

SKYLARK REBUTTAL EVIDENCE

**LAND WEST OF BRADMORE ROAD AND NORTH OF WYSALL
ROAD, WYSALL, NOTTINGHAMSHIRE
(THE APPEAL SITE)**

carried out by



PREPARED FOR: EXAGEN DEVELOPMENT LTD.

FEBRUARY 2026

LPA REF: 24/00161/FUL

PINS APPEAL REF: APP/P2935/W/25/3376986



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Project title:	Land west of Bradmore Road and North of Wysall Road		
Document title:	Skylark Rebuttal Evidence	Project number:	8245
Client:	Exagen Development Ltd.	Author:	Harry Fox
Version 1	For Submission	Issued on:	24/02/26
Quality Assurance	Checked by:	Approved by:	
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INTRODUCTION

- 1.1.1 I am Harry Fox, Associate Director at Clarkson and Woods Ltd (C&W). I am a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM) with over 18 years of professional experience. I have a degree in Ecology and have been a member of CIEEM since 2008. My particulars are set out in my earlier Proof of Evidence (CD 8.6.3).
- 1.1.2 This Skylark Rebuttal Evidence has been prepared on behalf of Exagen Development Ltd ('The Appellant') and relates to a planning appeal submitted pursuant to Section 78 of the Town and Country Planning Act 1990, concerning Land West of Bradmore Road and North of Wysall Road, Land West of Wysall, Wysall ('the Appeal Site').
- 1.1.3 This Supplemental Statement comprises evidence that I have prepared and provide for this Section 78 appeal. It is true and has been prepared and is given in accordance with the guidance of my professional institution. I can confirm that the opinions expressed are my true and professional opinions.

MATTER 1 – VALIDITY OF BASELINE BIRD SURVEY DATA

- 1.1.4 In Rushcliffe Borough Council's (RBC) Proof of Evidence (PoE) (CD 8.5.3), row 1 of Table 3-1 states that the baseline bird surveys are considered out of date and that no further bird survey data since the original surveys of 2022 has been collected, including during the update walkover survey conducted in August 2025. It should be noted that since the refusal of the original Planning Scheme was made in June 2025, it was not possible to undertake meaningful update breeding bird survey data subsequent to this since the bird breeding season is typically taken to run between March and early July and survey visits should be reasonably spaced within this period to enable representative data to be obtained.
- 1.1.5 It was noted during the August 2025 re-visit (for the purposes of updating the wider Ecological Impact Assessment) that a change of crop type to maize primarily in Old Wood South had taken place. This habitat is notably less conducive to skylark nesting than cereals, reflecting the interannual changes in habitat suitability resulting from normal crop rotation in arable farmland. Consequently, and since the layout of habitats across the site were broadly similar to those recorded in 2022, no further survey was considered necessary.

MATTER 2 – THE USAGE OF ESTIMATED POPULATIONS TO TEST FOR LOCAL LEVEL EFFECTS

- 1.1.6 RBC maintain that a Local level residual effect will result cumulatively from either the Planning or Appeal Scheme when considered alongside the consented Highfields Solar Farm scheme, and that this is unacceptable (table in CD 8.5.3 at §3.9 as well as §5.1.3 and §5.1.5). No reasoned argument is put forward to qualify or substantiate this and so presumably relies on professional judgment.
- 1.1.7 While this cumulative effect was first suggested within the cumulative assessment section of the Appellant's EclA (§3.6.4), this has since undergone a more objective and detailed examination within the Appellant's Proof of Evidence on Skylark underpinned by a conservative estimation of the population within Rushcliffe District. This enabled it to be demonstrated that the eight territories recorded within the development footprint of the Scheme represents a tiny (0.37%) proportion of the local population, lower than a nominal 1% threshold often used to test for likely significance. Even when combined with the 11 territories from the consented Highfields Solar Farm scheme, this total still only represents 0.88% of the estimated local population.
- 1.1.8 The Chartered Institute of Ecology and Environmental Management's (CIEEM) Guidelines for Ecological Impact Assessment in the UK and Ireland (2024) states at §4.8 in the context of assigning a geographical scale of significance that, "*Various approaches can be adopted for defining local importance, including assessment within a district, borough or parish context or within other locally defined areas.*" It is therefore valid to use the conservatively estimated skylark population for Rushcliffe Borough when testing for significant residual effects at a Local scale. Since all permutations of residual effect, as well as the



combined populations recorded at the two schemes (19), total well below 1% of the estimated Rushcliffe District population of skylark it is hard to see how anything other than a Site level effect can be concluded.

