



Our ref: APP0030
S Dowding

Emailed to
request-22175-0d909783@whatdotheyknow.com

11 December 2009



Dear S Dowding

Representations/ Response to Environmental Information Regulations Request

We refer to your email of 26 November 2009 making representations in relation to the ODA's response (dated 26 November 2009) to your request for information dated 29 October 2009 (EN00426).

Your representations refer to the results of a bird survey undertaken in East Marsh, which the ODA withheld in response to your request until the date of its completion, which had been anticipated to be 4 December 2009. You also mention that the ODA has made a proposal for the siting of a wind turbine on East Marsh, and that this matter is currently the subject of a public consultation ending December 14th. And you state that "it appears to me that by withholding this data you are hindering the possibility for this consultation to proceed in a transparent and accountable manner".

Regulation 11 of the Environmental Information Regulations permits a requester to make representations to a public authority in relation to the applicant's request if it appears to the requester that the authority has failed to comply with a requirement of the Regulations in relation to a request.

Regulation 11 provides that a public authority shall on receipt of representations-

- (a) consider them and any supporting evidence produced by the information requester; and
- (b) decide if it has complied with the requirement.



MAYOR OF LONDON



I have considered the statements in support of your representations, and I do not consider that the ODA has failed to comply with a requirement of the Regulations in respect of your request. I believe that it was correct and appropriate for the ODA to withhold the draft report at the time when your request was made, since the draft report fell into the category of "material which is still in the course of completion, unfinished documents or incomplete data" (one of the exceptions in the regulations). I also consider that the public interest test was correctly applied at the time of your request, in view of the need to ensure proper verification of the content of the report (in the public interest) before its public release, and in view of the short delay until completion of the report.

We would also clarify that the use of the word "redrafted" in the final paragraph of the first page of our response was not intended to suggest that the report was being completely re-written. It was intended to convey that the report was still in an incomplete and unfinished draft form, and the subject of a reiterative drafting process. We apologise for any confusion or ambiguity which may have been caused.

We can also assure you that the ODA has no intention of hindering any public consultation to proceed in a transparent and accountable manner. The ODA takes its duties and responsibilities under information access legislation seriously, and supports the principles of transparency and accountability, but equally has to consider (where appropriate) whether it is necessary and desirable to disclose information which is exempt from public release (under the regulations) at the time when the request is made.

However, we accept that the report was not released on 4 December 2009 as anticipated in our response, for which we apologise. We appreciate that you have concerns about the bird survey in East Marsh and we wish to provide you with further information about the survey and the process under which information related to the survey has been progressing.

The main Olympic Park and Transformation Planning Application set out a site wide approach to meet energy and carbon targets. Planning conditions include the provision of sufficient on-site renewable energy generation capacity to meet at least 20% of the annual carbon emissions of the venues and other buildings to be retained within the site in the Legacy phase.

The Olympic Park planning application received approvals including provision for a wind turbine at Eton Manor. The ODA employed a competitive procurement process which concluded with the selection of Ecotricity as preferred bidder for the design, build and operation of wind turbines on the Olympic Park in December 2008.

There was an opportunity arising from this ODA procurement process for London Borough of Hackney (LBH) to install a second wind turbine at East Marsh to provide renewable electricity to the local area.

LBH explored this opportunity and consulted with the ODA and Ecotricity to determine the feasibility of the East Marsh site. As a result of this, LBH felt it possible to run a public consultation in order to determine the opinion of local residents about the scheme.

In order to support this feasibility process, the ODA commissioned a bird study as part of an environmental impact assessment. The bird survey report summarises the bird survey data over 12 months. The intention of the survey was to characterise the use of the site by birds during all seasons and at different times of the day. The survey method was agreed through consultation with Natural England and the Royal Society for the Protection of Birds and was carried out by a skilled observer.

It would be normal for a planning application to include such a study, carried out over a number of seasons, in order to determine the impact of the proposal on wildlife. In the event that LBH determines that there is public support for a wind turbine at East Marsh, Ecotricity would be expected to prepare a planning application, including reference to the bird survey report in the Ecology chapter of an Environmental Impact Assessment.

