

**Blackhorse Farm, Baldock**  
Guidance Note: Corn Bunting

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# 1 Introduction

## Background to report

- 1.1 The North Hertfordshire Preferred Options Local Plan consultation process has identified Blackhorse Farm, Baldock, as having the potential to accommodate approximately 2,800 new homes, a secondary school and two primary schools. The outline of the proposal is shown as Figure Number A086401\_005.
- 1.2 The site is currently 131 ha of arable farmland interspersed with hedgerows, ditches and a single minor road (Bygrave/ Ashwell Road).
- 1.3 In response to the emerging Local Plan, there have been concerns raised about the impact of an increased local population on farmland birds, specifically corn bunting *Emberiza calandra* (a species of material consideration in the planning process (see Section 2)) by the Royal Society of the Protection of Birds (RSPB) and local residents.
- 1.4 BSG Ecology has been commissioned to identify how the proponent can achieve a robust baseline on which to base an assessment, and with regard to some key principles of mitigation/ compensation to ensure impacts on the species can be addressed.

## 2 Ecology, Status and Protection of Corn Bunting

### Ecology of corn bunting

- 2.1 Numerous research projects have been undertaken on corn bunting. A basic summary of corn bunting ecology, drawing on sources including: Snow & Perrins (1998), Brown & Grice (2005); Setchfield *et al.* (2012) and Burgess *et al.* (2015), is presented below
- 2.2 The corn bunting's range extends from southern Scandinavia to North Africa, and as far east as Western China. The English birds are of the nominate race *Emberiza calandra calandra* which occurs through much of Europe. The current UK stronghold for corn bunting is predominantly southern and eastern England (including Hertfordshire), with small populations in Cornwall and as far north as the Hebrides.
- 2.3 The corn bunting is omnivorous and feeds almost exclusively in arable farmland, wet meadows and rough grassland. Insects form an important dietary requirement for young chicks, whereas adults will eat both seeds and insects during the breeding season. Over winter corn bunting feed in flocks, and their diet is dominated by seeds, particularly cereal grains, in cover crops and winter stubble.
- 2.4 Corn buntings are ground-nesting birds and have a complex breeding behaviour, with male birds often breeding with several females. Their nests are normally on the ground, among thick tangled grass or dense weeds, in depressions in the soil. Throughout its natural range corn bunting are often recorded having two broods (a group of chicks hatched from the same clutch of eggs) within a year. Most corn bunting in southern England nest in cereal crops and due to the harvest time will only very rarely have a second brood. Although they do need perches (small trees, bushes, overhead cables, fences or walls) to overlook territory and to serve as song-posts, corn bunting prefer open country and have minimal demands for cover (except to some extent for overwinter roosts (e.g. in reeds)).
- 2.5 Due to their reliance on invertebrate food sources during the breeding season, their optimum habitat in southern England is field systems that are untreated with pesticides (or have low chemical inputs in general). Corn bunting tend to be found in highest density in fields that slope or undulate rather than those are flat. They are often associated with fields that have a south facing aspect, which due to the warm microclimate support a greater number of invertebrates.
- 2.6 During an assessment of the British Trust for Ornithology's (BTO) Common Bird Census undertaken between 1985 and 1995 densities of corn bunting were found to have a maximum density of 0.243 territories (singing males) per hectare (mean = 0.085) (Donald & Forrest 1995). This indicates that in optimum habitat up to ~100 territories could be present within a single tetrad. The mean number equates to 34 territories per tetrad.

### Legislative and Policy Context

- 2.7 Corn bunting has undergone a historical decline (since records began in 1800) in their breeding population. This has been most severe in recent times: -61% over the last 25 years, and also -90% since 1969. In addition to a population decrease there has also been a, severe breeding range decrease (-56%) since 1969, with a moderate breeding range decrease (-35%) in the last 25 years and a moderate (-27%) non-breeding (winter) range decline over the past 25 years. The current population of corn bunting within Britain is estimated at 11 thousand territories (BTO, 2016).
- 2.8 This significant drop in population and contraction in range has led to corn bunting becoming a Red-listed Bird of Conservation Concern (Eaton *et al.*, 2015)<sup>1</sup>. Corn bunting is also a Species of

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<sup>1</sup> Certain species are listed as Birds of Conservation Concern (Eaton *et al.*, 2009). These are species which may have experienced significant declines or become more localised within the UK. Birds with 'red' status are those of high concern, whilst 'amber' species are those of medium concern. These are not a material

Principal Importance (SPI) for the conservation of biodiversity in England under Section 41 (S41) of the Natural Environment and Rural Communities (NERC) Act, 2006. The S41 list is used to guide decision-makers such as public bodies, including local authorities and utilities companies, in implementing their duty under Section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England, when carrying out their normal functions, including development control and planning. More detailed information regarding the protection and conservation listing of corn bunting is included within Appendix 1.

