Ecology – Proof of Evidence

Ms Rhia McBain BSc (Hons) MCIEEM

Acting on behalf of Rushcliffe Borough Council

for

Planning Appeal by Exagen Development Ltd Against the Refusal of a Full Planning Application for the construction, operation and subsequent decommissioning of a renewable energy park comprising ground mounted Solar PV with co located battery energy storage system (BESS) at the point of connection, together with associated infrastructure, access, landscaping and cabling

at

Land West of Bradmore Road and North of Wysall Road,
Land West of Wysall, Wysall
Known as: Old Wood Energy Park

Planning Application Reference: 24/00161/FUL

Planning Inspectorate Reference: APP/P3040/W/25/3375110

Heatons
Planning Environment Design

February 2026

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Revision	Author	Checked by	Date
V1	RM	PB/GI	February 2026

1 QUALIFICATIONS AND EXPERIENCE

1.1.1 I am Rhia McBain BSc (Hons) MCIEEM, Director of Ecology at Heaton Planning Limited (Heatons). Heatons are a planning, environment, and design consultancy, with an experienced team of planners, geologists and ecologists.

1.1.2 I have over 20 years' experience within the Biodiversity, Ecology and Habitat Management sectors having worked in both the private and public sector. I have extensive experience in assessing ecological impacts, creation of habitat and species mitigation and habitat management. I am a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM).

1.1.3 I was instructed by Rushcliffe Borough Council (RBC) in December 2025 to represent the local planning authority at the inquiry with regard to Reason for Refusal three - impacts and mitigation for protected species, namely, skylark. I visited the site on 8th January 2026.

1.1.4 The evidence which I have provided for this appeal is true, to the best of my knowledge. I confirm that the opinions given are my true and professional opinion, irrespective of by whom I am instructed.

2 SCOPE AND INTRODUCTION

2.1.1 The application and appeal relate to a proposed development for the "*Construction, operation and subsequent decommissioning of a renewable energy park …… together with associated infrastructure, access, landscaping and cabling*"

2.1.2 My evidence considers Reason for Refusal (RfR) three only, concerning impacts of the proposed development upon protected species, namely skylark. The Council (RBC) considers the proposed development would result in significant adverse biodiversity impacts that would be contrary to the provisions of local and national planning policy. The relevant policies are discussed in Chapter 4 of this document.

2.1.3 My proof of evidence relates to the information provided in the Council's Statement of Case (SoC) (CD 8.4). And provides a summary of evidence associated with this document. There are two appendices:

- Appendix 1 – Ecology drawings
- Appendix 2 – Context photographs

2.1.4 As confirmed at the Case Management Conference (CMC) on 7th January 2026, the Council's sole concern in relation to protected species relates to impacts upon identified skylark populations. As requested during the CMC, I have considered both the original skylark mitigation submitted with the application and the 'enhanced' skylark mitigation submitted during the appeal.

3 EVIDENCE AND ARGUMENTS

3.1 Introduction

3.1.1 In line with RfR 3, the Council alleges there would be significant ecological harm from the proposed development that:

- would result from the displacement of skylark from the Appeal Site, which are a priority species and a species of principal importance; and
- is not sufficiently mitigated to prevent a significant adverse impact on skylark.

3.1.2 Skylark are a Species of Principal Importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 and are also 'red-listed' on Birds of Conservation Concern. The UK population has shown a 9% decrease 1995 to 2023 (BTO website, CD 10.4).

3.1.3 A recent report published by Solar Energy UK 'Ecological Trends on Solar Farms in the UK' (CD 10.3), notes that skylark were recorded singing above panels on 51.4% of sites monitored in 2022; however, no evidence of nests was found. H.Fox, 2022 (CD 10.1) also confirms that skylark will avoid nesting within solar array fields but will use them for foraging and singing. The presence of solar panels is therefore considered to prevent nesting.

3.2 Ecology Baseline

3.2.1 As part of the appeal, the Appellant submitted an updated EcIA (CD 3.8) and a Summary of Changes document, showing additional fields for skylark mitigation (CD 3.5, Figure 1).

3.2.2 Breeding bird surveys in 2022 (CD 1.14) identified up to 9 skylark territories. These surveys are now out of date, and the updated Impact Assessment (CD 3.8) included no additional breeding bird surveys. Therefore, this proof is based on the 2022 data (CD 1.14).

3.3 Appellant's Ecology Impact Assessment (EcIA) Comments

3.3.1 I agree with the Appellant's updated EcIA (CD 3.8) paragraph 3.6.4, that skylark would be subject to significant adverse impacts long term, increasing to at least Local level when cumulative impacts with the adjacent consented solar farm are accounted for. However, the updated EcIA has not updated the impact assessment for skylark.

Table 3-1 Updated EcIA Concerns

Concern	Description	Impacts assessed in the updated EcIA	Harm/Issues
Out of date surveys	Updated survey in 2025 has only stated a walkover took place no additional bird surveys.	N/A	High wind speeds are stated as likely reducing recorded bird activity. No information on changes to territories since 2022, therefore a robust impact assessment cannot be undertaken. The updated EcIA also does not justify why further surveys were not undertaken given only 4 surveys were undertaken in 2022 when the guidance now states 6 visits are required (CD 10.15).
Updated mitigation impacts	Two additional fields have been brought in through the blue line for proposed skylark plots. These will be two small fields and a strip of land between the two access tracks post development.	No	A large area of the proposed additional area is unsuitable due to overhead cables and hedgerows/trees/buildings (see mitigation suitability section). The habitat suitability pre and post has not been assessed fully including the temporary construction compound indicated to be placed within one of the mitigation fields (see para 3.7.2 below).

