



**Additional Relevant Representation and Additional Comments/Queries Regarding ExQ1
Deadline 3 (02/07/2025)**

Additional Comments/Queries Regarding ExQ1

Question Number	ExA Question	Applicant Response	Burnet Comment
1.6.8	The Burnet Heritage Trust have commented [RR-011] there are a number of species that have not been surveyed or included within ES Appendices 8-7 [APP-152 and APP-153] and 8-8 [APP-154] as follows:	<p>The Survey Area for breeding bird surveys is defined in Section 3 of ES Volume III Appendix 8-7 Breeding Bird Report [APP- 152] and for non-breeding birds in Section 3 of ES Volume III Appendix 8-8: Non-Breeding Bird Report [APP-154] and summarised in Table 8-1 of ES Volume I Chapter 8: Ecology [APP-060]. This is summarised for breeding birds as follows: ‘For the general breeding bird assemblage, the Survey Area is defined as the land within the Order limits and to a maximum of 50 m from the Order limits. For species of greater conservation value and/or higher sensitivity, e.g. those listed on Schedule 1 of the WCA and sensitive to potential noise or visual disturbance, where any such species were recorded, the survey area was extended up to 200 m from the Order limits’</p> <p>For non-breeding (wintering and passage) birds as follows: ‘The land within the Order limits and to a maximum of 500 m from the Order limits.’ All bird species, including Marsh Harrier, Grasshopper Warbler, Marsh Warbler and Garganey were included within the scope of the surveys and, where present, recorded.</p>	<p>The Burnet Trust is somewhat confused by the responses presented here since they seem to be in contradiction to statements made during ISH3. During the hearing it was stated by the applicant that breeding bird surveys presented by the applicant "would equate to an assessment of the [candidate] SSSI" (see transcript of ISH3 01:30:27:23 - 01:30:59:14). However, here the applicant states the breeding bird survey was conducted "to a maximum of 50m from the Order limits". In fact, by their own admission, the applicant's surveys did not detect Grasshopper Warbler, Marsh Warbler or Garganey during Breeding Bird Surveys; even when some of these were in audible distance from the DCO. Therefore, it seems unlikely to the BHT that the full breeding bird community of the candidate SSSI (which extends over 1.4km eastwards from the Northeastern boundary of the DCO) would have been fully appraised, especially since this area includes private land where the Burnet Trust itself has not been able to conduct surveys.</p> <p>The applicant has apparently referred to the databases provided by the Burnet Trust. However, the desk-based elements of the Breeding Bird Report [APP-152] and Non-Breeding Bird Report [APP-154] omit the occurrence of numerous species entirely (e.g., Curlew Sandpiper, Egyptian Goose, Rock Pipit). Whilst these species are transient and not significant to the development, their</p>

		<p>In addition, the extensive data bases, such as those highlighted by the Burnet Heritage Trust (BHT) were reviewed to provide additional information from both within the Survey Areas and outwith.</p> <p>The Applicant has provided a detailed response to the BHT Relevant Representation at Deadline 1 [REP1-031]. A response to each of the specific species is provided below.</p>	<p>omission from an apparently exhaustive list (where other equally transient species are included) belies a failure to properly incorporate the public databases to which the applicant claims have been fully apprised. Other errors include this listing of Cuckoo as a non-breeding bird.</p>
1.6.8 Cont.	<p>• Table 4 of ES Appendix 8-7 states that Marsh Harrier is not within the order limits. As Marsh Harrier is identified within Annex 1 Birds of Conservation Concern (BoCC) Amber list, please confirm survey distance for this species given the methodology set out within Section 3 of ES Appendix 8-7 and given the ecological protection afforded this species.</p>	<p>Marsh Harrier – Given the species is listed on Schedule 1 of the WCA (and therefore protected from disturbance whilst breeding) the Survey Area for the species was up to 200m from the Order limits. The Applicant recorded foraging Marsh Harrier during non-breeding bird surveys, as presented in ES Volume III, Appendix 8-8: Non-Breeding Bird Report [APP-154]; however, the species was not recorded during breeding season surveys. The species has, therefore been assessed as part of the non-breeding bird assemblage. The creation of extensive areas of neutral grassland across the Order limits, as well as the enhancement of the riparian corridor along the River Went, will likely benefit foraging Marsh Harrier (i.e. greater abundance of prey) and not prohibit potential future breeding in the wider area.</p>	<p>The Burnet Trust is surprised that the applicant believes the scheme, as currently conceived, will benefit Marsh Harrier, given that the anticipated 'neutral grassland' will actually be over-sailed by solar panels and therefore unsuitable for this species' foraging. Other similar Solar DCOs have explicitly noted that panelled areas are not suitable foraging habitat for the species and provided additional areas of ecological mitigation to alleviate such impacts (e.g. Cleve Hill Solar Farm 6.4.5.2 Environmental Statement - Landscape Biodiversity Management Plan [APP-203].)</p>