- 2.9 The major losses in England have fragmented the population into discreet clusters. This includes a remnant population on the chalk soils from Dorset to Cambridgeshire (including Hertfordshire) (Balmer *et al.* 2013).
- 2.10 The Hertfordshire Vision: A Local Biodiversity Action Plan (Hertfordshire Environment Forum, 2006) therefore recognises corn bunting as a 'UK priority species, where Hertfordshire can contribute to achievement of the national targets, because the species' is 'characteristic of the area'.
- 2.11 The changing distribution of Corn Buntings in Hertfordshire was described by Donald *et al.* (1994) as follows:
- "Although apparently common during the 1950s, the species was scarce in large areas of central and eastern Hertfordshire and had apparently always been so (Sage 1959). An expansion into these areas began during the early 1950s, populations in the county increased throughout the 1960s and the early 1970s (Gladwin & Sage 1986), and the species became common in central areas where it had once been scarce (Gladwin 1983). Although the population remained stable during the late 1970s, when the national population was in steep decline (Mead & Smith 1982), by the mid-1980s its distribution was also contracting (Terry 1986). Numbers have continued to fall, particularly in the more recently occupied areas. The species was reported from 301 tetrads<sup>2</sup> during 1967-73, but from only 208 during 1988-92 (Smith *et al.* 1993).*
- 2.12 In Hertfordshire the current population estimate is 138 territorial males in 2003 (Smith *et al.* 2015). The 2014 Hertfordshire corn bunting survey gave an updated estimated population of 217 males (172 singing males recorded in 38 tetrads) (Orchard, 2015). The population (in both 2003 and 2014) was shown to be restricted in the north of the county (focussed around the Baldock and Royston areas) both in the breeding season and the winter. Although not within the 2014 survey, in 2014 two records were received for singing male corn bunting on the southern fringe of the county near West Hyde (Orchard, 2015).
- 2.13 During the 2014 Hertfordshire survey, the site was within tetrad TL23M (Bygrave Common), this tetrad was one of only three tetrads within Hertfordshire that supported over 10 singing males in the Hertfordshire survey, with 14 recorded (Orchard, 2015). More detailed inspection of the results show that nine singing male corn buntings were recorded within the site, two singing males immediately adjacent and a further three within 500 m.
- 2.14 Assuming there are 11 breeding pairs within and immediately adjacent to the site it suggests that this area is of at least County Level importance as per the CIEEM guidelines for Ecological Impact Assessment (CIEEM, 2016).

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consideration within planning in their own right, but present opportunities for the development to have a net benefit for wildlife (NPPF, 2012) if appropriate.

<sup>2</sup> A tetrad is a standard survey square of 400 ha.

### 3 Recommended Survey Method

- 3.1 In order to establish a contemporary baseline, survey work will be needed.
- 3.2 It is recommended that the standardised survey method follows that set out in the RSPB's Bird Monitoring Methods (Gilbert *et al.*, 1998), which is outlined below.

