

LAND AT BERRINGTON

APP/L3245/W/23/3332543

Application for erection of an up to 30 MW solar PV array with associated infrastructure

CLOSING SUBMISSIONS ON BEHALF OF FLOUR NOT POWER

XIC = Examination-in-Chief, XX = Cross-Examination, Re-X = Re-Examination

Introduction

1. At the close of this Inquiry, four clear reasons remain as to why the appeal proposal should not come forward on this site. First, there is unacceptable visual and landscape impact. Secondly, there would be significant unmitigated harm to a protected species of principal importance. Thirdly, the proposal would result in unjustified loss of high-grade agricultural land. Fourthly, numerous heritage assets would be impacted.
2. In each of these regards, the proposal conflicts with key policies in the extant and the emerging development plan. While the scheme would have obvious benefits, those are not enough to outweigh the harms arising. Local people have always recognised this as a poor site for solar development and a poorly thought-through scheme. Nothing the Appellant has said at the Inquiry changes that conclusion.
3. In closing, the main issues identified by the Inspector will be addressed in the following order: landscape, ecology, agricultural land, heritage, and the planning balance.

Landscape

4. The scheme is badly sited in landscape terms, with the sloping topography offering open views from public receptors. Not only that, but remarkably limited mitigation is proposed, and little that would be effective.
5. Starting with the impacts to landscape character. The first matter on which Mr Bullock differs with Mr Leaver relates to the sensitivity of the appeal site – this is reached by combining judgments on landscape value and susceptibility.
6. It is common ground between Mr Bullock, the authors of the Landscape and Visual Appraisal (“LVA”) and Mr Haigh who drafted the Appellant’s Statement of Case (“SOC”) that the landscape value of the appeal site should be assessed as medium – between low and high.¹ The site has evident perceptual qualities as well as historic continuity.² The LVA found its recreational value is “high”.³ Mr Leaver has used a different methodology to all other parties. He puts the value at “community” value, the lowest value available on his methodology.⁴
7. Susceptibility is the ability of landscape to accommodate the development without undue consequences.⁵ It is agreed that the appeal site lies within the Estate Farmlands LCT.⁶ Key characteristics of that LCT are “*Mixed farming land use; Clustered settlement pattern; Large country houses with associated parklands; Planned woodland character; and Medium to large scale landscapes with framed views.*”⁷
8. The Shropshire Landscape Typology goes on to say in respect of this LCT that “.....*landscape character is largely determined by an ordered pattern of fields and woods.... The majority of the woodlands have a planned appearance,*

¹ LVA CD1.18 at §§6.5-6.6 Mr Bullock at §5.18

² Mr Bullock’s Proof at §7.9

³ The LVA CD1.18 at p.20 (24/23) sets out at §§6.3-6.4 why the value is medium

⁴ See Mr Leaver’s Methodology Appendix 1 to his Proof at §§18-19. The only detailed analysis of value in Mr Leaver’s evidence is within his Appendix 2 – but that appears to apply to the entire Estate Farmland Landscape Character Type (“LCT”) and not to the appeal site specifically

⁵ See Mr Leaver’s Methodology Appendix 1 to his Proof at §14

⁶ as appraised within the ‘The Shropshire Landscape Typology’ (2006) – CD8.2 pp.52-54

⁷ CD8.2 at p.52

although some plantations occupy the sites of older woods and small stands of ancient woodland occur in some places. They tend to create framed views within medium to large scale landscapes.”⁸

9. Mr Bullock explains in his Proof that while woodlands framing views are a key characteristic of the wider LCT, the appeal site itself is more open and less enclosed – where there is concentrated tree cover in the immediate surrounding area, that is located along existing stream and watercourses, rather than being planned.⁹ This lack of planned woodblocks impacts the discernability of the proposals from a number of locations.¹⁰

10. Mr Leaver and Mr Bullock agree that the appeal site, which is currently undeveloped countryside with open views to the south, has a high susceptibility.¹¹ Mr Bullock emphasises its tranquillity, sense of remoteness, and very limited man-made detracting features.¹²

11. Mr Bullock combines the site’s medium value with a high susceptibility to get a high sensitivity.¹³

12. To reach an overall judgment about the extent of the effects arising, sensitivity is combined with magnitude of change. This is assessed in terms of the size or scale of effects, geographic extent and duration and reversibility.¹⁴ In terms of the change the proposal would bring about while the scheme is operational, Mr Bullock explains that panels would cover the vast majority of the open fields of the site.¹⁵ However, the scheme would not only comprise solar panels. Other key components would include:

- a. Internal maintenance tracks: The layout plan shows hundreds of metres of maintenance tracks, passing through the higher prominent landform

⁸ CD8.2 at pp.52-54

⁹ Mr Bullock’s Proof at §5.11, §5.13

¹⁰ Mr Bullock’s Proof at §5.12

¹¹ Mr Leaver’s Proof at §§6.2.3-6.2.4

¹² Mr Bullock’s Proof at §5.15

¹³ Applying Mr Leaver’s methodology, those findings would still result seem to result in a sensitivity that is high/medium Methodology at Appendix 1 §38 of Mr Leaver’s Proof

¹⁴ Methodology at Appendix 1 §19 of Mr Leaver’s Proof

¹⁵ Mr Bullock’s Rebuttal at §19

within each of the field areas.¹⁶ The Appellant has provided no detailed assessment of the impact arising.

