Response to the Unilateral Undertaking for the Skylark Mitigation Strategy submitted in relation to Berden Hall Solar Farm

PINS Reference:

S62A/22/0006

11 April 2024

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APPENDIX

Rebuttal Proof of Diane Corfe dated 26/02/24 responding to matters raised by the Appellant's Expert Witnesses (James Packer and Howard Fearn) in their Ecology Proof of Evidence (submitted in connection with the Appeal Reference APP/L3245/W/23/3332543 in relation to land south of Berrington, Shrewsbury, Shropshire).

A: Introduction

1. This submission has been prepared by Protect the Pelhams ("**PtP**") in response to the Unilateral Undertaking for the Skylark Mitigation Strategy (the "**Undertaking**") submitted by Berden Solar Limited (the "**Applicant**") in connection with its proposal to construct a 49.99 MW solar farm and associated infrastructure (the "Proposed Development") on 177 acres of agricultural land at Berden Hall Farm (the "**Proposed Site**").

2. This representation should be read in conjunction with the earlier documents submitted by PtP which comment on the harm to skylarks which are present at the Proposed Site:

Document	Date	URL
Response to the Environmental Statement pages (26 – 28)	14/02/2023	https://assets.publishing.service.gov.uk/media/63ee44e88fa8f56131d0ee4e/PtP_Response_to_Berden_Hall_Solar_ES_Redacted.pdf
The submission of Katherine Armstrong made at the hearing before Mr Shrigley	9/03/2023	https://assets.publishing.service.gov.uk/media/6411dc6dd3bf7f79d7b78f4b/Katherine__Armstrong_Ecology_Skylarks.pdf
The submission of Katherine Armstrong made at the hearing before Mr Griffiths	26/03/2024	https://assets.publishing.service.gov.uk/media/660448bc91a320001a82b107/Katherine_Armstrong_statement_Redacted.pdf

B: Background

3. The Undertaking was submitted to the Planning Inspectorate after the deadline for representations of 8th January 2024 and commits the landowners to ensuring that the Skylark Mitigation Strategy ("**SMS**") is upheld for the lifetime of the solar farm, i.e., 40 years.

4. On 26th March 2024 a Decision Notice was published in relation to an Appeal regarding a proposed solar "farm" on Land west of Berrington, Shrewsbury, Shropshire, SY5 6HA ("**Berrington**") – Appeal Reference: APP/L3245/W/23/3332543 following a five-day Inquiry held in March 2024. In Berrington the Applicant had also offered a Unilateral Undertaking. However, this was considered insufficient to address the harm to skylarks which would result from the solar "farm". In considering the issue, the Inspector commented as follows:

> *141. I am in no doubt that the appeal proposal is likely to have a significant adverse effect on a priority species, notably the Skylark which attracts* ***significant negative weight****. It has also been shown that there is no satisfactory alternative means of avoiding the adverse effect through redesign or by re-locating on an alternative site. Development plan policy requires a corresponding exercise of balancing the social or economic benefits of the proposal.*

178. However, on the evidence before me, and having regard to local and national policies, there is a clear mandate for consideration by the decision maker. ***The starting point is, in the knowledge that the appeal site is used by Skylarks for nesting, the inevitable displacement of a protected species is a very strong material consideration****.*

179. Application of the hierarchy of avoid, mitigate or compensate ultimately became grounded in the latter. But even then, the ability to compensate rests on a scheme yet to be produced and to be secured by a Grampian condition in tandem with the ***Unilateral Undertaking****.*

180. Whilst having no criticism of the covenant within Schedule 1 as such, I am not convinced that the nature and effectiveness of the intended mitigation measures are sufficiently understood and well-developed to provide sufficient reassurance.

183. …. the Skylark Mitigation and Management Strategy sets out guiding principles to be followed. Further, the Appellant has sanctioned the condition. The claim is, if the details were found to be unacceptable, the Council would simply refuse to endorse them with a resultant embargo on the ability to implement the planning permission. However, in my opinion and in the alternative, if the compensation scheme was found to be unacceptable, and it was the only impedance to the development and all its benefits, the Council would be faced with a balance between the two single opposing interests, out-with the balancing exercise of this decision.

184. On this basis, I am not satisfied that this issue should be deferred to another day and ***I attach significant weight to the impact of the proposal on Skylarks, a priority species in decline****.*

5. In their Decision Notice of 16th May 2023, Shropshire Council had Refused permission for Econergy International Ltd to construct an up to 30 MW Solar PV Array, stating that:

'Skylarks are protected under the EU Birds Directive 79/409/EEC. The application affects land which is used by Skylarks for nesting. The applicant proposes to mitigate for the loss of nesting opportunity by providing protected plots on land to the immediate north of the site. However, this land if of a different character and the general area is also used for seasonal shooting which may coincide with the Skylark nesting season. It is considered that the applicant has not demonstrated sufficiently that the proposed off-site mitigation would provide an appropriate safe and undisturbed environment for successful Skylark nesting'.

6. For the purpose of the Berrington Appeal, Shropshire Council's Ecology expert, Diane Corfe submitted a Proof of Evidence[1] which identified a number of concerns in relation to the appellant's Skylark mitigation. Diane Corfe then submitted a further Rebuttal Proof ("**RP"**) responding to points made by the appellant's Expert Witnesses in their Ecology Proof of Evidence (see **Appendix**). Many of points made by Ms Corfe are relevant to the Skylark Mitigation Strategy which is the subject of the Unilateral Undertaking submitted by Berden Solar Limited.

