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**From:** David Innes, Blueprint Planning [REDACTED]

**Sent:** 23 December 2022 11:49

**To:** Planning.Responses <Planning.Responses@arun.gov.uk>; Planning <Planning@arun.gov.uk>

**Subject:** Fwd: Bognor Regis Golf Course M/16/22/PL

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Please upload to the planning portal please.

Have a great Christmas.

David Innes

[REDACTED]

Begin forwarded message:

**From:** Owen Jones [REDACTED]

**Date:** 22 December 2022 at 11:21:49 GMT

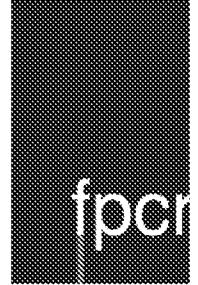
**To:** "David Innes, Blueprint Planning" [REDACTED]

**Subject:** Bognor Regis Golf Course M/16/22/PL

Dear David, in addition to my letter yesterday I am also enclosing a response prepared by FPCR in respect of the comments submitted by Place Services regarding Skylark. It sets out the reasons why direct offsite replacement skylark habitat in this case, as suggested the Condition 9 of the Place Services reponse, is not required for the LPA to fulfil the legal duty under the Habitats Regulations or NERC Act 2006. As ever, if there are any queries, please do not hesitate to contact me. Kind regards,  
Owen

Owen Jones  
Director

[REDACTED]



David Innes  
Case Officer

masterplanning s  
environmental assessment s  
landscape design s  
urban design s  
ecology s  
architecture s  
arboriculture s  
graphic design s

Studio 2 Dunley Hill Court  
Dunley Hill Farm  
Ranmore  
Berkshire  
Surrey  
RM15 6SX

22<sup>nd</sup> December 2022

Dear David,

**RE: Land South of Grevatts Lane/A259 Climping – Skylark Mitigation**

This letter asserts that direct compensation for the loss of skylark habitat as detailed in comments by Place Services on 28th October 2022 regarding planning application M/16/22/PL is disproportionate for a scheme of this scale due to the low significance of the impact on skylark populations. In addition, direct compensation for the loss of bird habitat as a result of development, regardless of significance or scale, is not the legislative intent of any piece of UK wildlife legislation. The requirement for a bespoke Farmland Bird Mitigation strategy should therefore be removed in its entirety and be replaced with a condition that targets improving the development itself by creating more opportunities for birds of similar conservation status that are declining in residential and urban environments.

The comments made by Place Services are as follows:

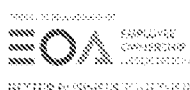
*'There is insufficient information available to identify the likely impacts upon Priority Farmland birds, particularly Skylark (Alauda arvensis) which nest in arable fields and the breeding bird survey identified breeding ground Skylarks on site. Although mitigation during construction and new foraging opportunities have been recommended in the Ecological Assessment (FPCR, August 2022), mitigation for the loss of nesting habitat for ground-nesting birds has not been considered. With the reviewed document stating "The existing arable habitats provide some breeding and/or foraging habitat for skylark, linnet, yellowhammer and meadow pipit. The proposals will see all the arable habitats removed and their loss will not be compensated for, however the number of such species were low and due to the context of the local landscape such species are not solely reliant on the habitats within the Site." Government Standing Advice for wild birds indicates that "There should be a suitable amount of replacement habitat to compensate for the displacement". The surrounding habitats have not been surveyed and so it is not possible to say if the identified species are not reliant on the site's habitats. The open habitats that are provided as part of the proposals are not equivalent to what will be lost.*

*As a result of breeding Skylarks having been identified on site, with no compensation proposed, Appendix F: Breeding Bird Survey Results (FPCR, August 2022), a bespoke Farmland Bird Mitigation Strategy is required to ensure that impacts upon nesting Skylark are mitigated and compensated for. Any territories that are unable to be mitigated for on site should be compensated*

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Offices also at  
Lockington Hall, Lockington, Derby DE74 2RH  
Addlepool Business Centre Clyst St George, Exeter, Devon EX3 0NR  
York Biotech Campus, Sand Hutton, York YO41 1LZ  
Aislewoods Mill, Nursery Street, Sheffield S3 8GG



