Proof of Evidence by

James Packer BSc (Hons) MCIEEM CEcol and Howard Fearn MSc MCIEEM

Land south of Berrington, Shrewsbury, Shropshire, SY5 6HA

On behalf of Econergy International Limited

Against the Refusal of Planning Permission by Shropshire Council for:

"Erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling."

APP/L3245/W/23/3332543

LPA Ref. 22/04355/FUL

Page left intentionally blank

Contents

1. Introduction

1.1. Qualifications

James Packer

1.1.1. My name is James Packer. I hold a BSc (Hons) in Environmental Sciences. I have been working in the environmental sectors for over 30 years and have been with ADAS (now part of the RSK Group) since 1994. I am the Technical Director for the ecology team. I am a full member of the Chartered Institute of Ecology and Environmental Management, and a Chartered Ecologist.

1.1.2. I am currently the Chairman of the Rarities Committee of the Somerset Ornithological Society and have been a general committee member for many years. I am an experienced ornithologist and ecologist with a specialism in vertebrate ecology. I currently hold licences from Natural England to survey bats (level 2), Hazel Dormice and Great Crested Newts.

1.1.3. I have significant experience of producing ecological reports and designing mitigation strategies for birds and other protected species. I have designed mitigation and compensation for many European Protected Species under Natural England issued derogation licences (Great Crested Newts, Hazel Dormice and bats). I have designed bird survey methods where standard survey guidance was not available, and written reports and assessed impacts for development projects where birds are significant receptors.

1.1.4. I am the technical lead for quality of ecology work in ADAS. This involves technical review and approval of reports, overseeing the organisation of training, informing the team of external standard guidance updates and company procedures.

Howard Fearn

1.1.5. My name is Howard Fearn. I am the Director of Avian Ecology Ltd. ('AEL'), an ecological consultancy which currently employs twenty professional ecologists. I founded AEL in 2007, and have been a practicing professional ecologist for twenty-one years.

1.1.6. I have a Master's degree in Ecology and Environmental Management, and I am a full member of the Chartered Institute of Environmental Management ('CIEEM').

1.1.7. I am responsible for the quality of ecology work in AEL, and am technical lead on major projects. My project experience is primarily in renewable energy developments, in particular onshore wind and solar energy projects of all scales across the UK.

2. Introduction

2.1.1. This ecology proof of evidence has been prepared on behalf of Econergy International Limited ("The Appellant") and specifically relates to the planning appeal submitted in accordance with Section 78 of the Town and Country Planning Act 1990 (as amended) regarding the proposed up to 30 MW solar PV development on land south of Berrington, Shrewsbury, Shropshire.

2.1.2. The first draft of this proof of evidence was prepared by Mr Packer. At a very late stage, the Council submitted a Supplementary Statement of Case which raised ecological issues which were broader in scope than those set out in the reasons for refusal. Based on the need to deal with all points properly, Mr. Fearn will give witness evidence at the inquiry. The Inspector and Council have been made aware of this position with the Council accepting responsibility for the very late submission of what amount to new reasons for objection. Mr Fearn reviewed and revised the first draft proof document prepared by Mr Packer and, as such, all subsequent first-person references in this document are assigned to Mr Fearn.

2.1.3. This planning appeal follows the decision of Shropshire Council ("the Local Planning Authority (LPA)") to refuse the planning application (LPA ref: 22/04355/FUL) for the following development described as:

"Erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling."

2.1.4. The planning application was refused by the Council on 16 May 2023. The following three reasons given for refusal were given as:

(1) 88.2% of the land within the 44.09-hectare site is best and most versatile quality with 54.1% being the higher Grade 2 quality. It is not considered that the renewable energy benefits of the proposals or the applicant's justifications for this choice of site are sufficient to outweigh the adverse impact of losing the arable production potential of this best and most versatile land for the 40-year duration of the proposed solar farm, assuming the land is physically capable of reverting to intensive arable production at the end of this time period. The proposals are therefore contrary to paragraph 174B of the NPPF and Core Strategy Policy CS6 (and the accompanying explanatory paragraphs). The proposal is also contrary to policy DP26(part 2.k) of the emerging Shropshire Local Plan which states that solar farm developments should use lower grade land in preference to best and most versatile land.