#### Survey method

- 3.3 The target areas for the survey (hereafter referred to as the survey area) are the entire development site and a 400 m perimeter area; plus any identified potential mitigation area(s) (see Section 4). A standardised survey method should be followed for the survey area that will be repeatable post development to monitor any change in numbers.
- 3.4 The survey areas (as identified above) should be divided into plots of approximately 50 ha. This area can be covered in a single morning.
- 3.5 As a minimum<sup>3</sup>, a single visit per month should be undertaken by a suitably experienced ornithological surveyor in May, June and July. These should be at least two weeks apart. Any very wet or very windy weather conditions should be avoided as this will reduce detectability of corn buntings. The survey should start in the early morning, so that they coincide with maximum bird activity, but avoid concentrated song activity at dawn (i.e. starting ½ hr after dawn); and finish before 11 am. The dates, start and end time of the survey and weather conditions (wind direction and speed, cloud cover, precipitation and temperature) should be recorded for each visit. Surveyor experience should also be evidenced in the resulting report as per the Biodiversity- Code of Practice for planning and development (BS42020:2013) (British Standards Institute, 2013).
- 3.6 During each visit the survey area should be walked at a slow pace to enable all birds detected to be identified and located. Frequent stops were made to scan suitable habitats and to listen for singing and calling birds. All areas of suitable breeding habitat within the survey area should be approached to within 50 m. Although this survey is targeted at corn bunting, all breeding farmland birds should be recorded to ensure that any mitigation is suitable for other legally protected or notable species.
- 3.7 During the survey the location and activity of each bird detected (including those seen or heard) should be recorded and mapped using standard two-letter BTO species codes combined with activity symbols.
- 3.8 The three visits should then be combined on a single map. Birds exhibiting breeding behaviour should be assigned to one of two categories: possible/ probable breeding or confirmed breeding. These are defined below:
- Possible/probable breeding: birds heard singing, alarm calling, displaying courtship behaviour in suitable breeding habitat or, evidence of nest building on one or more of the survey visits;
  - Confirmed breeding: one or more adults undertaking a distraction display; the presence of a used nest or eggshells; the presence of recently fledged or downy young (that are clearly of local origin); apparently incubating adults or adults commuting to and from a nest / hole; adult birds carrying faecal sacs or food for young; or, a nest with eggs or young present.
- 3.9 As with all breeding bird surveys following this technique, the process is open to some subjectivity in interpretation except where active nests are located. Registrations on the final figure should be treated as indicative of territory locations.

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<sup>3</sup> Data should be kept under review. If the emerging picture is unclear, or survey work is weather affected, one or more further visits should be completed.

- 3.10 The survey methodology and results should be set out in a clear concise report, with associated figures. Due to the sensitivity of corn bunting within Hertfordshire and surrounding the site the report should draw out the results for this species, including an estimate of the number of singing males/ breeding pairs. Separate figures should be produced to show the locations of the singing male corn buntings within the survey area during each survey visit, plus a final territory map based on these data.

## 4 Environmental Measures to Address Impacts on Corn Bunting

### Likely Impacts

- 4.1 All corn bunting territories within the site are likely to be lost as a result of development. Due to the habitat requirements of corn bunting no on-site mitigation is considered possible.
- 4.2 A recent study (Thomas *et al.*, 2014) has demonstrated that increased cat predation of nesting birds is likely to occur up to 300 to 400 m (a range of 6.88 ha) of a residential area, reflecting the ranging distance of cats from their place of residence. It is therefore reasonable to expect that the numbers of farmland birds, including corn bunting, within this area will be affected by cat predation if the development proceeds.
- 4.3 Due to the impact on farmland birds (specifically corn bunting); habitat compensation should be required due to corn bunting being of material consideration within the planning process (see Section 2) and the population on site being of at least County Level Importance.
- 4.4 With a suitable off site compensation area (to be agreed by both the Local Planning Authority and the RSPB) no net loss of corn bunting due to the development is likely to occur.
- 4.5 To provide a guide as to the compensation for eleven breeding pairs of corn bunting and the achievability of this for the project, environmental measures likely to benefit the species are set out below.

### Identification of a Compensation Area

- 4.6 To ensure that the compensation area is not impacted by any increased predation by cats originating from the site it should be located over 400 m from the houses at the edge of the development. It should also be located over 400 m from any existing large residential areas (or known proposed large residential developments). The 400 m perimeter zone is shown on Figure 1.
- 4.7 The selection of the compensation area should be as close to possible to the edge of this 400 m perimeter zone as can be achieved. This will ensure that any corn buntings that are displaced from the development site will stand the greatest chance of finding alternative breeding habitat within the local area.
- 4.8 The compensation area should be arable farmland which can be interspersed with rough grassland or wet meadows. The fields should be relatively large (over 5 ha) and the area should preferably be either a south facing slope or undulating.
- 4.9 Farmland that is within the optimum region for the compensation area(s) has been marked on Figure 1, as a guide.

