

STATEMENT OF COMMON GROUND: SKYLARKS

**BETWEEN EXAGEN DEVELOPMENT LTD AND RUSHCLIFFE
BOROUGH COUNCIL**

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

carried out by



commissioned by

EXAGEN DEVELOPMENT LTD.

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LAND WEST OF BRADMORE ROAD AND NORTH OF WYSALL ROAD, WYSALL, NOTTINGHAMSHIRE

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The information, data and advice which has been prepared and provided is true and has been prepared and provided in accordance with the Chartered Institute of Ecology and Environmental Management's (CIEEM) Code of Professional Conduct. We confirm that the opinions expressed are our true and professional bona fide opinions. This report and its contents remain the property of Clarkson and Woods Ltd. until payment has been made in full.



1 INTRODUCTION

- 1.1.1 This Ecological (skylark) Statement of Common Ground (ESoCG) is between Exagen Development Ltd (the Appellant) and Rushcliffe Borough Council (RBC) and relates to a Planning Appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, against RBC's decision to refuse planning permissions 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*' (the Proposed Development) on land west of Bradmore Road and north of Wysall Road, land west of Wysall, Nottinghamshire (the Appeal Site).
- 1.1.2 The purpose of this ESoCG is to identify the areas where the principal parties (the Appellant and RBC) are in agreement and to narrow down the issues that remain under discussion on the matters relating to the effects on skylark as a result of the Proposed Development. This will allow the public inquiry to then focus on the most pertinent issues with regards to potential impacts on breeding skylark. This ESoCG should be read alongside the overarching SoCG.
- 1.1.3 This ESoCG has been agreed with RBC.

1.2 Terminology

- 1.2.1 In Tables 1 and 2 of this SoCG:
- 1.2.2 "Agreed" or "common ground" indicates where the issue has been resolved between the principal parties.
- 1.2.3 "Not Agreed" indicates a final position, and
- 1.2.4 "Under discussion" indicates where these points will be the subject of ongoing discussion wherever possible to resolve, or refine, the extent of disagreement between the parties.



2 MATTERS CONSIDERED COMMON GROUND

2.1.1 **Table 1** below details by topic the matters agreed with Rushcliffe Borough Council. Any responses by either party can be added in under a dated heading in the appropriate row as necessary.

Table 1

Item	Matters Considered Common Ground by the Appellant	Rushcliffe Borough Council Response (where necessary)
1. Scope of 'RfR 3: Protected Species'	<p><u>December 2025</u></p> <p>Whereas the wording of RfR 3 states, "The impacts of the proposal upon protected species including the permanent negative residual impact upon Skylarks, is not considered to be adequately diminished by the proposed mitigation measures," it is considered common ground that the sole subject of RfR 3 is that of skylark and does not include other protected species, habitats or ecological features.</p> <p>This was clarified during the Case Management Conference held on 07/01/26 (see Notes Following CMC Ref: APP/P3040/W/25/3375110).</p> <p>Furthermore, no objections concerning other ecological features were raised within the planning application consultation comments from RBC's Senior Ecology and Sustainability Officer and RBC's Planning Officer.</p>	Agreed that only skylark as a protected species are to be addressed during this appeal.
2. Suitability of developed land for skylark.	<p><u>December 2025</u></p> <p>It is considered common ground that the fields on the Appeal Site which currently support nesting skylark will likely cease to be suitable for nesting once developed with solar panels (see paragraph 3.4.2 of RBC's SoC).</p>	Agreed that any area subject to solar arrays will no longer be suitable skylark nesting habitat.
3. Scale of skylark displacement effect.	<p><u>December 2025</u></p> <p>It is considered common ground that the displacement of nesting skylark from approx. 95ha of arable land due to the Proposed Development would likely result in an adverse residual effect at the Site level following implementation of mitigation proposed in the planning application (see paragraph 3.4.3 of RBC's SoC).</p>	Agreed, that approx. 95ha of suitable skylark habitat to be lost. With the additional information provided during the appeal process, RBC considers the scheme has an adverse cumulative and residual effect at up to Local level.



