

**Friends of St. Mary's Lands Response to
Report to the Cabinet 10th February 2022 Item 8
St. Mary's Lands**

Background/Information

- 1.3 The Warwickshire Wildlife Trust were unaware of our survey findings and consultation results when they made this statement in March last year. They did not have the benefit of the findings in our report and we have now submitted this to them, including Karl Curtis, for their views. We have also submitted our report to Warwickshire County Council Ecology, the RSPB and the British Trust for Ornithology. The WDC officers are not ecologists and do not have the professional qualifications to challenge the scientific evidence of the RSPB, the BTO and the photographic evidence provided by FoSML which was indisputable.
- 1.4 Appendix 3b does not represent a response to the FoSML findings or consultation results.

The ecologist who carried out the WDC Survey, Andrew Waller set up ASW (with £10 shares) six days before his first visit. If he indeed undertook some repeat visits, why are these not reflected in his report? Why has he only recorded two visits on 20th April and 9th June. No visits are recorded in the second half of the breeding season. His report is dated September 2021 and marked **Final**. Our Critique of his Survey is attached and the following questions arise.

- Why only two site visits and neither of them in the crucial 2nd half of breeding season?
 - Why did he not notice and photograph the height of the grass sward?
 - Was he aware of the nesting preferences of Skylarks?
 - Why was the actual fenced area not indicated on his report when this was the area he was assessing?
- 1.5 The Warwick Natural History Society are not on the Working Party and did not have the benefit of the FoSML Report. This has now been sent to them with a request for their views.

Appendix 3a is taken from the Masterplan Consultation Outcomes September 2016 and was not specific to fencing off an area to protect nesting birds. FoSML totally agree that SML is important to

Nature and wildlife which is why we went to the effort of a survey and consultation.

Appendix 3c

Please see our response attached.

We understand the "*representative of the local wildlife group on the Working Party*" to be Roland Hopkins, an officer of Warwick District Council. In an email to our Secretary, he clarified his position as representing no group and is not a qualified ecologist. He has been in contact with Jon Holmes (WDC Green space officer) and Plincke and believes that it was through these contacts that he was approached to be on the working party.

We have not been able to ascertain the names of the 'other ecologists' (see our response to Cllr. Bartlett dated 1.2.22).

- 1.6 Our representative attended a site meeting with the portfolio holder to clarify the concerns raised in our report. This was suggested **by us** at the November meeting with WDC. As we could not initially ascertain the name of the other attendee and believing that the further meeting would not be with a professionally qualified ecologist, our representative initially declined. If it were to be with Mr Waller of ASW, nothing would be gained by rehashing his theories. after reading his response. It failed to address the issues raised in our report, ignored evidence from respected national bodies and was lacking in scientific rigour and merit.

However, when further enquiries revealed that this site meeting was to be with Henrietta Westergaard, who works for Plincke, our representative agreed to meeting with her. However, it transpired that Ms. Westergaard would not be available for several weeks and so the meeting has not yet taken place.

The next site meeting was at our request as our representative had serious concerns regarding the state of the ground within the fenced-off area. Cllr. Ashford attended this meeting with Cllr. Bartlett. It was clearly shown that the extremely long grass (100-150 cm) had not been cut, had collapsed and was lying flat on the ground, Advice received from a specialist qualified in grass management states that the grass underneath will die and leave bare patches.

- 1.7 If the measures are repeated this year and next, the findings of our report foresee a **significant decrease** in the numbers of nesting

birds in the fenced-off area. It will be too late then for a full review. The review should have resulted from the findings in our report as carried out last year, fully evidenced and backed by scientific fact. An opportunity for a review could have been carried out when our report was presented to Cllrs. Day and Bartlett in November last year. A Working Party meeting could have been held at this time instead of in March/April this year (five months after our report was submitted). The solutions to protecting the nesting birds were presented in our report and supported by respondents to our survey (all of whom are your voters/electorate)

90% of users would prefer to see alternative solutions to the green plastic fencing e.g., mown pathways, wooden marker posts, professional signage.

Despite Cllr. Day's commitment at our November meeting that Cllr. Bartlett will take it away, take a close look and respond in due course, Cllr. Bartlett confirms we have still not received a response to our report.

- 1.10 The Working Party papers have not always been treated as private and confidential. Our Secretary attended the first meeting in February 2015 as a District Councillor and can confirm that the Briefing Paper from FoSML was accepted by the meeting. An extract re confidentiality follows.

"FSML note the commitment of WDC in its constitution to be Open, Transparent and Accountable.

Therefore, whenever possible, all the minutes and reports of this Working Party should be made public, i.e. on the WDC website.