### Rationale for Selection of Bird Survey Area

- 4.10 As outlined in Section 3 a survey should be undertaken to gather baseline information of the estimated population of corn bunting currently using the area(s). If this baseline survey identifies that the population of corn bunting within any area is already high and that no further conservation gain can be added by management then an alternative site should be sought. This baseline survey should also include a habitat assessment for corn bunting of the compensation area(s) and identify current and site specific future management.
- 4.11 The Hertfordshire corn bunting survey (Orchard, 2015), showed that the Tetrad immediately to the north of the site (TL23N (Newnham)), only recorded 3 singing corn bunting males, and is therefore a potentially suitable area for management. TL23P (Newnham Hill), 2.6 km north of the site, recorded 22 singing male corn buntings. The other areas within a 5 km radius all recorded less than 10 singing males (within each tetrad). Larger numbers of corn bunting indicate better habitat,

and the need for more extensive compensatory measures to increase territory density. It follows that areas with good numbers of corn bunting should not necessarily be excluded from the search area, but that more effort may be required to ensure that corn bunting numbers within them can be increased.

- 4.12 The area south of Wallington becomes more wooded and fields become smaller and are enclosed by more substantial hedgerows. Although a compensation area could be found within this region it is less suitable than some of the surrounding farmland.

#### **Management of the compensation area.**

- 4.13 Once the compensation area has been decided management will be required to optimise the habitat for corn bunting. Management measures might typically include:
- Establishing a mix of winter and spring-sown cereals and set-aside interspersed with rough grassland.
  - Harvesting crops as late in the year as possible (preferably after mid-August).
  - Leaving unmanaged fields of overwinter stubble and rotational set-aside (preferably seed-rich) through the winter and into the spring.
  - Avoiding broad-spectrum insecticides after mid-March.
  - Avoiding spraying of herbicides targeted at broad-leaved weeds in the outer six metres of cereal fields.
  - Creating grass margins around arable fields to increase food and nesting habitat. Species such as cock's-foot *Dactylis glomerata* should be included in the seed mix (as per the Hertfordshire Biodiversity Vision (HEF, 2006)) to create a tussocky sward.
  - Establishing beetle banks (strips of 2 m rough grassland) in fields greater than 20 hectares.
  - Introduction of arable fodder crops into grassland areas.
  - Fencing off margins of up to six metres around improved grassland and leaving these unfertilised, uncut and ungrazed.

#### **Monitoring**

- 4.14 To ensure that the compensation is successful and that no further adjustments are required, a monitoring plan should be put in place. The proponent should propose a monitoring regime that is linked to the timelines of the compensatory work, and is robust enough to demonstrate change in the corn bunting population.
- 4.15 If monitoring demonstrates that the aims of the compensatory management are not being achieved, the likely reasons for this should be identified and alternative measures suggested.

#### **Reporting**

- 4.16 A report should be produced by a suitably experienced ecologist setting out the baseline survey results (and the survey method undertaken to gain these), a compensation strategy, and a monitoring strategy that can be agreed on and delivered to ensure no net loss of corn bunting within the local area.
- 4.17 A brief written review is then recommended to consider the results of the monitoring surveys (after each monitoring survey) and to suggest any suitable or necessary improvements to the mitigation plan.
- 4.18 A final report should then be produced at the end of the ten year monitoring period to consider the success of the mitigation project. This report should review the necessity for further monitoring. This report should be shared with the Local Planning Authority and the RSPB.