- 1.1.9 With this clarification of the appropriate use of the estimated district population for determining Local scale effects, we therefore maintain that effects (pre or post mitigation) on skylark, including when potential cumulative effects are factored in, will likely occur at no more than Site level.

MATTER 3 – MITIGATION VIA SKYLARK PLOTS VS SKYLARK HABITAT

- 1.1.10 Table 3-1 (row 2), Table 3-2 (row 2) and §3.4.4 of RBC's PoE (CD 8.5.3), together with references to CD 10.5, CD 10.6, CD 10.9 and CD 10.10 indicates RBC believe that the mitigation offered by the Application and Appeal Schemes makes use of 'skylark plots'. Skylark plots are c.5x5m patches of undrilled crop within arable fields created at a rate of 2/ha. Skylark plots are a conservation measure aimed at improving foraging opportunities for skylark within otherwise intensive monoculture crops, thereby improving nesting productivity, territory density or both. They are not designed as locations within which skylarks are meant to nest; nesting would continue to occur within the neighbouring crop. This is not the mitigation type which is being put forward within either the Application or Appeal schemes. The proposed mitigation is less complex and simply revolves around the change of management or cropping regime within selected fields to form a habitat which can support a higher density of nesting skylark; this uplift being calculable thanks to research-derived average territory densities per habitat. Consequently, the guidance which RBC cite, and state the Appellant ignores, is not appropriate.
- 1.1.11 This distinction is important since guidance on the creation and maintenance of plots from bodies such as the British Trust for Ornithology and RSPB, as well as government agencies in relation to agri-environment schemes, has been referenced in RBC's PoE and used to evidence non-compliance by the Scheme's mitigation. In particular the assertion that a 50-80m buffer inboard from boundary features cannot contribute to the mitigation land. This is erroneous given the difference between the function and aim of skylark plots and the mitigation put forward in the Scheme.
- 1.1.12 As plots are discrete habitat features which increase habitat heterogeneity and provide an enhanced foraging resource, it is advisable and logical to place them in the most attractive locations, i.e. within field centres, so as to maximise their effectiveness. Accordingly, while skylark nest locations tend to be placed toward field centres, the wider territory they sit within will encompass a wide radius often spanning field boundaries and other 'edge' habitats in order to make best use of the available foraging resource, with such habitats often comprising grassland or arable weeds. Consequently, to remove a 50-80m 'buffer' from the mitigation fields would be a misapplication of the cited guidance and misunderstand how skylark territories make use of the entirety of arable fields.
- 1.1.13 This inaccuracy undermines the various points in the RBC PoE (CD 8.5.3) where it is asserted that the mitigation would only be able to support a fraction of that which is calculated in the Appellant's Statement of Case Ecology Appendix (CD 8.2) and PoE (CD 8.6.3), and where alternative calculations are made which show fewer territories accommodated (see CD 8.5.3 §3.4.4, §3.5.2, §3.5.5 and Table 3-2).
- 1.1.14 Taking the first of the cited guidance documents, CD 10.5 is a general piece on the RSPB website advising farmers on ways to help skylark, including the provision of plots. There is very little prescriptive advice on this page. One of the only prescriptions says "*Skylarks occupy open fields to avoid predators. They cannot be conserved by measures taken within 10m of the field boundary*" which is at odds with RBC's claim to not include 50m (or latterly 80m) from the boundary of the mitigation fields. The page supports the use of spring cereals as mitigation, as is put forward as an option within the Scheme.
- 1.1.15 CD 10.6 is a general piece on the Championing the Farmed Environment website solely focused on skylark plots. No advice relevant to the mitigation type put forward in the Appeal scheme is provided. It is stated that "*Research shows that plots sited more than 80m from the edge of the field perform significantly better*", although no citation is given. The RBC PoE (CD 8.5.3) points to an 80m buffer from the mitigation field margins needing to be disregarded from mitigation calculations. As this figure is clearly derived from advice on the precise placement of skylark plots it is not relevant to the Application or Appeal mitigation measures which aim to provide contiguous habitat within which entire or partial territories can reside.