Concern	Description	Impacts assessed in the updated EcIA	Harm/Issues
Cumulative impacts from application 24/01542/PAQ	Change the use of existing disused barns to 8 residential units in the centre of the Appeal site.	No	Significant disturbance during construction works. Once occupied, increased levels of disturbance around the Appeal site and increase in predation risk due to domestic pets / cats.

3.4 Suitability of Proposed Mitigation

3.4.1 It is important to preface this section with the fact that, whilst skylark are a well-studied species with regard to nesting preferences, there is limited data on the efficacy of mitigation.

3.4.2 For ease of comparison with the Appellant's case, within this document the Council has generally used the same baseline territory density as the Appellant. Using relevant studies and guidance, the greatest chance for successful mitigation for breeding skylark are:

- Fields with open, unobstructed aspects (CD 10.4, 10.5, 10.6, 10.9 & 10.10);
- Limited/no boundary vegetation (Wilson et al. 1997 – CD 10.12 Summary paragraph 2 Pg. 1462);
- Away from field tramlines as closer proximity to tramlines increases nest failure risk, and skylarks usually avoid them. (Donald et al., 2002 CD 10.7 and Püttmanns et al., 2020 CD 10.8); and
- Mitigation should be located away from field boundaries/ tall structures, "*Candidate receptor fields should feature low (<2m high) boundary features, no buildings*" (H.Fox, 2022 CD 10.1).

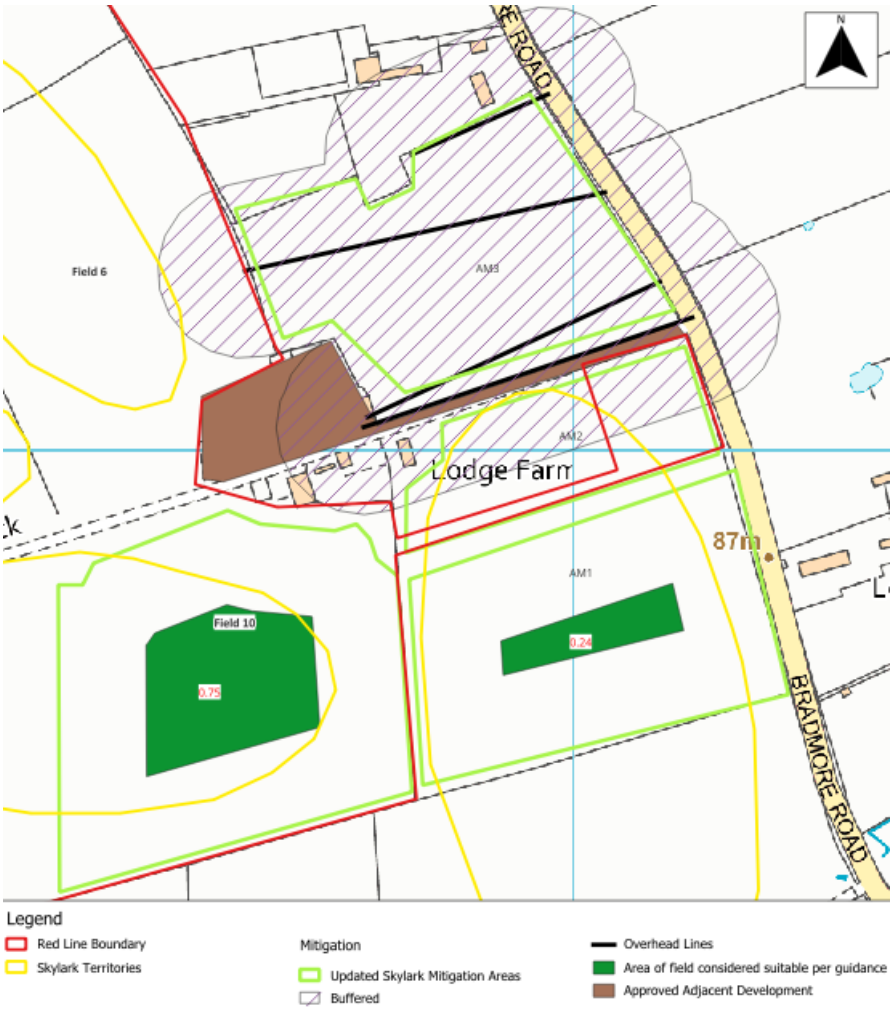
3.4.3 Whilst Donald et al (CD 10.7) is the most widely referenced study to confirm skylark avoidance of boundary features/vegetation etc, other studies have confirmed this. A study in the Alps showed that "*increasing proximity of tall structures such as buildings, trees and electricity poles strongly reduced Skylark habitat occurrence….This result accords with previous studies showing that Skylarks are sensitive to the presence of a few or even a single tall ….. Our data suggest that forests and single trees are strongly avoided up to around 100 m, and buildings and high infrastructure (e.g. antennae, ski lift pylons and electricity lines) were avoided up to as much as 300 m distance*" (Hunnick et al, 2025 Pg. 303, right hand column, second paragraph CD 10.13).

3.4.4 Government guidance (CD 10.9 & 10.10) on creation of skylark plots and nesting habitat within cereal/arable land to improve chance of successful skylark broods is set out in the table below.

