



APPEAL BY Hodson Developments

POSSINGHAM FARM

PLANNING APPEAL RE: REFUSAL OF PLANNING APPLICATION 22/00571/AS

APPEAL REFERENCE

APP/E2205/W/24/3345454

Rebuttal in respect of Ecology

of Helen Lucking BSc Hons, BES, MCIEEM

September 2024

APPEAL DETAILS: Appeal by Hodson Developments against the refusal by Ashford Council of a planning application in respect of the proposed development at Possingham Farm, Chilmington Green, Ashford Kent

LPA REFERENCE: **22/00571/AS**

SITE ADDRESS: **Possingham Farm, Chilmington Green, Ashford Kent**

APPEAL REFERENCE: **APP/E2205/W/24/3345454**

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1.0 INTRODUCTION

- 1.1 This Rebuttal Proof forms an addendum to my initial Proof. At the time of my initial proof, it had been expected that both parties would have been able to come to agreement and sign a Statement of Common Ground. My proof related just to two areas of disagreement between the two parties in relation to skylark mitigation and the Landscape Parameter Plan submitted for the planning application not matching with the proposed mitigation within the Site.
- 1.2 Further issues regarding the wording of conditions specifically in relation to mitigation for badgers have been raised. The comments below are in relation to the issues raised within the proof of evidence of Ms Emma England and in relation to the disputed wording of conditions with regard to badgers.
- 1.3 The evidence which I have prepared in this rebuttal proof is true and is given in accordance with the guidance of my professional institute. I confirm that the opinions expressed herein are my true and professional opinions.

2.0 Response of points arising from Emma England Proof of Evidence

Badgers

2.1 The proof of evidence of Emma England did not refer to any issues relating to badgers or their protection. The outstanding issue with badgers is in relation to the wording of the condition proposed by KCC for the development.

2.2 The wording is as follows:

Within the condition for the Ecological Design Strategy.....Full details of how the 30m badger buffer zone will be maintained and how it will be protected from human interference over the long-term;

Within the condition relating to the Landscape and Ecological Management Plan (LEMP)..... A 30m buffer from development for the identified main badger sett.

2.3 The appellant requested the wording of the conditions to be changed to:

Within the condition for the Ecological Design Strategy.... Full details at detailed design stage of the extent of the badger sett buffer post construction and how it will be protected from human interference over the long-term;

And

Within the condition relating to the Landscape and Ecological Management Plan (LEMP)..... An appropriate buffer from development for the identified main badger sett;

2.4 The Ecological Impact Assessment Reports for the proposals identified a main sett on the periphery of the site.

2.5 The original EclA April 2023 (core document CD2/26) provided mitigation for badgers during construction of a 30m buffer with only specific works permitted under the supervision of an ecologist and if a sett requires to be closed it would be done under licence from NE.

2.6 The addendum of Nov 2023 (core document CD4/4 has two paragraphs at 10.19 and 10.20 related to the badger mitigation. Unfortunately, this section of the report is rather clumsily worded as it doesn't mention 'during construction' in paragraph 10.19. However, paragraph 10.20 refers directly to post construction whilst the previous paragraph referred to getting a licence from NE (if it was considered work could cause a disturbance). The first paragraph was intended to be relating to construction and I feel it can easily be interpreted that the first paragraph is relating to construction only as the second paragraph refers to post construction. Within paragraph 10.20, the post construction text does not specify the size of a buffer but does discuss using protective fencing incorporated into boundaries of dwellings closest to the badger sett to prevent long term issues with badgers and gardens and also strategically positioned fencing to protect the badger sett from disturbance.

2.7 The most recent report of September 2024 (submitted as an addendum to the SoCG) reverts back to the table in the Original EclA and again details a 30m buffer during the construction phase only with specific works permitted under the supervision of an ecologist and that if a sett needs closing it would be under licence. Under the operational /post construction phase, the text states at the detailed

design stage it is considered a sufficiently large buffer to the spoil area (where the badger sett is) can be provided.