[1] https://www.shropshire.gov.uk/media/27355/cd-133-shropshire-council-proof-of-evidence-ecology.pdf

C Inadequacies in the Applicant's mitigation of harm to Skylarks

7. Protect the Pelhams therefore wishes to draw the attention of the Inspector to the following inadequacies in the Applicant's Ecological Assessment by reference to the approach taken in relation to Berrington:

1. Skylark a Priority species	
Berrington: According to Shropshire Council, the Applicant's EcIA should have drawn attention to Skylark under Shropshire's Core Strategy Policy CS17 and SAMDev policy MD12 as a **Priority Species/Species of Principal Importance** significantly impacted by the development.	Berden: The Applicant's Cherryfield Ecological Assessment does not draw attention to Skylark as a Priority species. The Environmental Statement (ES) by RPS **does not draw attention to Skylark as a Priority Species**. The species is noted only in ES Table 7.6 as 'BRed,' with no further reference to its conservation status in the ES.
2. Lack of baseline assessment	
Berrington: Econergy's EiCA acknowledged that six site survey visits are recommended in the Guidelines from the Bird Survey & Assessment Steering Group, 2023; CD 10.4, but admitted that only four site survey visits had been carried out on the Berrington Site between 23 March 2022 and 30 May 2022. Diane Corfe considered that **four surveys were insufficient to provide robust data** (RP 2.13).	Berden: **Only three site surveys** of the Site were carried out by the Applicant's consultants, Cherryfield Ecology, as long ago as June 2019, September 2020 and February 2022. These are now **out of date**. One additional desk-based and habitat survey by RPS (9th November 2022) was used to support the Applicant's Environmental Statement. The **estimate** of 14 breeding pairs of Skylark in the SMS is therefore just that: an estimate. Moreover, the figure of 14 breeding pairs is based on a survey of a potential solar farm proposal site in Walpole, Norfolk, carried out in 2021 (SMS 2.2). The justification for this methodology is unclear from the SMS. The SMS claims to be providing a precautionary additional 8 Skylark plots (36 rather than 28), but in the absence of robust data it is not possible to be certain how many plots are needed as compensation for the loss of habitat. On many occasions the number of skylarks observed singing on the Berden Hall Solar Farm Site suggests that the numbers of **breeding pairs may be higher than 14 pairs**, but in the absence of a full baseline assessment it is not possible to know.

3. Lack of wintering bird surveys	
Berrington: The Applicant had carried out no wintering bird surveys (RP 2.22). Diane Corfe states: '*I do not agree that it is possible to state that the development is unlikely to negatively affect any wintering birds using the site, particularly skylark which roost in fields of winter stubble*.'	Berden: The Applicant has carried out no wintering bird surveys. Cherryfield acknowledged the limitations of their three site visits, only one of which took place in winter, and RPS's report is a desk study and habitat survey. It is therefore not possible to be certain that the development will not negatively affect any wintering birds using the site, particularly Skylark.
4. Lack of mitigation land survey	
Berrington: Diane Corfe points to the failure of the Berrington Applicant to survey the mitigation land proposed for Skylark. Consequently, '*no baseline has been established in accordance with best practice*' and it is therefore '*not possible to robustly justify a conclusion of no significant effect' (*RP 2.16*).* Ms Corfe states (RP 2.27): *'I do not agree that it is appropriate to devise a mitigation strategy for a significantly adversely affected species whereby, over 40 ha of potentially suitable breeding habitat is lost and only 6ha of potentially suitable habitat is proposed as off-site compensation. Furthermore, this mitigation land has an unknown ecological status for skylark or any other species, as it has not been subject to field survey verification*.'	Berden: **The Applicant has not surveyed the mitigation land**, thus there has been no baseline assessment of the two fields proposed as mitigation and no assessment of the potential impact of future development or changing farming practices on or near this land. **Neither has the Applicant established that this land is suitable for Skylark**. As in the Berrington case, it is not appropriate to devise a mitigation strategy for a significantly adversely affected species whereby **over 63 ha of potentially suitable breeding habitat is lost and only 14 ha** of potentially suitable habitat is proposed as off-site compensation (SMS 3.11).
5. Lack of robust and credible evidence for BNG	
Berrington: Diane Corfe states that without a full baseline assessment of the mitigation land there is potential for the significant effects on Skylark to be *'traded with significant effects on another important ecological feature(s), such as the semi-natural grassland that has developed on the mitigation land since the land management practices changed in 2012 or another species, such as great crested newt'* (RP 2.23).	Berden: At the Redetermination Hearing on 26th March it was suggested by the Planning Inspector that some species might benefit from the development even if others were adversely impacted. However, as Ms Corfe points out, '*It is agreed that the BNG achieved is likely to be beneficial to a range of species but these habitat improvements do not directly benefit skylark. One of the ten principles of BNG is achieving the best outcomes for biodiversity by **using a credible and robust evidence base to deliver compensation that is ecological equivalent** and that accounts for the location and timing of losses*' (RP 2.45).

6. Skylark territory metric	
Berrington: Diane Corfe cites the leading authority on Skylark as calculating a density of 0.28 territories per hectare of arable farmland for Skylark (RP 2.26).	Berden: The SMS uses the metric 0.22 Skylark territories per hectare of arable farmland for the Skylark plots proposed, and offers no rationale for using this lower-than-accepted metric (SMS 2.4).
7. Mitigation land	
Berrington: Diane Corfe highlights that the mitigation land, cattle grazing pasture, is of a different character from the skylarks' existing habitat, arable farmland (RP 2.26).	Berden: Although the mitigation land (Fields 1 & 2) for Berden Hall Solar Farm is similar to the Site fields in being arable land, it is not identical habitat. Skylarks are present in modest numbers in various locations around Berden, which is surrounded mainly by arable land, but the greatest density of Skylark is on the proposal site fields, which may be why the BTO has records for their presence there over many years. Red kite is known to nest at Arnold Spring (Ancient Woodland) to the north of Berden, which may explain why there are lower numbers of Skylark north of the village. Being large open fields with few trees and other tall structures (which expose **ground-nesting birds to predation by birds of prey such as Red kite**), the Site is especially suitable habitat for Skylark.
8. Onsite mitigation	
Berrington: Diane Corfe states that Offsite compensation should only be considered for a development when all other options Onsite have been exhausted (RP 2.8).	Berden: Statera have nowhere considered onsite mitigation for Berden Hall Solar Farm, such as setting aside areas within the solar arrays for breeding Skylark.
9. Offsite mitigation	
Berrington: Diane Corfe cites a reference who states 'that in intensive arable landscapes, there is less likelihood for successful 'absorption' of displaced skylark from impacted sites and that this can accelerate the decline of the species' (RP 2.31).	Berden: The mitigation land (Fields 1 & 2) is intensive arable land.