Table 3-2 Comparison of government guidance on agri-scheme skylark plot creation

Original AB4 Gov guidance (CD 10.9 in the 'Where to use this option' and 'Where this option cannot be used' sections)	**Updated AHW4 guidance (CD 10.10 in the 'Where you can do this' and 'Choosing the right location' sections)**
Fields must be >5 hectares with an open aspect (or at least 10ha where fields are bounded by tall vegetation/woodland).	Fields should be >5 hectares with an open aspect (or at least 10ha where fields are bounded by tall vegetation/woodland).
>50m from field boundaries and margins.	>80m from field edges, telegraph poles, pylons.

Figure 1 Skylark Mitigation Suitability Plan



3.5 Further information on mitigation provided by the Appellant.

3.5.1 The Appellant's case revolves around the use of one piece of as yet not widely accepted or officially published suggested mitigation ratios based on the estimated population density in the surrounding area and that of the County. This carries significant risk as it is both untested with regard to success in mitigation and it sets a dangerous precedent of ignoring more official and peer reviewed evidence based on skylark ecology and predation risk.

3.5.2 The Appellant's case ignores all other relevant guidance and in this case is arguing against government and relevant bodies guidance on how to create effective skylark nesting habitat (CD 10.5, CD 10.6 and CD 10.7 – CD 10.10).

3.5.3 The information brought forward through the appeal has given the Council information on the mitigation, however it does not provide any research-based evidence as to how this mitigation will actually be implemented long term, especially given the lack of certainty as to how those fields will be managed. For example, there is no mention of reduction in pesticides in these areas.

3.5.4 As per H.Fox, 2022 (CD 10.1 Pg 49 middle column) "*If the carrying capacity of neighbouring habitat allows, some degree of 'absorption' into the surroundings is theoretically possible. Where sites are in proximity to heaths, moorland or coastal grassland this may be more likely. However, in intensive arable landscapes, this is less so and an acceleration of a decline of local breeding success is possible, especially in combination with other development*." Following this, in this particular location and considering the two adjacent developments, absorption will be limited and impacts will be significant as per the Appellant's updated EcIA (CD 3.8).

3.5.5 The suitability of the updated mitigation has not been described within the Appellant's updated EcIA (CD 3.8). Neither of the mitigation schemes have been fully assessed against guidance for mitigation including a description of how many territories are anticipated to be present post development, however, in the Appellant's Main SoC Ecology Appendix and Ecology SoCG further information has been provided and whilst it appears to have some invalid assumptions and calculations, it provides the data required for the Council to assess the mitigation proposed.

3.6 Original Mitigation

3.6.1 The impacts of the reduction in habitat from just under 95ha to <5ha has not been fully explored and mitigation justified within the EcIA. With no impact

assessment included regarding other territories being displaced into those fields from this development or the adjacent. Follow up information provided during the appeal process does allow for a more robust impact assessment but does not align with the EcIA conclusions which the Council deems to be the more accurate of the two with regard to residual and cumulative impacts.

3.6.2 In simple terms, the area of habitat to be lost is c.95ha (para 3.5.60 of EcIA CD 3.8 and agreed in the SoCG) with the proposed original mitigation providing approx. 3.62ha, reduced to <1ha with appropriate buffers from limiting factors such as trees, buildings and field boundaries as per best practice guidance (see Appendix 1 Mitigation Drawing).

3.6.3 Outside the best practice and relevant guidance that is available, if one uses the H. Fox prototype from the CIEEM article in 2022 (CD 10.1), the mitigation remains unsuitable. The tables below outline the potential skylark territories that might be mitigated for using the prototype on the original mitigation area only.

3.6.4 The tables are separated into

a) Whole field assessment using the area quoted in the Appellant's case of 3.62ha; and

b) Assessment against those areas considered suitable taking into account appropriate methodologies e.g. suitable buffers as per guidance and research.

3.6.5 Using the alternative mitigation metric calculation, the baseline observed territories ((b) (Table 1, Pg.49, H.Fox, 2022 CD 10.1)) within the development footprint are used to reduce the assumed territory density (a) of the mitigation area then this is multiplied by the hectares proposed for mitigation (c) the result gives the number of territories that could be mitigated.

3.6.6 For example, on set-aside, the number of territories that could be compensated are calculated below:

(b) = 0.39

(a) = 0.08 (observed) baseline.

(b)-(a) = 0.31.

(b)-(a) * (c) = maximum of 1 territory mitigated (1.12).

3.6.7 This calculation is also used in the mitigation tables in the sections for all the mitigation assessments.

Table 3-3 Mitigation calculated using CIEEM 2022 prototype allowing for full field from original mitigation scheme

Area of mitigation proposed (ha)*	3.62
Territory density (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Total territories potentially mitigated – set aside	**1.12**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Total territories potentially mitigated – spring cereal	**1.38**

* N.B. this includes areas RBC consider inappropriate given government and RSPB guidance

Table 3-4 Mitigation calculated using CIEEM 2022 prototype allowing for the areas of the original mitigation, considered appropriate as per Government/RSPB guidance

Area accepted as suitable	0.75
Territories (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Set aside mitigated territories	**0.2325**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Spring cereal mitigated territories	**0.285**

3.6.8 Based on the above, only accounting for 8 on site territories (as per the Appellant's SoC), the maximum number of territories suggested as mitigated on 3.62ha is 2 and when relevant research and guidance on what areas should be counted towards mitigation is <0.5 of a territory.