1.6.8 Cont.	<ul style="list-style-type: none"> • Grasshopper Warbler have not been surveyed. Given this species is a Species of Principal Importance (SPI) and is listed on the BoCC Red list, please confirm the extent of the surveying distance for this species given the methodology set out within Section 3 of ES Appendix 8-7. 	Grasshopper Warbler – the Survey Area for the species included a minimum of 50m from the Order limits, and where accessible and individuals where audible, up to 200m beyond that. The species was not recorded during breeding bird surveys undertaken by the Applicant; however, as presented in Table 4 of ES Volume III Appendix 8-7 Breeding Bird Report [APP-152] is acknowledged as being present in the wider area.	Grasshopper Warbler held territory (probable breeding) <60m from planned panelled areas (and 10m from the DCO boundary). At this distance, it could be expected that construction noise of ~70Db is possible (based on expected attenuation of 105Db potential construction noise); a distance which has previously been demonstrated to impact nesting success in songbirds (Williams et al., 2021). Grasshopper Warbler is likely to be especially susceptible to the impacts of construction since their mechanical-sounding song occupies a single frequency which would easily be overcome by background noise. As of 2025 there is also a pair of Cetti's Warbler (also a schedule one breeding species), nesting at the same location.
1.6.8 Cont.	<ul style="list-style-type: none"> • Marsh Warbler have not been surveyed. Please confirm if this species was surveyed and if not, why not. 	Marsh Warbler – the species is listed on Schedule 1 of the WCA and as such protected from disturbance whilst breeding. The Survey Area for the species included a minimum of 50m from the Order limits, and where accessible and individuals where audible, up to 200m beyond that. The species was not recorded during breeding bird surveys undertaken by the Applicant. However, it is noted that the species has been present at Topham in 2023 and 2024. The Applicant has provided a detailed response in [REP1-031], but in summary, due to a combination of distance, construction activities and	The Burnet is pleased this species has now been included. However, the presence of a breeding species with fewer than 10 breeding pairs nationally should highlight the important and potentially fragile bird community immediately adjacent to the site.

		equipment and duration of activities, no significant disturbance will occur to sensitive species, such as Marsh Warbler, outside the Order limits.	
1.6.8 Cont.	<ul style="list-style-type: none"> Garganey have not been surveyed. Please confirm if this was surveyed and if not, why not 	<p>Garganey – the species is listed on Schedule 1 of the WCA and as such protected from disturbance whilst breeding. The Survey Area for the species included a minimum of 50m from the Order limits, and where accessible, up to 200m beyond that.</p> <p>There is no breeding habitat for Garganey within the Order limits, with breeding likely to be associated with wetlands north of Topham. The species was not recorded during surveys undertaken by the Applicant.</p> <p>It should be noted that prior to commencement of any works, surveys of both breeding and non- breeding birds will be undertaken to establish whether the distribution of birds has changed, and any specific mitigation measures are required, such as to avoid disturbance by species listed on Schedule 1 of the WCA. This is secured through the Framework CEMP [REP1-019] and via Requirement 11 of Schedule 2 to the Draft DCO [REP1-005].</p>	<p>The applicant has suggested no possible breeding habitat exists within the order limits for Garganey, when in fact the seasonal flood land at (53°38'57.99"N, 1° 4'30.85" W) provides a small area of suitable breeding habitat in years when water is present into the spring, where the species has been seen.</p>