- b. Substations: There would be two customer substations of up to 3.95 metres height and seven inverter transformer stations of up to 3.5 metres height.¹⁷ The inverter stations are not confined to the western edge of the site.¹⁸
- c. Cabling: The cabling would require excavation of the verges of the Shrewsbury Road, backfilling and then the reestablishment of vegetation.¹⁹ This would inevitably have impacts in both landscape and visual terms, again the Appellant has provided no detailed assessment.²⁰

13. As to duration, Mr Leaver finds that the scheme would be “permanent” in landscape terms.²¹ In all, the parties agree that the magnitude of change would be substantial at the scale of the site.²² The development proposals would change the character of the site from undeveloped agricultural fields to a solar farm over a 40 year period.²³

14. Mr Bullock, the LVA, the Appellant’s Landscape SOC, and Mr Hurlstone all conclude that the operational landscape character impact on the site would be at least large or major.²⁴ The proposed landscape mitigation measures are unlikely to significantly reduce those character effects over time.²⁵ Mr Leaver combines substantial magnitude with medium sensitivity to get a Major/Moderate and permanent adverse effect on the site.²⁶

¹⁶ CD15.2 layout plan, Mr Bullock’s Proof at §2.1

¹⁷ CD1.27, CD1.28, Mr Bullock’s Proof at §§2.3-2.4

¹⁸ Mr Bullock’s Proof at §4.15, CD15.2 Site Layout Plan

¹⁹ Site location plan CD15.1, Mr Bullock’s Proof at §§2.6-2.8

²⁰ Mr Bullock’s Proof at §2.8

²¹ Mr Leaver’s Proof at p.31 §23

²² Mr Bullock’s Proof at §5.44, Mr Leaver’s Proof at §6.3.5

²³ Mr Bullock’s Proof at §5.44

²⁴ LVA CD1.18 §6.21, Landscape SOC CD4.3 same result at §4.5.1, Mr Bullock §5.26, §5.44

²⁵ Mr Bullock’s Proof at §5.47

²⁶ Mr Leaver’s Proof at §6.3.9 - Were this an EIA scheme, that would still appear to be a “significant” effect applying §39 at p.7 of the methodology at Appendix 1 to Mr Leaver’s Proof

15. There would also be material landscape effects beyond the site itself during operation of the scheme.²⁷ Mr Bullock concludes that the landscape character would be significantly diminished relative to the current baseline conditions, due to the introduction of the man-made industrial energy features comprising solar panels and associated infrastructure.²⁸
16. The construction and decommissioning phases were not assessed in any detail in the LVA.²⁹ Yet, the construction stage would require an extensive workforce, daily HGV trips, and significant plant including a crane for lifting and positioning ancillary structures and a piling machine for ramming the frames into the ground.³⁰ While only for a limited time period, the landscape character effects would be large scale across the whole extent of the site³¹ and would bring perceptual impacts to the surrounding area.³² Mr Leaver accepts a moderate impact – Mr Bullock considers it would be greater given the change from relatively tranquil agricultural fields.³³
17. Turning then to visual impact, the Inspector has seen the views on his site visit, and it is not proposed to go through each viewpoint in detail. However, some general points are worth noting.
18. First, Mr Leaver accepts having regard to the photomontages that proposed boundary hedgerows would have limited effects in screening views from the south and east.³⁴ At viewpoints 11 and 15, solar panels on sloping land panels would remain largely visible above mitigation planting.³⁵ From the public right of way at Cantlop, Mr Bullock finds there would be direct views across the northern half of the site that would not reduce with mitigation leading to a major

²⁷ See Mr Leaver's Proof at §6.3.7

²⁸ Mr Bullock's Proof at §4.16

²⁹ CD1.18 §6.10 and §8.2

³⁰ Mr Bullock's Proof at §§4.2-4.5, §5.35

³¹ As set out by Mr Leaver at §§6.3.3-6.3.4 of his Proof

³² Mr Bullock §§5.29-5.31, Mr Leaver at §6.3.3

³³ Mr Leaver's Proof at §6.3.4, Mr Bullock's Proof at §5.26

³⁴ Mr Leaver's Rebuttal at §3.5.1

³⁵ Mr Leaver's Rebuttal at §3.5.1. Photomontages appended to Landscape SOC CD4.3 (viewpoints 11 and 15)

adverse effect.³⁶ Mr Leaver accepts users would experience relatively open views from most of that public right of way but only finds a moderate effect.³⁷

19. Secondly, Mr Leaver's Proof does not assess the impact on the public rights of way to the east – 0407/16/1 and 0407/1/1. Mr Bullock finds that from some locations here the solar farm would be seen against the skyline and would be experienced as prominent within views.³⁸

20. Thirdly, local roads have gappy hedges in places, particularly at Cliff Hollow and on the northern part of the road bisecting the site, and the landscape masterplan proposes very little by way of new planting along these routes.³⁹

21. Fourthly, it is clear that local residents deeply value the visual amenity of the site and surrounding area – the Inquiry heard that it brings health and wellbeing benefits, as well as attracting visitors from afar. Just to give some examples of the powerful representations made by third parties:

- a. 18-year old Elliot Thomas said that *"[Berrington] really is a treat to the eye and has always felt like such a quiet and peaceful place to live, surrounded by the Shropshire hills... this industrial creation would change our village for a long time"*.
- b. Tre told the Inquiry that *"to have the visual amenity of the soft green valley replaced with the grey angular rows of solar panels will change the entire context of Cantlop and the Cound Brook Valley. The view from the closest public right of way will be altered for a generation"*.
- c. Hugh Elliott referred to *"the devastation that a solar farm in the proposed location will have on the visual amenity that is the Cound Brook Valley and the further, more distant landscape in which it exists...."* He went on to say that *"already in this area there are two solar farms, Berriewood and Boreton, which are so much more sensitively inserted into their flatter, topographical settings. This south facing sloping site set in a*

³⁶ Mr Bullock's Proof at §6.35, §§6.39-6.40

³⁷ Mr Leaver's Proof at §7.3.1

³⁸ Mr Bullock's Proof at §§6.16-6.31

³⁹ Mr Bullock's Proof at §§2.10-2.13, §§6.43-6.47, Rebuttal at §§1.31-1.37

‘gently undulating’ landscape is simply the wrong place to build a solar farm for so many reasons.”

22. In all, there would be clear landscape and visual harm, and the Rule 6 Party agrees with the Council that this is unacceptable and in conflict with policy.

Ecology

23. As to ecology, the Appellant’s case that there would be no significant harm to a protected species misinterprets policy and is built on a series of shaky assumptions.

