

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL ON BEHALF OF ECONERGY INTERNATIONAL LIMITED

LAND TO THE WEST OF BERRINGTON, SHREWSBURY, SHROPSHIRE, SY5 6HA

APPEAL REFERENCE APP/L3245/W/23/3332543

**APPELLANT'S RESPONSE TO THE SHROPSHIRE COUNCIL POSITION STATEMENT IN
RELATION TO DRAFT UNILATERAL UNDERTAKING**

1. INTRODUCTION

- 1.1 This is the Appellant's response to the Council's Position Statement in relation to the draft Unilateral Undertaking submitted by the Appellant (the "Position Statement").
- 1.2 The current draft of the Unilateral Undertaking has been agreed between the Developer, the Landowners (defined within the Unilateral Undertaking as the First Owner and the Second Owner but here referred to as the Landowners) and the Mortgagee.

2. RESPONSE TO PARAGRAPHS 2, 3 AND 4 OF THE POSITION STATEMENT

- 2.1 The comments set out in paragraph 2 of the Position Statement are noted but do not relate to any specific objection to the current drafting of the Unilateral Undertaking.
- 2.2 Paragraphs 3 and 4 of the Position Statement relate to matters that have been dealt with in evidence and will be the subject of submissions. The conclusions drawn within these paragraphs are not agreed.

3. RESPONSE TO PARAGRAPH 5 OF THE POSITION STATEMENT

- 3.1 The Appellant does not agree that the amendments to the Unilateral Undertaking set out in paragraph 5 of the Position Statement are required. Each of the sub-paragraphs set out within with Position Statement is addressed as follows.

Paragraph 5.2

- 3.2 The presence of a bracket before "and the Mortgagee" and the corresponding closing bracket do not affect the meaning of the drafting. The wording has been agreed with the Mortgagee and the Appellant does not consider that any amendment is necessary.

Paragraph 5.3

- 3.3 The Council's comment in relation to the wording within the definition of Skylark Mitigation Strategy is based on a misreading of this definition and a misunderstanding of how the Skylark Mitigation Strategy relates to the Skylark Mitigation and Management Plan.

3.4 The wording “as may be amended from time to time in writing as agreed in writing by the Council at its absolute discretion” relates to the Skylark Mitigation Strategy that will be approved by the Council under the proposed planning condition. This wording is required to make it clear that if the approved Skylark Mitigation Strategy is amended, it is still bound by the Unilateral Undertaking.

3.5 The Skylark Mitigation and Management Plan is not agreed by the Council but helpfully sets out the relevant principles that will be used as the basis for the detailed Skylark Mitigation Strategy which is to be submitted and approved by the Council in due course.

Paragraph 5.4

3.6 The binding of the Mortgagees interest in the Application Site is covered by clause 3.7 of the Unilateral Undertaking. This drafting has been agreed with the Mortgagee’s solicitor. Any amendment to clause 3.2 is unnecessary (the Appellant considers that the reference to clause 3.3 of the Unilateral Undertaking should in fact be to clause 3.2 as this relates to the binding of each parties interest).

Paragraph 5.5

3.7 The deletion of the wording “or Mitigation Site” from clause 3.5 of the Unilateral Undertaking is unnecessary. If any planning application comes forward on the Mitigation Site, the Council has complete discretion to refuse any such planning application on the basis that it has an impact upon the ability of the Mitigation Site to provide the required mitigation.

3.8 The current drafting in the Unilateral Undertaking simply makes clear that should a planning permission be granted affecting land falling within the Mitigation Site, the Unilateral Undertaking will not limit development pursuant to that planning permission. This is entirely right and proper given that such permission should not have been granted in the first place if it impacted upon the ability of the land to provide mitigation.

Paragraph 5.6

3.9 The insertion of the wording “the Council” before “and approved in writing by” within paragraph 2 of Schedule 1 to the Unilateral Undertaking is a requirement for the Council to provide approval. Any requirement for the Council to provide approval in writing amounts to an obligation falling upon the Council.

3.10 As set out in paragraph 001 Reference ID: 23b-001-20190315 of the Planning Practice Guidance, a unilateral undertaking cannot bind a local planning authority because they are not a party to it. This means that the Unilateral Undertaking cannot place an obligation upon the Council because it is not bound by it and so the suggested wording cannot be included due to the nature of the obligations being secured by Unilateral Undertaking.

Paragraph 5.7

- 3.11 In order to “maintain” any Skylark Mitigation Strategy, it is clear that such strategy must be complied with. If there were any breach of the strategy, it would no longer be “maintained”. Therefore, the addition of the words “and comply with” into paragraph 3 of Schedule 1 to the Unilateral Undertaking is unnecessary. The current drafting has been agreed by both the Landowners and the Mortgagee.

Paragraph 5.8 to Paragraph 5.11

- 3.12 The proposed obligation to be inserted as paragraph 4 of Schedule 1 to the draft Unilateral Undertaking is unnecessary and excessive. It is not the proper or appropriate way for the Skylark Mitigation Strategy to be enforced.
- 3.13 The Council seems to adopt a different approach to enforcement of the Skylark Mitigation Strategy to that which would be taken for any other scheme that would be approved under a planning permission or planning obligation. To take an example from residential development, a building might need to be demolished if a landscaping scheme, noise scheme, travel plan etc were not complied with.
- 3.14 The Council highlights a point about an analogy to BNG being raised in correspondence with the Appellant’s solicitor. Such analogy was primarily raised in relation to whether the Mortgagee needed to be a party to the Unilateral Undertaking and not in relation to the Council’s proposed additional obligation. Since the Mortgagee is now included as a party to the Unilateral Undertaking, the Appellant does not see the relevance of the Council’s commentary in paragraph 5.8 and 5.9.
- 3.15 In paragraph 5.10 and 5.11 the Council questions how compliance with the Skylark Mitigation Strategy is to be enforced without its proposed additional obligation. It would be enforced in the same way as any other planning obligation that is entered into requiring compliance with an agreed scheme for mitigation. The Council has not provided any reasonable justification as to why a breach here would be any different to a breach of a scheme elsewhere.

4. RESPONSE TO PARAGRAPH 6 OF THE POSITION STATEMENT

- 4.1 The concerns raised in paragraph 6 of the Position Statement are based on a misreading of the draft Unilateral Undertaking. The definition of Mitigation Site is to the land edged blue on the Plan, and the Plan is defined as the Plan attached at Schedule 2 to the Unilateral Undertaking. The Unilateral Undertaking clearly binds the Mitigation Site.

4.2 The plan contained within the Skylark Mitigation Plan at Schedule 3 to the Unilateral Undertaking is not referenced within the Unilateral Undertaking itself and so such plan is of no relevance for determining the land bound by the Unilateral Undertaking.

5. CONCLUDING REMARKS

5.1 In conclusion, through Mr. Davies, the Council has accepted that imposition of a Grampian condition would be lawful. The Council has complete control over whether or not a suitable Skylark Mitigation Strategy is approved or not and what that strategy should contain to ensure that adequate mitigation is provided. The proposed combination of Grampian condition and Unilateral Obligation to ensure that whatever Skylark Mitigation Strategy is approved is maintained for the duration of the proposed development is entirely robust and appropriate. Indeed, the level of legal protection afforded to Skylark mitigation goes over and beyond that which would normally be presented by an Appellant.

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