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Kingston Solar Farm

15/06/2022



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INTRODUCTION

Background

- 1.1. Neo Environmental Ltd has been appointed by Renewable Energy Systems (RES) Ltd (the “Applicant”) to complete an ecology rebuttal in support of the proposed 49.9MW solar farm with associated infrastructure (the “Proposed Development”) on lands circa 1.3km south of Gotham and c. 0.75km northwest of East Leake, Nottinghamshire (the “Application Site”).
- 1.2. Rushcliffe Borough Council (“RBC”), who are considering the planning application, have shared a representation from Gavin Ward with the Applicant. This concerns the validity of the ecological surveys and assessment that supports the solar farm’s planning application. It is understood that RBC have re-opened consultation on the matter with their in-house ecologist.

Development Description

- 1.3. The Proposed Development will consist of the construction of a 49.9MW solar farm with bi-facial solar photovoltaic (PV) panels mounted on metal frames, new access tracks, underground cabling, perimeter fencing with CCTV cameras and access gates, two temporary construction compounds, substation and all ancillary grid infrastructure and associated works.
- 1.4. The Proposed Development will result in the production of clean energy from a renewable energy resource (daylight). It will also involve additional landscaping including hedgerow planting and improved biodiversity management.

Purpose of this Document

- 1.5. Neo has received consents for numerous solar projects by taking the approach used to date in the Proposed Development application. However, to allay any concerns RBC and Gavin Ward should have, a point-by-point response to Gavin Ward’s representation is provided.

Statement of Authority

- 1.6. This assessment has been produced by Daniel Flenley BSc (Hons) MPhil MCIEEM MECW, a Principal Ecologist with over 7 years of consultancy experience and 16 years of field experience. Daniel has gained particular experience in undertaking various ecological assessments, including Ecological Impact Assessments, for a range of development types including extractives, energy and housing. He is a full member of the Chartered Institute of Ecology and Environmental Management (“CIEEM”) and Association of Environmental Clerks of Works (“AECOW”).

CONCERNS

Survey Timings

- 1.7. Gavin Ward's first main point concerns survey timings. He begins this as follows:

"Paragraph 1.4 on Page 9 of the Extended Phase 1 Habitat Survey Report (Neo Environmental, 25/1/2022) states that;

"The survey of Fields 1 to 16 and the intervening woodland (i.e. all lands except the extremity north of Field 5; see Figure 3 of Volume 2: Planning Application Drawings) was performed outside the optimal season for botanical surveys (which is April to September)."

"This means that almost all of the habitats on site were surveyed on the 26th February 2021. Yet they go on to claim;

"However, given the habitats encountered, it is not considered that this places a significant constraint on the interpretation of the Application Site's ecological interest."

"This is poor practice and seriously undermines the validity of their assessment. To illustrate this point, this has resulted in the Extended Phase 1 Habitat Survey Report classifying part of Rushcliffe District Golf Course Local Wildlife site [sic], as "Amenity Grassland". Yet their own EclA clearly states in Table 2.4 that the qualifying features of that site are "Calcareous and neutral grassland. Species rich grassland on calcareous loam soils."

- 1.8. There are three considerations in light of amenity grassland. Firstly, a competent botanist will be able to assess which habitats should be subject to further survey within its optimal season. Both surveyors are full CIEEM members and competent botanists. As such, it should be accepted that the habitats have been correctly identified despite the timing of the survey. Their judgment that the timing is not an undue constraint should also be accepted unless manifestly incorrect.
- 1.9. Secondly, we consider the extent of qualifying features within a designated site. A golf course such as Rushcliffe can (and usually is) designated for a habitat that is absent from much of it. It would be an unusual – not to mention rather challenging – golf course that consists entirely of species-rich calcareous and neutral grassland that is not mown at least in part as an amenity habitat. Indeed, the course map¹ and course tour videos² provided by Rushcliffe Golf Club show that the area (which includes holes 1, 3, 4 and the latter stretch of hole 2) is as described in Neo's habitat map: areas of boundary woodland and scrub that closely give way to short, cropped grassland. It is important to note that while the JNCC handbook³ notes classifies a 'field season' – which varies from habitat to habitat – it does not state surveys cannot be performed outside the optimal season due to validity.