1.6.9	<p>The Burnet Heritage Trust relevant representation [RR-011] raises concerns that inclusion of fields SE6 and SE7 would result in a disproportionately negative effect on biodiversity including the isolation of broadleaf woodland from adjoining woodland areas.</p> <p>Please explain the rationale for inclusion of fields SE6 and SE7 and in particular:</p> <p>a) how it represents good design?</p> <p>b) the ecological impacts that result from the inclusion of these fields.</p> <p>Please also explain how the removal of these fields would impact on the significant effects identified in the ES</p>	<p>The Applicant provides a response to both points below.</p> <p>a) and b) The placement of solar PV in fields SE6 and SE7 will not cause any isolation of existing habitats in adjoining areas or in connectivity for wildlife moving between areas and across the wider landscape. Both fields are currently pasture grassland, with the Habitat classification type being ‘Other neutral grassland’. This grassland type will be retained and continue to be present throughout operation.</p> <p>As set out in ES Volume I Chapter 8: Ecology [APP-060] and the Framework LEMP [REP1-029] the design parameters include development set-backs of at least 15m from all woodland. As such, undeveloped buffers around woodlands and other boundary features which will be subject to habitat creations and enhancements, such as species-rich grassland creation and hedgerow improvements, will mean there will be no isolation of habitats outside the Order limits. These embedded design parameters will strengthen habitat connectivity and further facilitate wildlife</p>	<p>The construction phase for SE6 and SE7 will impede the movement of amphibians between the network of ponds in the area and without very significant mitigation will likely result in substantial mortality.</p> <p>Even after construction, the erection of large stock-proof fences around the perimeter of the site will impede the movement of deer and other large mammals between previously contiguous areas of woodland habitat. Additionally, the peninsular shape of the two parcels will disproportionately extend noise and disturbance towards 11 properties on West Lane and Bate Lane.</p> <p>The applicant is aware that since non-statutory consultation, the overall footprint of the DCO has increased by over 180ha with no increase in the anticipated total output of the scheme. With appropriate types and densities of panels, the scheme could maintain the planned output whilst preserving larger, contiguous areas as ecological mitigation. This means that the effective change in generating capacity resulting from the removal of SE6 and SE7 would be zero. Such an approach would mean the scheme had a slightly more ‘land-sparing’ (as opposed to land-sharing) approach to ecological mitigation, which has been demonstrated in multiple contexts to produce overall better ecological outcomes (e.g. Finch et al., 2019).</p> <p>N.B.</p> <p>Dr SL Mitchell of BHT has published internationally recognised research on this topic, so the trust is happy to elaborate if ExA wishes.</p>
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	<p>Chapter 8: Ecology [APP-060] (including residual significant effects) and how their removal would affect the likely generation capacity of the project.</p>	<p>movement. No significant adverse effects on biodiversity have been identified in ES Volume I Chapter 8: Ecology [APP-060] and the removal of fields SE6 and SE7 would not alter these conclusions.</p> <p>Whilst in plan view the fields may appear as removed from the core extent of the Order Limits, they are well contained by existing vegetation along the disused railway line and woodland to the north of Bungalow Farm. This makes this part of the Scheme visually imperceptible with the exception of glimpsed views through a field entrance for people driving along the 60mph West Lane. Therefore, it was established that no additional mitigation was required during the design process and that their use for solar PV was appropriate from a landscape and visual perspective.</p> <p>By removing PV from fields SE6 and SE7, there would a reduction in generating capacity by 5.65 MWp. This would be equivalent to a small commercial solar farm or 1,400 typical UK 4KWp residential rooftop solar systems.</p>	
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Additional Relevant Representation

Candidate SSSI

The Burnet Heritage Trust has worked with Natural England (NE) representatives in the past and respects the expertise within their ranks. We also fully understand the pressure NE officers are under in terms of resources, officer time, and the disruption of frequent restructuring within the organisation. However, we must express disappointment at the thoroughness of their responses and the generic nature of their comments.