*for offsite e.g. by the use of spring-sown regimes, retention of winter stubble, provision of set-aside or provision of Skylark plots in nearby arable crops (the amount of land which should accommodate the required number of displaced Skylark territories can be calculated using Harry Fox's example, as provided in InPractice Magazine, 117 47-51 (September 2022)). However, if suitable land is not available in the applicant's control to be secured by a condition of any consent for a Farmland Bird Mitigation Strategy, then the compensation measures may be required to be secured via a legal agreement.'*

This letter is in two parts, the first is an ecological impact assessment for the effects of the proposed scheme on skylark. Part 2 is regarding the legal and policy requirements for addressing impacts of developments on farmland birds and why a Farmland Bird Mitigation strategy is not necessary.

## **Part 1: Ecological Impact Assessment**

### *Survey Summary*

Three breeding bird survey visits were conducted in May, April and July 2022. The survey results showed during this period there were ten singing individuals in April, six in May and four in July (*Ecological Assessment – Site B, Appendix F Breeding Bird Survey, August 2022*), where the species recorded were identified as a probable breeder, which is defined as territories defended over at least two surveys. From comparing the data FPCR collected, it looks like there are roughly five areas where skylarks were recorded on two or more occasions (they were not precisely the same area).

### *Ecological Impact Assessment*

Skylarks are one of the most common farmland birds with an estimated 1.55 million territories nationally. They nest in a wide range of open habitats mostly heathland, moorland, arable and marsh, with bogs, reedbeds, pasture and coastal areas also favoured, but are generally absent from towns and dense woodland. Their status as a common and widespread species nationally is due to their association with the most abundant habitat types in the UK. Unless stated otherwise, the figures in this assessment have been taken from the British Trust for Ornithology's (BTO) bird facts webpage and related links to national BTO Breeding Bird Survey data and BTO's Bird Atlas.

Skylark have declined in the UK since the second world war and for this reason are listed as a Priority Species on NERC Section 41 and are Red listed on the Birds of Conservation Concern 5 (BoCC5). It is widely agreed that the cause of this decline is from changes in farming practices, mainly the intensification of grassland management for livestock and a shift in arable farming from spring to winter cereals; not from loss of habitat due to development. In recent years the decline has somewhat stabilised and was estimated to be -1% in England in the 5 years from 2013 to 2018.

In a study by Donald (2004)<sup>1</sup> nesting densities of skylarks on arable land were estimated to be 28 pairs per km<sup>2</sup> on average. On this basis, the site, which is approximately 0.73km<sup>2</sup>, would be expected to support at least 20 pairs. However, numbers on site reached between four pairs and a maximum of six pairs, suggesting that the on-site population is far less than would be expected and that the habitat is sub-optimal for breeding skylark. Furthermore, skylark can have up to four broods per year, with the number of nesting attempts a good indicator of the stability of the population<sup>1</sup>. Winter cereals are less than ideal habitat for skylark as the crops overtop 60cm far sooner than spring sown crops, resulting in sub-optimal habitat for a third (or even second) brood. This is relevant, as the majority of crops on site are winter wheat, with some oilseed rape and legume crops less often in recent years (communications with farmer). Spring cereals are better for

<sup>1</sup>Donald, P.F. (2004). The Skylark. Poyser, London

<sup>2</sup>CIEEM (2022). CIEEM In Practice Issue 117 September 2022

skylark, supporting 0.42 pairs/ha, while intensive winter wheat supports 0.15 pairs/ha and both legumes and oilseed rape only 0.12 pairs/ha<sup>2</sup>. Therefore, the farmland habitat on site are sub-optimal for breeding skylarks.