Ecotricity has been reviewing the bird survey data and considering the Environmental Impact Assessment which is currently being drafted. The Environmental Impact Assessment would provide detail of the overall impact of the project on ecology and make an assessment of whether or not these changes would give rise to significant impacts, advise on the consequence of a decision to proceed and recommend mitigation and monitoring measures. This Environmental Impact Assessment would be subject to further stakeholder consultation as is normal for a planning application.

A draft copy of the bird survey report has recently been reviewed by Ecotricity, and was issued to the ODA for review on the 4th December and finally to LBH for review on the 9th December. The intention of this review process was to permit the application of normal quality assurance before the report could be agreed for formal issue. Similarly, the ecological chapter of the Environmental Impact Assessment is also undergoing drafting to consider the impact of a wind turbine on the basis of the report.

We are now pleased to provide you with copies of the report (attached) which should be read in conjunction with the relevant extract from the draft impact assessment (below). We would ask you to note that, in the event that LBH decide to proceed with the project, Ecotricity may be expected to engage in further stakeholder consultation, consider the need for further survey activity and finalise the drafting of these reports.

We trust you find this explanation helpful and that it gives you comfort that the ODA has been eager to thoroughly consider the potential impact of the wind turbine and apply normal practice in support of a consultation and planning process.

If you are not satisfied with this response you may apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House, Water Lane
Wilmslow,
Cheshire
SK9 5AF

Yours sincerely



Celia Carlisle
General Counsel
Olympic Delivery Authority

Relevant extract of the Ecology Chapter of the Environmental Impact Assessment which is currently being drafted.

5.9.3 Operation impacts on birds

Mortality from collision

The level of collision would depend on the amount of flight activity over the site, the extent to which birds are displaced by the turbines and the ability of birds to detect and manoeuvre around rotating turbine blades. Birds that collide with a turbine are likely to be killed or fatally injured.

The extent to which birds are able to avoid collision with wind turbines has not yet been adequately quantified. The indications from studies so far are that birds readily avoid wind turbines and that collisions are rare events and occur mainly at sites where there are unusual concentrations of birds and turbines, or where the behaviour of the birds concerned leads to high-risk situations. Examples include concentrated migration flyways, other situations where large numbers of birds may be flying at night or in poor visibility (e.g. tidal feeding movements), areas where the food resource is exceptional, 'wind wall' turbine layouts (a close array of turbines across a wind funnel), and the use of lattice towers by perching birds. There are no such unusual circumstances at East Marsh that are likely to result in a high level of collision to birds.

Flight activity of four priority species^[1] were recorded, common tern, peregrine, marsh harrier and red kite. During 72 hours of observation only 1 common tern, 1 marsh harrier 6 peregrine and 1 red kite flights were recorded. Of these, no common tern, marsh harrier or red kites flights and only 1 peregrine flights were observed within rotor-sweep height. Such a level of flight activity is of little concern. The magnitude of collision effects on common tern, marsh harrier, peregrine and red kite therefore considered to be negligible. The overall impact is therefore neutral and there is predicted to be no impact on these species as a result of collision.

Table 5-11 Summary of flight activity of target species at East Marsh

Species	No. flights	No. flights at 30-130m	Max no. flights per VP period	Max no. flights per VP period at 30-130	% of VP periods recorded	Mean no. flight per VP Period	Mean no. Flights 30-130m per VP Period
Common Tern	1	0	1	0	0.06	0.02	0
Marsh Harrier	1	0	1	0	0.03	0.01	0
Peregrine	6	4	1	1	0.18	0.18	0.12
Red Kite	1	0	1	0	0.03	0.03	0

Flight activity of 16 secondary species^[2] were recorded great cormorant, grey heron, mute swan, canada goose, gadwall, common shelduck, buzzard, sparrowhawk, kestrel, caspian gull, black-headed gull, common gull, lesser black-back gull, great black-back gull, herring gull and yellow legged gull. In addition flocks of unidentified gull were classified into flocks of large gull, small gulls and mixed gulls.

There were only small number of flights of mute swan, canada goose, common shelduck, gadwall , grey heron, kestrel and sparrow hawk within the area or within the sweep of the turbines (Table 5-12)and therefore magnitude of collision effects on these species is considered negligible.

