

2nd March 2023

Re: P2022/0216 Melin Court Wind Farm – Section 73 application to vary conditions, March 2022

To the Planning Officer,

This letter provides a further response to Neath Port Talbot Council (NPTC) regarding the above Section 73 application and follows-on from earlier correspondence dated 26th January 2023 and NPTC's subsequent email response to this (repeated below) and a follow-up digital meeting on 21st February 2023.

The NPTC Biodiversity Office responded as follows:

With regards to the ecological information submitted on 26th January 2023, the Biodiversity Officer has advised that further queries/clarification is required on the following:

Bats – if a feathering condition can be implemented as suggested which in conjunction with the original mortality monitoring clause then this should help reduce the mortality of these species (along with the 50m minimum habitat buffer).

We can agree with the terrestrial species not needing updated surveys as the footprint of the scheme has not changed however for aerial species the footprint of disturbance has gotten larger and as such further surveys are required.

Honey buzzard – the updated survey information provided by Steve Roberts does support the need for the pre-construction surveys prior to development commencing and then appropriate measures being put in place if needed.

In relation to other species surveys such as Goshawk, it needs to be considered in the context of the wider landscape not just the site. This current situation needs to be considered and the justification based on whether the bird populations in the wider area will have changed.

Kestrel – in the 2014 surveys they were considered to be at significant risk of impact. How is this affected by the proposed change of turbine tip length? This species was not mentioned in the note.

Would the window of minimum and maximum risk height used to assess the vantage point surveys include this additional tip increase to justify the assumptions made in the note?

As the original consent is outdated in terms of wildlife legislation, policy and approaches in guidelines the following condition is recommended:

If the development is not started within 18 months from the date of the consent, the approved ecological mitigation, compensation and enhancement measures secured under conditions x,y,z etc shall be reviewed, and where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any

changes in the presence and/or abundance of habitats and species and ii) identify any likely new ecological impacts that might arise from any changes. Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measure and timetable

Reason: To update and clarify the ecological impacts predicted and inform the ecological mitigation measures to be applied in line with the ES; in compliance with wildlife legislation, particularly the Conservation of Habitats and Species Regulation 2017 (as amended), PPW, Future Wales, TAN5 and LDP policies EN6 and 7.

The above response formed the basis for discussion in the meeting of 21st February. The meeting was attended by representatives of NPTC (including the Biodiversity Officer), the Applicant and Avian Ecology, acting in our capacity as advisors to the Applicant.

The response comments above are understood and acknowledged. During the meeting each point was discussed in further detail, and it was agreed that additional commentary would be provided to reflect the points discussed.

All parties agreed that pre-commencement surveys for terrestrial species, habitats and honey buzzards would be adequate to address any potential concerns about these and could be delivered through planning conditions.

Similarly, the previously suggested mitigation strategy for bats (Avian Ecology letter of 26th January 2023) was agreed to be appropriate and could be delivered through planning conditions.

As such, the remaining discussions were centred on potentially sensitive bird species, namely red kite, goshawk and kestrel. I shall therefore address each species in turn; however it remains my professional view that additional surveys would be disproportionate to any potential effects in this specific case.

It remains the case that there is no published data or literature which distinguishes impacts on birds (or bats) between different turbine blade length specifications. Further, 'collision modelling' using the standard NatureScot collision risk model for birds, is not sufficiently sophisticated so as to allow for small changes to blade length to affect results; both surveys and modelling are undertaken using highly precautionary parameters and therefore model outputs would be unchanged by a 4.9m blade length increase.

Before expanding, it is important to acknowledge that additional surveys can be appropriate where variations to wind turbine tip height (blade length) are applied for. Subsequently my comments in this letter should be considered in the context of the Melin Court Section 73 application only, which is a very modest tip increase from 145m to 149.9m (so 4.9m only), and a relatively small number of turbines (x 5). Other applications would evidently need consideration on their own merits, and it does not follow that professional opinion expressed here would apply to other Section 73 applications in Wales or elsewhere.

Red Kite

Information on red kite populations was presented in my letter of 26th January and is repeated here for ease of reference.

Numbers of red kite continue to increase in Wales and the UK, with the species now on the Welsh 'Birds of Conservation Concern 4' 'Green list'¹, with increasing population numbers and distribution (Stanbury *et al.*, 2021²). The most recent red kite population estimate for Wales is 1,350 pairs (Hughes *et al.*, 2021³), with numbers of kites increasing in Wales by 413% since 1995 (Harris *et al.*, 2020⁴), and Wales supporting 30% of the British population (Hughes *et al.*, 2021). Subsequently, it is evident that the red kite population is in a sustained period of strong growth. Whilst it is acknowledged that red kites can collide with wind turbines (e.g. Duffy and Urquhart, 2014⁵ and Hötter *et al.*, 2017⁶), there is no evidence to indicate in Wales or the wider British population that collisions with onshore wind farms occur to such an extent as to have any adverse effect on red kite conservation status, or to even slow their continued growth (see Duffy and Urquhart, 2014 and Sansom *et al.*, 2016).