**Securing of compensation area**

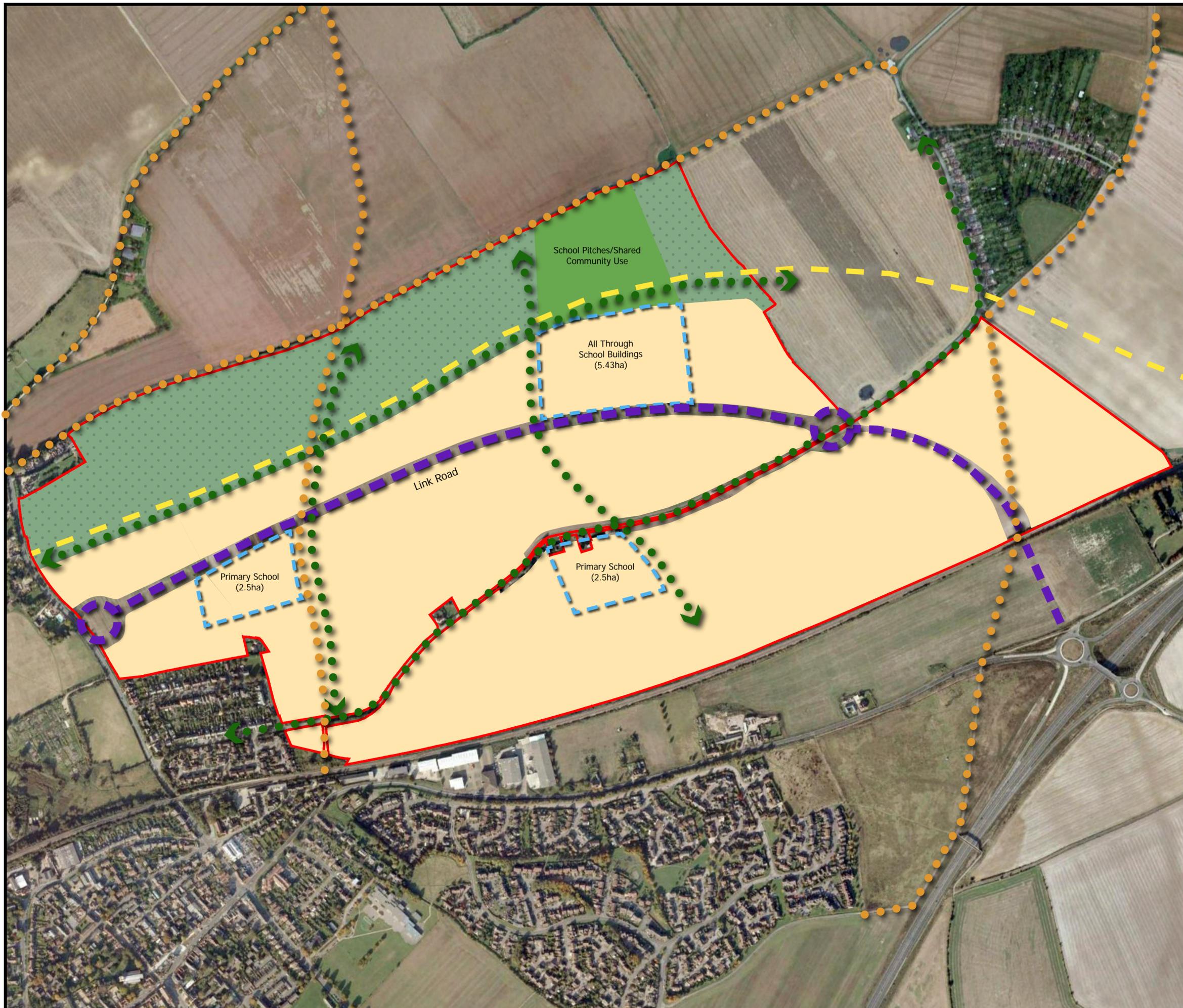
- 4.19 To ensure the council has the confidence that compensation proposed can be delivered, the land on which it will take place must either be under the ownership of the site proponent or there must be clear evidence that its management can be legally delivered.
- 4.20 The management and monitoring of the compensation area can then be formally agreed on through the planning process (i.e. through a Section 106 agreement). The agreement should be in perpetuity.