24. Skylarks are listed under s.41 of the Natural Environment and Rural Communities Act 2006 (“NERCA”) as a species of principal importance. They are also red-listed in the Birds of Conservation Concern in the UK 2021. The stark national decline in recent decades is well documented.⁴⁰

25. Shropshire is one area in which the species is holding out, and there is a particular stronghold to the east of Berrington.⁴¹ Ms Corfe told the Inquiry in XX that *“this area is very important for skylarks.”*

26. Skylarks are reliant on open habitats, by enclosing those solar farms make the land less attractive for breeding purposes.⁴² Solar Energy UK note that given their preference for nesting *“in open fields, away from tall structures solar arrays are therefore not conducive to nesting by Skylarks”*.⁴³ That article also sets out that confirmed nesting on solar farms has, to date, not been recorded. Mr Fearn accepts that adopting a precautionary approach, it should be assumed that Skylarks are unlikely to breed within a typical solar farm.⁴⁴

⁴⁰ Ms Corfe’s Appendices Shropshire Biodiversity Action Plan p.47 *“...skylark, for example, declined nationally by 75% between 1972 and 1996”*. BTO’s 2022 report at CD10.25 p.18 Corn Bunting & Skylark finds a 14% decline between 1995 and 2022.

⁴¹ As per the map in Ms Corfe’s Rebuttal Proof

⁴² Mr Fearn in XIC

⁴³ CD10.12

⁴⁴ Agreed Mr Fearn in XX Rule 6 Party

27. When 11 territories were found on the appeal site in 2022, no substantive mitigation was initially proposed. Despite the Council's request for on-site mitigation, the scheme was not redesigned in any significant way.⁴⁵ Mr Fearn confirmed he had not been asked to consider any on-site redesign option.⁴⁶ Mr Fearn also confirmed he had not been asked to consider alternative sites.⁴⁷

28. Ms Corfe pointed in XIC to a number of inadequacies in the on-site surveys. In her view, due to these errors, additional territories might have been missed.⁴⁸

29. No surveys at all have been done on the compensation land – in Ms Corfe's words, a "*fundamental omission*".⁴⁹ However, if all 11 displaced territories are to be compensated, then the compensation land would have to accommodate those along with any existing territories.⁵⁰ Mr Fearn accepts it would have been preferable to survey the compensation site.⁵¹ Skylarks were observed on compensation land during the breeding bird survey, as were six pairs during Mr Packer's confirmatory wintering bird survey.⁵²

30. Absent any survey, the Appellant sought to rely on the Fox paper to estimate how many skylarks are present on the compensation land.⁵³ However:

- a. First, Fox is a fairly recent theoretical publication, which concludes by saying "*The prototype methodology given here is not perfect, makes several assumptions and is as yet without monitoring data. However, it is anticipated to provide a starting point for discussion on [ground-nesting bird] mitigation.*"⁵⁴ Mr Fearn accepted these as limitations of the paper.⁵⁵

⁴⁵ See SC Ecology Comments at CD2.1

⁴⁶ Mr Fearn XX Rule 6 Party

⁴⁷ Mr Fearn XX Rule 6 Party

⁴⁸ Ms Corfe in XIC

⁴⁹ Ms Corfe in XX

⁵⁰ Mr Smith's Proof at §5.1

⁵¹ Mr Fearn's Proof at §5.1.4

⁵² Appellant's SoC CD4.2 (§5.4.6), Mr Fearn's Proof §5.1.3

⁵³ Mr Fearn XX Council, Fox Paper CD10.22

⁵⁴ CD10.22 PDF p.6/6

⁵⁵ Mr Fearn XX Council

- b. Secondly, Fox's approach is not supported in any policy or guidance as an adequate alternative to surveys.⁵⁶
- c. Thirdly, while Fox suggests a way to estimate average densities, the area to the east of Berrington is not "average" as a stronghold for skylarks. The breeding bird survey of the appeal site found a density of 0.25 in a year when the site was planted with oilseed rape – applying Fox the density should have been as low as 0.12 with that vegetation.⁵⁷ There appears to be more skylarks in the locality than Fox anticipates.
- d. Fourthly, Fox does not take into account the different character of the compensation land versus the appeal site, which may have a bearing on sightlines of skylark, and which might affect carrying capacity.⁵⁸

31. As to the adequacy of the mitigation land, the area proposed for compensation, only 25 ha, is not much more than half the size of the appeal site.⁵⁹ There is currently no certainty as to its future management regime. While the Appellant's Skylark Mitigation Plan (CD1.15) only provides two options – arable or grazed pasture – a further third option was introduced for the first time in oral evidence at the Inquiry: set-aside.

32. The obvious reason that the Appellant made this last-minute suggestion of set-aside was that if one follows Fox's steps through, it becomes apparent that if the compensation site were to either remain as grazed pasture or be converted to arable, it is inadequate in size to compensate the 11 displaced territories.

33. Going through the steps of Fox, it is agreed per step 1 and 2 that the density of the site that would be impacted is 0.25.

34. Per step 3, Ms Corfe made clear her view is that all 11 territories should be compensated, given the importance of skylark in this particular part of Shropshire and that they are declining.⁶⁰ Her clear view was that in this

⁵⁶ Agreed Mr Fearn XX Rule 6 Party

⁵⁷ Agreed Mr Fearn XX Rule 6 Party

⁵⁸ Mr Fearn XX Council

⁵⁹ Agreed Mr Fearn XX Rule 6 Party

⁶⁰ Ms Corfe in XIC

scenario, given the limitations with the survey methodology and stronghold for skylark at this site, compensation should be like for like as a minimum.⁶¹

35. Per step 4 of Fox, determining baseline territory density of receptor site, Mr Fearn said this should be 0.02 Intensive Grazed Pasture. Assuming that is right, we get the following results for different mitigation options of arable conversion, pastoral farmland (the highest option for grazed pasture) or set aside.