¹ <https://www.rushcliffegolfclub.co.uk/course-map> [accessed 25th May 2022]

² <https://www.rushcliffegolfclub.co.uk/tour-of-the-course/> [accessed 25th May 2022]

³ JNCC (2010) Handbook for Phase 1 Habitat Survey: A Technique for Environmental Audit. 2010 Edition.

1.10. Thirdly, according to JNCC's Handbook for Phase 1 Habitat Survey⁴:

“Amenity grassland [...] comprises intensively managed and regularly mown grasslands, typical of lawns, playing fields, golf course fairways and many urban 'savannah' parks [...].”

1.11. This demonstrates that a habitat – not least on a golf course – may be defined in part by its use and management.

1.12. The representation continues:

“The subsequent implications of this, is that they are highly likely to have systematically undervalued many of the grassland habitats within & adjacent to the site.”

1.13. Arable crops and improved grassland are not priority habitats; indeed, they can legally be cultivated without requiring planning permission, and can thus be considered temporary. As the habitat has (as explained above) not been incorrectly designated, there are no subsequent implications and no need to correct the assessment of grassland value.

Bats

1.14. Gavin Ward goes on to mention the presence of certain bat species in the local area, insinuating that the habitats within the Application Site are higher value than had been assessed. He then states:

“Based on this misclassification of the value of the bat foraging habitats on site alone, I consider there to be insufficient information for the council to discharge their duties re: the protection of biodiversity – and the potential harm to a protected species (i.e. bats [sic]) which is a material consideration for the determination of this application.”

1.15. Later, he adds:

“The rest of the EclA is based on this fundamental error regarding the collection of sufficient information to inform the assessment – as required under the Section 3 of the CIEEM EclA Methodology – and contrary to their claim in paragraph 2.893 of their assessment.”

1.16. This disregards a fundamental principle contained in both the most recent Bat Conservation Trust guidance⁵ and national planning policy⁶. Ecological assessments and surveys should be proportionate to the likely impacts of a project. Extensive surveys are not required when a scheme's impacts on bats are foreseen to be low. Moreover, pre-commencement surveys for bats have been recommended for the project if any unforeseen impacts to trees are ultimately needed.

1.17. This raises the question as to the likely magnitude of the Proposed Development's impacts. Some disturbance and habitat loss (circa 23ha of arable, 44ha of modified grassland, 0.7ha of

⁴ JNCC (2010) Handbook for Phase 1 Habitat Survey: A Technique for Environmental Audit. 2010 Edition.

⁵ BCT (2016) Bat Surveys for Professional Ecologists Good Practice Guidelines (3rd edition)

⁶ Ministry of Housing, Communities & Local Government (2021) National Planning Policy Framework.

other neutral grassland and 0.1ha of tall herb community foraging habitat, and 0.02ha broad-leaved woodland and 199.5m of hedgerow foraging/commuting habitat) will occur during the construction phase. However, positive impacts during the operational phase are predicted to outweigh this substantially. Moreover, 2239m of hedgerows will be planted as compensation and enhancement. Given the level of temporary disturbance, buffering of features and value of the hedgerow on site, no surveys of this type were deemed necessary.

- 1.18. Gavin Ward also refers to barbastelle bat, which is well known among bat workers as a species with a strong affinity to woodland and other dense vegetation. The Proposed Development avoids woodlands, hedgerows and scrub, with 10m and 5m buffers put in place for woodland and hedgerows respectively. A development that delivers gains in bat habitat is not undesirable in an area where scarcer bat species could use or colonise the site.
- 1.19. While Gavin Ward's factual information concerning bat roosting at Fox Farm is welcome, no fundamental change to the conclusions of the assessment is considered likely. This is, in large part, due to the relatively benign nature of the Proposed Development. Any minor changes to the assessed status are likely to be positive for bats.