NE's standardised letter to the inspectorate [REP2-071] stated that "*Natural England will only attend hearings by exception, targeting those ISH that have the greatest likelihood of resolving significant environmental risks.*". A subsequent statement also makes clear that they will not attend a site hearing as they are not permitted to comment.

As the government body responsible for being "...the government's adviser for the natural environment in England," and "...helping to protect and restore our natural world" We are disappointed the organisation cannot find the time to speak in person with the examiners, to visit the sites they are commenting on, or send more than a standardised letter in response to a Nationally Significant Infrastructure Project.

It is our understanding that NE has advised PINS that due consideration should be given to the ecological value of the area, in assessing the application, but has only advised the developer based on information received from them (the developer). NE feels the habitats are valuable enough to remind PINS of the need for careful consideration but has not given the same advice to the applicant, despite BHT ecologists raising concerns about the thoroughness and quality of their ecological surveys, and providing data not submitted by the applicant.

NE does not appear to have the capacity to examine the candidate SSSI submission. The Trust is disappointed by this and believes its relevance to a Nationally Significant Infrastructure Project and the potential impact on the habitats and bird species of the Humber Estuary SPA and Humberhead Levels SAC, falls within their statutory responsibilities.

Trustees understand that NE officer time is limited, and extensive survey work is likely to be unfeasible; however, reading a 6-page document, speaking with its ecologist authors, and perhaps a short site visit would at least enable officers to offer some insight to the inspectorate.

Functionally Linked Land

It is also the Trust's understanding that NE officers do not consider the candidate SSSI or the development area as functionally linked land due to their distance of 16km from the Humber Estuary. This contradicts the definition of Functionally Linked Land used in their study 'Identification of Functionally Linked Land supporting Special Protection Areas (SPAs) waterbirds in the Northwest of England' [Ref.NECR361], which states "*...areas of land occurring within 20 km of an SPA, that are regularly used by significant numbers of qualifying bird species. This definition has been developed and agreed with Natural England. A buffer of 20 km has been used based on the distance Pink-footed Geese tend to travel from their roost sites within an SPA site.*". It is worth noting the Pink-footed goose records submitted in previous relevant representations [REP1-054] and that Geese in the area are observed flying towards roost sites on Read's Island (Humber SPA) and Hatfield Moors (NNR / SAC) in the evening.

Similarly, for Western Marsh Harrier, radio telemetry studies demonstrate that both nesting and roosting birds will utilise habitat up to 15km away (Cardador and Mañosa, 2011), and at least 3 pairs nest on Thorne Moors SAC. These birds travel more widely in winter and are regularly recorded transiting East-West along the River Went corridor at Southfield Reservoir, and there are records of multiple birds within the DCO and over 50 observations at immediately adjacent areas at Topham. The spatial distribution of both local-scale observations (Fig. 1a) and region observation rates (Fig. 1b) demonstrates a very clear spatial link between birds occurring within the order limits of the DCO and those breeding and roosting on Thorne Moor SPA and more widely along the Humber Estuary.

