

**The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17:
North Kesteven District Council response**

Question	NKDC reply
<p>Annex C – Question C2</p> <p>‘Provide comments on the skylark mitigation strategy as set out at paragraphs 5.5.9 to 5.5.13 of the outline Landscape and Ecological Management Plan [REP4-039]’</p>	<p>In specific response to Annex C, Question C2 and in relation to paragraphs 5.5.9 to 5.5.13 of the outline Landscape and Ecological Management Plan [REP4-039], the Council comments as follows. However, please also see the ‘subsequent updates’ section below as this matter has now been progressed in discussion with the Applicant and the Council’s consultant ecologist.</p> <p>The Council maintains its position that this matter can be secured via a Requirement, and that some flexibility in approach can be built into it. However, there are some concerns that as submitted the section of the oLEMP dealing with skylark mitigation is still relatively noncommittal in places (using phrases such as “<i>seek to ...</i>”). The oLEMP and LEMP need to be clear on what will be provided even if there are two alternate options.</p> <p>The applicant has concluded no significant effect on skylark in EIA terms, which is not the same as no effect. This also does not necessarily mean that mitigation is not required or is not otherwise appropriate e.g. mitigation for non-significant effects is often required for other reasons e.g. legal compliance (badger). In this case, the skylark is a species of principal importance so it is a relevant consideration when meeting the Biodiversity Duty.</p> <p>There is a clear conclusion of a net loss in skylark habitat with a likely consequence for the population (loss of 16-28 territories relative to the baseline). It is agreed that the impact from the scheme in isolation is relatively small, but the concern is that the cumulative impact at landscape scale from similar developments and wider impacts on habitat suitability will be more adverse (through incremental losses relative to the baseline). On that basis we do not agree that the level of proposed development across the County will result in a “no residual adverse effect”.</p>

The CIEEM Guidelines for Ecological Impact Assessment (EclA) state that “*Cumulative effects are particularly important in EclA as ecological features may be already exposed to background levels of threat or pressure and may be close to critical thresholds where further impact could cause irreversible decline. Cumulative effects can also make habitats and species more vulnerable or sensitive to change*”. Mitigation that avoids impacts at a local scale site by site, is an effective means to address/remove potential cumulative effects.

Skylark also provides a ‘flagship species’ for agreeing mitigation for other birds dependent on similar habitats and of less favourable status (e.g. yellow wagtail). Drivers for securing adequate mitigation include the:

- Conservation of Habitats and Species Regulations 2017 which implement the requirement under the Birds Directive that signatories “*must preserve, maintain and re-establish birds habitats to ensure a sufficient diversity and area of habitats*”. Under the Regulations “*Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive*”.
- The statutory Biodiversity Duty under the Environment Act 2021 to provide for the enhancement and improvement of biodiversity. The related Environmental Targets (Biodiversity) (England) Regulations 2023 set legally binding targets (e.g. “*Halt the decline in species populations by 2030, and then increase populations by at least 10% to exceed current levels by 2042*”) for the recovery of wildlife-rich habitat, and species recovery. Wild birds are one of the indicators monitoring by Government in relation to biodiversity targets.
- Reflecting the above, the Standing Advice on Wild Birds e.g. “*There should be a suitable amount of replacement habitat to compensate for the displacement*”.

Paragraph 5.5.10 sets out a range of potential mitigations including some on-site mitigation within the order limits and some off-site mitigation utilising 62ha of arable land offsite (but within the option area and within the Applicant's control). The latter is noted as providing 17-30 territories and 124 skylark plots (at a density of 2 plots per ha).

However, paragraph 5.5.11 confirms that the proposed mitigation strategy utilising land on- and off-site only has the potential to mitigate for between 77-87% of the 124 skylark territories recorded on site in the 2021-22 baseline, meaning that 13-23% of skylark territories currently remain unmitigated for (paragraph 5.5.13) through high level measures specified in the oLEMP.

Paragraph 5.5.14 notes that the applicant agrees to work with the Council and Lincolnshire Wildlife Trust (LWT) to carry out or contribute to a strategy for the benefit of Skylarks either on land in which the Applicant has an interest, or such other land, or through such other mechanism to be agreed with NKDC in consultation with LWT.

LWT have not been asked by the ExA to comment on the proposed skylark mitigation strategy, therefore the Council has sought initial advice from LWT. We understand that LWT's position on skylarks is one of wishing to see collaboration from the solar industry to address the cumulative effects of habitat loss for skylarks given that Lincolnshire is largely agricultural with large areas of breeding habitat within solar DCO Order Limits, and we understand that LWT are working through initial proposals put forward by various solar NSIP representatives.