Birds

- 1.20. According to Gavin Ward:

“The ecological assessment submitted also does not include any dedicated breeding bird surveys – a decision which is at odds with the aims of both Core Strategy Policy 17: Biodiversity and Local Plan Part 2 Policy 38: Non-Designated Biodiversity Assets and the Wider Ecological Network.”

- 1.21. This interpretation of local policy fails to consider the issue of proportionality. Due to the nature of the Proposed Development, a full suite of breeding bird surveys is not considered appropriate.

- 1.22. The representation continues:

“The EclA also fails to acknowledge in their pre-mitigation impacts that disturbance of nesting birds would be an offence under UK wildlife legislation – and therefore a significant effect in EIA terms.”

- 1.23. CIEEM guidelines⁷ make clear that, depending on geographical context, significance varies even for the same site and species. However, the ecological assessment submitted by Neo Environmental does identify the potential for significant effect on birds as a result of the Proposed Development. Given yellowhammer and skylark are known and anticipated to be present, based on the species scoping survey and biological records, this is likely to be significant at the site or (at most) local level. Lapwing was not identified either onsite or in the

⁷ CIEEM (2020) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. Version 1.2.

data search. Pre-construction nesting bird checks and nesting bird boxes have been recommended to mitigate the potentially significant effects identified.

1.24. Ward then continues by asking for six breeding bird survey visits:

“In accordance with the Bird Survey Guidelines (<https://birdsurveyguidelines.org/>) the applicant must be asked to conduct six breeding bird surveys of the application site and it’s [sic] immediate surrounds.”

1.25. These guidelines are not yet the accepted industry standard (although they may become so in the future) and are not binding. The current standing advice for developments affecting wild birds in England is published by Natural England⁸. However, in conjunction with this standing advice, the principle of proportional survey effort is again important. The development has carried out a background data search and protected species scoping survey which has informed us of the predicted impact, and this does not necessitate additional surveys.

Invertebrates

1.26. The fourth point of the representation concerns invertebrate data and surveys:

“Table 2-5 “summarise the most relevant protected, Priority and invasive non-native species recorded within the search area” however [sic] it does not include any invertebrate records whatsoever. There are 379 invertebrate Species of Principal Importance – a notable number of which are associated with the habitats present on this site, in particular woodland edge habitats (some of which are ancient woodlands – e.g. Gotham Wood Local Wildlife Site [LWS]) and high-value grasslands, such as those found around the site. The West Leake Hills LWS is also a site which is known to have a butterfly species present that are of high conservation value.

“The applicant is therefore unable to claim that the application will have “significant positive effects” on invertebrates, when they have not established what that baseline is – and therefore what their preferred habitats, microclimates or food plants may be – since they have not conducted any invertebrate surveys of any kind.”

1.27. Records of a small number of invertebrate species were received during the desk study exercise. These have been summarised in greater detail below.

Table 1: Invertebrate Species Recorded in Data Search. Invasive species are listed in bold black type.

Species	Number of Records	Field Signs or Sightings within ESA	Potential for Species within Application Site

⁸ Natural England (2022) Wild birds: advice for making planning decisions. Available at: <https://www.gov.uk/guidance/wild-birds-advice-for-making-planning-decisions>

Brown Argus	14	No	Limited
Common Blue	21	No	Yes
Dingy Skipper	1	No	Limited
Grizzled Skipper	30	No	Limited
Small Copper	11	No	Yes
Small Heath	4	No	Yes
White-clawed Crayfish	3	No	No
Zebra Mussel	1	No	No

1.28. Of the eight species recorded, two of these are aquatic and one is invasive. The six terrestrial species recorded comprise two very common and widespread butterflies (small copper and common blue), two widespread and relatively common butterflies (brown argus and small heath) and two less-common UK priority butterflies (grizzled skipper and dingy skipper).