- 1.1.16 CD 10.9 is an archived government advice webpage on the creation of skylark plots for payments under the Countryside Stewardship grant scheme. Again, the only relevant advice here relates to the siting of plots 50m from field boundaries.
- 1.1.17 CD 10.10 is a current government advice webpage on plot creation along the same lines as CD 10.9 again containing the 80m distance.
- 1.1.18 Discussion in PoE sections 3.6 and 3.7 of the mitigation calculations includes multiple re-calculations which erroneously factor in the skylark plot guidance. As a result, it is claimed that <1ha of the 3.62ha of original mitigation and <1ha of the 6.75ha additional mitigation should actually be considered valid mitigation (§3.6.2 and §3.7.4 respectively). Figures using these <1ha measurements as an alternative to those in the Appellant's SoC and PoE are given in §3.6.8, §3.7.10 and §3.8.3. As set out in §3.6.7 and elsewhere of the Appellant's PoE (CD 8.6.3), the land within proximity of boundaries (10/50/80m) is considered to form part of a skylark's territory regardless of whether it nests there or not and as such is accounted for with the Appellant's mitigation calculation methodology. This is precisely why the method in the CIEEM article (CD 10.1), and that which is followed by the Scheme's mitigation, does not require the 'removal' of this buffer zone land. Therefore, it is not valid to state that the proposed mitigation should actually measure a far smaller area, or that a far small number of territories are accommodated by it.

MATTER 4 – MITIGATION CALCULATIONS AND THE USE OF SETASIDE

- 1.1.19 In §3.7.3 and Tables 3-3 to 3-10 of the RBC PoE (CD 8.5.3) the figure used for 'setaside' habitat is not the same as that used in the Appellant's SoC Appendix on Skylark (CD 8.2) or PoE (CD 8.6.3). RBC have opted to use the figure for 'standard' setaside, over that of 'organic' setaside. Organic setaside will be entirely achievable since its periodic cultivation would be done without recourse to spraying of weedkiller or other synthetic additives such as pesticides. Although it does not change the calculation of mitigation of between 1 and 2 territories for the original mitigation, it does have a significant outcome when considering both the original and additional mitigation together. In Table 3-8 of their PoE (CD 8.5.3), RBC calculate that only 3 whole territories would be mitigated with standard setaside whereas it is 5 with organic setaside as per Table 3 in the Appellant's PoE.
- 1.1.20 Finally, in paragraph 3.8.5, RBC state that "*It is unclear how the Appellant's case for the mitigation being acceptable could be accurate when the schemes provide <50% of the area suggested using the CIEEM prototype (CD 10.1) even if the established guidance is not used and the whole area proposed is accepted*". Again, this sentence refers to calculation of the wrong type of setaside, plus it fails to factor in the absorption effect explained previously in the Appellant's PoE §3.6.2-3 (CD 8.6.3) – see Matter 5. It is reasonable to assume the achievement of organic-level setaside in the mitigation fields owing to their removal from the typical cropping regime by the lease arrangement and sole management for providing mitigation habitat for nesting skylark, so it is considered an unreasonable deviation to re-calculate on the basis of 'standard' setaside.