There is additionally no empirical evidence that levels of actual collision mortality risks predicted using the NatureScot collision risk model are realized in actual collision fatalities at onshore wind farms in the UK, or that collisions of red kite (or other raptor species) increase with increasing local or regional populations (see de Lucas *et al.*, 2008⁷ and Duffy and Urquhart, 2014).

In the context of a small (4.9m) tip height increase for an already consented development, it therefore remains my view that additional survey is disproportionate to the potential impacts and that there is no potential for significant impacts on red kite populations through collision. To the best of my knowledge there is no evidence to the contrary and updated surveys would not facilitate any additional meaningful impact assessment.

The protective measures ('RBBPP') outlined in my letter of 26th January 2022 (for honey buzzards) will also ensure that red kites are not harmed or disturbed whilst breeding, if a nest is present 300m **Error! Bookmark not defined.** of the construction area.

It is subsequently reasonable to conclude there is no pathway for significant effects on red kite populations, or for potential legislative offences, as a result of the Section 73 application.

Goshawk

Information on goshawk populations was presented in my letter of 26th January and is repeated here for ease of reference.

¹ Available online at:

https://www.bto.org/sites/default/files/publications/birds_of_conservation_concern_wales_4_2022.pdf [accessed December 2022].

² Stanbury, A., Eaton, M., Aebischer, N., Balmer, D., Brown, A., Douse, A., Lindley, P., McCulloch, N., Noble, D., and Win I. 2021. The status of our bird populations: the fifth Birds of Conservation Concern in the United Kingdom, Channel Islands and Isle of Man and second IUCN Red List assessment of extinction risk for Great Britain. *British Birds* 114:723-747. Available online at <https://britishbirds.co.uk/content/status-our-bird-populations> [accessed December 2022].

³ Hughes, J., Mason, H., Bruce, M and Shorrocks, G. (2021). Crimes against raptors in Wales 1990-2019. *Birds in Wales* 18:1.

⁴ Harris, S.J., Massimino, D., Balmer, D.E., Eaton, M.A., Noble, D.G., Pearce-Higgins, J.W., Woodcock, P. and Gillings, S. (2020). The Breeding Bird Survey 2019. BTO Research Report 726. Thetford: British Trust for Ornithology.

⁵ Duffy, K. & Urquhart, B. (2014) Braes of Doune Windfarm Report on Red Kite Studies 2004-2012. A report prepared by Natural Research Projects on behalf of the Braes of Doune Ornithology Steering Group

⁶ Hötter, H.; Mammen, K.; Mammen, U.; Rasran, L. (2017). Red Kites and Wind Farms - Telemetry Data from the Core Breeding Range. In *Wind Energy and Wildlife Interactions* (pp. 3-15). Springer.

⁷ de Lucas, M., Guyonne, F.E., Janss, D.P. and Ferrer, M. (2008) Collision fatality of raptors in wind farms does not depend on raptor abundance. *Journal of Applied Ecology*, 45, pp 1659-1703.

The Welsh goshawk population is estimated to be 314 pairs and the species shows a strong national (UK) population increase, with a 25-year trend of +204% (Eaton *et al.*, 2022⁸). Allowing for gaps in coverage, as the species is often poorly monitored, the British population is now considered to be approaching 1,300 pairs (Eaton *et al.*, 2022).

Goshawks typically spend most of their active time hunting at or below forest canopy height and are therefore at relatively low risk of collision with wind turbines; however, they may be an increased risk of collision mortality during display fights. Such behaviour can occur throughout the year but is more frequent over nesting areas in March and early April (Hardey *et al.* 2013⁹).

Given that the species' is widely accepted to be at low risk of collision, there is no evidence to suggest that a small (4.9m) tip height increase could lead to any measurable increase in collision risks, or have an adverse effect on the species' conservation status.

The RBBPP outlined in my letter of 26th January will ensure that goshawk are not disturbed whilst breeding, if a nest is present with 350m **Error! Bookmark not defined.** of the construction area.