To determine the importance of the site for skylark, importance has been assessed at regional, county and local levels as follows:

**Regional:** The skylark population in the South East over the past five years have increased slightly from 1,998 individuals in 2017 to 2,759 in 2021, although the number of squares surveys does vary 683 in 2017 and 703 in 2021. The trends show that over the last 25 years there has been a 17% deduction in the numbers, however the most recent trends in ten years (+14%), five years (17%) and two years (12%, some statistical smoothing occurring). This data and trends are only based on the areas that are surveyed by the BTO and so do not cover the entirety of the south-east and provide a sample of the population only. This data is however useful for observing trends in population numbers in this part of England.

**County:** The 2019 Sussex Bird Report describes skylark as “*very common but declining resident*”, with “common” species estimated to have populations of between 5001 – 30,000 pairs breeding annually. This species was recorded in 375 tetrads which is a slight increase over previous years, but comparable to the ten year average of 380. During BBS for this report, skylarks were noted in 47% of the squares with a maximum of 29 at Horse Eye Level (Pevensy Levels, 94km east from site). Breeding was only confirmed in nine tetrads with probable in a further 41.

**Local:** Population data at this resolution is not readily available, however during FPCR consultation exercise with SxBRC they reported 187 records from 1990 to 2019 within a 2km radius of the application site, with typical numbers recorded between one and six individuals. There was a single peak count of 5000 recorded, although the location was not given. This number was likely recorded during the winter when skylark can flock together to feed. The majority of records were from Climping Gap and Arun Valley Ford. It should be noted that these are generally one-offs, incidental records and so not necessarily representative of population sizes. The numbers on site are unremarkable and consistent with those recorded in neighbouring areas.

Based on land use, Arun District is largely formed by open farmland habitats, with an estimate of 55.2% of land used for farmland. This suggests plentiful open habitat for skylark is present locally.

### Conclusion

Overall, the skylark present on site have been assessed as local-level importance due to their status as a NERC and Red listed species, but four/six pairs are not a significant number and the magnitude of the effect is low for a species that is this common and widespread locally. The habitat present on site is also sub-optimal and not a good example of skylark habitat, even before development. There will not be a significant effect at the local level on skylark, and impact of the proposals will therefore be negligible even in the worst-case scenario where six pairs are permanently lost. Further surveys that have been conducted since the submission of the Environmental Statement have continued to support the findings presented within the Ecology assessment and its findings therefore remain unchanged. These are set out in Table 8.6 of the Ecology Chapter, with the effects set out in table 8.12 also supported.

The most likely scenario will be that the skylarks are displaced into the significant amounts of suitable habitat available locally, which includes large amounts of land nearby currently in agri-environment schemes. The development of the site will lead to a large amount of grassland habitat as part of the golf course and so areas of the site will still be of foraging value to skylark that are displaced, especially to the north of the site which borders other suitable skylark habitat to which they may be displaced to. There are also some opportunities that breeding might take places

<sup>1</sup>Donald, P.F. (2004). The Skylark. Poyser, London

<sup>2</sup>CIEEM (2022). CIEEM In Practice Issue 117 September 2022

around the 'roughs' of the golf course where the intense management and disturbance from golfers is reduced. The low significance of the impacts of the scheme on the local skylark population alone is enough to support the removal of the requirement for a Farmland Bird Mitigation Strategy as being disproportionate, in line with BS 202020 and CIEEM guidance on impact assessments.

## **Part 2: Legal and Policy Requirements**

Bird habitats in the UK, except where all birds are protected while nesting under the Wildlife and Countryside Act (WCA) 1981, including additional protection to Schedule 1 birds, are not statutory protected unless they fall under a statutory protected site designation (SSSI, SPA etc).

Outside the designation of protected sites, birds and their habitats are addressed through Regulation 10 of the Habitats Regulations and Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, whereby duties are placed on the secretary of state, local authorities and other bodies, to have in place "*measures to maintain the population of bird species*" and to "*have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity....in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.*"

NERC section 41 places a responsibility on the Secretary of State to maintain a list of Priority Habitats and Species, and birds including Skylark, feature prominently on the list due to their historic declines. These duties do elevate the NERC Section 41 species and habitats for consideration as conservation priorities, but it is not equal to statutory protection, and it is an overstretch of the legislative intent to apply like-for-like compensation for NERC species especially where the effects are not significant.