10. Loss of breeding habitat	
Berrington: The key issue for Skylark in this case is **loss of breeding habitat**.	Berden: There are references in the SMS to 'nesting sites' (3.6), 'nests' (3.7) and 'nesting habitats' (3.8)[2] when in fact Skylark plots are intended to increase foraging opportunities for birds - they are **not designed as nesting plots**. At the Redetermination Hearing at Uttlesford District Council on 26th March the Applicant's own Ecology expert argued that Skylark plots help the birds to breed by increasing their food supplies but she explained that the plots are not intended as nesting plots.

D Conclusion

8. Dismissing the Berrington Appeal, the Inspector concluded:

> *187. Considering the proposal in the round, and in light of the many facets of national guidance, I conclude that the nature and extent of the benefits of the proposal do not outweigh the harm that I have identified and the proposal would be in conflict with the development plan read as a whole. Having decided that the planning conditions before me would not make the development acceptable, I dismiss the appeal.*

9. The Inspector is respectfully reminded of the requirements of paragraph 185b of the NPPF which states as follows (emphasis added):

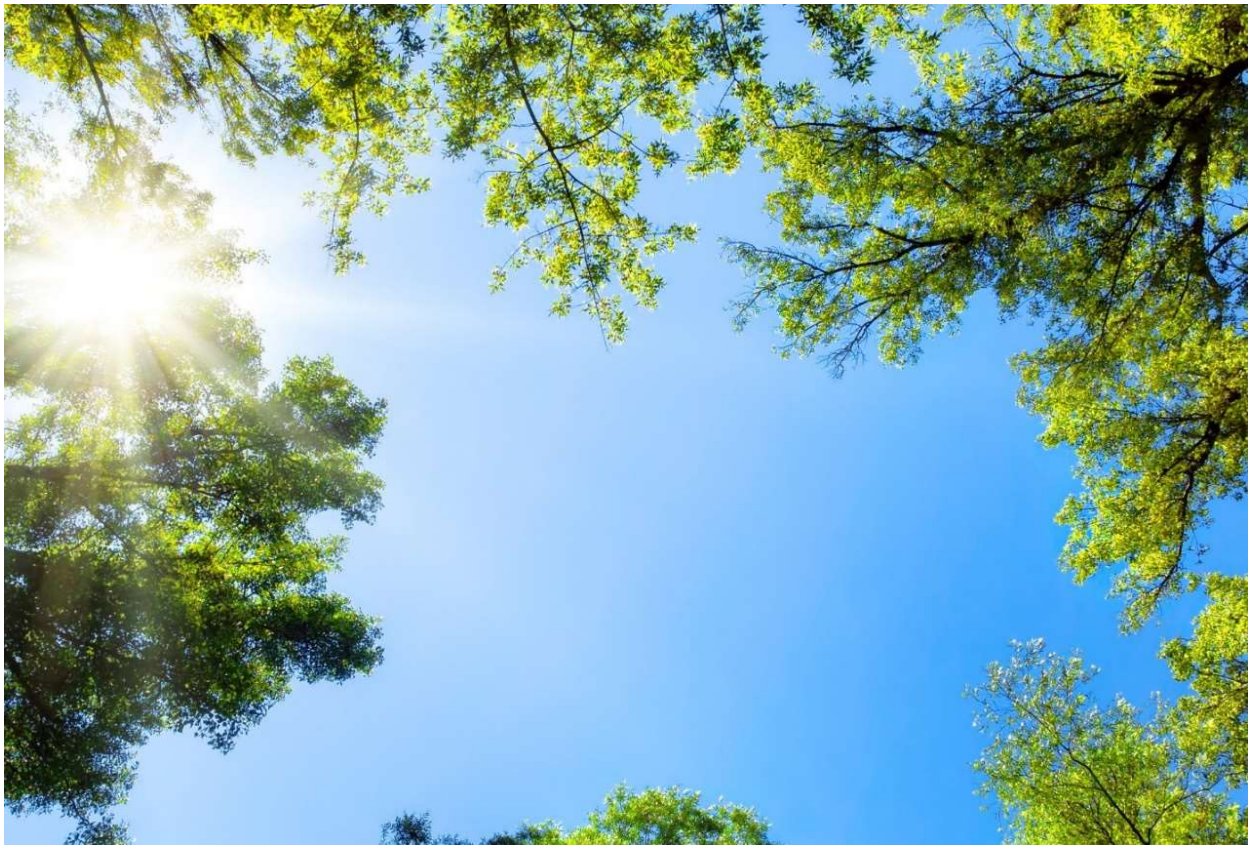
> *"185. To protect and enhance biodiversity and geodiversity, plans should: …*
>
> *b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity".*

10. PtP therefore urges the Inspector to reject the Unilateral Undertaking proposed by the Applicant in relation to the Proposed Development and to attach significant weight to the impact of the proposal on Skylarks, a priority species in decline.

[2] e.g. Pelham Solar Skylark Nest sites 527 SL LP Rev A 08.02.23 v2 (PDF, 1.53 MB, 1 page)

APPENDIX

REBUTTAL PROOF OF DIANE CORFE (TECHNICAL DIRECTOR OF WATERMAN INFRASTRUCTURE AND ENVIRONMENT LTD & NATIONAL SERVICE LEAD FOR ECOLOGY) DATED 26/02/24 RELATING TO LAND SOUTH OF BERRINGTON SHREWSBURY, SHROPSHIRE



Shropshire Council

Rebuttal Proof

Of Diane Corfe

Ecology and Nature Conservation

Town and County Planning Act 1990 (as amended)

APPEAL BY ECONERGY INTERNATIONAL LTD

Against the Refusal of Planning Permission by Shropshire Council for:

"Erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling."