(2) The proposed solar farm site would potentially have a visually oppressive effect for users of the publicly maintained highway leading to Cantlop Mill which bisects the site. This is due to the height difference of up to 6m locally between the highway and the top of the proposed arrays. The proposals would also have an adverse effect on existing

expansive and high-quality views in the vicinity of the public footpath at Cantlop which is in an elevated position overlooking the site. Other publicly accessible views of a generally pristine rural environment exist from the Berrington Road to the north and the Eaton Mascot Road to the east. Additional field margin planting has been proposed and solar arrays have been pulled back in some margins with the objective of seeking to reduce such views. However, full screening is not physically possible due to the local topography, and it is not certain how effective planting would be as a visual mitigation measure. The proposals therefore have the potential to adversely affect the local landscape and visual amenities from a number of public viewpoints surrounding the site due to the replacement of the current arable fields with solar arrays and associated built infrastructure. This conflicts with Core Strategy Policies CS6, CS17 and SAMDev policy MD12.

(3) Skylarks are protected under the EU Birds Directive 79/409/EEC. The application affects land which is used by Skylarks for nesting. The applicant proposes to mitigate for the loss of nesting opportunity by providing protected plots on land to the immediate north of the site. However, this land is of a different character and the general area is also used for seasonal shooting which may coincide with the Skylark nesting season. It is considered that the applicant has not demonstrated sufficiently that the proposed off-site mitigation would provide an appropriate safe and undisturbed environment for successful Skylark nesting. The proposals are therefore contrary to Core Strategy Policy CS17 and SAMDev policy MD12.

2.1.5. My Proof of Evidence will also consider the Supplementary Statement ('the Council's SS') on Ecology, issued by the LPA on 30th January 2024 (CD 4.12). This reads:

Under Refusal Reason 3, please add the following:

1. The EcIA under section 2.4 states:

On the 18th of January 2022 Natural England responded to the EIA Screening Consultation (reference 380253) from Ecoenergy International Ltd. Natural England's advice was as follows "based on the materials supplied with the consultation, there is potential likely significant effects to statutorily designated sites and further assessment is required"(emphasis added). Further consideration on whether an Environmental Impact Assessment is required was recommended by Natural England.

There doesn't appear to be any evidence of how the applicant addressed this.

2. The EcIA under section 6.3, states:

There are no other developments within the area which could have cumulative impacts in associated with the proposed development. In addition, no negative residual effects have been identified as a result of the proposed development.

There does not appear to be any evidence of the cumulative impact assessment being undertaken i.e a list of sites/developments considered: other solar farms/potentially disturbing developments to skylark in the locality, developments with planning consent but not built out yet etc, or how these were assessed to arrive at this conclusion.

3. Skylark is a priority species and Species of Principal Importance under Section 41 of the Natural Environment and Rural Communities Act 2006. The Council will provide evidence to demonstrate that the proposed development is not in accordance with para 185 b of the National Planning Policy Framework, 2023.

4. The Council will provide details as to why the ecology baseline established for skylark on the development site and mitigation land is not considered robust (for example, skylark baseline survey findings are absent for the mitigation land), the evaluation of the importance of skylark in the local area is not sufficient and resultingly, the suitability of the mitigation land has not been fully evaluated and its likelihood of success as a mitigation measure in doubt.

5. The Council will provide details as to why Part 3 of Policy DP26 and DP12 of the emerging local plan has not been fully met, with respect to the presence of a priority species and how alternative options of onsite design to avoid mitigation and compensation has been demonstrated, and which alternative compensation options were assessed.

