

Title: Protection of Ground Nesting Birds, St Mary's Lands, Warwick
Lead Officer: Chris Elliott
Portfolio Holder: Councillor Roberts
Wards of the District directly affected: Warwick Aylesford

Approvals required	Date	Name
Portfolio Holder		Councillor Will Roberts
Finance		
Legal Services		Kathryn Tebbey
Chief Executive		Chris Elliott
Director of Climate Change		Dave Barber
Head of Service(s)		Marianne Rolfe
Section 151 Officer		Andrew Rollins
Monitoring Officer		Graham Leach
Leadership Co-ordination Group		Cllrs Wightman; Davison; Boad; Falp; Day.
Final decision by this Committee or rec to another Cttee / Council?	Yes	
Contrary to Policy / Budget framework?	No	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	No	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	No	
Accessibility Checked?	Yes	

Summary

This report reports back on a 2 year trial on measures to protect ground nesting birds on St Mary's Lands Warwick and proposes options for the future. This report seeks approval for the next steps.

Recommendation(s)

- (1) That Cabinet notes the ecologists report and recommendations and agrees to continue with the protection measures for another two years but amends the area as shown on Plan 1 (Appendix 2) attached.
 - (2) That Cabinet requires officers to commission a follow up ecologist's study on the proposed further 2 year trial; to undertake a consultation with appropriate bodies and the local community; and, to report back to Cabinet on the outcome of those measures and the consultation before February 2026.
 - (3) That Cabinet approves the cost of £2,000 for the fencing per annum from the existing budget, and £3,000 for the ecologist work.
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1 Reasons for the Recommendation

- 1.1 Part of the St Mary's Lands open space in Warwick has been used by protected ground nesting birds but given the continuing decline in those species e.g. skylarks, it was agreed that measures should be introduced to help protect them from disturbance during their breeding and nesting season. This took the form of temporary barriers to prevent people and dogs from entering over the breeding season – February to August each year. This had caused some controversy but also support. In February 2022, the then Cabinet agreed the following resolution:
1. The ecologist's report commissioned by the Council, the comments of the Friends of St Mary's Lands (FoSML) and those of other groups (Appendices 2, 3, 3a and 4 to the report) be noted;
 2. The continuation of the protection measures as set out in Plan 1 be agreed, and be implemented and be continued for a further two years, then subject to a full evaluation and review;
 3. Authority be delegated to the Chief Executive and the Leisure Culture and Tourism Portfolio Holder to agree the revised terms of reference for the St Mary's Lands Working Party attached at Appendix 5 to the report, subject to a prior meeting of the working party;
 4. A detailed report be brought to the Cabinet regarding the position where in a Working Party's or Partnership's agreed terms of reference, all organisations participating or working with the Council on projects or partnerships, for example, such as the St Mary's Lands Working Party (SMLWP) are asked to disclose their governance arrangements to ensure that they are open and transparent, and that non-disclosure of such arrangements will mean that such groups may therefore be excluded from participation; and,

5. A further report on how the SMLWP engages with the wider community be brought forward for consideration.
- 1.2 Since then the measures have been carried out for the period February to August in 2022 and in 2023. An ecologist's study was commissioned to evaluate the impact of the measures and that is attached at Appendix 1. In summary the study concludes that:
- Skylark numbers are improving, showing a steady gain.
 - The area north of the Public Right of Way was not a popular location and the fencing should consider the area to the south instead – see plan 1 (appendix 2).
- 1.3 The ecologist's view is that unless there are other wildlife / management gains of installing permanent fencing, it seems too early to commit to that cost. She would prefer to continue with the temporary fencing in the alternative location and re-visit in a further two years.
- 1.4 The options to be considered include:
- o Do nothing / end the trial
 - o Continue with a modified area of fencing for a further two years
 - o Continue with a fenced area and include the larger area with roping off and signage only (so we can test how effective 'good behaviour' approaches might be alongside a fenced area
 - o Move to a permanently fenced off area that is seasonally open with permanent signage and bird watching spots along a 'Skylark Trail'.
- 1.5 As arrangements need to be put in place this month for the season to August, and as work priority has lain elsewhere meaning there has, as yet, been no opportunity to undertake any wider consultation on the next steps it is proposed that the Council continues with a modified area as shown on Plan 1 (Appendix 2) for a further two years and then undertake a wider consultation.
- 1.6 The consultation process could involve the following approaches:
- o An online survey setting out the improvements in breeding bird populations and what the problems are with a range of measures, including permanent fencing with seasonal access and the creation of the skylark trail with look out points and wildlife interpretation. The danger here is that the FoSML may just canvass negative responses to skewer the outcome and demand the results via a FoIR;
 - o A second option would be to an event on the Common during the trial period with some play value attached to it (wildlife colouring books, mini-beast trail etc) to try and attract a broader demographic);
 - o A third option might be more of a 'meet the expert' nature walk and talk with an opportunity to learn more about the local wildlife from 2 or 3 wildlife experts such as the RSPB and Warwickshire Wildlife Trust. The walk and talk could be promoted in the local press but runs the risk of being high-jacked but at least its more informally recorded than a survey.