In only wholly exceptional circumstances should there be the need for "confidentiality" or secrecy. Participants should know that what they say or papers they submit, will be made public and therefore be self-editing.

There are obvious conflicts of interest in having those that stand to make financial benefit from a new plan having a role within its creation. These are solvable BUT great care must be taken to ensure a wide range of views are sought and considered and the ultimate plan must be predominantly for clear public benefit.

Given the past mistrust of apparent secret schemes and public scepticism about past WDC conduct towards St. Mary's Lands, there is a need to regain public support.

This can only be achieved by being frank and open about the issues and the positions of all participants, not by secrecy or back room deals."

- 1.11 The Terms of Reference proposed have not been discussed with the Working Party and it has been over a year since the last meeting. Why wasn't one called earlier to discuss the ToR and the other proposals in the Item 8 papers?

We understand that WDC is committed to working with community groups. What governance arrangements is WDC seeking?

FoSML is a not-for-profit organisation and an unincorporated association. We are accountable only to our members.

An Unincorporated Association

Has voting members

- Can be charitable (but do not have to be)
- Not incorporated

An unincorporated association is a membership organisation. It can be whatever its members want it to be, and carry out whatever activity the members choose. It is the easiest, quickest and cheapest way for a group to set itself up. It is ideal for many small groups, especially those without staff or premises. A large number of groups fall into this category (sometimes without knowing it). To set up an unincorporated association, your group simply needs to draw up a constitution, setting out the rules under which it will be run.

An unincorporated association can be a charity, but it does not have to be. Many unincorporated associations primarily benefit their own members, and are therefore not considered to be charitable and are not regulated by charity law. For an unincorporated organisation to be a charity it must have charitable aims and be run for the public benefit. If your group is not charitable you do not need to register with or report to anyone. If your group is charitable, you will need to register with the Charity Commission if your annual income is over £5,000 per year.

An unincorporated association is not incorporated, so it cannot enter into contracts or own property in its own right.

To set up an unincorporated association, all you need to do is write and agree a constitution in your group. If you do not plan to become a charity, your constitution should lay out whatever aims you want for your group. If you wish to be a charity, it is best to base your constitution on the model constitution on the Charity Commission website.

Cllr. Bartlett advised that we would only be required to submit our Constitution. Would any other 'governance arrangements' be

required and would such information be too intrusive and/or subject to the Data Protection Act?

We were also told at the November meeting that the Working Party was to be reconstituted but have heard no more. We now note, however, that Mr. Elliott has invited the same members of the Working Party to the next meeting, including 7 officers (reduced from 12), 4 WDC tenants, 3 WDC Cllrs., 1 County Cllr. and one Town Cllr. As well as the Racecourse Manager a representative of the Jockey Club was invited.

We note that Hill Close Gardens are still on the Working Party membership list, even though they are outside the boundary of St Mary's Lands. An earlier Executive Meeting recommended that FoSML have two members on the Working Party but this was reduced to one by Mr. Elliott.

Mr. Elliott circulated the Cabinet meeting papers to the Working Party, requesting comments but neglected to include the FoSML Survey and Consultation Report. The recipients did not have the benefit of our findings when they sent back their comments. At our meeting in November 2e had offered a presentation to the Working Party when they next met. Yet they are being asked for their comments without being fully informed.

It was interesting to note from the comment sent from the model aeroplane flyers' representative on 29th January 2022 that they had seen the Skylarks actually flying over and joining their flights, sometimes at the same time, generally appearing unmoved by them and landing in the grass alongside the planes. He also noted that, at times, they appeared to be visiting the flyers' area rather more than the fenced area from about mid-July to August on, when the grass was extremely high and way past the 20 to 30cm.

2. Alternative Options available to Cabinet

90% of users would prefer to see alternative solutions to the green plastic fencing e.g., mown pathways, wooden marker posts, professional signage.

- 3.17 The FoSML Management Committee did not decline a meeting with the Leader of the Council and the CEO. We were reluctant to have a meeting during the Covid restrictions and suggested that this wait, especially since a meeting would be better served with the outcome (after September) of our consultation with users of the land (conducted via a QR code). We then suggested dates in October for the meeting but these were unacceptable to WDC. The meeting

finally took place on 3rd November 2021 with the Management Committee present - and named. We kept minutes of the meeting.

4.2 Financial

The cost of fencing was over £2,000 and for three years will be over £6,000.

5.1 Risk Assessment

As a competent authority, WDC must help to provide, protect and restore habitats for wild birds. Could there be a legal risk in continuing with these measures if the outcome is a **decrease** in the nesting bird population? Could WDC's reputation be damaged if this was indeed the outcome and the negative publicity that would result?