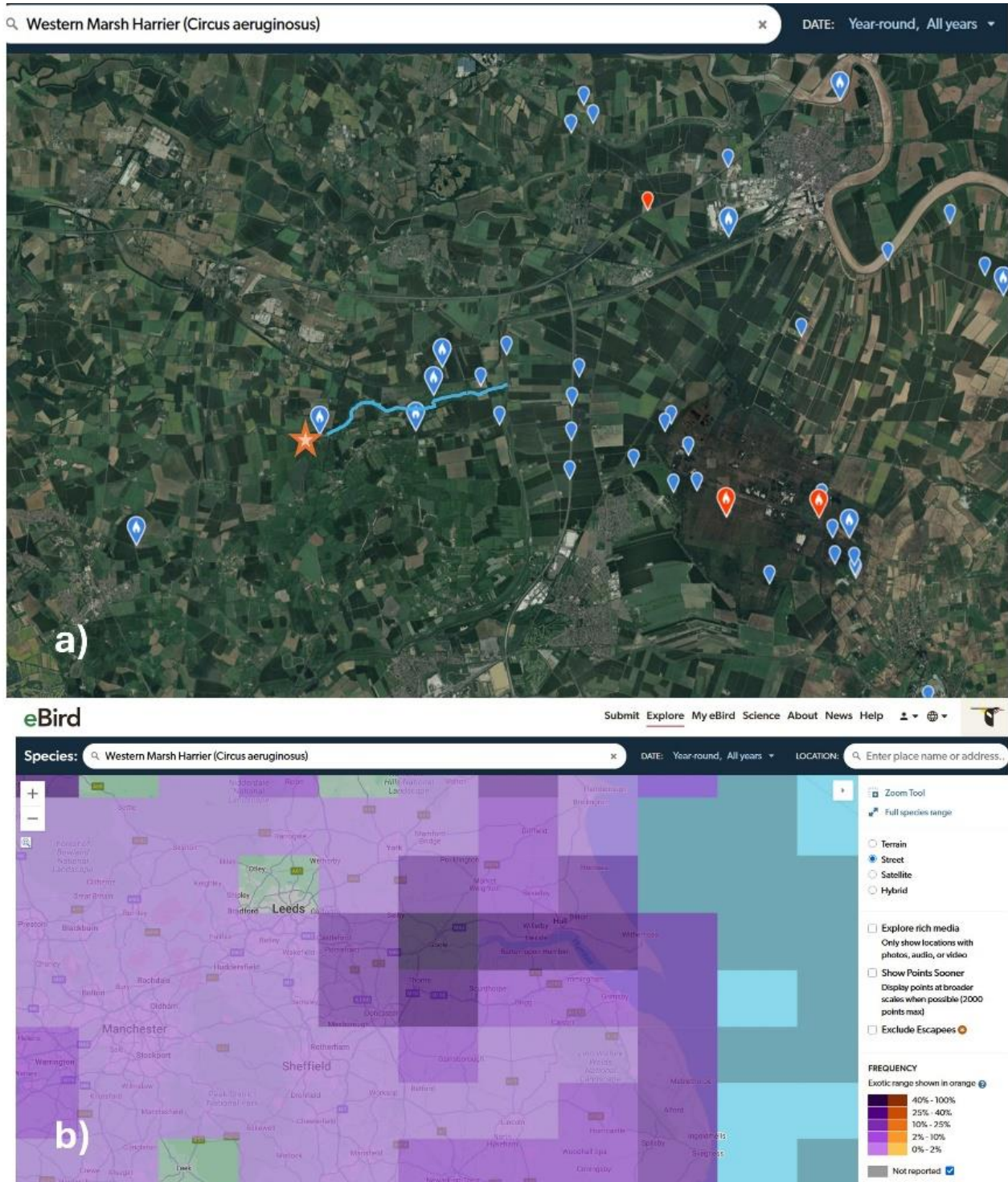


Figure 1. The distribution of Western Marsh Harrier records a) along the River Went (highlighted pale blue) corridor from the proposed Fenwick Solar site (orange star) in the West, to roosting and nesting sites on Thorne Moors SAC (red flame icons) in the East, demonstrating clear movement patterns between the two sites and b) region level reporting frequencies of Western Marsh Harrier showing the upper Humber (including area covered by Fenwick Solar project) as the area with the highest abundances. This demonstrates unequivocally how the feeding areas of the DCO are linked to breeding populations of Thorne Moors SAC and Humber Estuary SPA.