3.6.9 This leaves between 6 and 7 territories unaccounted for in mitigation and does not account for any cumulative impacts from territories being absorbed from the adjacent solar farm nor the impacts from potential residential development around the mitigation field (RBC ref. 24/01542/PAQ).

3.6.10 As per the CIEEM article (CD 10.1), the ability of the absorption rates in the local landscape are limited due to the presence of intensive arable and lack of data on the fate of displaced skylarks, see the excerpt below:

"*If the carrying capacity of neighbouring habitat allows, some degree of 'absorption' into the surroundings is theoretically possible…… However, in intensive arable landscapes, this is less so and an acceleration of a decline of local breeding success is possible, especially in combination with other development*." (CIEEM, 2022. CD 10.1).

3.6.11 This further justifies the Council's position that absorption should not be used in this case as an acceptable option due to the landscape generally being intensive arable and the combination of the two adjacent developments.

3.7 Updated Mitigation (additional fields only)

3.7.1 The additional fields (labelled AM1/2/3 on our plan(s) for reference) proposed with the Appeal provide limited suitable habitat for breeding skylark due to their size and presence of buildings, overhead cables and tall vegetation to field boundaries (see Appendices 1 and 2).

3.7.2 Further issues relate to a temporary construction compound currently proposed within half of the additional skylark mitigation field AM2 as per the Appellant's Planning Statement (CD 1.2 para 5.66, Pg. 39). This means that for the lifetime of the construction phase of the northern site, this whole field becomes unsuitable. This will also cause significant additional disturbance to the AM3 field just north. The Appellant's ecology assessment and reports have not considered this issue.

- Additional Mitigation Field 1 (AM1) – Had an existing territory, has vegetation and buildings around the boundaries and is <5ha in size. It is also due to be split into two smaller fields with an access track between them (AM1 and AM2).
- Additional Mitigation Field 3 (AM3) – <5ha with structures and tees/vegetation around the boundaries. The whole field is made unsuitable by the presence of multiple overhead cables (Figure 1 above, see Appendix 1 Mitigation Drawing for full scale plan). It is also clear from the baseline surveys in 2022 that no territories are present within this field, this indicates a reluctance to use this field for nesting given territories present wholly or partially within all other fields both on this site and the adjacent scheme. Skylark were observed in all fields during the surveys for this site and the adjacent site with this field being the exception where no skylark were observed.

3.7.3 The Appellant's SoC Ecology Appendix 5.1.2 uses the organic set aside ratio of 0.56 despite there being no evidence within the application that the farm is organic nor would be managed as such in future, therefore through this PoE document we have used the more accurate standard set aside (non organic is 0.39). The tables below examine the Appellant's mitigation scheme against the CIEEM prototype (CD 10.1), however it should be noted that this does not exempt the mitigation from including best practice measures to ensure the highest chances of success.

3.7.4 The area of habitat to be lost is just under 95ha (para 3.5.60 of EcIA CD 3.8) as per the SoCG (CD 8.3.3), with the additional mitigation fields providing in theory

6.75ha (Appellant's Main SoC Ecology Appendix (CD 8.2)) with <1ha of total mitigation habitat across all fields provided outside the predation and nesting preference guidance referenced previously.

3.7.5 The Appellant's SoCG (CD 8.3.3) states that overhead lines have been shown to not necessarily prevent skylark from nesting , referencing a study by Klaus et al, 2025 summary and Page 6, bottom left (CD 10.14). However, this study states it was undertaken in an area that represents suitable skylark habitat with a comparably high population density which is not the case at the Appeal site. Further to this limitation of the referenced study, the Council's objection to the field with overhead cables was to prevent mitigation within fields where predation risk is higher, which is the case where woodland, tall vegetation and overhead lines are concerned. Their SoCG only discusses one of several overhead cables within / in proximity to this field.

3.7.6 Further to the point above, in the most up to date Government agri-scheme guidance for skylark (AHW4) (CD 10.10), the 50m buffer from vegetation, buildings, pylons and overhead cables has increased to >80m (see Table 3-2).

3.7.7 No information is given on areas available nearby for rotation that may be needed to preserve soil health if set aside or cereal crops are present for the life of the solar farm. Nor any habitat management recommendations such as reduced pesticides, it is left as potentially set aside or spring cereal.

3.7.8 The tables below calculate the various potential mitigated territories based on the CIEEM prototype (CD 10.1) and further calculations taking into account relevant guidance and research on nesting preferences and predation risks.

Table 3-5 Mitigation calculated using CIEEM 2022 prototype allowing for all the added mitigation areas

Area of mitigation proposed	6.75
Territories (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Set aside mitigated territories	**2.0925**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Spring cereal mitigated territories	**2.565**

* N.B. this includes areas RBC consider inappropriate given government and RSPB guidance

Table 3-6 Mitigation calculated using CIEEM 2022 prototype allowing for the areas of additional mitigation fields deemed to be appropriate as per Government/RSPB guidance

Area considered appropriate	0.24
Territories (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Set aside mitigated territories	**0.0744**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Spring cereal mitigated territories	**0.0912**

Table 3-7 Mitigation calculated using CIEEM 2022 prototype allowing for full field from the area of additional mitigation field AM1

Whole of field AM1 after split	2.38
Territories (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Set aside mitigated territories	**0.7378**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Spring cereal mitigated territories	**0.9044**

3.7.9 These tables show that a maximum number of 2-3 territories can be absorbed into the additional mitigation area, assuming the whole area is accepted.