Appeal Reference: **APP/L3245/W/23/3332543**

SC Planning Application Reference: **22/04355/FUL**

SC Appeal Reference: **23/03207/REF**

Waterman Infrastructure & Environment Ltd
Pickfords Wharf, Clink Street, London SE1 9DG

Client Name:	Shropshire Council
Document Reference:	20615101-WAT-XX-XX-RP-N-750001_P01_S1
Project Number:	WIE20615-101

Quality Assurance – Approval Status

This document has been prepared and checked in accordance with
Waterman Group's IMS (BS EN ISO 9001: 2015, BS EN ISO 14001: 2015 and BS EN ISO 45001:2018)

Revision	Status	Date	Prepared by	Checked by	Approved by
01	Final	26/02/24	Diane Corfe Technical Director (Ecology)	Becky Bailey Associate Director (Ecology)	Ruth Jeffs Director

Comments

Revision		Status	
P*nn*	Preliminary (shared; non-contractual)	S1	Coordination
C*nn*	Contractual	S2	Information
		S3	Review & Comment
		S4	Review & Authorize
		S5	Review & Acceptance
		A0, A1, A*n*	Authorized & Accepted (*n*=work stage if applicable)

1. Personal Details and Background

1.1. My name is Diane Corfe. I am employed by Waterman Infrastructure and Environment Ltd as a Technical Director and their National Service Lead for Ecology. Waterman is a Registered Chartered Institute of Ecology and Environmental Management (CIEEM) Ecology Practice. I have held senior positions in multi-disciplinary consultancies (Atkins, Scott Wilson, Jacobs) and a pure sustainability consultancy (ERM Ltd) before joining Waterman.

1.2. My academic and professional qualifications are Bachelor of Science Degree (with joint honours) in Botany and Zoology (Environmental Biology) and a Master of Science degree in Environmental Engineering. I am a full member of the Royal Society of Biology, a Chartered Biologist and a full member of CIEEM with over 30 years' experience in consultancy.

1.3. I am required by CIEEM to abide by the Code of Professional Conduct (the Code) which includes exercising sound professional judgement in my work, identifying clearly the limitations and applying objectivity, relevance, accuracy, proportionality and impartiality to the information and professional advice I provide. This Rebuttal has been prepared in accordance with this Code.

1.4. I have not been involved in the scheme prior to the submission of the appeal. This Rebuttal Proof should be read alongside my Proof of Evidence for the planning application 22/04355/FUL at land south of Berrington, Shrewsbury, Shropshire, SY5 6HA.

1.5. The application was refused on the following ecological grounds as set out in the Decision Notice (dated 16th May):

"Skylarks are protected under the EU Birds Directive 79/409/EEC. The application affects land used for Skylarks for nesting. The applicant proposes to mitigate for the loss of nesting opportunity by providing protected plots on land to the immediate north of the site. However, this land if (sic) of a different character and the general area is also used for seasonal shooting which may coincide with the Skylark nesting season. It is considered that the applicant has not demonstrated sufficiently that the proposed off site mitigation would provide an appropriate safe and undisturbed environment for successful Skylark nesting. The proposals are therefore contrary to Core Strategy CS17 and SAMDev policy MD12".

2. Ecology Rebuttal

2.1. This Rebuttal Proof addresses the Council's response to matters raised by the Appellant's Expert Witnesses (James Packer and Howard Fearn) in their Ecology Proof of Evidence.

2.2. I refer to the relevant paragraph number and statement made by the Appellant's Expert Witnesses, followed by my rebuttal. Each is addressed in turn as they are ordered in the Appellant's Ecology Proof of Evidence.

2.3. Paragraph 2.1.2 states:

The first draft of this proof of evidence was prepared by Mr Packer. At a very late stage, the Council submitted a Supplementary Statement of Case which raised ecological issues which were broader in scope than those set out in the reasons for refusal. Based on the need to deal with all points properly, Mr. Fearn will give witness evidence at the inquiry. The Inspector and Council have been made aware of this position with the Council accepting responsibility for the very late submission of what amount to new reasons for objection. Mr Fearn reviewed and revised the first draft proof document prepared by Mr Packer and, as such, all subsequent first-person references in this document are assigned to Mr Fearn.

Rebuttal:

2.4. It is agreed that the Supplementary Statement of Case (SoCG) was made available at a late stage, however, the additional points raised are fundamental to the delivery of any ecological impact assessment so far as it should follow current best practice. This includes the establishment of a robust baseline proportionate to the impacts, the assessment of impacts and the application of the ecological mitigation hierarchy to identify appropriate and effective mitigation/compensation measures to address significant effects at the construction and operation stages. In addition, once contacted by the Appellant's expert witness, James Packer on 23rd January, a Teams call was held on Friday 26th January to discuss the SoCG provided the previous day. During this call, I highlighted the supplementary points that I identified following a review of the planning documentation and a site visit completed on 23rd January. This was followed by an e-mail of 29th January to James Packer which included a copy of the SoCG with suggested tracked changes and comments. The next day (30th January), the supplementary Statement of Case was issued.

2.5. Paragraph 3.2.2 states:

Core Strategy Policy CS17 does not specifically mention Skylarks, but it does have a wider aim to "identify, protect, enhance, expand and connect Shropshire's environmental assets, to create a multifunctional network of natural and historic resources." It requires all development to protect and enhance the diversity, high quality and local character of Shropshire's natural environment, and not adversely affect the ecological value and function, their immediate surroundings or connecting corridors. All development must not have a significant adverse impact on Shropshire's environmental assets and not create barriers or sever links between dependent sites. All development should secure financial contributions towards the creation of new, and improvement to existing environmental sites and corridors, and provision to long term management and maintenance.

Rebuttal

2.6. Core Strategy Policy CS17 covers all Priority habitats and Priority species and in so doing skylark are included under this policy. There are currently over 900 Priority Species/Species of Principal Importance, and this list is subject to change, it is therefore an omission not to state skylark falls under this Core Strategy policy in the Ecological Impact Assessment (**CD 1.23** and **CD 1.24E**) given its importance and the fact that it is significantly adversely impacted by the development.

2.7. Paragraph 3.2.3 states:

SAMDev policy MD12 does not specifically mention Skylarks, but it does require new development proposals to conserve, enhance and restore Shropshire's natural and heritage assets.

Rebuttal

2.8. For the same reasons as given above, I believe the EcIA should have drawn attention to skylark under this policy. It is noteworthy and relevant that the first action in the hierarchy for important species that are affected by development, is to conserve. Whilst efforts to do this within the Application Site are evident as shown by some small areas at the periphery of the site being retained and enhanced, these areas are not sufficient to mitigate for the onsite impacts to skylark nesting habitats. It is uncertain why the suggestion made by the Council on this matter in e-mail correspondence dated 10th March 2023 (refer to Paragraph 3.25 of my Proof of Evidence) were not possible to implement and off-site compensation was progressed. Offsite compensation should only be considered for a development when all other options on site have been exhausted. Given the importance of the Application Site for skylark, and the scale of development impact, it is considered that the feasibility of changing the layout of the solar panel arrays to provide larger areas of highly suitable breeding habitat within the central areas of the site could have been subject to a re-evaluation of the layout to incorporate the Council's recommendation. Evidence of this optioneering and the reasoning for it to be discounted is not reported in the EcIA (**CD 1.23** and **CD 1.24E**).