1.29. Of these less-common species, grizzled skipper has already been considered in the ecological assessment submitted. Dingy skipper occupies the following habitats:

“[...] a wide range of open, sunny habitats including chalk downland, woodland rides and clearings, coastal habitats such as dunes and undercliffs, heathland, old quarries, railway lines and waste ground. Suitable conditions occur where foodplants grow in a sparse sward, often with patches of bare ground in a sunny, sheltered situation. Taller vegetation is also required for shelter and roosting.”⁹

1.30. This species was not noted during the survey, additionally the vast majority of the site lacks these habitats. A single wooded ride containing semi-improved grassland is present between areas of plantation woodland. However, the only record of dingy skipper within the data search area (which extends more than 2km beyond the Application Site owing to a reduction in the site boundary) is from a location northeast of the site in 2007. It is therefore considered unlikely the species would be present within the site. If the species is still present locally, it is more likely that the existing designated sites will support it (and existing records retrieved by the data search could also show this).

⁹ Butterfly Conservation (n.d.) Dingy Skipper: *Erynnis tages*. Available at: <https://butterfly-conservation.org/butterflies/dingy-skipper> [accessed 25th May 2022]

1.31. Ward also criticises the timing of one of the two habitat and scoping surveys carried out, saying it is inappropriate for assessing the invertebrate interest of onsite farmland. Neo Environmental notes that the division between ploughed/sown land and arable margins could, however, be seen at the time of the habitat surveys. The margins were often less than circa 1m wide, reducing their potential for retaining significant ecological interest. This is visible from the photographs provided in **Appendix 2.1: Extended Phase 1 Habitat Survey Report** of the planning submission.

1.32. Ward continues:

“Four Invertebrate surveys must be conducted on site, during the optimum times of year (typically spread between April – July) to determine the true baseline for these species on site, and the EclA – and any associated mitigation measures - must then be updated accordingly.”

1.33. As the Phase 1 did not show signs of invertebrates of note, additional surveys would be unlikely to affect the outcome of the assessment in any significant way.

Reptiles

1.34. After referring to the potential presence of reptiles in long grassland (as noted in Neo Environmental’s report) Ward continues:

“Seven reptile presence / likely absence surveys must be conducted on site, during the optimum times of year (typically April – June & September) to determine the true baseline for these species on site, and the EclA – and any associated mitigation measures - must then be updated accordingly.”

1.35. Again, this decision was informed by the Phase 1 survey and data search, which did not identify any need for such surveys at this site. The vast majority of the grassland margins are being retained as they exist within the 5m hedgerow buffers, i.e. not subject to habitat loss or significant disturbance. The mitigation measures recommended will be sufficient to deal with all potential harm.

[Redacted]

[Redacted]


[Redacted]


[Redacted content]

[Redacted content]

[Redacted content]

[Redacted content]

- 
- Wherever possible, construction has been kept over 30m from the nearest woodland and scrub (where setts could be dug), with buffers of 10-15m specified at the edges of woodland;
 - Development work between 15m and 30m of Gotham Wood will be supervised by a suitably experienced Ecological Clerk of Works;
 - The **Outline Construction Environmental Management Plan** (“OCEMP”) submitted contains a detailed Ecology Construction Method Statement, as requested by Rushcliffe Borough Council;

- 
- No works or storage of materials or vehicle movements will be carried out in or immediately adjacent to ecological buffer zones (including badger exclusion zones) or ditches.
 - Deer fencing will have 10cm gap at base to allow free movement of badger through the site;
 - Employed contractors will be instructed on the potential for protected species prior to accessing the site for construction. If protected species are found during works, work will cease until a suitably qualified ecologist has been consulted.
 - Any pipes over 200mm in diameter will be capped off at night to prevent animals entering;
 - Materials such as netting and cutting tools will not be left in the works area where they might entangle or injure animals.

Biodiversity Net Gain

1.43. Gavin Ward’s first concern about the Applicant’s **Net Gain Assessment** relates to the methodology used:

“The Biodiversity Metric 2.0 that they have used was superseded on 7th July 2021 by the Biodiversity Metric 3.0. The final baseline habitat surveys which should have informed the BNG calculations were not completed until the 29th June 2021. The first (and only) version of the

BNG report was issued on the 7th February 2022. Therefore, there is no reason why the BNG assessment has used an out-of-date assessment methodology.”