- 2.8 My view is that in terms of the condition, as long as it has to be approved as an appropriate buffer by KCC then there is a mechanism in place to ensure badgers are mitigated and protected appropriately. The legislation relating to badgers is from an animal welfare perspective; the location of the sett has been identified on site and it is unlikely that the size of the sett can extend significantly given it is located in a pile of spoil and due to the surrounding low lying ground conditions. There are many examples of similar developments with badger setts remaining within close proximity to developments. Badgers are relatively tolerant of moderate levels of noise and activity (¹Natural England 2009 Core document CD10/3) and the badgers within the Site are already regularly subject to disturbance through the regular ploughing and harvesting of crops in the adjacent field. The EclA reports have made reference to the potential for setts being closed down requiring a licence from Natural England. In the event that the main sett is required to be closed, there is sufficient room within the clan home range for an artificial sett to be constructed in the Chilmington Green Ecologically Managed Farmland just to the east.

Skylarks

- 2.9 In relation to skylark, I disagree with the way that Emma England has measured the number of territories that could be provided within the adjacent Chilmington Green Ecologically Managed Farmland in her Proof of Evidence paragraphs 79 -80 and 91 and the requirement to fully compensate for the loss of 46 territories across Chilmington Green and Possingham developments (paragraph 88). The information below sets out the reasons why.
- 2.10 Skylark has undergone a decline in its breeding population within in the last 25 years (²Eaton *et al.* 2015 Core doc CD10/4) although it still a relatively common species, being recorded from 861 tetrads in Kent in 2008 – 2013, and an estimated population in Kent of between 20000 – 28000 pairs (³Clements *et al* 2015 Core doc CD10/5).
- 2.11 In her proof (paragraph 79 and 89), Emma England refers to the mitigation provided within the adjacent Chilmington Green development. The Chilmington Green ES chapter (⁴WSP 2012 Core doc CD15/19) refers to a maximum count of 35 skylark with an estimation of 30 territories within the study area from breeding bird surveys undertaken in 2010. Additional surveys in 2011 found 14 territories over that year's survey area but this was not the same area as that surveyed in 2010. Across the two years surveys, the survey covered some 298ha of farmland which means that approximately 0.134 territories per ha was recorded. The mitigation for the Chilmington Green development allowed for "sufficient provision" for the species with 60ha of ecologically managed farmland provided including provision of skylark plots, retention of winter stubble, incorporation of arable field margins. It was anticipated that the breeding success (fecundity ie the number of successfully reared young in a given year) would be greater than that in the conditions when the baseline surveys were undertaken.
- 2.12 The Site Wide Strategic Ecological Enhancement and Mitigation Strategy for Chilmington Green (⁴The Landscape Partnership November 2016 Core doc CD15/18) estimated the number of territories as 40 based on the combined results of 2010 and 2011. However, it should be noted that no information regarding the crops of the various fields was provided in either year nor any changes to management