2.9. Paragraph 3.2.4 states:

The Council's SS of 30th January refers to art 3 of Policy DP26 and DP12 of the emerging local plan (CD 5.6). Policy DP26 relates to strategic, renewable and low carbon infrastructure and does not make specific reference to Skylarks or any other species; however, it does require applications to be accompanied by an assessment of the proposal's effect on natural assets. Part 3 of the policy states that this assessment should be proportionate to the development proposed and include sufficient information to allow an accurate evaluation. Paragraph DP12 requires applications to be supported by an Ecological Assessment and sets criteria for avoidance, mitigation of and compensation for adverse effects.

Rebuttal

2.10. For the same reasons as given above, I believe the EcIA should have drawn attention to skylark under this policy and the weight that it carries.

2.11. Paragraph 5.1.1 states:

A breeding bird survey was undertaken by ADAS in 2022 and this is reported as part of the EcIA (ADAS, 2023, CD 1.23). The survey took place during four visits between 23 March 2022 and 30 May 2022….. It is acknowledged that recommendations within the web based guidance for Bird Survey Guidelines (Bird Survey & Assessment Steering Group, 2023; CD 10.4) recommends that six survey visits are undertaken, but this is the number of visits suggested in the guidelines that is "sufficiently robust to identify the majority of bird species using lowland deciduous woodland in the breeding season and establish a good understanding of the numbers and distribution of species present." The guidelines state that "lowland deciduous woodland is one of the most complex habitats to survey, due to the range of bird species it can support, and the dense vegetation leading to a heavy reliance on vocal encounters." The proposed development site is not lowland deciduous woodland. …….. It is my opinion that four, rather than six survey visits has provided an adequately representative bird survey result of this site. …….. To this end, it is my view that a four-visit survey is entirely robust in an arable landscape.

Rebuttal

2.12. I agree that the method states that six visits is considered robust to identify species using a complex habitat such as lowland deciduous woodland, but the method goes on to say "*Six visits is therefore considered to be a proportionate survey effort for all terrestrial and freshwater habitats. This number is*

based on a small amount of research and the collective opinion of the steering group. A more substantive piece of research is planned to inform this element of the guidelines but until the evidence suggests otherwise, six is the recommendation."

2.13. As such the default position of the survey guidelines (**CD10.4**) is a minimum of six survey visits during the breeding season and four surveys in the non-breeding season unless a robust justification can be made. I do not agree that the surveys completed at the Application site were sufficient considering the deciding factors that are identified within the Guidelines, but also the lack of details provided about the survey methodology itself (**CD 1.23** and **CD 1.24E**) and the accuracy of how the results have been reported in the Results Tables and accompanying Figures (reproduced in **Appendix A** of my Proof of Evidence).

2.14. Taking the factors that the Guidelines state can be considered when looking to deviate from the recommended approach, I have set out below my opinion against each:

- Is the site small and of negligible importance for breeding birds? **No**
- Is the potential for the development to have a negligible effect on breeding birds? **No**
- Are there important/priority/red list species present on or adjacent to the site? **Yes**
- Is the development site in proximity to statutory and non-statutory designated sites with either birds or habitats of importance **Yes**

2.15. In terms of how the results have been reported as stated in my Proof of Evidence, the timing of the surveys has not been shown. The Guidelines state that surveys completed beyond 10-11am will not provide representative results as bird activity tails off at this time. In addition, for particularly large sites, surveys may require several surveyors. It is not stated how many surveyors were involved on this Application site. Furthermore, late migrants in 2022, as shown in **Appendix F** of my Proof, is further justification for surveys extending through June and July to assess the likely number of broods sustained at the Application site. It is also important to note that all other birds were being recorded importantly those that are in hedgerow and woodland habitats and transects show accurate results up to 50m either side of a transect. As the transect routes are not shown in the result maps it's not possible to ascertain whether all areas of the Application site, in particular, the central zones were subject to the same survey effort as that at the periphery. The survey guidelines state the importance of recording the presence of priority species/Species of Principal Importance, in adjacent land too and to record different types of activity/behaviour notation (for example, flying overhead, evidence of feeding young. i.e. notations as specified in the Guidelines and included as **Appendix E** in my Proof of Evidence).

2.16. Given the importance that different habitats play to support a sustainable, highly productive population of skylark, it is expected that the survey transect(s) would have taken in land outside the Application site, and particularly included the mitigation land. As such, I cannot conclude that the baseline has been established in accordance with best practice and furthermore, given the presentation and evaluation of the results, that the Precautionary Principle **(CD 10.28**) has not been applied:

"*The evaluation of significant effects should always be based on the best available scientific evidence. If sufficient information is not available further survey or additional research may be required. In cases of reasonable doubt, where it is not possible to robustly justify a conclusion of no significant effect, a significant effect should be assumed. Where uncertainty exists, it must be acknowledged in the EcIA".*

2.17. Paragraph 5.1.2 states:

The bird survey results presented in table 5 of the EcIA show a range of bird territories present on the site, most notably the Species of Principal Importance Dunnock (3 territories), Skylark (11 territories) and Yellowhammer (3 territories). All Species of Principal Importance have the same status under the planning policies mentioned above.

Rebuttal

2.18. It is agreed that all species mentioned in the above paragraph are Species of Principal Importance, however, dunnock is an amber listed species meaning that its decline has been moderate, rather than being a significantly high decline (ie 50%) as is the case for a red listed species, in the last 25 years or longer. Amber species are also considered to be recovered or are recovering from historical decline, whereas red listed species are globally threatened or are not recovering from historical decline. Dunnock is also most commonly associated with hedgerows and woodland edge habitats and the survey findings on the Application site confirmed this to be the case, with only three territories identified.

2.19. Although yellowhammer is a red listed species the same as skylark, they are associated with well managed hedgerows and scrub in addition to lowland arable and mixed farmland. Whereas skylark do not use hedgerows or woodland edge habitats for their nest sites or to forage in.