Fox's Steps	Arable conversion	Pastoral Farmland	Set aside
1. Number of territories in the development footprint.	11	11	11
2. Calculate the density of territories across all skylark-suitable habitat to be impacted.	0.25 (11/44ha)	0.25 (11/44ha)	0.25 (11/44ha)
3. Decide on territories to be compensated	11	11	11
4. Determine baseline territory density at the receptor site either from site survey or referencing research-based figures (e.g. Table 1)	0.02	0.02	0.02
5. Calculate the net change in territory density possible at a receptor site before and after enhancement (using Table 1)	0.28 – 0.02 = 0.26	0.18 – 0.02 = 0.16	0.39-0.02 = 0.37
6. Divide the number of territories to be compensated by the net density change figure to give the number of hectares needed	11/ 0.26 = 42 ha	11/0.16 = 69 ha	11/0.37 = 30 ha

36. Mr Fearn accepted that the compensation site is inadequate in size applying the factors in Fox for all these management regimes if all 11 territories are to be compensated.⁶²

37. The requirements would obviously go up further if Ms Corfe is right that the compensation site should be categorised as rough grazing, on the basis that for many years it has been under stewardship and retains very well-developed grassland.⁶³

⁶¹ Ms Corfe in XX

⁶² Mr Fearn XX Rule 6 Party

⁶³ Ms Corfe in XIC

38. Changing the management regime of the mitigation land away from grazed pasture also brings, in Ms Corfe's, words "a number of uncertainties".⁶⁴ The mitigation land currently comprises good quality semi-improved grassland, and changing that habitat which is important for other biodiversity would result in its own impacts that have not been assessed.⁶⁵

39. In terms of arable conversion, the compensation site was under stewardship up to 2022 and lies in very close proximity to the SSSI and Ramsar, sloping down towards those protected sites such that there would be a real risk of pollution through runoff.⁶⁶ The Appellant's Agricultural Productivity Assessment noted that "Berrington Pool SSSI borders the farm to the north. Therefore, any changes in land management should take this into consideration, in particular any changes that would require increased fertiliser applications."⁶⁷ Whatever the reason that a screening request has been made to Natural England as regards conversion of that land to arable, Natural England does need to be consulted.⁶⁸ At this stage the more likely option of the two set out within the Skylark Mitigation Plan would be continuation as grazed pasture.⁶⁹

40. Furthermore, the arable strategy proposed within the Skylark Mitigation Plan of providing 12 plots (one plot per territory displaced) within 6ha was designed on the basis of a misunderstanding of the RSPB guidance.⁷⁰ Elsewhere, ecologists have made the mistake of assuming that two plots should be provided per territory displaced.⁷¹ ADAS had assumed even less than that. Skylark plots do

⁶⁴ Ms Corfe in XIC

⁶⁵ Ms Corfe in XIC

⁶⁶ Ms Corfe in XIC, her Figure 1 on p.34/53 shows location of those, CD1.18 LVA Appendices topography plan, Mr Smith's Proof at §7.4, Mr Fearn XX Rule 6 Party

⁶⁷ CD1.20 §1.6

⁶⁸ Mr Fearn XX Rule 6

⁶⁹ CD 1.15 Skylark Mitigation Plan at §4.1, "The current land use within these areas is for grazing, with the current land use likely to persist following development.some current HLS land may not be suitable for arable reversion due to its grade, or to its proximity to the Berrington Pool SSSI", Mr Fearn XX Rule 6

⁷⁰ Agreed Mr Fearn XX Rule 6. The SMP CD1.15 provides at §4.1.2 that "The proposed mitigation will be carried out with the proposed specification of two territories/plots per/ha (the minimum density as identified in RSPB, 2023). A total of 11 territories were present on site at the time of surveying, therefore a total area of 6 ha is required to accommodate the 11 territories/plots." What the RSPB paper at CD10.8 actually says is you create 2 plots per ha – doesn't say anything about how many territories that will accommodate

⁷¹ Mr Fearn XX Rule 6, CD10.22 PDF p.5/6 "it is common to see ecologists propose a basic metric such as two plots for each skylark territory displaced. It is not clear how this is decided upon and appears to confuse the 2 plots/ha rate of RSPB farmland management advice with a suggested rate per displaced territory".

not provide nesting habitat and so do not equate to territories.⁷² In Mr Fearn's words "*that's not how I would have done it*".⁷³

41. As to the potential for set aside, while the 25ha would still not be enough land, no detail has been provided about how that would work including how long the transition would take.⁷⁴ There is no documentary evidence whatsoever to support a conclusion the land is organic or indeed capable of becoming organic (the farmer that farms it today does not have an organic herd) or over what time period.⁷⁵ Unlike the grazed pasture/arable conversion options set out within the Skylark Mitigation Plan, there is "*no information*" within the written evidence before the decision maker about how these set-aside options would work on this site.⁷⁶

42. What is now clear is that the current approach set out within the Skylark Mitigation Plan is inadequate. As Mr Fearn conceded "*further work needs to be done*".⁷⁷

43. The Rule 6 Party agrees with the Council that the pre-commencement condition is not sufficient to overcome these failings.⁷⁸

- a. First, at this stage it must be established that the compensation land is adequate in size for the proportion of displaced territories that are to be provided for – the condition cannot change the total area of land available. As Mr Davies explained to the inquiry, the condition "*relies on the mitigation land being sufficient*".⁷⁹ The Rule 6 Party is very clear that the land provided is not adequate in size.
- b. Secondly, the condition proposes that the future strategy "*shall follow the principles set out in the Skylark Mitigation and Management Plan produced by ADAS and dated 1st May 2023*". However, the principles set

⁷² Mr Fearn XX Rule 6, CD10.22 p.5/6, CD10.12 p.2

⁷³ Mr Fearn XX Rule 6

⁷⁴ Agreed Mr Fearn XX Rule 6

⁷⁵ Agreed Mr Fearn XX Rule 6

⁷⁶ Mr Fearn XX Rule 6

⁷⁷ Mr Fearn XX Council and XX Rule 6

⁷⁸ Mr Davies Re-X

⁷⁹ Mr Davies in XIC

out within that plan have been shown to be inadequate. Any future strategy based on those would also be inadequate.