3.7.10 However, once the appropriate buffers are implemented the number of territories potentially mitigated for drops to 0.07-0.09. Even if the full field that could be used without appropriate buffers but avoiding the additional field areas proposed within 50-80m of overhead cables gives <1 territory mitigated for.

3.7.11 This leaves in a best case 5-7 territories unmitigated and at worst, all 8 left unmitigated.

3.8 Updated Mitigation – assuming the original and additional fields are used.

3.8.1 The area proposed is not sufficient as to successfully mitigate for the number of skylark territories on site or cumulative territory impacts by the adjacent solar or residential schemes (RBC ref. 22/00303/FUL and 24/01542/PAQ respectively).

3.8.2 If all proposed mitigation is implemented then the potential number of territories that could be mitigated are calculated in the tables below, this uses the same method/calculation as the tables in the original and additional mitigation sections above.

Table 3-8 Mitigation calculated using CIEEM 2022 prototype allowing for all the proposed mitigation (original and additional) areas

Area of mitigation proposed	10.37
Territories (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Set aside mitigated territories	**3.2147**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Spring cereal mitigated territories	**3.9406**

* N.B. this includes areas RBC consider inappropriate given government and RSPB guidance

Table 3-9 Mitigation calculated using CIEEM 2022 prototype allowing for the combined areas of proposed mitigation deemed to be appropriate as per Government/RSPB guidance

Area accepted as suitable	0.99
Territories (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Set aside mitigated territories	**0.3069**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Spring cereal mitigated territories	**0.3762**

Table 3-10 Total potential territories mitigated for if both of the larger fields (Original +AM1) are allowed in full

Area accepted using original field and AM1	5.18
Territories (observed) appeal site	0.08
Territories per research - set aside	0.39
Territories after baseline - set aside	0.31
Set aside mitigated territories	**1.6058**
Territories per research - spring cereals	0.46
Territories after baseline - spring cereals	0.38
Spring cereal mitigated territories	**1.9684**

3.8.3 The above tables show that if the full enhanced mitigation scheme including the original field and the additional fields is implemented, it can be assumed that a maximum of 4 territories or the 8 (not including cumulative) would be mitigated. However, when appropriate evidence and guidance is used, a maximum of 1 territory can be assumed to be mitigated successfully.

3.8.4 If the H.Fox 2022 calculation (CD 10.1) is used to assess the area of habitat needed to mitigate for the 8 territories (for purposes of aligning with Appellant's SoCG/Soc) = 0.08 territories (observed), with 0 territories within 75m of the site boundary, assuming 50% of cumulative territories (+4) = 12 territories to be impacted and an assumed baseline density of the same as the appeal site (0.08). The net change in territory density pre and post enhancement (0.39 in non-

organic set aside subtracting the receptor baseline of 0.08 gives 0.31). Finally, the number of territories to be compensated (12) divided by the anticipated receptor site territory density 12/0.31 = 38ha of suitable habitat required.

3.8.5 Even if one removed the requirement to include cumulative impacts and reduced the number of territories to be compensated to 8 on site, this gives an area required of 25.8ha. 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.

3.9 Mitigation Conclusions

Issues with the original mitigation (one field split with the eastern part c. 3.62ha as mitigation)	Relevant guidance/research	Any changes to the issues raised when considered against the updated mitigation (Fields outside red line boundary (AM1, AM2, AM3) and part of Field 7.
<5ha field & no open aspect	Fails to meet government, RSPB & CFE advice (CD 10.5, CD 10.6, CD 10.9 & CD 10.10)	None, each field is still <5ha and no open aspect
Enclosed by >2m tall vegetation/buildings/pylons	Fails against all relevant and widely accepted guidance and research as well as not meeting the preferred boundaries as per H.Fox, 2022 - see paragraph 3.4.2 bullet 5 above. (10.4, CD 10.5, CD 10.6, CD 10.7, CD 10.8, CD 10.9, CD 10.10 and CD 10.12).	None, the additional fields also have the same concern with boundary vegetation and buildings/telegraph poles and pylons. Field AM3 is further made unsuitable by the presence of multiple overhead wires which can form a deterrent against nesting but primarily are a concern with placement of mitigation in areas where there would be a higher risk of predation.
Post landscaping and construction the field becomes further enclosed by security fencing and landscaping including trees.	As per above	As per above
Cumulative impacts (22/00303/FUL)	As per Appellant's EcIA (CD 3.8), there will remain a significant level of impact to skylark of up to Local level. This is an unacceptable level of impact to a protected species.	No change.
Cumulative impacts (24/01542/PAQ)	No assessment has been made clear within the Appellant's ecology documentation to date on how the impacts e.g. disturbance once inhabited or sublethal impacts of pets including domestic cats will affect the proposed mitigation	No change