- between years. The survey area was not the same but there were areas of overlap so double counting of territories may have occurred depending on the crop rotation at that time.
- 2.13 The strategy within the Site Wide report was for 40 skylark plots to be created each year within arable fields at a density of 2 per ha over a minimum of 20ha of the total available farmland. A total of 66ha of farmland is referred to as being retained and enhanced for farmland birds. This mitigation strategy has been accepted by the LPA and KCC for Chilmington Green. The mitigation did not specifically suggest that 40 territories would be directly replaced by providing the 40 skylark plots rather it states that in any given year 40 skylark plots would be provided over a minimum of 20ha. Emma England has suggested in her proof (paragraph 82) that of the areas of ecologically managed farmland only 49ha would be available for skylark (based on removing some due to size and location next to woodland and trees). This is still more than double the amount that has been approved as being available in the Site Wide Strategic Ecological Enhancement and Mitigation Strategy.
- 2.14 The proof by Emma England (paragraph 82) has assumed that conventional winter sown wheat will be sown within all the fields and even with skylark plots this would only support 0.4 territories per ha resulting in 19.6 skylark territories and conversely the loss of 26.4 territories from Chilmington Green. The farmland management plan for the Chilmington Green Ecologically Managed Farmland has yet to be prepared, regardless of this the assumptions above do not allow for areas farmland to be left fallow / set aside which would increase the number of skylark territories and decrease the overall perceived loss of territories.
- 2.15 Currently there is no planning policy or legislation which requires like for like replacement of habitat for skylark. Indeed it has been accepted before by KCC that it is not always possible to provide replacement on a 1 to 1 basis and that it is acceptable to provide mitigation that does not provide like for like territory provision (⁶App/V2255/W/19/3233606 Core doc CD8/3)). The aim therefore of the Chilmington Green mitigation was not to replace like for like territories but to create habitat which would allow better breeding success with more young being raised each year.
- 2.16 The density and fecundity of skylark is complex and there is much variation in the numbers of skylark recorded in the various research. For each piece of research showing very low densities there are pieces of research showing the variation of densities are large. In Donald (⁷2004 Core doc CD10/6) the influence of vegetation height is described. Skylarks occur in low densities in habitats that have very short vegetation. The short vegetation does not provide sufficient cover to hide the nest. They also avoid habitats where the vegetation is very tall or dense as it makes moving around difficult. In cereals therefore the numbers of skylark changes with the changing height of the sward, often low at the beginning of the spring in spring sown cereals where the ground is bare and increasing until the sward becomes too high. In set aside the densities are often high but only where rotation ensures the vegetation doesn't become too high. This publication also refers to territory densities recorded in different habitats from a number of European studies. Set aside was found to support an average territory density of 45.6 pairs per km² (which equates to 0.45 pairs per ha) with a range of up to 110 pairs per km² (1.1 per ha). The range of the densities within arable farmland was also variable between 7 – 110 pairs per km². The significance of farmland for skylarks is not so much due to the densities of the birds it supports, rather it is the vast area of land which is covered by farmland.

- Cereals such as wheat and barley support 40% of the farmland skylark population in the UK however, other crop types including legumes and brassicas can support similar densities of skylark but these crops cover less of the UK farmland. Skylarks lay eggs from late March or early April and can have up to 4 broods in a season hence there can be different numbers of birds recorded within cereal crops during the breeding season as the crops grow.
- 2.17 In her proof paragraph 80, Emma England refers to research indicating that “*fields with two skylark plots per ha can accommodate more nesting skylarks compared with conventional winter-sown wheat management (0.3 territories per ha compared to 0.2 territories per ha). If skylark plots are combined with arable field margins 0.4 territories per ha could be supported.*”. In paragraph 90 she states the figure of 1 territory per ha is based on data from Germany and may not be fully applicable to the UK. However, the data in ⁸Conservation Evidence (Core doc CD10/7) also stated that Ogilvy *et al* 2006 found that by June winter wheat fields with skylark plots (at 2/ha) had more nests, 1/ha compared to 0.4/ha and that there were more chicks per nest and the number raised was also higher (1.5 chicks per ha in the late season) this research being based on 10 farms in the UK.
- 2.18 To date, I have found no information as to why only 2 skylark plots per ha is recommended within the guidance provided by various organisations. However, a report from Sweden (⁹Farmers for Skylarks 2018) reviewing the effectiveness of skylark plots in arable farms with winter wheat in Sweden found that increasing the number of skylark plots from 2 per ha to 3 per ha increased the number of skylark territories per ha. It recognized that the skylark plots need to be spread out across the field to enable the birds to forage for food in a larger area. A second report in Conservation Evidence by Odderskaer *et al* ¹⁰(Core doc CD10/9) reported higher densities of skylark in fields where 100x 40m² plots were created in a 22ha field (4.5/ha) than those fields with 7m² plots at 7 per ha. The purpose of the skylark plots is not to provide nesting locations for birds, rather it is to provide increased foraging areas. Therefore, at sites like Chilmington Green where there are currently no headlands and very narrow margins to the arable fields increasing these features as well as providing skylark plots has the potential to result in a significant increase in breeding skylark. There are many factors which can impact on the success or otherwise of breeding skylark: from the number of predators such as corvids (crows and magpies) in a particular year to the conditions in early spring and the extent and timing of the use of pesticides (herbicides and insecticides) on site. The diversity of crops within an area can also have a significant effect with areas where a mixture of winter and spring cereal crops along with set aside and winter stubble being left being more successful. Winspear, R & Davies, G. 2005⁽¹¹⁾ (core doc CD10/10) state that reduction in the use of pesticides, both herbicides and insecticides, after March 15th has been identified as being of particular importance for the increased success of skylark breeding.
- 2.19 At Possingham, in 2023 when there was a cereal crop, a maximum estimate of three to four territories were recorded equating to 0.12 to 0.169 territories per ha it was noted that registrations of skylark peaked in May and had decreased to only three in the June survey showing how the densities of skylark can fluctuate during a single season. In 2024 the fields were ploughed and then left as set aside which resulted in an increase to six territories (0.25 territories per ha). The vegetation was very short in early spring, the central part of the southern field lying under water in spring, the northern field ploughed later than the rest. These two fields supported the same number of skylark territories