MATTER 5 – APPLICABILITY OF THE ABSORPTION EFFECT

- 1.1.21 'Absorption' refers to the ability of an area of suitable skylark nesting habitat located adjacent to the edge of a solar farm to receive displaced territories solely through the enhancement of foraging habitat conferred to it by the presence of the solar farm. The mitigation re-calculations presented within RBC's PoE (CD 8.5.3) do not take this effect into account and RBC asserts in PoE para 3.6.10 that it should not be taken into account at all, quoting text from the CIEEM journal article on the subject (CD 10.1).
- 1.1.22 The aim of the quoted text has been duly taken into account by the Appellant's assessment of this potential absorption effect. The quoted text seeks to highlight that while this effect should not be entirely relied upon for mitigation, especially in an arable landscape context, it need not be ruled out. The magnitude of the effect is clearly impeded by the presence of the consented Highfield Solar Farm scheme to the west and the woodland to the north etc., therefore candidate edge territories in these locations were disregarded. Since expanses of arable suitable for nesting land do exist in the form of four similar arable fields to the south, it is reasonable that the absorption effect should not be ruled out. Only two of the eight territories were considered capable of being absorbed, which is considered to be a precautionarily low, and hence



reasonable and realistic, number and so this effect should remain factored into the mitigation calculations as per the Appellant's PoE (CD 8.6.3).

MATTER 6 – POTENTIAL TO SECURE FURTHER MITIGATION LAND

- 1.1.23 Since the commencement of the appeal process, an area of arable land within the control of the Appellant has potentially become available for use as additional mitigation land. This area measures some 23ha over two large fields approximately 850m to the southwest of Old Wood South located within Rushcliffe Borough Council, and within close proximity to the consented Highfields Solar Farm Scheme. See the location plan overleaf for its location (blue line) in relation to Old Wood South (red line).
- 1.1.24 It is my view that both the Application and Appeal schemes provide adequate mitigation for the impacts predicted (as agreed by the RBC Ecology Officer on the Application), especially in the light of the Site scale of residual effects and the other benefits to biodiversity conferred by Scheme resulting primarily from the reversion of intensive arable to grassland. However, if the inspector thought it necessary to consider then it is possible that the land could be secured for mitigation via a pre-commencement condition with the preparation of an appropriate management plan to guarantee its favourable management for this purpose over the lifetime of the Scheme. The Appellant carried out three breeding bird survey visits of eastern field in May to July 2024 which recorded between one and two existing skylark territories (a density comparable to that within the Appeal Site), confirming its suitability. The western field is equally as suitable.
- 1.1.25 This area of land, if managed as spring-sown cereals, could accommodate between 5.29 and 8.74 skylark territories in its own right. If managed as organic setaside, it could accommodate between 7.59 and 11.04 skylark territories. The ranges given here are due to use of different baseline territories used in the calculations as a precaution. The first figures use a figure of 0.23 territories/ha derived from research on skylark use of winter wheat habitat, while the second figures use the observed Scheme baseline territory density of 0.08 territories/ha derived from the breeding bird surveys. Consequently, this land alone could at least accommodate more than 50% of the Scheme's baseline territories (before natural absorption or other mitigation is factored in) and at best even represent a net gain in nest habitat provision in the local area.