44. For these reasons, the Rule 6 Party considers that there is no prospect of a scheme coming forward that provides adequate compensation for the 11 pairs of skylarks that would be displaced. The Appellant has had since the breeding bird surveys in 2022 to come up with an appropriate strategy but has still not managed to do so.⁸⁰ Accordingly, it would not be reasonable to impose a pre-commencement condition. Furthermore, granting permission would establish the principle of development on the appeal site together with the mitigation land. It would be very hard for the Council to refuse to discharge the Strategy subsequently on the basis that the mitigation land is just too small.
45. Forced to confront the deficiencies in the proposed mitigation, the Appellant at the Inquiry resorted at the last minute to a new suggestion – that there is no need to compensate for all 11 displaced territories because there would be no harm to the conservation status of the species at a county-level. This argument was not raised previously in any of the Appellant’s written evidence.
46. What do the policies say? CS17 of the Core Strategy provides, *inter alia*, that “Development will identify, protect, enhance, expand and connect Shropshire’s environmental assets, to create a multifunctional network of natural and historic resources. This will be achieved by ensuring that all development: Does not have a significant adverse impact on Shropshire’s environmental assets”. Paragraph 7.6 of the supporting text is clear that “environmental assets” include species of principal importance under s.41 NERCA. If there is a significant adverse impact on a protected species, there will be conflict with that policy.
47. As to MD12, this provides that the avoidance of harm to Shropshire’s natural assets and their conservation, enhancement and restoration will be achieved by, *inter alia*, “2. Ensuring that proposals which are likely to have a significant adverse effect, directly, indirectly or cumulatively, on any of the following: iii. priority species; will only be permitted if it can be clearly demonstrated that: a)

⁸⁰ see Original SMP CD1.15 at §1.4

there is no satisfactory alternative means of avoiding such impacts through re-design or by re-locating on an alternative site and; b) the social or economic benefits of the proposal outweigh the harm to the asset....”

48. Mr Davies told the Inquiry in Re-X that the reference to re-design and alternative sites indicates that the policy is considering site-level rather than County-level impacts.⁸¹

49. The NPPF is clear at §185(b) that plans should promote “.....*the protection and recovery of priority species...*”. Paragraph 186(a) provides that “*if significant harm to biodiversity 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*” (emphasis added). Mr Heslehurst accepted that this paragraph is referring to a site-level impact.⁸²

50. Mr Fearn’s approach was not entirely clear but appeared to be that there would only be a significant impact in breach of any of these policies if there was an effect on the conservation status of skylarks at a county-level. However, almost no individual planning application will harm the overall conservation status of the species.⁸³ As Mr Davies told the Inquiry, if Mr Fearn’s view was followed on every site, the result would be no protection left for priority species.⁸⁴

51. While Mr Fearn said his view reflected his experience dealing with other species on other sites, he provided no detailed evidence of other sites/species to the Inquiry that could be assessed.

52. Mr Fearn’s approach also conflicts with that of Inspector Parker at *Manuden*, who found that a solar scheme that failed to compensate for the displacement of 17 pairs of skylarks with no s.106 or Grampian conflicted with the NPPF.⁸⁵ In

⁸¹ Mr Davies in Re-X

⁸² Mr Heslehurst XX Rule 6

⁸³ Agreed Mr Heslehurst XX Rule 6

⁸⁴ Mr Davies in XIC

⁸⁵ CD7.26, §§61-66

that case, the Inspector did not interpret the NPPF as requiring protection of favourable conservation status – but as requiring adequate compensation for individual lost territories. When taken to the decision, Mr Fearn said that in some parts of country where the species is less common, it would be appropriate to look at individual territories displaced.⁸⁶ However, it is unclear why skylark's thriving comparatively in Shropshire is a reason to reduce the protection given to them – particularly when there remains a national decline.

53. Further indications of how national planning policy is to be applied point in favour of an approach that looks at individual territories displaced on a site-level. Mr Fearn accepted that the Government guidance (Natural England's "Standing Advice") is relevant to consideration of this application and that this tells local planning authorities that development should provide equivalent or better alternative habitat.⁸⁷ In particular,

- a. Natural England's Standing Advice for Wild Birds makes clear "*There should be a suitable amount of replacement habitat to compensate for the displacement. For example, there is: no net loss of habitat; like-for-like replacement near to the original nest to provide a long-term home; alternative habitat that is better in quality or area than the lost habitat; maintained habitat connection to allow normal bird movement. The proposal should make sure compensation sites are established for wild birds to use before work starts.*"⁸⁸
- b. Natural England's Standing Advice for protected species and planning applications, makes very similar points, emphasising that compensation measures should be a last resort, and these should "*make sure that no more habitat is lost than is replaced ('no net loss') and aim to provide a better alternative in terms of quality or area compared to the habitat that would be lost*".⁸⁹

⁸⁶ Mr Fearn XX Rule 6

⁸⁷ at CD10.10 and CD10.11 Mr Fearn XX Rule 6

⁸⁸ CD10.10, p.5/7

⁸⁹ CD10.11, p.11/17

54. These documents imply that compensation should not relate to conservation status but to a local site level impact.⁹⁰ The Circular referred to by the Council would also support that approach. It provides as follows:

- a. §98. *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.....*
- b. §99. *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....*

55. It is also of note that the fundamental concern of the Fox article on which Mr Fearn relies is that skylarks are being undervalued in planning, and that mitigation proposed is not based on an ecologically sound rationale.⁹¹ Again, that concern and the entire methodology Fox had derived would not arise if the only impacts we should be concerned with are to the conservation status of the species rather than at a site-specific level.

56. In all, the Rule 6 Party is clear that the Appellant's skylark mitigation plan and compensation site are both inadequate to compensate for the 11 displaced pairs. The condition proposed cannot remedy the deficiency. There is a clear conflict with local and national policy.

Agricultural Land

57. The Appellant accepts that over 80% of the appeal site is best and most versatile ("BMV") agricultural land, with the majority of the site Grade 2 – "very good" quality.⁹² Mr Heslehurst finds that the "loss" of this BMV land over a 40-

⁹⁰ Agreed Mr Fearn XX Rule 6

⁹¹ CD10.22 PDF p.2/6, agreed Mr Fearn in XX

⁹² ALC Report is CD1.3, table 4.3 sets out the conclusions

year period is a harm to weigh in the planning balance, affording it moderate negative weight.⁹³

58. As the Inquiry heard, Mr Franklin considers that a significant proportion of the site is of Grade 1 quality and that this should have been included in the Appellant's mapping.⁹⁴ In terms of approach, it is agreed that the relevant guidelines are those from 1988 of the Ministry of Agriculture, Fisheries and Food ("the MAFF Guidelines").⁹⁵

59. As Mr Franklin explained in XIC, there are two reasons he finds that much of the site should be considered Grade 1. First, the Appellant's survey found a high number of Grade 1 samples: the ALC report recognised that "[i]ncluded within the land mapped as Grade 2 are profiles of Grade 1 land quality".⁹⁶ As Mr Franklin explained, the guidance suggests that on large-scale maps variability should be identified.⁹⁷ This ALC map is large-scale – carried out using OS base maps at scales of 1:10,000 or larger.⁹⁸ Ms Metcalfe accepted that the guidance envisages that variability will be shown in such circumstances.⁹⁹

60. Mr Franklin has mapped the Grade 1 areas where they come in clusters – those areas comprise nearly 50% of the total mapped Grade 2 land.¹⁰⁰ These were not mapped in the ALC survey, in which no explanation was given for their exclusion.