The approach of local authorities for conserving NERC S41 birds has been the use of strategies and action plans. The species that are most vulnerable and sensitive, for example cirl bunting *Emberiza cirlus* and turtle dove *Streptopelia turtur*, tend to have more species-specific action plans and policy in place to promote their protection and recovery. While species that are less sensitive, common and widespread such as house sparrow *Passer domesticus* and skylark, have broader more strategic based approaches. These vary from simply gathering more information, to planning and development policy driven bird box requirements in new developments (e.g. Cornwall's Biodiversity Guidance for Planning), and in the case of most farmland birds, the use of / promotion of agri-environmental schemes.

In the Lowland Derbyshire Biodiversity Action Plan 2011 - 2020, within the Claylands Area Action Plan. Skylark are listed as a LBAP species, and are addressed under "farmland birds". The key action for farmland birds in the LBAP is a targeted renewing Entry Level Stewardship agreement holders to include appropriate actions for hedgerows, farmland birds and field margins.

This agri-environment scheme approach to restoring and / or enhancing farmland bird habitats has been the primary approach in the UK across local authorities, as well as across Europe. It is reflected in the governments Biodiversity 2020: A strategy for England's wildlife and ecosystem services, and there is a consensus in the UK that the best approach to tackling farmland bird decline is through influencing farming practices through payment schemes. This consensus can be further illustrated by the Section 41 Species - Priority Actions Needed (B2020-008) assessment. This was conducted by Natural England with a team of experts, to address outcome of the Government's Biodiversity 2020 strategy which states: '*By 2020, we will see an overall improvement in the status of our wildlife and will have prevented further human-induced extinctions of known threatened species.*'

<sup>1</sup>Donald, P.F. (2004). The Skylark. Poyser, London

<sup>2</sup>CIEEM (2022). CIEEM In Practice Issue 117 September 2022

For this work, a wide-range of expert ecologists were asked by the Biodiversity 2020 Terrestrial Biodiversity Group to identify what needs to be done for these S41 species to recover. They considered all of the S41 species found in England and identified and prioritised the actions they believe are needed for their recovery. For skylark, action types categorised as “survey or monitoring”, “habitat management” and “research” were identified, and were as follows:

- Ensure adequate monitoring of the effectiveness of Environmental Stewardship.
- Ensure the appropriate design and level of funding of Environmental Stewardship-including measures to ensure take up of relevant prescriptions in the right places.
- Carry out further research on solutions in pastoral areas.
- Under the action type category “policy or legislation” delivered through “planning policies & control”, European nightjar, circl bunting, woodlark, house sparrow, common starling and song thrush are listed, and the actions were as follows:
  - Maintain and protect key sites from built development or agricultural intensification/abandonment (circl bunting)
  - Take impacts of human disturbance on breeding density and breeding success into account when planning housing development, particularly in south and east England, and protect important populations as necessary (woodlark and nightjar).
  - Ensure home-owners, Local Authorities, developers and others consider needs of, and action for, birds in building design/maintenance and garden/green space management (house sparrow, song thrush and starling).

The reason for this agri-environment scheme approach consensus for skylark is because they remain common and widespread, because their populations are currently not-sensitive to the comparative minor amount of skylark habitat lost to development, given the extensive amount of their preferred farmland and open habitats that remain in the UK. It also is tackling the problem from its root cause i.e. the intensification of farming practices.

Overall, the requirement for direct offsite replacement skylark habitat in this case, as imposed by Condition 9, is not required for the LPA to fulfil their legal duty under the Habitats Regulations or NERC Act 2006. The National Planning Policy Framework (NPPF) also states that planning conditions should only be imposed where they are *'necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects'*, and here based on the arguments above, we assert that this is an example of a condition that is not necessary nor reasonable.

Yours sincerely



David Harper  
Associate Director (Ecology)

FPCR Environment and Design Ltd



<sup>1</sup>Donald, P.F. (2004). The Skylark. Poyser, London

<sup>2</sup>CIEEM (2022). CIEEM In Practice Issue 117 September 2022