as the previous year likely due to the lack of vegetation. By comparison, the central field of 7.2ha increased from 1 territory to 3 territories between the two years, this field having vegetative cover earlier in the season but not growing too tall during the latter part of the season. It has been agreed that EC8 might not be the most appropriate field for skylark plots due to its size and location (to be confirmed with surveys) however, given that recorded increase in the number of territories in Possingham with the set aside and the research mentioned above which found increasing the number of skylark plots per ha and the size of the skylark plots increases the number of skylark territories it is considered that increasing the numbers of skylark plots as has been committed to in other fields within the Chilmington Green Ecologically Managed Farmland can provide additional mitigation for skylark at Possingham.

- 2.20 In summary, whilst the research available has provided much evidence about the low densities of skylark within farmland and that the provision of skylark plots results in an increase in the number of territories and the breeding success of skylark, there is no specified reason why this should be limited to 2 skylark plots per ha. The skylark plots do not provide nesting places for skylarks, rather they provide a foraging resource for skylark within their home ranges. As has been seen at Possingham within a single 7ha field the number of territories increased from 1 to 3 between two years due to change in land use (winter wheat to unmanaged set aside). The other two fields did not show this same increase in territories due in part to the removal of winter stubble in the north and bare ground in spring. This shows how the number of territories can vary between years and how the fields within the Chilmington Green development which is currently intensively farmed could provide a higher number of skylark by having appropriately managed set aside and increasing the skylark plots proposed from 2/ha to 3/ha.

References:

¹Natural England 2009 *Protection of Badgers Act 1992 (as amended) Interpretation 1 of 'Disturbance' in relation to badgers occupying a sett*. Guidance Note June 2009

²Eaton *et al.* 2015 The Status of our bird populations: the fourth Birds of Conservation Concern in the United Kingdom, Channel Islands and Isle of Man *British Birds* 108: 708-746

³Clements *et al* 2015 Kent Breeding Bird Atlas 2008 – 2013 Kent Ornithological Society

⁴WSP 2012 Environmental Statement for Chilmington Green, Volume 2B Appendices Chapter 9 Ecology

⁵ The Landscape Partnership 2016 Site Wide strategic Ecological Enhancement and Mitigation Strategy for Chilmington Green

⁶App/V2255/W/19/3233606 Appeal Decision Land at South-west Sittingbourne / Wises Lane Sittingbourne

⁷ Donald P 2004 *The Skylark Poyser Monographs*

⁸Conservation Evidence 2006 SAFFIE –research into practice and policy
<https://www.conservationevidence.com/individual-study/3587>

⁹Farmers for Skylarks (2018) Skylark Plots Report Unique cooperation to reverse the trend for a threatened species Swedish University of Agricultural Sciences (SLU)

¹⁰Odderskær P., Prang A., Poulsen J., Andersen P. & Elmegaard N. (1997) Skylark (*Alauda arvensis*) utilisation of micro-habitats in spring barley fields. *Agriculture, Ecosystems & Environment*, 62, 21-29.
<https://www.conservationevidence.com/individual-study/2884>

¹¹Winspear, R & Davies, G. 2005. *A management guide to birds of lowland farmland* RSPB, Sandy Beds.