1.44. As noted, the majority of the site was surveyed in early 2021, when DEFRA Biodiversity Metric 2.0 was the industry standard. The two versions of the metric are not fully compatible. Many local planning authorities allow a transition period in which multiple survey methods are accepted. This is partly because extensive and costly baseline surveys may have been carried out some months before a planning submission. Neo Environmental expects that RBC’s ecologist has likely already considered this when reviewing the Net Gain Assessment.

1.45. Ward continues:

“However, the biggest issue with the BNG assessment, is its use and reliance on habitat condition scores that are based on habitat surveys conducted in February. This is contrary to one of the UK’s good practice principles for biodiversity net gain – namely “Achieve the best outcomes for biodiversity”. The BNG calculations are demonstrably inaccurate and it is telling that the EclA they have submitted makes no reference whatsoever to the findings of their BNG calculations in their impact assessment – they are simply appended. That is despite it theoretically providing a quantitative method for supporting their overall assessment findings.”

1.46. Neo Environmental notes that different habitats assessed by Biodiversity Metric 2.0 are best evaluated at different times of year. For instance, heathland criterion 4 refers to condition assessment either between February and April, or in autumn¹⁰. However, grasslands are best evaluated in between these two periods. Versions 3.0 and 3.1 of the Metric explicitly go as far as specifying:

“Habitat surveys can be undertaken year-round, though it is important to note that the optimal survey season is April to September inclusive for most habitat types. Surveys outside of the optimal survey period should use a precautionary approach to assessing condition criteria which are not measurable at the time of year the survey is undertaken [...].”^{11,12}

1.47. This illustrates that the assessment is not automatically deficient by virtue of its timings. Indeed, the UK Habitat classification scheme that forms an essential part of the Metric also makes allowance for “seasonal restrictions” in data collection (see Section 4.2: Methodology of its User Manual)¹³.

1.48. It is noted that the large areas of the site comprise habitats that are not time-bound in terms of assessment. For instance, over 32.7% of the Application Site is arable habitat, which automatically receives a ‘poor’ condition score by virtue of its very nature.

¹⁰ Crosher, I. et al. (2019) The Biodiversity Metric 2.0: Auditing and Accounting for Biodiversity Value: Technical Supplement (Beta version, July 2019). Natural England.

¹¹ Panks, S. et al. (2021) The Biodiversity Metric 3.0: Auditing and Accounting for Biodiversity. Technical Supplement. Natural England.

¹² Panks, S. et al. (2022) The Biodiversity Metric 3.1: Auditing and Accounting for Biodiversity. Technical Supplement. Natural England.

¹³ Butcher, B. et al. (2020) The UK Habitat Classification User Manual Version 1.1. Available at: www.ukhab.orhg

Alleged Errors

1.49. Gavin Ward then raises two further points which he considers deficient. Firstly:

“They state in table 2-2 that they have used a 15km Zone of Influence for Internationally designated sites. Two paragraphs below (in para 2.67) they state their desk-study only used a 5km search radius. However, in paragraph 2.88 they then state that no internationally designated sites are present within 15km of the site boundary. This lack of consistency and accuracy is of concern.”

1.50. Neo can confirm that a 15km search radius was used for internationally designated sites. This included, but was not limited to, a search within 5km.

1.51. Secondly:

“The majority of the assessments also appear to have been completed (or substantively contributed to) by Daniel Flenley, however his CIEEM status is unclear. The Net Gain Assessment is the latest dated report (7th February 2022) which states he is a Graduate CIEEM member – however [sic] the Extended Phase 1 Habitat Survey report (dated 25th January 2022) list [sic] him as a Full Member. Furthermore, none of the Checkers or Approvers are listed as CIEEM members, therefore it is not possible to determine if suitably qualified ecologists have been involved in conducting or reviewing all of these surveys and assessments.”

1.52. For the avoidance of doubt, both Daniel Flenley and Kevin Johnson are full members of CIEEM (and were at the time of the planning submission). All surveying, plus the majority of the initial writing, was carried out by suitably qualified ecologists. While some elements of the reporting were not written by a full CIEEM member, they were checked, updated or otherwise edited by one during the collaborative report production process. Paul Neary BA H.Dip MA MSc MEnvSc MIAI ACIFA CEnv, who approved the reports, is also a Chartered Environmentalist.