On the basis of paragraphs 5.5.9 to 5.5.13 of the oLEMP, the Council has to assume that there is currently no clear strategy setting out how the residual 13-23% of unmitigated skylark territories will be provided. This is confirmed by the applicant to be reliant on either the use of third-party land, the actions (at least in part) of third parties and potentially (the oLEMP is silent on the matter) the payment of funds or the entering into separate agreement with third parties to secure such delivery. The draft s106 Heads of Terms does not currently include a payment mechanism, should this be an option that the applicant wishes to reserve.

North Kesteven District Council response to Deadline 4 submissions and subsequent updates

Document/reference	NKDC comments
<p>REP4-050 – DCO Schedule of Changes</p>	<p>In response to the changes set out under Table 5 (document page 39 onwards):</p> <p>Schedule 2, Requirement 8(2)(c) – NKDC notes the proposed deletion of reference to Metric 4.0 and replacement with the Statutory Metric. The Council’s deadline 3 and 4 responses advised that version 4.0 should be adopted. DEFRA guidance ‘<i>Calculate biodiversity value using the biodiversity metric</i>’ issued on 15/12/23 states that “if you already started calculations in version 4.0 or before, you will need to copy and paste these into the statutory biodiversity metric tool. The outcomes of calculations for most habitats will not change between metric version 4.0 and the statutory version. We will provide a summary of what has changed from version 4.0 to the statutory version”.</p> <p>The Council has since received a document from the Applicant comparing metric Version 4.0 and the Statutory Metric in relation to actual BNG unit delivery on site. That document confirms that adopting the Statutory Metric will result in a gain of 20.18 habitat units. The Council is therefore content with Requirement 8 referring to use of the Statutory Metric rather than version 4.0.</p> <p>Schedule 2, Requirement 8(3) – we are pleased to note the increase from 5 to 7 years.</p> <p>Schedule 14, Paragraph 5(1) – the RPAs have continued dialogue with the Applicant regarding the Requirement fee discharge schedule referred to in Schedule 14, Paragraph 5(1) of the draft DCO. North Kesteven District Council has reached agreement on the proposed schedule of fees, which is listed below:</p>

Fees

5.—(1) Where an application is made to the relevant planning authority for a discharge, a fee is to apply and must be paid to the relevant planning authority for each application.

(1) The fee payable for each application under sub-paragraph (1) is as follows—

- (a) a fee of £2,535 for the first application for the discharge of each of the requirements 6, 7, 8, 11, 12, 13, 14, 15, 16, 18, 19, and 20;
- (b) a fee of £578 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and
- (c) a fee of £145 for any application for the discharge of—
 - (i) any other requirements not listed in paragraph (a);
 - (ii) any application under requirement 5 in respect of requirements not listed in paragraph (a); and
 - (iii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within ten weeks from the relevant date in paragraph 2(1) unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period for determining the application has been agreed pursuant to paragraph 2(1) of this Schedule.

The Council has agreed the interpretation and application of the above fee schedule with the Applicant for the avoidance of doubt, with an example 'working' in table format below. In summary., the rate at 5 (1) (a) is payable in full across each Requirement submitted for discharge whether in full or in part; i.e. to reflect the partial discharge of a Requirement across certain phases of development (i.e. to take account of staged discharges of the same requirement). The rate at 5 (1) (b) would only be payable in the event of any application to amend any Requirement already discharged through 5 (1) (a).

Example:

Requirement	Type	Fee
LEMP	Partial discharge Phase 1a	£2535
LEMP	Partial discharge Phase 1b	£2535
LEMP	Subsequent revision to amend scheme details approved through Phase 1a	£578
Boundary treatment	Full discharge – whole site	£2535
Boundary treatment	Subsequent revision to amend approved boundary treatment details for Phase 1b	£578

	<p>Schedule 14, Requirement 5(3) – we agree that this amendment is necessary regardless of the final discharge fee agreed between the parties.</p>
<p>REP4-044 and REP4-045 - Outline Supply Chain, Employment and Skills Plan</p>	<p>We note that REP4-044 and REP4-045 ‘Outline Supply Chain, Employment and Skills Plan’ has been expanded to confirm that the mechanism to secure the £50,000/year funding will be via a section 106 agreement, the Heads of Terms of which have been drafted. The RPAs have continued discussions with the applicant in relation to the draft Heads of Terms and North Kesteven District Council has since agreed this draft; which we understand will be submitted by the Applicant at Deadline 5.</p> <p>For the avoidance of doubt, whilst not previously specified in section 3 of REP4-044 and REP4-045 the fund should include providing education/training at those establishments listed in ‘Table 1- Examples of public and private sector organisations’. The agreed Heads of Terms has been drafted to include the following ‘purpose’ of the Skills contribution, for the avoidance of doubt to include education bursary payments:</p> <p><i>“To be used for increasing employment, education and skills opportunities in the local area (primarily within North Kesteven District and Boston Borough but to include neighbouring authority areas where necessary) for individuals in the renewable energy, sustainable farming/agricultural diversification, ecology and sustainable development sector (primarily with the purpose of reducing carbon emissions in line with the key values of Ecotricity relating to food, energy, and transport carbon emissions), and which may include the provision of training and apprenticeships and education bursary payments (the "Purpose")”.</i></p>
<p>REP3-034 and REP3-035 Outline Operational Management Plan</p>	<p>The Council has continued dialogue with the Applicant in relation to the Outline Operational Management Plan and specifically the section dealing with Periods of Extended Outage. The Council has subsequently agreed revised wording as follows which we understand the Applicant will update and resubmit at Deadline 5:</p>