Item	Matters Considered Common Ground by the Appellant	Rushcliffe Borough Council Response (where necessary)
4. Number of skylark territories displaced by Highfields Solar Farm (consented application on land west of the Appeal Site, App Ref: 22/00303/FUL).	<p><u>December 2025</u></p> <p>A typographical error in the appellant's SoC Appendix on Skylark made reference in paragraph 3.1.12 to there being only 8 territories on the Highfields Solar Farm application site, whereas it is correct that there are eleven.</p>	Agreed that 11 territories are to be impacted by the Highfields Solar Farm.
5. Scope of 'buffers' when referenced in RBC's SoC	<p><u>December 2025</u></p> <p>It is assumed that it is common ground that when 'buffers around field edges' are referenced in RBC's SoC in bullet point 2 of paragraph 3.4.8, this is in connection only with the mitigation fields provided for skylark.</p>	Buffers are applicable to mitigation.
7. Lack of pre and post habitat data for the additional mitigation land in the Appeal Site.	<p><u>Paragraph 3.4.5, bullet point 1 of RBC's SoC - December 2025</u></p> <p><i>“...the lack of pre and post development habitat data for the additional areas of mitigation restricts the ability to assess the value of these habitats and potential territory densities and carrying capacities”</i></p> <p><u>Paragraph 3.4.8 bullet point 5 of RBC's SoC - December 2025</u></p> <p><i>“Habitats within the additional mitigation areas have not been fully surveyed nor the mitigation type explained.”</i></p> <p><u>22/01/26</u></p> <p>Assuming this will be whole field options and is related to the additional fields only, RBC agrees to move this to matters agreed based on further information submitted by the Appellant during the appeals process.</p>	<p><u>09/01/26</u></p> <p>It can be confirmed that the additional mitigation land proposed within the Appeal scheme comprises semi-improved (Modified Grassland) grassland pasture (northern field) and winter-sown cereals (southern field). This data was collected in 2022 at the time of the original baseline ecological surveys as the fields were originally included within the survey area. These habitats were reconfirmed following a re-survey in 2025 prior to the appeal being submitted.</p> <p>In terms of post-development habitat (once mitigation is in operation), as a precaution, the mitigation calculations presented in Table 2 of the Appellant's SoC Appendix on Skylark assumed winter-sown cereals throughout which would generally support a higher baseline density of skylark territories than pasture grassland, leading to a more conservative estimation of the carrying capacity of the fields after enhancement for nesting skylark. As also set out in Table 2 of the Appellant's SoC Appendix on Skylark, the options for proposed habitat management for skylark are either spring-sown cereals or set-aside, in keeping with the treatment options for the original mitigation fields. These are two of the most valuable habitats for skylark in a lowland agricultural context.</p> <p>It is consequently presumed that this item can be moved to Matters Agreed.</p>



3 MATTERS UNDER DISCUSSION

3.1.1 **Table 2** below details by topic the matters not currently agreed or considered common ground with Rushcliffe Borough Council. As this is an iterative document, subsequent responses by either party can be added in under a dated heading in the appropriate row as necessary. Any matters which become agreed may be moved to Table 1 in due course.