61. Ms Metcalfe in oral evidence sought to provide an explanation. First, she suggested that the site did not match the descriptor of Grade 1 land as "*Land with no or very minor limitations to agricultural use. A very wide range of agricultural and horticultural crops can be grown and commonly includes top fruit, soft fruit, salad crops and winter harvested vegetables. Yields are high and*

⁹³ Mr Heslehurst's Proof at §9.4.12

⁹⁴ Mr Franklin in XIC

⁹⁵ CD9.1

⁹⁶ CD1.3 at §4.2, Mr Franklin in XIC

⁹⁷ Mr Franklin referred in XIC to the MAFF Guidelines CD9.1 at p.7 and the IEMA Guidance CD 9.10 Appendix C p.87

⁹⁸ Ms Metcalfe XX Rule 6 Party and Mr Franklin in XIC

⁹⁹ Ms Metcalfe XX Rule 6

¹⁰⁰ See Mr Franklin's Appendix 3 p.33, Mr Franklin in XIC

less variable than on land of lower quality.” However, that was putting the cart before the horse. As Mr Franklin pointed out, the MAFF Guidelines specifically exclude current yield information as a grading factor because it is not possible to consistently make allowances for variables such as management skill, different levels of input and short-term weather factors.¹⁰¹

62. Ms Metcalfe also suggested that the areas had been downgraded due to slope, saying this was borderline 7/8 degrees and in small places marginally steeper.¹⁰² However, as Mr Franklin explained in Re-X, that analysis is not set out anywhere within the ALC report – the gradient of the augurs is not even recorded. Ms Metcalfe accepted that she has not used precision machinery to assess slope or provided for the Inquiry any detailed assessment of gradient.¹⁰³ The rest of the Site which is also undulating was not downgraded. In Mr Franklin’s view, the slope is not a reason to exclude the Grade 1 from the map.¹⁰⁴

63. Secondly, Mr Franklin has also identified that in a number of areas the soil has droughtiness limitations. As there is irrigation available on site, applying what is said in the MAFF Guidelines, it would be appropriate to increase those areas by one grade.¹⁰⁵ Mr Franklin has provided a map of where those areas are, albeit accepting that augur 17 should not be included.¹⁰⁶ He explained in XX that if irrigation is available and suitable and of reliable quantity, it would be remiss to not include it in the assessment.¹⁰⁷ As to Ms Metcalfe’s email from Natural England saying that irrigation should no longer be considered, that may

¹⁰¹ CD9.1 in the preface *“Similarly site specific crop yield data are not regarded as a reliable indication of land quality, because it is not possible to consistently make allowances for variables such as management skill, different levels of input and short-term weather factors”* and at Page 8 Para 4 *“The grading does not necessarily reflect the current economic value of land, land use, range of crops, suitability for specific crops or level of yield. For reasons given in the preface, the grade cut-offs are not specified on the basis of crop yields as these can be misleading...”*

¹⁰² Ms Metcalfe in XIC

¹⁰³ Ms Metcalfe XX Rule 6

¹⁰⁴ Mr Franklin in Re-X

¹⁰⁵ MAFF Guidelines CD9.1 at p.8, Mr Franklin in XIC and XX

¹⁰⁶ Mr Franklin’s Appendix 4, Mr Franklin in XIC

¹⁰⁷ Mr Franklin in XX

be the internal view held but there is no published policy or guidance or public official statement to that effect.¹⁰⁸

64. So, what is the relevance of Mr Franklin's findings that large parts of the appeal site are Grade 1, which is defined as "excellent"?¹⁰⁹ As Mr Davies explained on behalf of the Council, the guidance at all levels is clear that "*poorer quality*" agricultural land should generally be preferred to higher quality.¹¹⁰ In Mr Davies' view, the land grade goes to weight.¹¹¹ He noted that there is no justification in any appeal decision or policy or guidance for the approach of preferring poorer quality land suddenly stopping once Grade 3a is reached.¹¹² In XX Mr Heslehurst conceded that the higher the grade (i.e. from 3a to 2 or 2 to 1), the greater the weight that should be attributed.¹¹³ Therefore, if significant parts of the appeal site are indeed Grade 1, that would further increase the weight afforded to loss of BMV in the planning balance.

65. Mr Franklin also explained that the higher the grade, the more "flexible" the land, including for food growing: a wider range of crops can be produced.¹¹⁴ That is relevant in the context of growing public and Government-level concerns about food security given current political and climatic instability.¹¹⁵ Ms Metcalfe accepted that food security is important and something with which we are all concerned.¹¹⁶ Yet, while operational, the appeal site would no longer be able to be used for arable or horticulture.¹¹⁷ Projecting over 40 years, that could amount to the loss of 14,000 tonnes of food production.¹¹⁸

¹⁰⁸ Mr Franklin in XIC and XX

¹⁰⁹ Mr Franklin's Proof at §9.2 and his Appendix 5 with conjoined maps

¹¹⁰ He referred in XIC to EN-3 CD6.4 – internal p.91 §2.10.29, NPPF footnote 62, the PPG on renewable and low carbon energy and the associated Written Ministerial Statement, Local Plan Policy CS6, and the emerging plan policy DP26 part 2 (k)