6.1. *The Applicant must provide notice to the relevant planning authority once any part of the authorised development stops generating electricity for a continuous period of 12 months for non-maintenance reasons ("**Period of Extended Outage**"). When giving such notice the Applicant must provide details of the steps it is taking to rectify the issue along with an expected timeframe for when generation is predicted to re-commence operation. The Applicant agrees to keep the relevant planning authorities updated following the Period of Extended Outage until the re-commencement of operation.*

6.2. *In the event that the equipment/plant is still inoperative after an additional period of 24 months from the first Period of Extended Outage (resulting in a continuous period of 36 months of outage), subject to paragraph 6.3, the Applicant must submit a decommissioning and restoration plan to the relevant planning authority for that part of the authorised development and decommissioning of that part of the authorised development must take place in accordance with the approved plan.*

6.3. *Paragraph 6.2 does not apply if:*

6.3.1. *it was a force majeure event;*

6.3.2. *the outage occurred as a result of National Grid undertaking any activities to Bicker Fen Substation and/or the transmission network; or*

6.3.3. *the relevant planning authority agree otherwise (acting reasonably).*

	<p><i>6.4. For the purpose of paragraph 6.3.1 a 'force majeure event' means an event or circumstance which is beyond the reasonable control of the Applicant which will include but is not limited to an act of God, war, civil disturbance, statutory prohibition, disruption to or issues with supply chains, Government intervention, order or act of Government or local/public authority, acts of terrorism, fire, lightning, flood, adverse weather conditions, prevention of access to any site as a consequence of any local, regional or national restriction on movement in consequence of a health emergency, or otherwise to prevent the spread of any communicable disease, explosion, accident, theft, vandalism or national strike action.</i></p> <p>Subject to this revision being incorporated into the Outline Operational Management Plan the Council has no further comments in relation to this specific matter.</p> <p>However, the Council still does not agree with the revisions made to the Outline Operational Management Plan in relation to grazing management which we understand will be submitted by the Applicant at Deadline 5. The Council's position on grazing management/mitigation of BMV impacts remains as per that submitted in response to the ExA second questions; including in relation to application of NFU Guidance on grazing density of 2 to 3 sheep per hectare on newly established grassland, and thereafter 4-8 sheep per hectare.</p>
<p>REP2-054 outline Construction Traffic Management Plan and Joint Position Statement with Beacon Fen Energy Park</p>	<p>We understand that the Applicant will be submitting a 'Joint Position Statement with Beacon Fen Energy Park' which read alongside an update to the oCTMP reflects the Beacon Fen notification process and Triton Knoll Access Track use by NGET. The Council has no specific comments and no outstanding concerns at this stage noting that the Joint Position Statement sets out high level operational matters relating to potential project overlap, protective provisions and details of co-operation with the Beacon Fen Energy Park scheme in relation to the construction phase.</p>

<p>REP4-039 and REP4-040 outline Landscape and Ecological Management Plan (update to Rule 17 Letter, Annex C – Question C2).</p>	<p>Further to the position set out above in relation to the Rule 17 Letter, Annex C, Question C2, the Applicant and Council have been discussing the proposed mitigation strategy for Skylark, resulting in an amendment to the oLEMP which the Applicant will be submitting into Deadline 5.</p> <p>In summary, the revision confirms that mitigation for Skylarks will be delivered via a combination of onsite delivery, provision on an option area and under the Applicant’s control and the mitigation of a further 16-28 territories through the provision of 0.25ha of skylark plots across approximately 77ha of arable land in wider Lincolnshire.</p> <p>The Applicant has confirmed that this latter element of mitigation will be delivered in partnership with a local landowner, and a memorandum of understanding (which the Council has received a copy of) will be provided as an Appendix to the updated oLEMP to evidence the agreement. The updated oLEMP also makes provision for the 16-28 territories to be provided in locations and through a mechanism to be agreed with the Lincolnshire Wildlife Trust (LWT) as part of a strategic approach with other solar NSIP developers in Lincolnshire, should this need arise.</p> <p>On this basis the Council are content that the detail of mitigation of impacts on Skylark can be addressed through the detailed LEMP and associated Requirement applying the above approaches.</p>
<p>Statement of Common Ground (SOCG)</p>	<p>The Council has agreed, signed and dated the final version of the SOCG which we understand the Applicant will submit into Deadline 5.</p>