Cumulative Impact Assessment

1.53. Ward then states:

“The EcIA does not include a proper or robust Cumulative Impact Assessment. Paragraphs 5.19 – 5.22 of the CIEEM EcIA Guidelines make no differentiation re: the types of development which should be considered in the scope of a Cumulative Impact Assessment. They should consider ALL developments within the Zone of Influence which could have an additive/incremental or associated/connected impact on any sensitive ecological [sic] receptors. Furthermore, the EcIA has (potentially) considered impacts on internationally designated sites within 15km of the site boundary, however their Cumulative Impact has only considered a very small list of solar farms – and only within 5km of the site, not 15km.”

1.54. However, as stated in paragraph 2.248 of the ecological assessment:

“A search of the Rushcliffe Borough Council, North West Leicestershire District Council, Erewash Borough Council, Broxtowe Borough Council and Nottingham City Council online planning portals was undertaken to identify any projects or developments [that] could impact any international sites, sensitive habitats or protected/notable species, either alone or in combination with the Proposed Development.” [Emphasis added.]

- 1.55. To clarify, all projects and developments located on these five local planning authority websites out to at least 5km were considered within the assessment. Solar farm developments were identified as those most likely to contribute to potential cumulative effects on designated sites, but were not the only development type considered.
- 1.56. Notwithstanding the above, RBC’s Ecology and Sustainability Officer (Paul Phillips MSc CEnv MCIEEM) has responded to the planning application consultation without mentioning any concerns regarding cumulative impacts. Given RBC’s knowledge of developments with potentially significant cumulative impacts on sites within 15km of Rushcliffe’s boundary, this supports Neo’s conclusion that no significant adverse cumulative effects are likely.

EIA Screening

- 1.57. Gavin Ward then surmises:

“Given the gaps in the baseline surveys discussed above – and the uncertainties those now raise re: the ecological consultant’s opinion that the scheme will have no significant residual adverse effects – the LPA should reconsider whether the development could result in likely significant adverse effects on sensitive environmental receptors - specifically notable & protected ecological features.

“Since that may be now the case, in accordance with the precautionary principal [sic], the LPA must reconsider whether to ask for a formal Environmental Impact Assessment to accompany this application. This is because of its size, it falls within Use-Class 3(a) of Schedule 2 of the Town & Country Planning (Environmental Impact Assessment) Regulations 2017 [as amended] and some of the impacts may be likely to meet some of the criteria listed in Schedule 3 of the EIA Regulations [e.g. 1(c), 2(b) and 3(a)].”

- 1.58. It is not Neo Environmental’s place to determine whether or not a development requires and EIA; that role falls to the council. The council determined the development does not require an EIA. However, we would reiterate that impacts on distant designated sites are unlikely. The main potential impact identified is run-off during construction. Given that this has already been covered in the assessment, the council’s decision should be considered valid.

SUMMARY AND CONCLUSION

1.59. To allay any concerns Rushcliffe Borough Council and Gavin Ward should have concerning the Proposed Development, this document provides a point-by-point response to the eleven topics of Gavin Ward's representation. The fact the Applicant has commissioned a 17-page rebuttal to Gavin Ward's seven-page representation shows that they are willing to engage with the consultation process, and take the matter seriously.

1.60. In Gavin Ward's summary of the alleged problems with the ecology submission, he makes the following point:

“Whilst I am not against the principal [sic] of a solar farm development in this location – indeed, given the climate, biodiversity and energy crises, they will be a vital tool in the UK's future energy strategy – these sites still need to be properly and robustly surveyed and assessed.”

1.61. Neo Environmental trusts that the current rebuttal shows that a sufficient level of survey effort and assessment has been employed for the Proposed Development. The conclusions of the ecological assessment are therefore considered valid, as are RBC's existing EIA screening response and the judgment of RBC Ecology and Sustainability Officer Paul Phillips.