2.20. Furthermore, Shropshire's Biodiversity Action Plan (BAP) Farmland Birds plan, which includes amongst other species, yellowhammer and skylark, details the reasons for inclusion of additional species due to significant declines since 1975. The Plan highlights that skylark declined nationally by 75% between 1972 and 1996, with further declines of 10% between 1994 and 2004.There was a UK BAP for skylark but none for dunnock or yellowhammer, again reflecting the difference in conservation status.

2.21. Only three yellowhammer territories were identified on the Application Site, the location of these was not indicated in the second version of the EcIA (CD 1.23), but they were shown in the Figures in the first revision of the EcIA (CD 1.24E), albeit with an incorrect transposition of the red line boundary and orientation of the aerial mapping. This species was associated with a section of the northern boundary vegetation (hedgerow) and bordering the area of lowland fen also along the northern boundary. It appears from the EcIA (CD 1.23) that there are no direct impacts on these habitats which are the same as those that support dunnock, as they are being retained and enhanced as part of the proposed development. It is therefore my opinion that it is incorrect to apply the same weight of planning policy to yellowhammer and dunnock as applied to skylark in this case, as their habitat is significantly improved within the Application Site.

2.22. Paragraph 5.1.3 states:

Wintering bird surveys of the site were scoped out because of the lack of habitats on the site that would support significant numbers of wintering birds that are functionally linked to a protected site. Also, the impact of the development is unlikely to negatively affect any wintering birds using the site. A confirmatory wintering bird survey visit undertaken by Mr Packer on 10 January 2024 found few birds on the site, including within the compensation area to the north. During this visit thirteen species were recorded, with the only Species of Principal Importance present being Skylark. Eleven Skylark were present on the site, and six were present on the compensation area. Skylark populations are migratory and birds will range widely depending on food (seed in winter) availability. As such, it is not correct to link winter populations to the breeding value of the site.

Rebuttal

2.23. I do not agree that it is possible to state that the development is unlikely to negatively affect any wintering birds using the site, particularly skylark which roost in fields of winter stubble. The fact that skylark was seen on the site (and the mitigation land) during the site visit undertaken by James Packer on 10th January, provides evidence that skylark use both the Application Site and the proposed mitigation land, albeit these numbers were encountered during a single reconnaissance visit, they have not been formally reported and do not constitute a full survey. I have made no link to the winter population and the breeding value of the development site in my Proof of Evidence; however, the fact remains that the actual status is not known on either the Application Site or the proposed mitigation land. In my opinion, in order to be certain of the efficacy of the proposed mitigation, a full baseline is necessary to ensure that another

significant effect doesn't result i.e. the significant effects on skylark are not simply traded with significant effects on another important ecological feature(s), such as the semi-natural grassland that has developed on the mitigation land since the land management practices changed in 2012 or another species, such as great crested newt.

2.24. It is also important to note that research indicates that there are likely to be returning birds in winter flocks on fields comprising the same birds that have bred there the season before, particularly those in small numbers indicating they are resident birds rather than larger flocks that indicate they are migrants (Donald (2004), The Skylark). This provides additional justification for the establishment of both breeding and wintering bird status particularly to inform effective skylark mitigation. If development effects are poorly understood, it follows that it is unlikely that effective mitigation can be identified that it is sufficient or provided in the correct location.

2.25. Aligned to this robust baseline is the importance of defining the correct number of transects, survey effort (no. of surveyors and frequency of surveys) and the appropriate zone of influence for bird surveys that should in most circumstances, extend beyond the red line boundary of the development site itself. This is particularly important with respect to bird surveys (**CD 10.4, CD 10.10, CD 10.28 and CD 10.32**). In the case of skylark, and at the significant numbers encountered during the breeding survey (**CD 1.23** and **CD 1.24E**) and known to be present in this part of Shropshire (Birds in Shropshire, 2022), a wintering bird survey of the Application site and its immediate surroundings, in my opinion was necessary to ascertain the Application's site importance as a wintering roosting site. In addition, this survey would have identified whether the land use at this site or the proposed mitigation land was providing a unique resource to breeding and wintering skylark. It is not appropriate to assume absence of a species which has been in significant decline as shown by its red list status. The map below is an interpretation of the skylark records in Shropshire as recorded in the Shropshire Bird Report 2022 (the skylark section is reproduced in **Appendix F** of my Proof of Evidence). This shows that the area to the east of Berrington supports a stronghold of singing/breeding skylark.

2.26. Paragraph 5.1.4 states:

The proposed Skylark compensation area has not been surveyed for breeding birds. Whilst it is accepted that surveys would have been preferred, it is not always possible to undertake surveys due to seasonal restrictions. I do not, however, consider this to be a substantive limitation when it comes to determining whether a site is important for Skylark populations. The species is very well studied, and it has been shown population densities depend heavily on land management practices, and in particular cropping regimes. In other words, the relationship between Skylarks and habitats is very well known. This is evidenced in Fox (2022, CD 10.22), which presents in Table a data adapted from Donald (2004), in a species-monograph book entitled 'The Skylark'. I consider this book to be the definitive text on the species. The table shows average pair densities for a series of habitat types. The land use of the proposed compensation area since 2022 has been intensively cattle grazed pasture. This type of land use supports the lowest density of any habitat type shown in Table 1 of Fox (2022, CD 10.22), at just 0.02 pairs of Skylark per hectare (ha). Improved grassland scores marginally better (at 0.05 pairs) and intensive silage at 0.08 pairs. All these management types are at the bottom (lowest Skylark density) of the table. To contract, the highest densities are present in coastal marsh (0.76 pairs / ha) and organic set aside (0.56 pairs / ha). Arable farmland typically supports 0.28 pairs / ha.

Rebuttal

2.27. I do not agree that it is appropriate to devise a mitigation strategy for a significantly adversely affected species whereby, over 40 ha of potentially suitable breeding habitat is lost and only 6ha of potentially suitable habitat is proposed as off-site compensation. Furthermore, this mitigation land has an unknown ecological status for skylark or any other species, as it has not been subject to field survey verification. It is also important to note that skylark in common with most mobile species, will use sub-optimal habitats in their territorial range, if optimal conditions change. However, the degree of change resulting from direct interventions through development or change in land management, is not the same as seasonal changes that occur from year to year.