As with the previous species, updated surveys would not facilitate any additional meaningful impact assessment and it is reasonable to conclude there is no pathway for significant effects on red kite populations, or for potential legislative offences, as a result of the Section 73 application

Common Kestrel

This species was not specifically discussed in my letter of 26th January; however the letter did include reference to 'other potentially sensitive bird species'. It is, however, acknowledged that the conservation status of this species has declined since the original consent (in 2014), and it is now 'amber listed' on Birds of Conservation Concern 5 (Stanbury *et al.*, 2021²). It is further accepted that kestrel fatalities have been recorded at operational wind farms (e.g. Barrios and Rodriguez, 2007¹⁰). There is sufficient evidence from flight behaviour (including hovering) that collision fatalities make this species vulnerable to collisions whilst hunting.

However, there is also evidence that mitigation can be implemented which is effective in greatly reducing the potential for collisions through habitat management. By reducing habitat suitability around wind turbines for prey species, kestrels have no reason to hunt around turbines and therefore collisions are avoided. Habitat manipulation has been found to be particularly effective for mitigation of collisions during studies of the similar Lesser Kestrel in Spain, where the number of collisions decreased by 75–100%. (Pescador *et al.*¹¹).

Additional bird surveys at Melin Court would not provide useful information on common kestrels for impact assessment purposes as there is no information on the local (borough/county level) population. Subsequently it would not be possible to undertake collision modelling which could be put in to any meaningful assessment context. Without this information, and coupled with the limitations of the modelling process, it is not possible to determine whether impacts arising from a modest (4.9m) tip height increase could be deemed significant.

⁸ Eaton, M. and the Rare Breeding Birds Panel (2022) Rare breeding birds in the UK in 2020. British Birds vol. 115, issue 11, pp 623–686

⁹ Hardey, J., Crick, H.Q.P., Wernham, C.V., Riley, H.T., Etheridge, B. and Thompson, D.B.A. (2013). Raptors: a Field Guide to Survey and Monitoring (3rd Edition). The Stationery Office, Edinburgh.

¹⁰ Barrios, L. and Rodríguez, A. (2007) Spatiotemporal patterns of bird mortality at two wind farms of Southern Spain. Pp. 56–72 in M. de Lucas, G. F. E. Janss and M. Ferrer, eds. Birds and wind farms. Madrid: Quercus.

¹¹ Pescador, M., Gomez Ramirez, J. I., & Peris, S. J. (2019). Effectiveness of a mitigation measure for the lesser kestrel (*Falco naumanni*) in wind farms in Spain. Journal of Environmental Management, 231, 919–925.

10.1016/j.jenvman.2018.10.094 - DOI - PubMed

Whilst the need for a precautionary approach is understood, and is accepted as a requirement for EIA, with the implementation of mitigation it is possible to confidently conclude that significant effects on kestrel populations are highly unlikely from the Section 73 application.

It is therefore my professional view that mitigation should be provided as a condition of any consent, whereby a kestrel protection plan is agreed with NPTC prior to commencement of construction, and that with such measures additional surveys are unnecessary.

In summary then, it remains my professional view that additional surveys for protected and notable species *prior to determination* of the Section 73 Application are not necessary to ensure either policy or legislative compliance and are, in fact, disproportionate to the potential for impacts arising from a modest increase in blade length of the consented wind turbines.

With the above information in mind, an alternative suggested planning condition text is provided for your consideration below.

If the development is not started within 18 months from the date of the consent (ref: P2022/0216) , the approved ecological mitigation, compensation and enhancement measures secured under conditions x,y,z etc shall be reviewed, and where necessary, amended and updated.

The review shall be informed by further ecological surveys of terrestrial species commissioned to i) establish if there have been any changes in the presence and/or abundance of habitats and species and ii) identify any likely new ecological impacts that might arise from any changes. Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Measures will include (but not be limited to) a bat mitigation ('feathering') strategy for implementation whilst wind turbines are idling, habitat management measures to dissuade common kestrel from hunting around wind turbine bases, and pre-development surveys for the presence of protected raptor species so as to ensure these are not disturbed by construction work. Works will then be carried out in accordance with the proposed new approved ecological measure and timetable.

Reason: To update and clarify the ecological impacts predicted and inform the ecological mitigation measures to be applied in line with the ES; in compliance with wildlife legislation, particularly the Conservation of Habitats and Species Regulation 2017 (as amended), PPW, Future Wales, TAN5 and LDP policies EN6 and 7.

For the avoidance of doubt, the above will be in addition to commitments made in the Habitat Management Plan forming part of the s.106 agreement attached to the consent (P/2014/883)

I trust this information is of some help. Should you wish to discuss the content of this letter further then please do not hesitate to contact me.

Yours sincerely,

Howard Fearn MSC MCIEEM
Director, Avian Ecology Ltd.