2.1.6. My Proof of Evidence addresses the requirement for the Council to consider Skylark under their Core Strategy Policy CS17 and SAMDev policy MD12. I shall consider whether Part 3 of Policy DP26 and DP12 of the emerging local plan has been met, and further whether the proposed development is in accordance with para 185 b of the National Planning Policy Framework, 2023.

2.1.7. As set out above, I shall also consider the adequacy of the breeding bird survey baseline, both on the Appeal site and also the proposed Skylark Mitigation and Compensation area.

2.1.8. I shall also consider cumulative effects of the proposed development, along with the potential for likely significant effects to statutorily designated sites and further assessment is required.

3. Legislation and Planning Policy

3.1. Legislation

3.1.1. The only legislation mentioned in the LPA reason for refusal of the planning application is the "the EU Birds Directive 79/409/EEC". This legislation protects Skylark the same as any other species of naturally occurring wild birds present in the EU. Skylark are not listed on Annex 1 of the Birds Directive, which is a list of threatened bird species for which Member States must classify Special Protection Areas.

3.1.2. The main legislation that protects Skylarks in the UK is the Wildlife and Countryside Act (1982) which protects all wild birds, their nests and eggs (with certain exceptions, though none relating to Skylark).

3.1.3. Skylark are on the list of Species of Principal Importance in England, which are the most threatened species for the purpose of conserving biodiversity and are designated under Section 41 of the Natural Environment and Rural Communities Act (2006). This list is used to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 40 of the Act, to have regard to the conservation of biodiversity in England when carrying out their normal functions.

3.2. Planning Policy

3.2.1. The only planning policies mentioned in the LPA reason for refusal dated 16th May 2023 are the local planning policies Core Strategy Policy CS17 and SAMDev policy MD12.

3.2.2. Core Strategy Policy CS17 does not specifically mention Skylarks, but it does have a wider aim to "identify, protect, enhance, expand and connect Shropshire's environmental assets, to create a multifunctional network of natural and historic resources." It requires all development to protect and enhance the diversity, high quality and local character of Shropshire's natural environment, and not adversely affect the ecological value and function, their immediate surroundings or connecting corridors. All development must not have a significant adverse impact on Shropshire's environmental assets and not create barriers or sever links between dependent sites. All development should secure financial contributions towards the creation of new, and improvement to existing environmental sites and corridors, and provision to long term management and maintenance.

3.2.3. SAMDev policy MD12 does not specifically mention Skylarks, but it does require new development proposals to conserve, enhance and restore Shropshire's natural and heritage assets.

3.2.4. The Council's SS of 30th January refers to art 3 of Policy DP26 and DP12 of the emerging local plan (CD 5.6). Policy DP26 relates to strategic, renewable and low carbon infrastructure and does not make specific reference to Skylarks or any other species; however, it does require applications to be accompanied by an assessment of the proposal's effect on natural assets. Part 3 of the policy states that this assessment should be proportionate to the development proposed and include sufficient information to allow

accurate evaluation. Paragraph DP12 requires applications to be supported by an Ecological Assessment and sets criteria for avoidance, mitigation of and compensation for adverse effects.

3.2.5. The Council's SS also makes reference to para 185 b of the National Planning Policy Framework, 2023 which requires plans to promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

4. The Proposed Development

4.1.1. The proposed development is shown in the ADAS Ecological Impact Assessment (EcIA) (ADAS, 2023a), and includes the erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling.

4.1.2. Existing field boundaries, trees and ephemeral ponds on the site will be retained within the development. In addition, within the boundary fence the site will be sown with a species diverse native wildflower mix and grazed with Sheep.

4.1.3. A small area (6.75 ha) outside the fence line will be managed as a typical meadow by cutting for hay. The existing hedgerows will be managed to improve their condition by rotational cutting and the establishment of ground vegetation. In addition, 0.56km of new species rich hedgerows will be created, and 0.03 km of species rich hedgerows with trees will be created.