## 5 References

- Balmer, D.E., Gillings, S. Caffery, B.J., & Swann R.L. (2013). Bird Atlas 2007-11: the breeding and wintering birds of Britain and Ireland. BTO Books, Thetford.
- British Standard Institute (2013). Biodiversity- Code of practice for planning and development (BS42020: 2013). British Standard Institute, London.
- Brown, A. and Grice, P. (2005). Birds in England. Natural England, Peterborough.
- BTO (2016) Bird Facts. <http://www.bto.org/about-birds/birdfacts>. [Accessed 03/02/2016]
- Burgess, MD., Bright, JA., Morris, AJ., Field, RH., Grice, PC., Cooke, AI., and Peach W. (2015) Influence of agri-environment scheme options on territory settlement by Yellowhammer (*Emberiza citrinella*) and Corn Bunting (*Emberiza calandra*). *Journal of Ornithology*. January 2015, Volume 156, Issue 1, pp 153-163
- CIEEM (2016). Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal, 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester
- Donald, PF., Wilson, JD., and Shepherd, M. (1994). The decline of the Corn Bunting. *Brit. Birds* 87: 106-132.
- Donald, PF. and C. Forrest (1995) The effects of agricultural change on population size of Corn Buntings *Malaria Calandra* on individual farms. *Bird Study*, 42:3, 205-215
- Eaton, M. Aebischer N, Brown, A. Hearn R. Lock, L Musgrove A Noble D Stroud D and Gregory R. (2015). Birds of Conservation Concern 4: the population status of birds in the UK, Channel Islands and Isle of Man. *British Birds* 108. December 2015. 708–746.
- Gilbert G., Gibbons, DW. and Evans, J. (1998) Bird Monitoring Methods. RSPB, Sandy.
- Gladwin, TW and Sage, B. (1986) The Birds of Hertfordshire. First Edition. Castlemead, Hertford.
- Gladwin, TW (1983). Major changes in Central Hertfordshire and its breeding bird populations. *Trans. Herts. Nat Hist Soc.* 27: 355-360.
- Hertfordshire Environment Forum (2006). A 50- year vision for the wildlife and natural habitats of Hertfordshire. [http://www.hef.org.uk/nature/biodiversity\\_vision/](http://www.hef.org.uk/nature/biodiversity_vision/) [Accessed online 01/02/2016].
- Mead, C. & Smith, K. (1982) Hertfordshire Breeding Bird Atlas. HBBA, Tring.
- Orchard, M. (2015) The 2014 Hertfordshire Corn Bunting Survey. In the Hertfordshire Bird Report 2014. Transactions of the Hertfordshire Natural History Society, Volume 47, Part 3, November 2015.
- Sage (1959) A History of the Birds of Hertfordshire. Barrie & Rockliffel, London.
- Setchfield RP., Bradter U., Mucklow C., Anderson GQA, and Davey A. (2012) An agri-environment option boosts productivity of Corn Buntings *Emberiza calandra* in the UK, 154, 235–247.
- Smith, T. (1933). The Birds of Staffordshire, Part IV. *Trans. North Staffs. Field Club* 1932-33
- Smith, KW., Dee, CW., Fernside JD., and Ilett, M. (2015). Birds of Hertfordshire. Hertfordshire Natural History Society, Welwyn-Garden-City.
- Snow, D.W. and Perrins C.M. (1998). The Birds of the Western Palearctic (Concise Edition). Oxford University Press, Oxford.
- Terry, JH. (1986). The Corn Bunting in Hertfordshire. *Trans. Herts. Nat. Hist. Soc.* 29 (7): 303-31
- Thomas RL., Baker PJ and Fellowes, MDE (2014). Ranging characteristics of the domestic cat (*Felis catus*) in an urban environment. *Urban Ecosyst* (2014) 17:911–921.

## 6 Figures

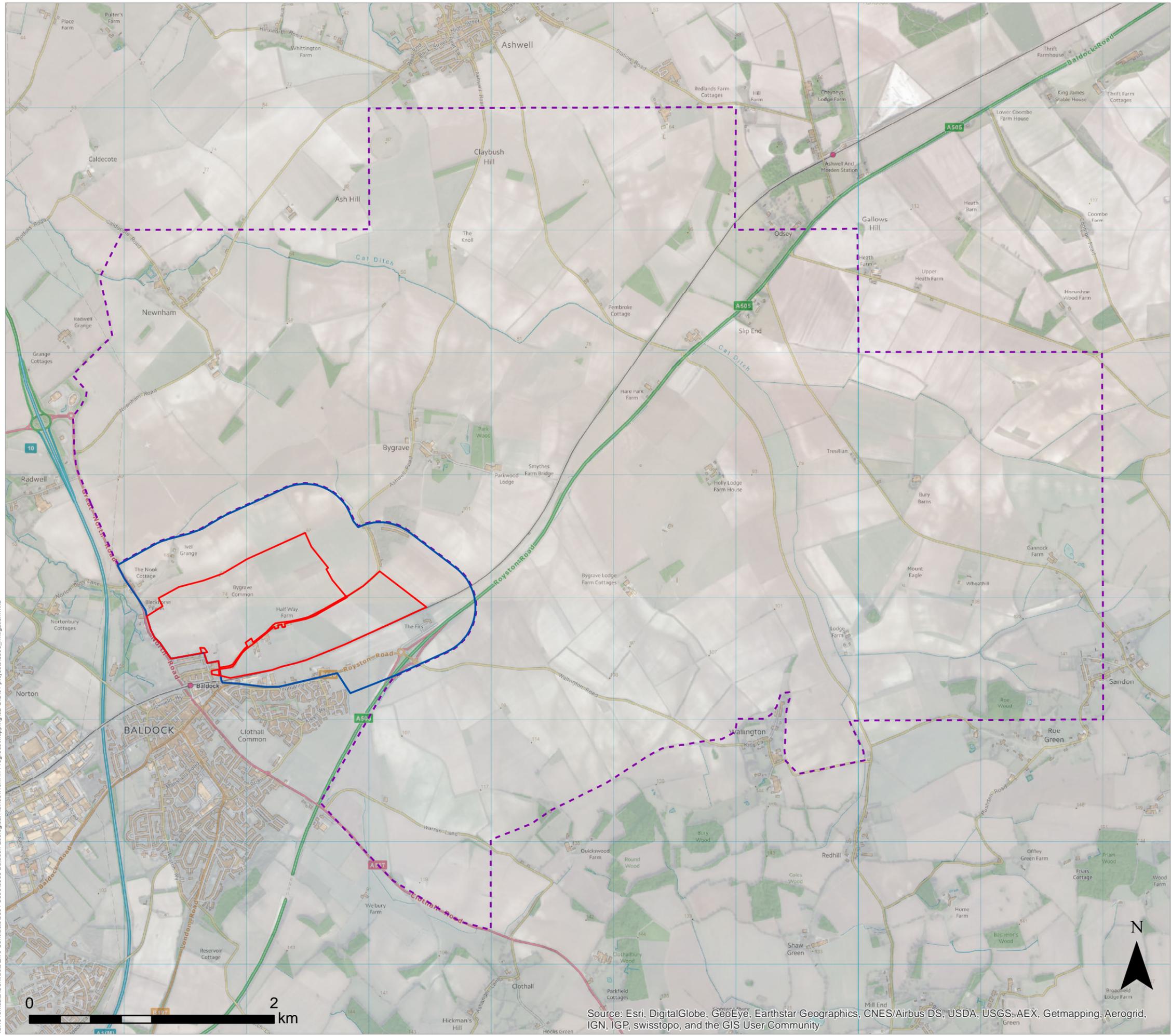
(overleaf)