We believe NE feels that the number of qualifying bird species in the area in question is too low and/or the area of land is too small to indicate functional links to the Humber Estuary. However, the Trust would refer to Natural England's Relevant Representation [RR-006], which states (concerning the applicant's data) *"It is claimed in section 5.3.7 that sites that are smaller than 2ha are unlikely to support a large enough population of birds to constitute 1% of as SPA/Ramsar population. Natural England does not dispute this claim in this case; however, it should be noted that the total area of smaller sites that support SPA birds could in combination, support in excess of the 1% 'rule of thumb'."*

The BHT candidate SSSI lies only a few kilometres from many designated sites (see below), and many other undesignated but sympathetically managed sites.

- 14km from the Humber Estuary at Goole SAC, RAMSAR
- 8km from Thorne Moors SAC (which is 3.6km from the Humber Estuary at Goole)
- 12.1km from Hatfield Moors SAC (which is 12.1km from the Humber Estuary at Keadby)
- 12.8km from The River Derwent SAC (which is 5.5km from the Humber Estuary at Airmyn)

The Trust feels that the site's proximity to other areas of valuable habitat, creating an area of functionally linked land parcels, and the ecological records submitted, along with the concerns raised over the quality of the applicant's data, make a strong case for NE to assess the data provided by the trustees.

Their existing stance of 'assessing the data received from the applicant and not investigating further', despite having access to data submitted by consultees, falls short of their duty as the statutory consultee advising on biodiversity impacts

BNG Commitments

The Trust would reaffirm the concerns raised in the ISH3, and echoed by YWT, about the longevity of the habitat creation and enhancement proposed as part of this development. We believe this should be permanent. The applicant has previously stated that any habitat creation and enhancement will remain for the lifespan of the Scheme and that upon decommissioning, all physical infrastructure will be removed, with the land, including created habitats, returned to landowners. Also that the scheme will not be responsible for the management of habitats within the Order limits following decommissioning and cessation of the DCO.

This response doesn't support the expectation within the Biodiversity Net Gain Good Practice Principles, that areas of mitigation or compensation will be secured for at least the lifetime of the development, 'with the objective of Net Gain management continuing in the future'.

To align with this good practice principle, benefits delivered by Biodiversity Net Gain should be secured for the longest possible timeframe, and whenever possible, in perpetuity. The Trust does not feel that allowing the areas of habitat creation to be returned to different uses is good practice, appropriate, or beneficial to the ecology of the area.

Also, concerning BNG, we refer to the discussion regarding the applicant's commitment to BNG within the ISH3, as we continue to question their foundation.

The applicant's Framework LEMP [REP1-029] predicts a potential BNG uplift of +30%, yet the application only commits to delivering 10% BNG overall. During the discussion, the examiner commented that the LEMP should be updated to ideally commit a higher percentage. Both the examiner and the Trust (and subsequently YWT) have queried the inconsistency in BNG uplift percentages presented across the applicant's documentation. The Trust would like to see the applicant review the basis for their BNG conclusions and commit to delivering a percentage closer to the 30% predicted within their LEMP, as the proposed delivery of 10% is considered inadequate.

The Burnet Trust is alarmed by this apparent need for flexibility without justification. We have evidence that a significant amount (~150ha+) of land within the DCO, which had been neutral grassland for the previous ~20 years was ploughed by landowners immediately after signing contracts with BOOM [see REP1-055]. Natural England have since investigated and confirmed that this was done by landowners in contravention of the Environmental Impact Assessment (Agriculture) (England) (no.1) Regulations 2006 assessments required for a change of land use but has chosen not to enforce any penalties on landowners for this violation. The applicant assured BHT multiple times that the baseline for BNG assessment would reflect the original state of the land. However, in ISH3, the representative for the applicant then stated the following (**see transcript of ISH3 00:20:05:11 - 00:20:40:21**):

"While there are the higher percentages in the BNG report, that show where BNG would land based on a current calculation, those may change as a result of minor amendments and layout, say, during detailed design or a change in the baseline habitat values between now and construction. For example, if you know there was existing habitat that was taken down or added in the meantime, that would all change the bag assessment between now and when the final BNG assessment was taken at the point of construction."