- 1.7 Of course it could involve elements of all 3 approaches. Members feedback on these approaches would be welcome.

2 Alternative Options

- 2.1 The options are set out in paragraph 1.4 above and the reasons for selection the proposed option are explained in paragraph 1.5. In respect of the rejected options, the reasons are as follows:
- Do nothing / end the trial – this would involve a return to the previous operational arrangements which had been by dint of the declining numbers of protected species been proven not to be a successful approach.
 - Continue with a modified area of fencing for a further two years – see paragraph 5.1 above – recommended.
 - Continue with a fenced area and include the larger area with roping off and signage only (so we can test how effective 'good behaviour' approaches might be alongside a fenced area – this is a variation on what has previously been used and so there is significant doubt of its effectiveness. Prevention of dogs roaming requires barriers they cannot cross.
 - Move to a permanently fenced off area that is seasonally open with permanent signage and bird watching spots along a 'Skylark Trail' – it is felt that as this would be a significant change it would require public consultation before introducing such a measure but could be considered at the end of the proposed 2 year trial and could be put forward as an option as part of the planned public consultation.

3 Legal Implications

- 3.1 Local authorities have a statutory duty to consider what action they can take – consistent with their other functions – to further the general biodiversity objective in section 40 of the Natural Environment and Rural Communities Act 2006. The Environment Act 2021 introduced a strengthened biodiversity duty to conserve and enhance biodiversity.
- 3.2 The Government has published guidance on complying with the biodiversity duty and some more specific guidance on the provision and protection of habitats for wild birds. The latter emphasises the identification of habitats, the species using those habitats (or which could do in the future) and then taking appropriate steps to preserve, maintain, enhance existing habitats and/or to create new ones.
- 3.3 All wild birds and their nests are protected under the Wildlife and Countryside Act 1981.
- 3.4 Public rights of way would need to be left open for people to use, unless subject to formal diversion orders. Informal desire lines could be affected without the requirement for legal process.

4 Financial Implications

- 4.1 The cost of the proposed temporary barrier measures and signage being undertaken for the next two years will be ? per annum and the cost of a further ecologist report is likely to be ? This can be funded from ?

5 Corporate Strategy

- 5.1 The proposal also supports Strategic Priority 3, linked to, creating vibrant, safe

and healthy communities of the future. In particular it fits with the Council's commitment to prepare and deliver a Biodiversity Action Plan.

6 Environmental/Climate Change Implications

- 6.1 The proposal helps to maintain and improve biodiversity and especially that of protected species in one of the most significant open space in Warwick town.

7 Analysis of the effects on Equality

- 7.1 An Equality Impact Assessment is not required. Public Rights of way will not be impinged though an informal desire line may be if the additional area is included.

8 Data Protection

- 8.1 There are no data protection implications.

9 Health and Wellbeing

- 9.1 The maintenance of an open space can contribute to the health of the local community both physical and mental. There is objective evidence to support this assertion. As part of this benefit local people can enjoy the retention of protected species as it adds to the experience of enjoying this particular open space, especially the sounds of skylarks.

10 Risk Assessment

- 10.1 The risks revolve around reputation and potential legal action. Reputationally, this has been something of a local controversy as those who have been impacted by the measures object though the impact if only for part of the year and largely affects dog walkers as the measures prohibit dogs from free roaming over the nesting sites. However, there is also a reputational impact if the Council did not take measures since it has been identified that the free roaming of dogs in this area did have an impact and this is upon protected species. The experience of the past two years has not materialized in any significant adverse public response, but the measure does require continued publicity.
- 10.2 In the earlier stages of the implementation of this scheme one of the public rights of way had been impinged as officers had introduced the measure on the actual line of the path as opposed to the statutory line. This was addressed after one season and ironically lead to a larger area being included. This approach had been agreed with Warwickshire County Council (WCC) as the Right of Way Authority to avoid any possibility of legal action.
- 10.3 If members choose to stop the trial or choose a lesser means of protection then they need to consider the risk that the Council may be challenged over the impact on protected species.

Background papers: Cabinet Report in February 2022.

Supporting documents: Ecologists report 2023.