Table 2

Item	Rushcliffe Borough Council Comment/Response	Appellant Comment/Response
6. Scale of residual effect with cumulative impact of Highfields Solar Farm factored in.	<p><u>Paragraph 3.4.4 of RBC's SoC - December 2025</u></p> <p><i>“While the amendments submitted by the Appellant as part of this Appeal include additional areas for skylark mitigation, when all data is assessed along with potential cumulative impacts from the adjacent solar development (22/00303/FUL), as per the Appellant’s EIA paragraph 3.6.4, the Council considers that the residual adverse impact to this species increases to Local level.”</i></p> <p><u>22/01/26</u></p> <p>RBC does not agree with this [The Appellant’s 09/01/26] response at this time.</p> <p>The mitigation or lack thereof of the adjacent development is immaterial, the Appeal site as per the CIEEM EclA Guidance must consider cumulative impacts of adjacent developments, in this case mitigation has not been designed to provide adjustments based on the approved schemes adjacent to the appeal site.</p> <p>The Council is not requiring or expecting the Appellant to mitigate for the Highfields scheme, only the cumulative impacts as per EclA guidance.</p>	<p><u>09/01/26</u></p> <p>While it is correct the Appellant assesses in paragraph 3.6.4 of the EclA that cumulatively, the residual effect may increase to a Local level, the Appellant believes that the numbers of territories within the Appeal Site and the Highfields site are very small within the context of any population estimate over any geographic scale as reported in the Appellant’s SoC Appendix on skylark. Furthermore, no mitigation for the displacement of skylark was put forward by the Highfields development nor requested by RBC, whereas the Proposed Development puts forward mitigation following best practice methodologies.</p> <p>Since the residual displacement of 4-5 skylark territories is given as a Reason for Refusal of the planning application and skylark mitigation was not present within the Highfields application and decision, the Appellant believes that RBC had erroneously omitted to require mitigation within the Highfields application. As such, the Proposed Development cannot be expected to provide mitigation for that which ought to have been provided within the Highfields application.</p>
8. Lack of offsite territory data.	<p><u>Paragraph 3.4.5, bullet point 2 of RBC's SoC - December 2025</u></p> <p><i>“...a lack of offsite territory data limits the ability to accurately assess impacts to offsite territories from changes to onsite habitats and habitat use, large scale loss of habitat, habitat fragmentation and displacement of onsite territories to surrounding areas. The success of skylark territories being displaced to adjacent habitats is not yet known (CIEEM, 2022).”</i></p> <p><u>23/01/26</u></p> <p>Additional information as per the Appellants SoCG has made it clearer where the baseline data has been used.</p>	<p><u>09/01/26</u></p> <p>Firstly, the baseline territory density for the mitigation land (both planning and appeal schemes) can be seen in Appendix A of the Appellant’s Breeding Bird Survey report. Part of only one territory is recorded at baseline in the additional mitigation fields of the appeal scheme (Field 8 – see Figure 4b in the Appellant’s Ecological Impact Assessment for field numbering during ecological assessment work), while a further one partial territory is present within the mitigation field of the planning application scheme (Field 7).</p>