Issues with the original mitigation (one field split with the eastern part c. 3.62ha as mitigation)	Relevant guidance/research	Any changes to the issues raised when considered against the updated mitigation (Fields outside red line boundary (AM1, AM2, AM3) and part of Field 7.
	areas which are all based around this residential application. (Cresswell, 2008 CD 10.11)	
Appellant's Main SoC Ecology Appendix referencing the residual impacts being acceptable due to the natural skylark annual variations.	This would be a cumulative impact, the annual variations in addition to the loss through lack of mitigation could significantly increase the loss of skylark in the area.	No change.
Appellant's Main SoC Ecology Appendix referencing the number of territories to be mitigated based on the H.Fox 2022 prototype	From Table 2 page 7 the organic set-aside baseline ratio has been used for the Appellant's calculations, this is inaccurate and inflates the number of territories that could be mitigated on the area. The area in question would be standard set-aside not organic. 0.39 territory densities vs 0.56 on organic set-aside which makes a significant difference.	No change
Territories mitigated based on the H.Fox/Clarkson & Woods 2022 prototype		
Mitigated territories –based on territory densities	<1 territory at most 2 territories mitigated, leaving 6 or 7 of the 8 (not including any cumulative impacted territories) unmitigated (see paragraph 3.6.8 above) This leaves >50% of the impacted territories unmitigated.	Small change, potentially up to 4 territories mitigated (although reduced to a maximum of 1 with relevant buffers as per guidance).
Area of land for mitigation required based on the 2022 prototype (it should be noted that RBC views the resultant areas below as excessive in this case).		
Mitigation area required in line with the proposed mitigation metric	25.8ha (or 38ha if the cumulative impacts to 50% of the adjacent skylark territories are included).	No change, this is a calculation based on the number of territories within the development boundary and is the amount of land deemed appropriate to mitigate for that number.

3.9.1 In conclusion, in a best-case scenario using only the prototype which has not been widely accepted nor monitoring data made available to test efficiency, and not aligning with relevant guidance, at least 4 – 6 of the 8 impacted on site territories would not be mitigated for. This also excludes any mitigation for the territories subject to cumulative impacts from the adjacent applications.

3.9.2 The Appellant's Main SoC Ecology Appendix suggests that the number of skylark territories subject to residual impacts is acceptable due to it being similar to the normal annual variations in skylarks. This leads to various queries and RBC would argue that including the cumulative impact of the loss or impact to the territories with the annual variation would cause an even higher loss of the local population rather than justify any reduction in the impacts.

3.9.3 Therefore, the Councils objection stands, and the mitigation proposed remains insufficient in this case given the likelihood of at best Site level and more likely Local level impacts to a protected species due to the loss of 4 - 6 of the 8 territories, plus cumulative impacts to the territories from the adjacent scheme. The loss of potentially >50% of skylark territories is entirely unacceptable.

4 POLICY COMPLIANCE AND RELEVANT APPEALS

4.1 Planning Policy Compliance

4.1.1 New solar developments are in keeping with the December 2024 NPPF (CD 5.1) Section 14 regarding climate change and transitioning to net zero by 2050. However, section 15 of the NPPF (December 2024), as per paragraph 193(a) any application resulting in significant harm to biodiversity that is not adequately mitigated for should be refused.

4.1.2 Assessment against the LPP2 (CD 6.3):

- Policy 1, point 9, it is not accepted that the development currently avoids significant adverse effects on important wildlife interests due to the long term adverse effects outstanding post mitigation to skylark;
- Policy 16, paragraphs 1(c & j), this scheme with the information available is not acceptable in terms of impacts to ecology and biodiversity and with as yet unacceptable mitigation;
- Policy 38, point 1 – this development at present does not help in the protection or recovery of priority species, in effect it is working against the recovery of skylark by significantly impacting the species in this location.
- Policy 38, point 2 – as per the above evidence, this scheme even if the full amended mitigation and original mitigation are combined has the potential for >50% of the skylark territories on site to be lost (in theory absorbed) which therefore does not sufficiently avoid, mitigate or compensate for the impacts to this species.
- Policy 38, point 3(b) – The scheme was not designed originally to minimise disturbance to habitats and species and the additional mitigation proposed has been selected to avoid any reduction in the development footprint, using inappropriate areas of mitigation for the species and with the remaining impacts at up to Local level with between 4 and 6 of the 8 territories not mitigated or compensated for.

4.1.3 The mitigation proposals conflict with Policy 17 of the adopted Rushcliffe Local Plan Part 1 (CD 6.1) due to the lack of information regarding alternative locations or scheme designs and does not compensate the loss of nesting habitat at a level equivalent to the biodiversity value lost (point 1e). This is due to the loss of 95ha

of suitable nesting habitat (para 3.5.60 of EcIA CD 3.8) with <5ha of suitable replacement habitat as mitigation.

4.1.4 The application also conflicts with Policy 38, Part 2 due to a significant adverse impact to a protected species with inadequate mitigation.

4.2 Appeal Example

4.2.1 Forest of Dean District Council appeal reference: APP/P1615/W/23/3329458 (CD 7.58), application P0271/22/FUL. Land south of Murrells End Farm, Hartbury.

"*Installation and operation a of a renewable energy generating station ……*".

4.2.2 This appeal was dismissed with a refusal point based on impacts to skylark. Despite additional areas of mitigation being offered by the Appellant, the Inspector considered that a planning condition was not suitable, that the proposal would not comply with the statutory test and was in conflict with planning policies.

5 CONCLUSION

5.1.1 This proof examines the Council's concerns which relate to skylark, and in which the Council identifies as policy conflict with both national and local policies. RfR three cites conflicts with Policy 1 (Development Requirements), Policy 16 (Renewable Energy) and Policy 38 (Non-Designated Biodiversity Assets and the Wider Ecological Network) of the LPP2 and Chapter 15 (Conserving and Enhancing the Natural Environment) of the NPPF.

5.1.2 Although not cited in the Decision Notice, the Council also considers LPP1 Policy 17 to be of relevance in considering RfR 3.