¹¹¹ Mr Davies in response to a question from the Inspector

¹¹² Mr Davies in Re-X

¹¹³ Mr Heslehurst XX Council

¹¹⁴ Mr Franklin in XIC

¹¹⁵ Mr Franklin's Rebuttal at p.5 notes that the Government has added a specific reference to food in the latest version of the NPPF at footnote 62

¹¹⁶ Ms Metcalfe XX Rule 6

¹¹⁷ Mr Franklin in XIC

¹¹⁸ Agreed Ms Metcalfe XX Rule 6, having regard to her Proof at §4.3.4

66. While in theory some sheep grazing is possible, there is no evidence of a local farmer or grazier who might take the grazing, rounding up sheep under panels has its complexities, and that would not mitigate for the loss of land with the potential for horticulture in a location where irrigation is available.¹¹⁹ In Mr Franklin's view, given there is not much Grade 1 land in this part of Shropshire, the loss of the site would be of strategic significance at a local level.¹²⁰

67. Mr Franklin also explained that there is no guarantee that the site could return to its current BMV status upon decommissioning in 40 years.¹²¹ He pointed to the potential compaction impacts of both construction and decommissioning on a site where the soil type is vulnerable to such effects when wet.¹²² Ms Metcalfe accepted there is a risk.¹²³ However, her view appeared to be that the Soil Management Plan would entirely remove it.

68. Mr Franklin explained that it is difficult to remedy severe soil compaction, which could occur during the construction phase without the ability to address it once the panels are in place.¹²⁴ If compaction is severe, there is a risk of soil damage and downgrading at the end of the scheme.¹²⁵ Ms Metcalfe conceded that there is no real evidence yet as to the impact of a 40 year solar farm and the subsequent decommissioning of it on soils.¹²⁶

69. The Inspector asked about the relevance of this conclusion. The Rule 6 Party does not say that there is any "test" that there must be no permanent loss of ALC quality. However, the potential reversion of the site to its current condition

¹¹⁹ Mr Franklin in XIC

¹²⁰ Mr Franklin in XIC

¹²¹ Mr Franklin's Proof at §5.20

¹²² See CD4.6 Updated Soils Management Plan at p.9, Mr Franklin's Proof at §5.23

¹²³ Ms Metcalfe XX Rule 6 – see also CD4.6 Updated SMP PDF p.13 (internal p.9) *"On any construction site there exists the risk of soil compaction from the use of heavy machinery and traversing land in unsuitable ground conditions.... Much of the site is classified as having a medium resilience to structural soil damage and hence there exists the risk of soil compaction on the site"*

¹²⁴ Mr Franklin in XIC

¹²⁵ Mr Franklin in XIC. That is exactly what the Inspector found in CD7.19 see §15 et. seq.

¹²⁶ Ms Metcalfe XX Rule 6

appears to be relied on by the Appellant as a mitigating factor.¹²⁷ Mr Franklin's point is that the reversion to the current condition cannot be guaranteed.

70. Finally, the Appellant has not shown that use of Grade 2 (or potentially Grade 1) BMV is necessary. As the Addendum Site Selection report shows, there is a considerable amount of Grade 3 land even within the Appellant's 3km search area.¹²⁸ In the wider Shropshire area, there are large areas of predicted Grade 3 land, as well as areas with a mix of low, moderate, and high likelihood of BMV (with the low likelihood areas mainly in the north of the county).¹²⁹ The appeal site, at 80+% BMV, has an even greater proportion than those areas identified as "high" likelihood, which equates to a 60% probability of BMV.¹³⁰

71. The Council also identified fundamental flaws in the Site Selection Report. First, it was produced during the currency of the appeal – the original report did not consider any other greenfield sites.¹³¹ Secondly, the alternative "DS" parcels are all far larger than the 44ha required for the appeal scheme, with some greater than 300ha.¹³² It clearly may be possible to carve out an appropriate 44ha site from these very large parcels – local resident Mr Dryburgh told the Inquiry he has done exactly that from DS8.¹³³ Thirdly, as Mr Heslehurst accepted in XX, no other landowners were ever approached.¹³⁴

72. While there is no requirement in law or policy for a site selection report, Mr Heslehurst accepted that there is a requirement to show poorer quality land has been used in preference to higher quality land where possible, and the way that has been demonstrated in this case is through that site selection report.¹³⁵ The Rule 6 Party considers the flawed report fails to demonstrate that poorer land was unavailable.

¹²⁷ See Appellant's Opening at §2.13, Mr Heslehurst's Proof at §9.4.6 and §9.4.11

¹²⁸ CD 4.4 part 2, p.2/5

¹²⁹ Mr Franklin XIC, his Appendix 10 and Appendix 11

¹³⁰ Mr Franklin in XIC

¹³¹ Agreed Mr Heslehurst XX Council

¹³² Mr Davies in XIC

¹³³ Mr Dryburgh's Statement to the Inquiry

¹³⁴ Mr Heslehurst in XX

¹³⁵ Mr Heslehurst XX Council and his Proof at §3.1.3

73. In all, the Rule 6 Party agrees with the Council that there would be conflict with both the emerging local plan Policy DP26 and with the extant local plan policy CS6 as regards use of high quality BMV land. That is so even applying the conclusions of the ALC that the vast majority of the site is Grade 2 land with no Grade 1.

Heritage

74. The appeal site lies in an area rich in heritage, with 31 designated heritage assets found within the 1km study area of the Built Heritage Statement.¹³⁶ Dr Jenkins' Statement explains in some detail the historic interconnectivity of the area, noting that the heritage assets cannot be considered in isolation and form part of a connected and largely unspoiled rural landscape stretching back thousands of years.¹³⁷

75. While Dr Jenkins' Statement focuses on the impact the appeal proposal would have in relation to four specific assets, that is not an exhaustive list of assets that could be affected by this proposal.¹³⁸

76. Turning first to Cantlop Bridge (II*). It is striking that Historic England were not consulted as part of the planning application or appeal, when this Grade II* structure would be situated less than 200m from the closest solar array.¹³⁹ Historic England's guidance states that they should be consulted or notified of any planning application which would affect the setting of a Grade I or II* listed building.¹⁴⁰

77. As to the impact, while the Bridge is listed for its architectural and historic interest, setting does contribute to its significance.¹⁴¹ The Bridge has direct