2.28. Paragraph 5.1.5 states:

Consequently, it is possible to be certain that the proposed compensation area supports very low numbers of breeding Skylark pairs due to current land management. The total size of the proposed compensation area is 25ha, of which 6ha of land will be managed for breeding Skylarks. Following the average density data presented in Fox (2022, CD 10.22), 25ha of intensive grazed pasture would be expected to support just 0.5 pairs of Skylark (25 x 0.02); improved grassland would likely support 1.25 pairs; and intensive silage 2 pairs. These figures are reduced again if only the 6ha of land proposed for management is considered (e.g., intensive grazed pasture would support 0.12 pairs). Whilst such figures may not be absolute, they fully demonstrate that the proposed compensation area, under current management, affords very poor-quality habitat for nesting Skylarks, and that the number of breeding pairs present each year must be very low.

Rebuttal

2.29. The confirmatory one-day site visit completed by James Packer on 10th January 2024 confirmed that six skylark were observed on the mitigation land. It would be erroneous to extrapolate that to be representative of the true winter baseline for that site and as previously stated doesn't necessarily correlate with the status of breeding skylark either. It does however confirm that skylark is present in the local area and was using the site on 10th January. Research shows that this can be evidence that breeding birds that had been present the season before, have returned to roost at the same site in the winter. The total size of the mitigation land necessary to fully compensate the adverse impact on the skylark at the Application Site, is predicated on the fact that the number of territories identified is robust and that there is sufficient carrying capacity potential for these displaced birds in the mitigation land. The suitability of the mitigation land also appears to be dependent on the outcome of the Natural England

screening set out in paragraph 6.1.5 of the Appellant's Proof of Evidence.

2.30. Paragraph 5.2.4 states:

There is no evidence to suggest that solar farms negatively impact Skylark other than when nesting.

Rebuttal

2.31. I do not fully agree with this statement. It is known that the ability to forage on solar farms is removed due to the changed land use from arable to grassland. Furthermore, the same reference quoted by the Appellant's Expert Witnesses in their Proof of Evidence states that '*potential effects of development on ground-nesting birds of open habitats are being overlooked, with mitigation often arbitrarily formulated*' (**CD 10.22**). This reference goes on to state that there appears to be an inconsistency in the understanding of not only skylark ecology but also impacts upon them and what mitigation is appropriate. It acknowledges that in intensive arable landscapes, there is less likelihood for successful 'absorption' of displaced skylark from impacted sites and that this can accelerate the decline of the species. It also acknowledges the importance of mitigating for the loss of foraging habitats as a result on solar farms, by retaining sufficiently open habitats within proposals stating that 'absorption' (of foraging birds) may theoretically reduce mitigation requirements further, '*However, caution should be exercised, and this effect may require baseline survey evidence*'. (**CD 10.22**)

2.32. Paragraph 6.1.1:

It is accepted that Skylarks may be prohibited from nesting within the site following the installation of the proposed development. Mitigation and compensation have been provided on a precautionary basis, whereby the loss of all eleven pairs noted within the site during field surveys is assumed.

Rebuttal

2.33. Given the limitations associated with the breeding bird survey on the Application Site, no breeding bird survey (or any other ecological survey) on the mitigation land and the lack of a wintering bird survey on both sites, the level of precaution applied appears to amount to an additional 0.5-1ha, little more than like for like.

2.34. Paragraph 6.1.2 states:

The proposed development will not preclude Skylarks from using the site as a feeding area, and that the conversion of intensively managed arable land to species-rich grassland will very likely increase food abundance above existing levels under arable production. …….. Increasing food availability through a change in land management within the site is likely to increase breeding productivity levels of Skylark pairs in the vicinity of the site, including those in the proposed Skylark compensation area. It is accepted that mitigation is required to provide breeding habitat; however, an assessment of the effects of the proposed development on Skylarks should also consider the continued availability of foraging habitat within the site, which will increase the abundance of invertebrate food availability. This in turn is likely to lead to improved breeding productivity, both on terms of the numbers of chicks reared and the number of nesting attempts by each pair per season

Rebuttal

2.35. It is not agreed that the change in habitat will improve the food resource as the options and management at the mitigation land appears to be dependent on the outcome of consultation with Natural England (refer to paragraph 6.1.5 of the Appellant's Proof of Evidence)

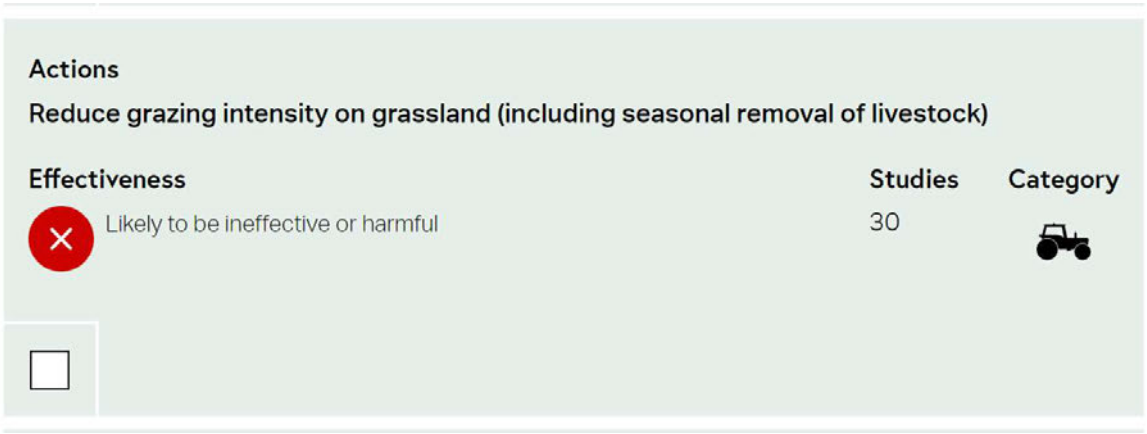
2.36. Paragraph 6.1.4 states:

The land use of the compensation area since 2022 has been intensively cattle grazed pasture. This type

of land use is not optimal for nesting Skylark and therefore it was judged that this land could be enhanced for nesting Skylark to provide compensation for an unpredictable number (up to eleven territories) of displaced birds from the solar farm.