5.1.3 It is my view that neither skylark mitigation scheme provides sufficient evidence as to how the mitigation would be implemented/maintained, does not provide adequate mitigation to avoid adverse impacts at Local level and mitigation is proposed on some areas considered unsuitable for mitigation.

5.1.4 It is therefore my view that adequate mitigation has not been provided by the Appellant, and it is reasonable to conclude that the Council's concerns regarding this species cannot be addressed through planning condition given the potential for significant, adverse, long-term impacts to a protected species.

5.1.5 I agree with the Appellant's EcIA (CD 3.8) that skylark would be subject to significant adverse impacts beyond Site level at up to Local level (paragraphs 3.5.67 & 3.6.4). It is my view that this level of impact applies regardless of which mitigation scheme is applied.

5.1.6 The Appellant's Main SoC Ecology Appendix relies heavily on a prototype that has, as yet, not become best practice nor has it become a widely used or accepted mitigation method.

5.1.7 The Appellant's mitigation case also ignores all well researched and evidence-based data including Government and RSPB advice (CD 10.5, CD 10.9 & CD 10.10) on how to effectively create suitable habitat for nesting skylark taking into account nesting preferences and predation risks.

5.1.8 Whilst the addition of a solar development aligns strongly with National policy, a substantial negative weight should be assigned to the inevitable long term, significant negative impacts to a protected species.

6 APPENDICES

6.1 Appendix 1 – Ecology Drawings

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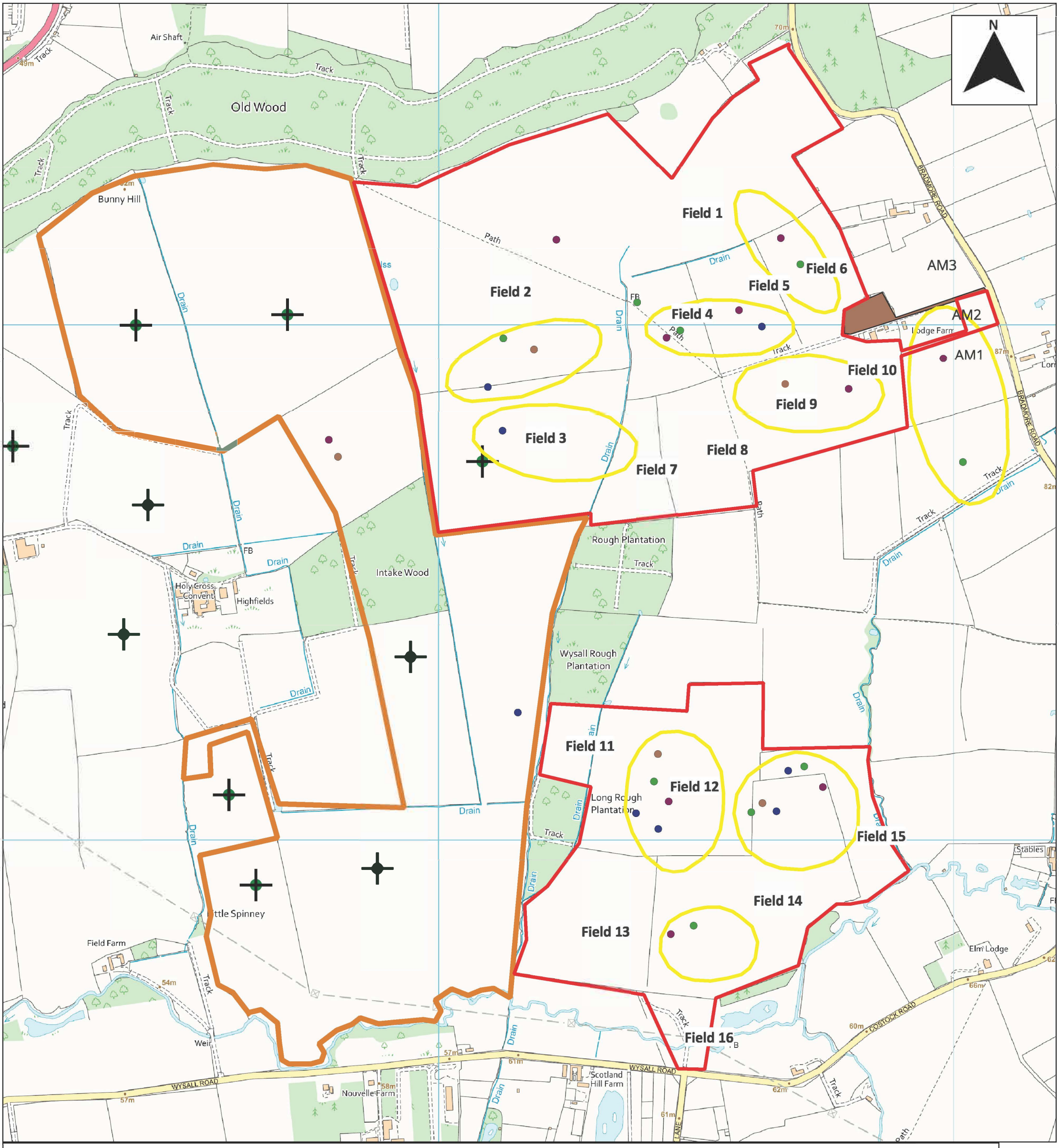

Legend

- Red Line Boundary
- Skylark Territories

Skylarks Recorded

- Survey 1
- Survey 2
- Survey 3
- Survey 4

- Approved Adjacent Development
- Skylark Field Use - Adacent Solar Scheme
- Adjacent Solar Scheme Boundary (field areas only)