MATTER 7 – SUGGESTED PRE-COMMENCEMENT SKYLARK MITIGATION STRATEGY CONDITION

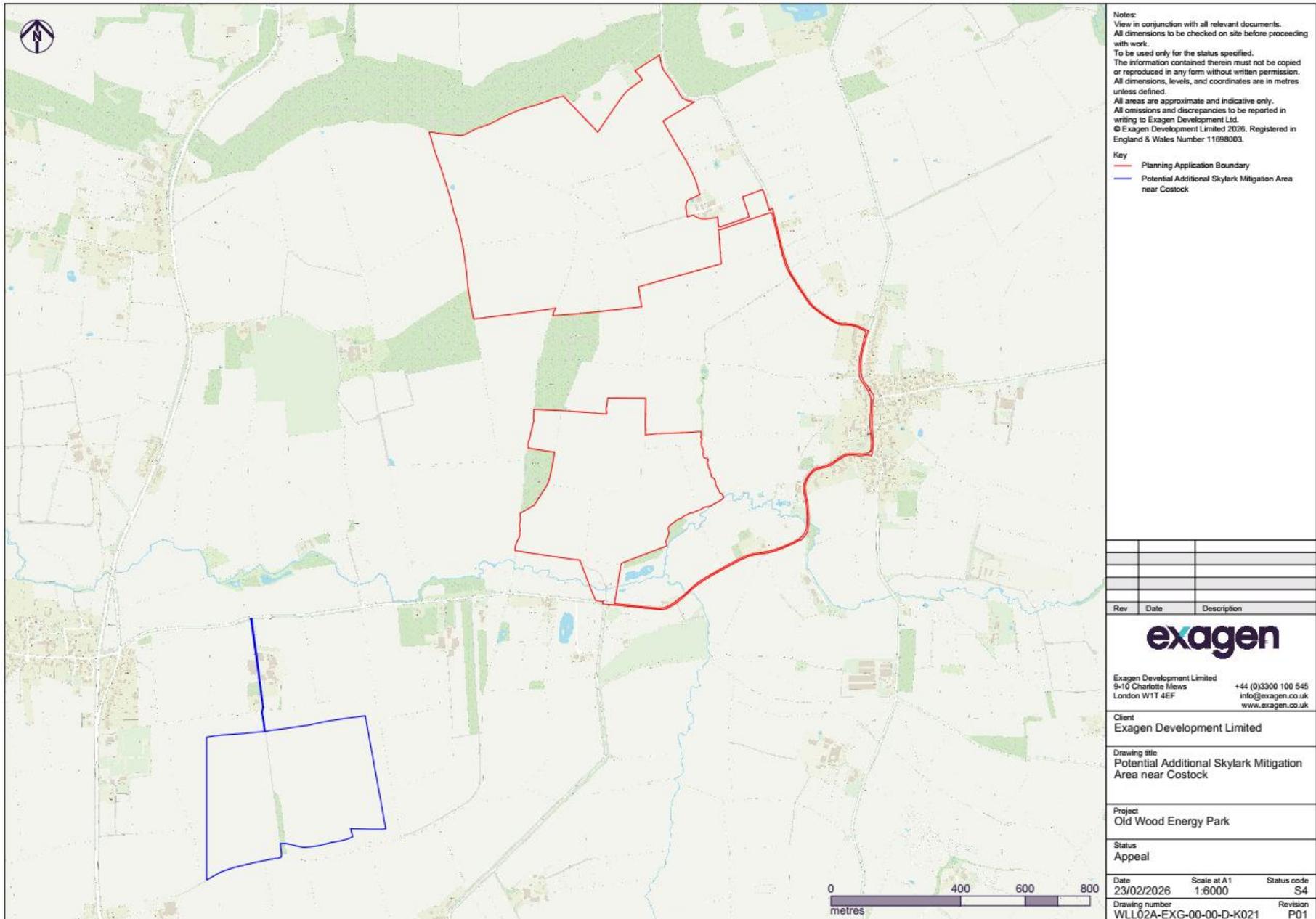
- 1.1.26 The Scheme is now supported by up to three potential skylark mitigation options (mitigation within the Application, the Appeal Scheme and the 'Costock' Land set out in Matter 6 above). Suggested wording for a pre-commencement condition to secure eventual mitigation is given below. The condition aims to put in place an agreed strategy for the implementation and ongoing maintenance of mitigation to ensure the long term delivery of the eventual mitigation for the duration of the scheme, along with a mechanism for its periodic review.

Prior to commencement of the development, a Skylark Mitigation Strategy for delivery of mitigation measures shall be submitted to and approved in writing by the local planning authority.

The content of the Skylark Mitigation Strategy shall include the following:

- a) purpose and conservation objectives for the proposed skylark habitat creation;*
- b) detailed methodology for the skylark habitat creation scheme, including target habitat types;*
- c) locations of the compensation measures by appropriate maps and/or plans;*
- d) persons responsible for implementing the mitigation measures;*
- e) an annual monitoring schedule to certify the delivery of the Skylark Mitigation Strategy for the first five years of operation;*
- f) a timetable for an assessment of the efficacy of the mitigation measures to be submitted for the approval of the local planning authority;*
- g) review, and if necessary, update of the Skylark Mitigation Strategy if indicated as necessary by the assessment of the efficacy of the mitigation measures including any need for further monitoring beyond 5 years.*

The skylark mitigation strategy shall be implemented in accordance with the approved details and all features shall be retained for the lifetime of the development.



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