Rebuttal

2.37. It is known that it is important to exclude grazing from pasture during the skylark breeding period, to avoid trampling and direct damage to nests, but grazing at other times of year and its intensity has not been shown to preclude skylark from taking up territories, in fact some grazing can open up swards to encourage skylark to commence nesting. Refer to extract below from Conservation Evidence (**CD 10.37**) which identifies that there is no beneficial impacts to reducing grazing to a number of species.
A systematic review of the effects of grazing intensity on meadow pasture concluded that intermediate levels of grazing are usually optimal for plants, invertebrates, and birds but that trade-offs are likely to exist between the requirements of different taxa. This is particularly relevant as the semi-improved grassland that extends across the proposed mitigation land is one of the four habitats that are not categorised as Priority, but nevertheless hold potential importance for conservation in England as stated in my Proof of Evidence (Paragraph 4.4) and shown in **Figure 3** of the same. Therefore, the importance of this grassland and its proximity to designated sites (Top Pool LWS, The Long Pool LWS, the Big Pool LWS and Berrington Pool SSSI and Midland Meres & Mosses – Phase 1 Ramsar site) cannot be disregarded when considering its value to accommodate displaced skylark territories.



2.38. It is reasonable that given the limitations associated with the field survey in 2022, the importance of skylark in the County, and the uncertainty around the efficacy of the proposed measures at the mitigation land (including but not limited to the lack of ecological baseline) that only providing at best, like for like compensation is highly likely to be insufficient to address the adverse effects on skylark.

2.39. Paragraph 6.1.5 states:

The basic premise of ADAS (2023b: CD 1.15) is to improve the area as much as possible so that the carrying capacity of the habitat for nesting Skylark increases and the area can absorb Skylarks that might be displaced from the development site. The mitigation and management plan has been written to allow for two scenarios for future management of this land. The current land agent, Frances Steer from company Balfours, reported verbally to Mr Packer on 10 January 2023 that this land has been managed under Countryside Stewardship and Higher Level Stewardship as a low input grassland until 2022, and has since been intensively grazed by cattle. At the current time, an Environmental Screening Report has been submitted to Natural England for possible conversion of the pasture to arable.

Rebuttal

2.40. The above statement indicates that there is a high level of uncertainty associated with the mitigation land as two scenarios have been proposed, but due to the Countryside Stewardship and Higher Level

Stewardship understood to be in place for ten years up to 2022, screening by Natural England is required for conversion of the land from pasture to arable has only recently been requested by the current land agent. The fact that this screening was not undertaken in advance of planning submission is a significant omission in the Skylark Mitigation and Management Plan (**CD 1.15** and **CD 1.16**). This is because the conversion of the land to arable use is contingent on the outcome of whether or not the proposed scenario would result in significant effects and therefore fall under the Environmental Impact Assessment (EIA)(Agriculture) Regulations 2017. These Regulations apply for land that is classed as uncultivated or being within a semi-natural area. Natural England decides if the proposal to change the use of land is likely to have a significant effect and a landowner must apply for this 'EIA screening decision' before any changes can be made. A response is provided by Natural England within 35 days of receiving the request.

2.41. If Natural England screen the proposals into the EIA (Agriculture Regulations, consent is required from Natural England and this requiring an application form, a map of the area and an Environmental Statement covering the ecological baseline of the site and the outcome of a detailed impact assessment.

2.42. Paragraph 8.1.3 states:

Section 5.1 of the submitted EcIA report (CD 1.23) identifies statutorily designated sites for nature conservation, noting the presence of Berrington Pool Site of Special Scientific Interest (SSSI), 400m to the north of the site. The pool forms a component part of the Midland Meres & Mosses Ramsar Phase 1. It is acknowledged that the Ramsar designation is not specifically identified in the submitted EcIA report; however the qualifying features of the Ramsar designation are consistent with those of the SSSI and subsequently the relevant features have been identified. Table 6 of the submitted EcIA states that 'no impacts are likely to occur as a result of the development upon either this [Big Bog Local Wildlife Site] or any other statutory or non-statutory designated site'. As such it is incorrect to state that there is no evidence the application has not considered statutorily designated sites. It is also my view that there is no potential pathway for effects on the SSSI or Ramsar features from the proposed development. Further, the creation of species-rich meadow, combined with the removal of agricultural chemicals associated with arable production (i.e., current site use) is likely to be beneficial to the local environment, in particular for invertebrate species.

Rebuttal

2.43. The Ramsar designation is not mentioned in Section 5.1 of the EcIA, which is a significant omission from the EcIA (**CD 1.23** and **CD 1.24E**). Although it is agreed, as screened out by the Council that the proposed solar farm development would not result in any Likely Significant Effects to the Ramsar site's qualifying features, as there is no feasible pathway, the EcIA (**CD 1.23** and **CD 1.24E**) did not address the potential Likely Significant Effects (LSE) that could arise from the proposed mitigation works including but not limited to the effects on great crested newt. This species is protected under the Conservation of Habitats and Species Regulations 2017 (as amended). My Proof of Evidence covers this potential risk in some detail, and I will not repeat it herein.

2.44. Paragraph 9.1.2 states:

It is accepted that the submitted EcIA does not include a list of sites considered for cumulative assessment. However, it is relevant that the application delivers a very substantial Biodiversity Net Gain (BNG), in addition to the delivery of a Skylark Mitigation and Management Plan.

Rebuttal

2.45. The fact that the evidence of the cumulative assessment of impacts has not been assessed is entirely separate from the Biodiversity Net Gain that has been achieved within the Application Site. Research has identified that cumulative impacts due to other development in proximity to a solar farm development and any associated mitigation land can increase the extent of mitigation and compensation measures

necessary (**CD 10.22**). It is agreed that the BNG achieved is likely to be beneficial to a range of species but these habitat improvements do not directly benefit skylark. One of the ten principles of BNG is achieving the best outcomes for biodiversity by using a credible and robust evidence base to deliver compensation that is ecological equivalent and that accounts for the location and timing of losses.

3. Declaration

3.1. This Rebuttal includes all facts which I regard as being relevant to the opinions which I have expressed, and the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion.

3.2. I believe the facts I have stated in this Rebuttal are true and that the opinions expressed are correct.

3.3. I understand my duty to the Inquiry to assist it with matters within my expertise and I believe I have complied with that duty.