Item	Rushcliffe Borough Council Comment/Response	Appellant Comment/Response
	<p>[In relation to the displacement of 1-3 skylark territories] Further information and calculations provided during the appeal have made it clearer where these territory figures have come from, however RBC does not currently agree.</p>	<p>Secondly, it is not agreed that a lack of offsite territory data limits the ability to accurately assess impacts to offsite territories. It is acknowledged that there is a lack of research on the fate of skylark territories displaced by development. However, while desirable, it is not considered necessary for the completion of best practice mitigation calculations to know the existing baseline territory density on any receptor/mitigation fields. Instead, the baseline can be extrapolated from data derived from on-site habitats where the land use is roughly equivalent, or alternatively, data derived from extensive research on territory densities in various habitat types, including arable and grassland. This point of method is acknowledged and put forward by the same 2022 CIEEM article referenced by RBC's SoC. This baseline territory density is then taken into account within the subsequent calculation steps in order to predict the effect of the proposed mitigation. Consequently, baseline territory information is not considered essential to complete the mitigation calculations set out in the appellant's SoC Appendix on Skylark.</p> <p>In addition, the assessment of a site-scale residual effect of the displacement of 1-3 skylark territories following the inclusion of the appeal application's mitigation (see Section 5 of the appellant's SoC Appendix on Skylark) takes into account the scale of impact of these territories being displaced into surrounding land and the loss/fragmentation of nesting habitat which drives it in the context of the provision of enhanced foraging habitat within the edges of the proposed solar development.</p>
9. Number of skylark territories to be displaced by the Appeal Site.	<p><u>Paragraph 3.4.6 of RBC's SoC - December 2025</u></p> <p><i>"The Council considers that the updated EIA does not address the impacts to all nine recorded territories shown in the BBS report (Clarkson & Woods, 2023). With nine skylark territories marked in the submitted BBS report survey results plan, the EIA reports have only eight territories marked. One of the original territories may have been left out during the EIA as it was previously off site, however, this territory is now on site due to being partially within the additional fields proposed for mitigation. Therefore, the Council considers that the EIA currently does not fully assess the impacts to all the territories that may be impacted now 'on site', assuming that the Inspector accepts the amendments proposed in the Appeal Scheme."</i></p>	<p><u>09/01/26</u></p> <p>It is not agreed that any territories have been 'missed' or not accounted for in either the impact assessment or in the provision and calculation of mitigation.</p> <p>The Figure in Appendix A of the Appellant's Breeding Bird Survey (BBS) Report (Clarkson and Woods, 2023) shows results derived from an earlier, wider Survey Area and includes part of a 9th territory, partially occupying Field 8 in the southeast of Old Wood North. This field is now put forward in the Appeal as additional skylark mitigation. No displacement of this territory will occur since the field will not be developed to solar. This territory will be retained within the mitigation land. It is automatically accounted for within the 'baseline territory density' element of all mitigation</p>



Item	Rushcliffe Borough Council Comment/Response	Appellant Comment/Response
	<p><u>Paragraph 3.4.8 bullet point 4 of RBC's SoC - December 2025</u></p> <p><i>"Skylark territories exist within the additional mitigation areas proposed, and these have not been accounted for appropriately as per standard guidance in this regard."</i></p> <p><u>22/01/26</u></p> <p>RBC do not agree to move this issue to matters agreed at this stage.</p> <p>RBC considers the number of territories to be impacted and displaced to be an ongoing query.</p>	<p>calculations carried out to determine the number of displaced territories the enhanced mitigation land can support. This is done by calculating the difference between the baseline territory density and the territory density which can be expected to result from the enhancement of the mitigation land to a more suitable nesting habitat. This has been done using both the observed territory density across the Site and assumed baseline territory density derived from research literature for completeness. The methodology followed that set out in Issue 117 of In Practice (pp. 47-51) the journal of the Chartered Institute of Ecology and Environmental Management and detailed in the Appellant's SoC Appendix on skylark (see paragraph 3.1.11 and Table 2).</p> <p>In conclusion, the 9th estimated territory is not impacted by development and is fully accounted for in the mitigation proposals - and therefore the assessment of residual effects - as set out in the Appellants SoC Appendix on skylark. Only an estimated 8 territories are capable of being impacted by the development, of which 1 (within Field 8) is considered likely to be absorbed into adjacent arable habitats (see paragraphs 3.1.9 and 4.1.1 of the Appellant's SoC Appendix on Skylark, and in paragraph 3.5.60 of The EClA), and another (in Field 7) is likely to form part of the baseline territory density of the mitigation land in a similar way to that described above for the 9th territory. Consequently, 6 territories are considered to be subject to displacement impacts.</p> <p>It is consequently presumed that this item can be moved to Matters Agreed.</p>
10. Suitability of the mitigation land	<p><u>Paragraph 3.4.7 of RBC's SoC - December 2025</u></p> <p><i>"The proposed mitigation measures are not considered appropriate to offset the harm that would be generated to the identified skylark population. The Council accepts that there is no 'official' skylark mitigation guidance, but it does consider that there is sufficient scientific research and tested standard guidance on creation of mitigation and nesting habitat for skylark that assessments can be made as to the likely success of proposed mitigation."</i></p> <p><u>23/01/26</u></p>	<p><u>09/01/26</u></p> <p>It is not agreed that the proposed mitigation measures are not considered appropriate to offset the harm generated to skylark.</p> <p>Unmitigated, the impacts on skylark are likely to be very small in the context of any estimation of population at any geographic scale. Indeed, no mitigation was offered by the adjacent Highfields solar development despite identifying a greater number of territories, and it was argued that impacts on skylark would be 'negligible'. Mitigation provided in the planning application proposal (and later appeal scheme) was offered in order to reduce any impacts as far as possible in line with best practice guidance and an appropriate assessment of the</p>