¹³⁶ CD1.6 at §1.4

¹³⁷ Dr Jenkins' Statement at §§4.2-4.29

¹³⁸ Dr Jenkins' Statement at §1.0

¹³⁹ Dr Jenkins' Statement at §5.6

¹⁴⁰ Dr Jenkins' Statement at §5.7

¹⁴¹ See Mr Britt's Statement at §6.2

historical association with both Berrington and Cantlop and is critical to understanding the historical interconnectivity between them: for example, it was built by public subscription collected from residents of the two settlements.¹⁴² Parts of the proposed development would be visible from the Bridge during winter months, and the site would also be visible from the Shrewsbury Road, the main access to the bridge.¹⁴³ The Appellant's photographs from viewpoint 18 do not present an accurate picture – in July 2023, the landowner felled approximately half of the trees in that location.¹⁴⁴

78. Dr Jenkins finds that the proposed development would be detrimental to the historic interest of Cantlop Bridge, affecting our understanding of the impact of the cast-iron bridge technology on the development of communications within the Shropshire landscape.¹⁴⁵

79. The second asset that Dr Jenkins finds would be harmed is Berrington Farmhouse, a Grade II listed C17th building with extensive views towards the Shropshire Hills across the proposed development.¹⁴⁶ Dr Jenkins explains that these views have remained largely unspoilt since its original construction and constitute an integral part of the asset's heritage significance: the property has been designed to overlook Cantlop and the hills beyond.¹⁴⁷ Similarly, Berrington Farmhouse can be seen from across the proposal site.¹⁴⁸

80. Mr Britt accepts that setting contributes to the asset's significance, including some elements of that historic landholding, and that the application site has a historic functional relationship with the asset, having once formed part of its agricultural landholding.¹⁴⁹ Dr Jenkins is clear that the proposed development would harm the sightlines between the property, Cantlop, and the Shropshire Hills, impacting our understanding of the asset within its context.¹⁵⁰

¹⁴² Dr Jenkins' Statement at §4.32, §5.11

¹⁴³ Dr Jenkins' Statement at §5.9

¹⁴⁴ Claire Wild Statement to the Inquiry

¹⁴⁵ Dr Jenkins' Statement at §5.11

¹⁴⁶ Dr Jenkins' Statement at §4.21 and §4.13

¹⁴⁷ Dr Jenkins' Statement at §§5.15-5.17

¹⁴⁸ Dr Jenkins' Statement at §5.15

¹⁴⁹ Mr Britt's Statement at §6.9, §6.11

¹⁵⁰ Dr Jenkins' Statement at §5.17

81. Turning next to Cantlop Mill (locally listed). Dr Jenkins explains that the Built Heritage Statement misinterprets the setting of the mill as its immediate surrounds and the mill race only.¹⁵¹ There is a historical functional relationship between the appeal site and the Mill, with both being part of the same historic farmholding.¹⁵² The road to Cantlop Mill was the main thoroughfare between Cantlop and Berrington prior to the construction of Cantlop Bridge, and the Mill was restored by public subscription from the settlements following a major fire in 1854.¹⁵³ The proposed development would encroach on the historic artery, irrevocably harming its significance and making the Mill almost impossible to place in the wider context of the Cound Brook Valley.¹⁵⁴

82. The final assets of focus in the Rule 6 Party's Written Statement are Newman Hall Cottages and its Associated Pump, both of which are Grade II listed. The importance of Newman Hall Cottages is that it represents the dwelling of the ordinary agricultural labourer, helping historians understand the realities of everyday life in a farming community.¹⁵⁵ The extent and proximity of the proposed development would cause harm to significance through setting, by severing the asset's association with the countryside that its original occupants once toiled and thus reducing our understanding of the asset's significance and its importance in the holistic appreciation of the historic rural landscape.¹⁵⁶

83. Taking all of these considerations in the round, Dr Jenkins concludes that the proposed development does not accord with the relevant legislation and national and local policy relating to heritage, including SAMDev Policy MD13 which seeks to protect heritage assets and to ensure that wherever possible, proposals avoid harm or loss of significance to assets, including their

¹⁵¹ Dr Jenkins' Statement at §5.18

¹⁵² Dr Jenkins' Statement at §§5.20-5.21

¹⁵³ Dr Jenkins' Statement at §§4.16-4.17

¹⁵⁴ Dr Jenkins' Statement at §5.24

¹⁵⁵ Dr Jenkins' Statement at §§5.26-5.28

¹⁵⁶ Dr Jenkins' Statement at §5.31

settings.¹⁵⁷ If the Inspector were to find harm, that would necessitate a heritage balance exercise.

Balance and Conclusion

84. This is a case where the proposals conflict with the development plan – a matter upon which the Rule 6 Party and the Council are in agreement. Accordingly, applying s.38(6) of the Planning and Compulsory Purchase Act 2004, permission should be refused, unless material considerations indicate otherwise.

85. In terms of material considerations, the Council and the Appellant's planners have weighed a range of benefits and harms in their balances. The important benefits include renewable energy and biodiversity net gain.

86. However, the harms are also very powerful. The Rule 6 Party has demonstrated through the evidence of Mr Bullock, Mr Franklin, Mr Smith and Dr Jenkins that the adverse effects are even greater than those accounted for by the planners. As Mr Heslehurst fairly accepted in XX, if the scheme would bring about heritage harm, if the landscape harm is major, if the land is mostly Grade 1, if poorer quality sites might be available, and if 11 pairs of protected red-listed species would be displaced without compensation – then his planning balance would look very different indeed.¹⁵⁸

87. In essence, this is a poorly conceived application, that started with a bad site and retrospectively and unsuccessfully has sought to justify that. Flour not Power are clear that the adverse impacts significantly and demonstrably outweigh the benefits. And so, for all the reasons cited by the Rule 6 Party and the Council throughout the course of this Inquiry and in the written evidence preceding it, the Inspector is invited to refuse the appeal.

¹⁵⁷ Dr Jenkins' Statement at §1.0

¹⁵⁸ Mr Heslehurst XX Rule 6 Party

11th March 2024

**Odette Chalaby
No5 Chambers**

London – Birmingham – Bristol
Tel 0870 – 203 5555