We would ask the ExA to request urgent clarification of this from the applicant and explicit assurance that the destroyed 'neutral grassland' areas are not now going to be claimed subsequently as additional BNG uplift.

Comments for the Examining Authority

Trustees appreciate that the inspectorate cannot control how statutory consultees operate; however, it is our understanding that it can influence them by requesting information about consultation efforts, requesting that evidence be examined, highlighting concerns about the quality or timeliness of responses, and ensuring that consultees have the necessary information and resources to provide informed advice.

The Trust would therefore implore the inspectorate to request Natural England's view on the candidate SSSI submission [within REP1-054], which is pertinent to this case. As previously mentioned, the submission is authored by qualified and highly experienced ecologists, and even without site visits, NE officers should be able to assess the validity of the data and relevance to the SSSI criteria, enabling the inspectorate to request further surveys or reviews of data should they feel it appropriate.

Summary Comments

The Burnet Heritage Trust has at no stage formally objected to the proposed solar farm and has engaged with the applicant to provide them with information about the ecological value of

both the development area and the adjacent land managed by the Trust, and how we feel the proposed development could impact both.

We have sought to achieve acknowledgement of the area's importance for wildlife, both locally and as one of a network of small sites within the Humberhead Levels, creating a corridor of functionally linked land to the Humberhead Estuary and Lower Derwent Valley National Nature Reserves.

The Trust has made recommendations for improved mitigation, particularly in the northeastern extent of the development site, bordering the Trust's land and candidate SSSI. The applicant's responses have been dismissive at best.

We feel that given the scale of the proposed development, the increased mitigation recommended by the Trust would be negligible in terms of the long-term impact on productivity yet would be hugely beneficial in mitigating the impact on the breeding and foraging birds of the Humberhead Levels.

Proposed amendments at a more detailed planning stage, or the construction phase, do not give us confidence that further mitigation will materialise. We would request commitment now and ask that the following be included in the framework LEMP.

- The area of wetland scrapes to be created within the northern mitigation area.
- The type and level of stock proposed for the areas of grazing.
- Commitment to include a number (~10) small headlands (for example, 3m x 20m, although dimensions can be flexible) of pollinator and bird-seed crop mixes along hedgerow edges or planned ecological mitigation areas. The crucial commitment is that these remain ungrazed and be reinstated biannually for the duration of the scheme. This minor design change is likely to have a disproportionately large impact on maintaining and enhancing pollinator and farmland bird communities. There is a large body of literature demonstrating these strips to be among the most cost-effective biodiversity interventions which can be made in farmland landscapes (e.g. Boatman et al., 2003)

As previously stated, the Trust has not to date objected to the scheme but has continued to seek improved mitigation within the project, believing the best way to achieve this is by ensuring that parcels of mitigation habitat serve to extend areas of land already managed for conservation (candidate SSSI), but also increasing the buffer zone between the Went and the development area.

For reasons already stated within this representation, Trustees feel that the exclusion of land parcels NE9, NE11, SE6, SE7 from the scheme (and their inclusions instead within proposed habitat restoration) would significantly improve mitigation and serve to protect the habitats and wildlife within the candidate SSSI and large areas of sympathetically managed land immediately adjacent to the development area and linked with Trust land. Between the impacts on such a highly biodiverse area in extreme proximity (<50m) to the scheme and the loss of important functionally-linked land which is important for open country birds such as Marsh Harrier, Eurasian Curlew and Pink-footed Goose, we do not believe current levels of mitigation are sufficient.

The Trust proposes that this is a relatively modest exclusion of land from the development, given the benefits it will provide ecologically, and that mapping additional mitigation in this way, contiguous to Topham and the River Went, will maximise the benefits to these species and biodiversity conservation in the region more broadly.

References:

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