Item	Rushcliffe Borough Council Comment/Response	Appellant Comment/Response
	<p>RBC has ongoing objections to the level of harm being assessed as offset by the proposed mitigation.</p>	<p>residual effect (to be weighed as appropriate in the planning balance) was given.</p> <p>Furthermore, the Appellant considers that the number of territories to be residually impacted by the scheme after mitigation are so small as to likely lie within a natural margin of annual variance of skylark usage in the local area which may be expected to fluctuate on account of factors including weather patterns, cropping regime/management and crop success among others.</p>
11. 5ha posed as a minimum area field size for skylark mitigation	<p><u>Paragraph 3.4.8 bullet point 1 of RBC's SoC - December 2025</u></p> <p><i>"The fields proposed for skylarks mitigation are less than 5ha..."</i></p> <p><u>22/01/26</u></p> <p>Any item without a comment is considered by the council to be a matter of ongoing consideration and not resolved/agreed at this stage.</p>	<p><u>09/01/26</u></p> <p>It is not agreed that 5ha is the minimum size of field which could be used for skylark mitigation. It is unclear from which source of advice this is obtained as this is not referenced in RBCs SoC.</p>
12. Buffers and boundary habitats.	<p><u>Paragraph 3.4.8 bullet point 2 of RBC's SoC - December 2025</u></p> <p><i>"The proposed mitigation strategy fails to provide adequate buffers around field edges as per guidance and includes no assessment of the impacts of hedgerows and trees etc. bounding these fields."</i></p> <p><u>Paragraph 3.4.10 of RBC's SoC - December 2025</u></p> <p><i>"The proposed mitigation areas under the Appeal Scheme and the areas within each field that disregarding the >5ha guidance could be appropriate as proposed nesting mitigation. This shows that on a best case of taking the whole field it would create up to 6ha of habitat. However, allowing for a 50m buffer due to the presence of fencing, planting and buildings, this area is reduced to <1ha in to"</i></p> <p><u>26/01/26</u></p> <p>RBC agrees that the buffers are applicable to the mitigation areas (point 5), however it is not agreed that these guidance measures do not apply here nor that they are contrary to the CIEEM article.</p>	<p><u>09/01/26</u></p> <p>Assuming Item 5 is agreed, it is not agreed that buffers (50m is suggested in paragraph 3.4.10 of RBC's SoC) are necessary to be taken into account of any mitigation calculation. This is contrary to the method proposed in the previously referenced CIEEM article and which is followed within the provision of mitigation for the planning and appeal applications, and discussed in the Appellant's SoC Appendix on Skylarks.</p>



