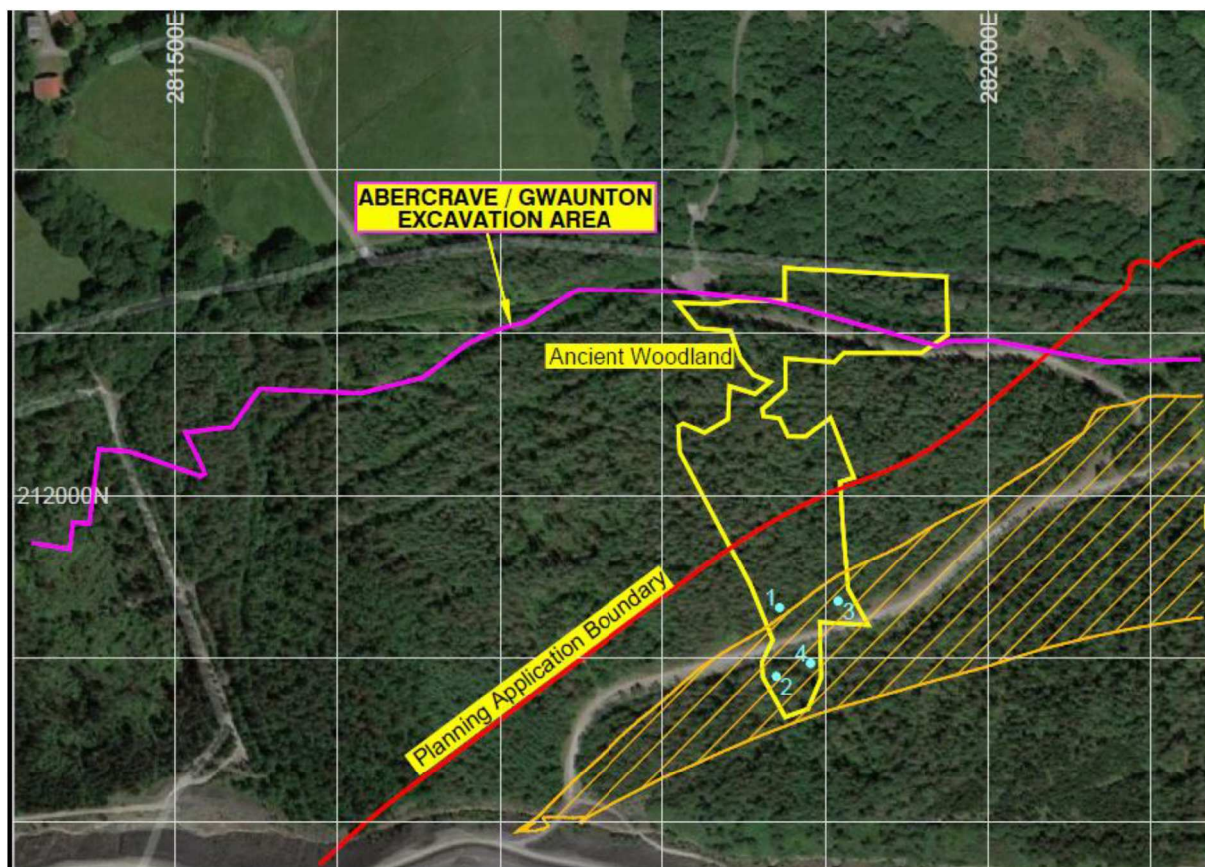


This is compelling evidence that the current plantation is likely to be on backfilled material following mining and extending over the area recorded as a PAWS, rather than as implied, the plantation replacing semi-natural woodland on the in situ woodland soils.

To solve the inconsistency between the recorded 'PAWS' and the mining records, the soils within the area of the 'PAWS' affected by the proposed raising of the embankment were examined to determine if they were backfilled 'spoil' or in situ woodland soils.

Method

The location and extent of the 'PAWS' (yellow line) within the application area (red line) and intersections with the proposed embankment works (orange hatch) on ground were marked using a GPS surveying system (see aerial image below). The purple line is the northern most extent of the surface mined land. Four representative locations (light blue and numbered) within the 'PAWS' and with safe access for a mini-tracked excavator were identified (see below).



Soil pits to a depth of about 1m were dug to expose the soil profile and provide material for examination. The features of the soil profile were recorded using standard soil survey descriptions (Hodgson, 1974). Photographs of each Pit are provided at the end of this Note.

Findings

At all four locations, the soil pits were within the European larch plantation where the ground had been deep 'forestry' ploughed to create parallel 0.3-0.5m high planting ridges at about 2.5m spacing. The pits were dug in the furrows between two ridges.

All four soil pits comprised backfilled Carboniferous Shale material. Soil Pits 1 and 2, and particularly Pit 2, had burnt colliery shale indicating an origin as ‘above ground’ deposited colliery waste. The predominantly clay profiles of Pits 3 and 4 were likely to be surfaced mined overburden.

Soil Pit 1 – 281872 E 211931 N

Depth cm	Description	Horizon
0-1	Moss/Litter	L
1-3	Dark Brown Humic / Stone Free	H
3-10	Clay Loam / 90% Grit / Grey Shale	Ah
10-70	80% Boulders & 20% Small Stones / Grey Shale	C

Soil Pit 2 – 281870 E 211889 N

Depth cm	Description	Horizon
0-1	Moss/Litter	L
1-3	Dark Brown Humic / Stone Free	H
3-10	Heavy Clay Loam / Stone Free / Grey Shale	Ah
10-90	Heavy Clay Loam/Clay / 40% Large Stones / Grey Shale	C

Soil Pit 3 – 281908 E 211935 N

Depth cm	Description	Horizon
0-1	Moss/Litter	L
1-3	Dark Brown Humic / Stone Free	H
3-10	Sandy Clay Loam / Stone Free / Grey Shale	Ah
10-70	Clay Loam / 20% Large Stones / Grey Shale + 30% Red Burnt Shale	C

Soil Pit 4 281891 E 211897 N

Depth cm	Description	Horizon
0-1	Moss/Litter	L
1-3	Dark Brown Humic / Stone Free	H
3-20	Heavy Clay Loam / Stone Free / Grey Shale	Ah
20-90	Heavy Clay Loam/Clay / 50% Large Stones / Grey Shale	C

There was no evidence of buried natural soil layers due to the forestry ploughing resulting in soil inversion in any of the Pits.

Conclusion

Clearly the original ancient woodland within the area now denoted as PAWS was surface mined during the extensive Abercrave / Gwaunton scheme. The in situ woodland soils were most likely disposed of within the progressive workings, as was the general practice into the early 1990s. Hence, the status of the ancient woodland site is more accurately referred to as having been ‘destroyed’. The planting of the current conifer plantation after the backfilling of the surface mine workings could

TECHNICAL NOTE – Nant Helen - Investigation of Soils within Planted Ancient Woodland Site.

give the impression that it is a PAWS, whereas it is simply a plantation on a destroyed ancient woodland site.

Reference

Hodgson J M, 1974. Technical Monograph nNo. 5: Soil Survey Field Handbook. Soil Survey, Harpenden.



Soil Pit 1



Soil Pit 2



Soil Pit 3



Soil Pit 4