Table 5-12 Flight activity of secondary species back gull over East Marsh

Species	No. flights	Flock size	Mean flock size	Number of birds	No. Flights 30-130m	Flock size 30-130m	Mean flock size 30-130m	Number of birds 30-130m	% VP flight recorded	Mean no. flight per hour
Great Cormorant	363	1-14	1.4	528	138	1-12	1.9	215	100	5.04
Grey heron	33	1-2	1.1	38	12	1	1	14	40	0.45
Mute Swan	1	1	1	1	0	0	0	0	0.03	0.013
Canada goose	10	1-20	3.9	43	0	0	0	0	18	0.13
Gadwall	3	1-10	4.6	14	0	0	0	0	6	0.041
Common shelduck	5	1-2	1.4	7	2	2	2	4	15	0.069
Buzzard	1	1	1	1	1	1	1	1	3.1	0.013
Sparrow hawk	1	1	1	1	0	0	0	0	3.1	0.013
Kestrel	14	1	1	14	3	1	1	3	25	0.19
Caspian gull	1	1	1	1	1	0	0	0	3.1	0.013
Black-headed Gull	333	1-150	3.7	1058	79	1-29	3.1	248	90	4.6
Common gull	167	1-20	1.9	335	36	1-6	1.6	58	59	2.3
Lesser black-backed gull	420	1-20	2.0	851	118	1-20	1.8	213	96	5.8
Great black-backed gull	31	1-4	1.2	41	19	1-4	1.2	24	50	0.43
Herring gull	316	1-120	3.8	1213	115	1-120	5.2	600	90	4.3
Yellow legged gull	6	1	1	6	3	3	1	3	19	0.08
Large gulls	75	1-150	11.2	847	27	1-150	9.8	266	28	1.04
Mixed gulls	64	1-590	17.7	1099	17	562	17.0	562	28	0.88
Small gulls	14	1-50	15.7	221	0	0	0	0	6	0.19

A larger number of flights of gulls and great cormorants were recorded over East Marsh. A significant number of these flights were within the rota sweep height. The extent to which gulls and cormorant are able to avoid collision with wind turbines has not been quantified although collision rates appear to vary between locations^{[3], [4], [5]}. In the long term study at Blyth Harbour on the impact of nine 300kw turbines over a 9 year period

the majority of casualties were large gull species, great black gull and herring gull at a frequency of 0.8 strikes per turbine per year. During this study period only one cormorant casualty was recorded even though they flew the wind farm at an average rate of 5/h and there was a roost of 120 cormorants close to the site³. Though the possibility of gulls or cormorant colliding with the rotating wind turbine blades cannot be ruled out, given the numbers of birds utilising the site and their recorded flight activity, the number of birds affected is likely to be small. The magnitude of collision effects is therefore considered to be low, the overall impact is considered to be negative and there is predicted to be an impact of minor significant.

Impact on breeding birds – displacement and disturbance

Nesting birds are confined to the perimeter of the site and therefore no significant impacts on nesting birds are anticipated during the operation phase.

References:

^[1] i.e. species listed on Annex I of EC Directive 79/409/EEC on the Conservation of Wild Birds 1979 and/or breeding species listed on Schedule 1 of the Wildlife and Countryside Act 1981 consider to be potentially as risk of collision

^[1] i.e. cormorant, grey heron, mute swan, geese, ducks, sparrowhawk, buzzard, kestrel, waders, gulls and raven.

^[1] Lawrence E. S., Painter S. Little B. (2007) Response of birds to the wind farm at Blyth Harbour, Northumberland, UK in *Birds and Winds Farms de Lucas, Janss and Ferrer (Editors) Quercus 2007*

^[1] Winkelman J.E (1992) The impact of Sep wind park near Oosterbierum (Fr) The Netherlands, on birds 1: collision victims RIN Rapport 92/2; 65-69

¹⁷⁾ Everaert, J. (2006). Wind turbines and birds in Flanders: preliminary study results and recommendations = Les éoliennes et les oiseaux en Flandre: résultats provisoires et recommandations, in: (2003). *Natuur.oriolus* 69(4). *Natuur.oriolus* : Vlaams tijdschrift voor ornithologie, 69(4): pp. 145-155