Item	Rushcliffe Borough Council Comment/Response	Appellant Comment/Response
13. Overhead cables	<p><u>Paragraph 3.4.8 bullet point 3 of RBC's SoC - December 2025</u></p> <p><i>"The northern field proposed as additional mitigation under the Appeal Scheme (if allowed by the Inspector) if [sic] wholly unsuitable for skylark due to overhead cables running across this field."</i></p> <p><u>22/01/26</u></p> <p>Any item without a comment is considered by the council to be a matter of ongoing consideration and not resolved/agreed at this stage.</p>	<p><u>09/01/26</u></p> <p>It is not agreed that the presence of an overhead cable over the northern field proposed as additional mitigation under the appeal scheme renders it wholly unsuitable.</p> <p>It is known that the presence of tall features can influence nest site selection in skylark. For example, the woodland to the north of the Appeal Site can be considered a tall feature and it is clear from the baseline data that territories are less likely in proximity to it. However, the electricity cable in question is understood to be a 33kV Distribution Network Operator cable installed on wooden posts (low-medium voltage). These features are not considered to be tall or substantive enough to seriously reduce the suitability of the field underneath for nesting skylark. Research on the subject has primarily identified impacts from high voltage National Grid-type transmission pylons (Milsom et al 2001) which are greatly different. Perhaps most notably, however, the existing cable extends westward over the Appeal Site and across Fields 1-4 which already host observed skylark territories, demonstrating the absence of a negative site-selection impact. This observation is also borne out in recent research which shows that the presence of low-medium voltage cables of this type is not an accurate predictor of skylark absence (Klaus, S., Liew, J.H., Müller, C., & Jechow, B., 2025).</p>
14. Wild Birds and Development advice.	<p><u>Paragraph 3.4.11 of RBC's SoC - December 2025</u></p> <p><i>"The Council considers that the mitigation does not meet the Government's advice note for wild birds and development (Wild birds: advice for making planning decisions (last updated April 2025)) as it results in a significant net loss in habitat and, while the habitats are to be replaced, they are not replaced like for like with regard to size of overall available habitat, nor in type of habitat. Therefore, this proposal does not adequately consider protected species and does not comply with the Wildlife and Countryside Act 1982 (as amended) nor meet the requirements as per the Conservation of Habitats and Species Regulations 2017."</i></p> <p><u>22/01/26</u></p>	<p><u>09/01/26</u></p> <p>It is not agreed that the mitigation does not meet the Government's advice note on wild birds and development. The mitigation in both the planning and appeal applications reduces an already very small impact on nesting habitat loss to non-significant levels. Furthermore, the allusion to the need for replacement with like-for-like habitats is misleading; this passage within the Government advice relates to the suggested process of purposeful displacement of birds from nesting sites in advance of development in order to avoid direct harm during development activities, which is different to the assessment of development impacts which has been suitably carried out.</p> <p>It is not agreed that the Proposed Development does not adequately consider protected species and does not comply</p>



Item	Rushcliffe Borough Council Comment/Response	Appellant Comment/Response
	Any item without a comment is considered by the council to be a matter of ongoing consideration and not resolved/agreed at this stage.	with the Wildlife and Countryside Act 1981 (as amended) or the Conservation of Habitats and Species Regulations 2017. It is considered that RBC's assertion of non-compliance is based on a misunderstanding of these pieces of legislation. In the context of birds, the Wildlife and Countryside Act 1981 (as amended) concerns the legal protection of all wild birds, their eggs and nests from harm, as well as the disturbance of certain species (not including skylark) while nesting. In the context of birds, the Conservation of Habitats and Species Regulations 2017 concerns the powers to propose protected sites for their value to certain bird species or species assemblages, and require appropriate assessment of potential development impacts upon them. As indicated in the comments from RBC's Senior Ecology and Sustainability Officer on the planning application scheme, no direct harm to skylark will be caused through the Proposed Development owing to the avoidance and mitigation measures proposed, which would include seasonal timing of certain development activities, the use of an Ecological Clerk of Works during others and the implementation of a Construction Ecological Management Plan. All of this is detailed within the Ecological Impact Assessment report submitted with the planning application and updated as part of the appeal submission.



4 SIGNATORIES

4.1.1 The above SoCG is agreed between Exagen Developments Ltd. (the Appellant) and Rushcliffe Borough Council as specified below.

Duly authorised for and on behalf of **Exagen Developments Ltd.**

Name:	Harry Fox
Job Title:	Associate Director
Date:	02/02/26
Signature:	

Duly authorised for and on behalf of **Rushcliffe Borough Council.**

Name:	Rhia McBain
Job Title:	Director of Ecology
Date:	04/02/26
Signature:	

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