- Site Boundary
- Developable Area: 99.03Ha  
2800 Residential Units @35dph: 80ha  
School buildings (total): 10.43ha  
Public Open Space (POS): 8.6ha
- Parkland: 32.02Ha  
Including:  
School Pitches: 4.16ha  
Remainder of POS Requirement: 7.52ha
- Ridgeline
- Public Right of Way
- Link Road
- Green Grid/Walking Routes
- School buildings

REV	DETAILS	DRAWN BY	CHECKED BY	DATE
CLIENT: <b>Hertfordshire County Council</b>				
PROJECT: <b>BALDOCK</b>				
DRAWING TITLE: <b>Framework Plan Option Two</b>				
SCALES: <b>1:5,000</b>		SHEET SIZE: <b>A2</b>		
DRAWN: AC	CHECKED: CJ	DATE: 23/05/14		
<b>WYG</b> Urban & Landscape Design <small>part of WYG group</small>				
<small>100 St. John Street London EC1M 4EH t: 0207 250 7500 f: 0207 250 7501</small>				
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**LEGEND**

- Site boundary
- 400 m radius from site
- Suggested areas for mitigation site

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PROJECT TITLE  
**BLACKHORSE FARM, BALDOCK:  
 ECOLOGICAL ADVICE**

DRAWING TITLE  
**Figure 1: Habitat enhancement site optimum areas**

DATE: 10.02.2016      CHECKED: PN      SCALE: 1:30,000  
 DRAWN: COH      APPROVED: OG      STATUS: FINAL

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## 7 Appendices

## Appendix 1: Summaries of Relevant Policy, Legislation and Other Instruments

This section briefly summarises the legislation, policy and related issues that are relevant to the main text of the report. The following text does not constitute legal or planning advice.

### Birds

- 7.1 All nesting birds are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs.
- 7.2 The Conservation of Habitats and Species (Amendment) Regulations 2012 has placed new duties on competent authorities (including Local Authorities and National Park Authorities) in relation to wild bird habitat. These provisions relate back to Articles 1, 2 and 3 of the EC Directive on the conservation of wild birds (2009/147/EC, 'Birds Directive'<sup>4</sup>) (Regulation 9A(2) & (3) require that 'in the exercise of their functions as they consider appropriate' these authorities must take steps to contribute to the 'preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of upkeep, management and creation of such habitat...'
- 7.3 In relation to the duties placed on competent authorities under the 2012 amendment Regulation 9A (8) states: 'So far as lies within their powers, a competent authority in exercising any function [including in relation to town and country planning] in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).'