Heatons
Planning Environment Design

Rushcliffe Borough Council

PROJECT
RBC Wysall Appeal
CLIENT
Rushcliffe Borough Council
DRAWING TITLE
Skylark Survey Data

DATE	BY	
14/01/2026	RM	
SCALE	REV	REFERENCE
1: 7000 @ A3	1	RBC.001

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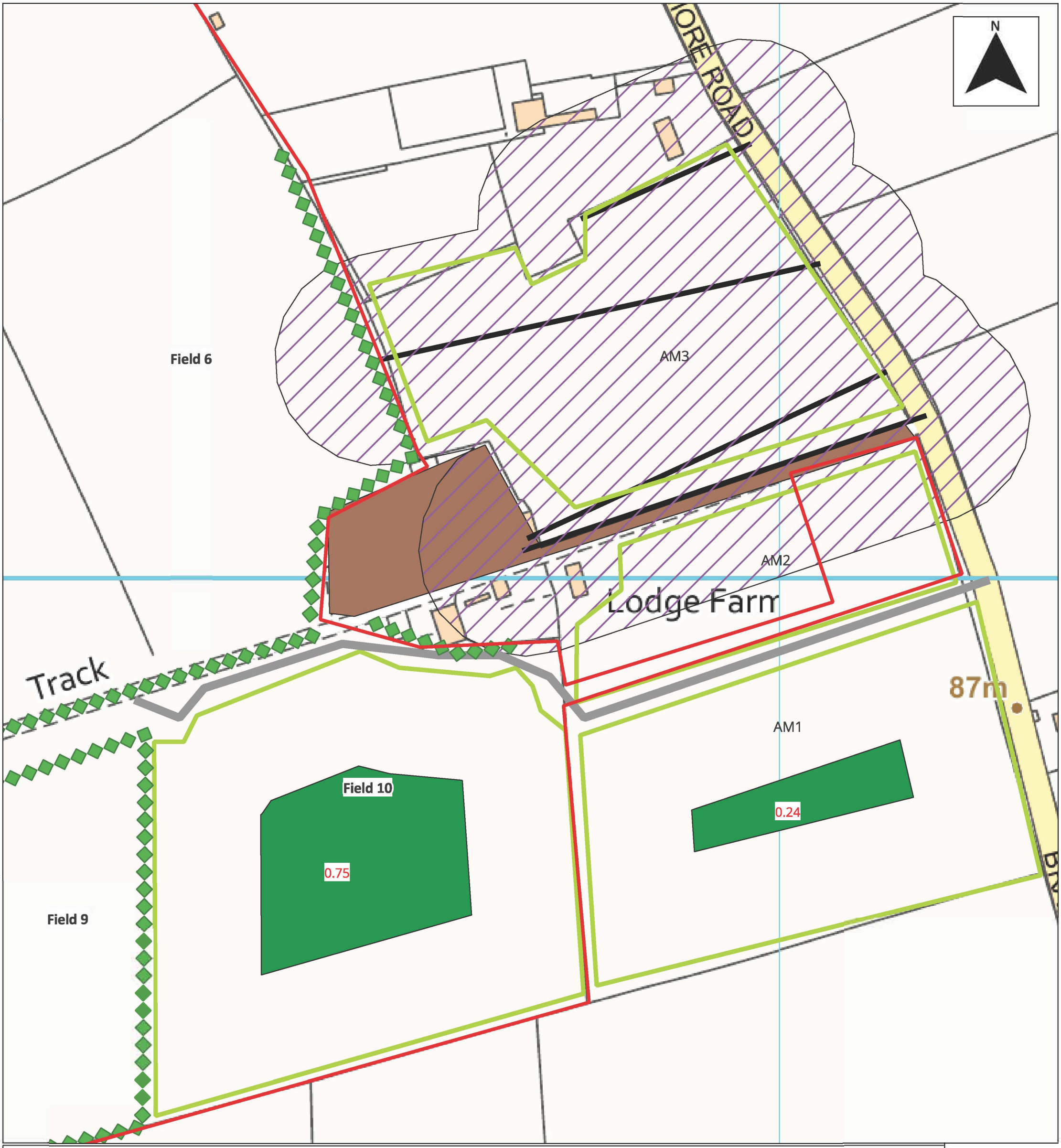

Legend

- Red Line Boundary
- New Planting
- New Access Track
- Approved Adjacent Development
- All Psoposed Skylark Mitigation Areas
- Overhead Lines
- Buffers for Unsuitable Haitat Around Overhead Wires
- Area of field considered suitable per guidance

Heatons
Planning Environment Design

Rushcliffe Borough Council

PROJECT

RBC Wysall Appeal

CLIENT

Rushcliffe Borough Council

DRAWING TITLE

Skylark Mitigation Suitability

DATE	BY	
14/01/2026	RM	
SCALE	REV	REFERENCE
1: 7000 @ A3	1	RBC.002

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6.2 Appendix 2 – Context Photographs

View of the overhead wires in field AM3 (facing NE at SK 60064 28073)

View of Field 9/10 showing the mast/tall structure in the corner of the field (facing S at SK 59791 27983)

View of field AM3 showing the road that runs along the east of the site with multiple overhead wires and tall vegetation present (facing N at SK 60064 28073)

View of the disused barns (tall structures) that form the central area of the site outside the red line boundary. (facing W at SK 59929 28025)