### National Planning Policy Framework

- 7.4 The Government published the National Planning Policy Framework (NPPF) on 27th March 2012. Text excerpts from the NPPF are shown where they may be relevant to planning applications and biodiversity including protected sites, habitats and species.
- 7.5 In conserving and enhancing the natural environment, the NPPF (Paragraph 109) states that 'the planning system should contribute to and enhance the natural and local environment' by:
- a. Recognising the wider benefits of ecosystem services;
  - b. Minimising impacts on biodiversity and providing net gains in biodiversity, where possible contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
  - c. Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.
- 7.6 Paragraph 117 refers to how planning policies should aim to minimise impacts on biodiversity, to: 'identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;' and to 'promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan.'
- 7.7 Paragraph 118 of the National Planning Policy Framework advises how, when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity

<sup>4</sup> 2009/147/EC Birds Directive (30 November 2009. European Parliament and the Council of the European Union.

by applying the mitigation hierarchy. The mitigation hierarchy advises that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

- 7.8 In paragraph 125 the NPPF states that ‘by encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.’ This applies to protected species that are a material consideration in the planning process including bats and may also apply to other light sensitive species.

#### **Government Circular ODPM 06/2005 Biodiversity and Geological Conservation**

- 7.9 Paragraph 98 of Government Circular 06/2005 advises that “the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult Natural England before granting planning permission. They should consider attaching appropriate planning conditions or entering into planning obligations under which the developer would take steps to secure the long-term protection of the species. They should also advise developers that they must comply with any statutory species’ protection provisions affecting the site concerned...”
- 7.10 Paragraph 99 of Government Circular 06/2005<sup>5</sup> advises that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted”.

#### **Natural Environment and Rural Communities (NERC) Act 2006 – Habitats and species of principal importance (England and Wales)**

- 7.11 The Natural Environment and Rural Communities (NERC) Act came into force on 1st October 2006. Sections 41 (S41) of the Act require the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England. The list has been drawn up in consultation with Natural England, as required by the Act. In accordance with the Act the Secretary of State keeps this list under review and will publish a revised list if necessary, in consultation with Natural England.
- 7.12 The S41 list is used to guide decision-makers such as public bodies, including local authorities and utilities companies, in implementing their duty under Section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England, when carrying out their normal functions, including development control and planning. This is commonly referred to as the ‘Biodiversity Duty.’
- 7.13 Guidance for public authorities on implementing the Biodiversity Duty<sup>6</sup> has been published by Defra. One of the key messages in this document is that ‘conserving biodiversity includes restoring and enhancing species populations and habitats, as well as protecting them.’ In England, the administration of the planning system and licensing schemes are highlighted as having a ‘profound influence on biodiversity conservation.’ Local authorities are required to take measures to “promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species. The guidance states that ‘the duty aims to raise the profile and visibility of biodiversity, clarify existing commitments with regard to biodiversity, and to make it a natural and integral part of policy and decision making.’

<sup>5</sup> ODPM Circular 06/2005. *Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System* (2005). HMSO Norwich.

<sup>6</sup> Defra, 2007. *Guidance for Public Authorities on Implementing The Biodiversity Duty*. (<http://www.defra.gov.uk/publications/files/pb12585-pa-guid-english-070516.pdf>)

- 7.14 In 2007, the UK Biodiversity Action Plan (BAP) Partnership published an updated list of priority UK species and habitats covering terrestrial, freshwater and marine biodiversity to focus conservation action for rarer species and habitats in the UK. The UK Post-2010 Biodiversity Framework<sup>7</sup>, which covers the period from 2011 to 2020, now succeeds the UK BAP. The UK priority list contained 1150 species and 65 habitats requiring special protection and has been used as a reference to draw up the lists of species and habitats of principal importance in England and Wales.
- 7.15 In England, there are 56 habitats of principal importance and 943 species of principal importance on the S41 list. These are all the habitats and species found in England that were identified as requiring action in the UK BAP and which continue to be regarded as conservation priorities in the subsequent UK Post-2010 Biodiversity Framework.
- 7.16 Corn bunting is listed as a species of principal importance on the S41 list.

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<sup>7</sup> JNCC and Defra (on behalf of the Four Countries' Biodiversity Group). 2012. *UK Post-2010 Biodiversity Framework*. July 2012. (<http://jncc.defra.gov.uk/page-6189>)