4.1.4. An ADAS Biodiversity Net Gain report (ADAS, 2022) demonstrates that a net biodiversity gain will be achieved for the site. One aim of the Environment Act (2021) is to achieve a 10% biodiversity net gain to be maintained for a period of at least 30 years after any development has been completed, but the ADAS report calculates that a much larger 121.34% net gain in habitats and a 76.47% net gain in hedgerows will be achieved.

5. Birds of the Development Site

5.1. Breeding Bird Surveys

5.1.1. A breeding bird survey was undertaken by ADAS in 2022 and this is reported as part of the EcIA (ADAS, 2023, CD 1.23). The survey took place during four visits between 23 March 2022 and 30 May 2022. It is acknowledged that recommendations within the web based guidance for Bird Survey Guidelines (Bird Survey & Assessment Steering Group, 2023; CD 10.4) recommends that six survey visits are undertaken, but this is the number of visits suggested in the guidelines that is "sufficiently robust to identify the majority of bird species using lowland deciduous woodland in the breeding season and establish a good understanding of the numbers and distribution of species present." The guidelines state that "lowland deciduous woodland is one of the most complex habitats to survey, due to the range of bird species it can support, and the dense vegetation leading to a heavy reliance on vocal encounters." The proposed development site is not lowland deciduous woodland. The site is two arable fields, a small grassland field, boundary features and a lagoon. This type of habitat is much simpler to survey than deciduous woodland because birds are more visible and easier to detect. It is my opinion that four, rather than six survey visits has provided an adequately representative bird survey result of this site. Further, it is my professional experience that four (and often three) breeding bird surveys visits are commonly undertaken to inform impact assessment and planning applications at many, if not most, solar farm developments in England. It is important to acknowledge that bird numbers will always fluctuate substantially between years, especially in a manged (farmed) landscape. As such no bird survey will provide a definitive figure on bird populations; their purpose is therefore to gather a clear understanding of the bird assemblage present, and to assist in determining the likely value of a site for birds rather than to provide absolute numbers. To this end, it is my view that a four-visit survey is entirely robust in an arable landscape.

5.1.2. The bird survey results presented in table 5 of the EcIA show a range of bird territories present on the site, most notably the Species of Principal Importance Dunnock (3 territories), Skylark (11 territories) and Yellowhammer (3 territories). All Species of Principal Importance have the same status under the planning policies mentioned above.

5.1.3. Wintering bird surveys of the site were scoped out because of the lack of habitats on the site that would support significant numbers of wintering birds that are functionally linked to a protected site. Also, the impact of the development is unlikely to negatively affect any wintering birds using the site. A confirmatory wintering bird survey visit undertaken by Mr Packer on 10 January 2024 found few birds on the site, including within the compensation area to the north. During this visit thirteen species were recorded, with the only Species of Principal Importance present being Skylark. Eleven Skylark were present on the site, and six were present on the compensation area. Skylark populations are migratory and birds will range widely depending on food (seed in winter) availability. As such, it is not correct to link winter populations to the breeding value of the site.

5.1.4. The proposed Skylark compensation area has not been surveyed for breeding birds. Whilst it is accepted that surveys would have been preferred, it is not always possible to undertake surveys due to seasonal restrictions. I do not, however, consider this to be a substantive limitation when it comes to determining whether a site is important for Skylark populations. The species is very well studied, and it has been shown population densities depend heavily on land management practices, and in particular cropping regimes. In other words, the relationship between Skylarks and habitats is very well known. This is evidenced in Fox (2022, CD 10.22), which presents in Table a data adapted from Donald (2004), in a species-monograph book entitled 'The Skylark'. I consider this book to be the definitive text on the species. The table shows average pair densities for a series of habitat types. The land use of the proposed compensation area since 2022 has been intensively cattle grazed pasture. This type of land use supports the lowest density of any habitat type shown in Table 1 of Fox (2022, CD 10.22), at just 0.02 pairs of Skylark per hectare (ha). Improved grassland scores marginally better (at 0.05 pairs) and intensive silage at 0.08 pairs. All these management types are at the bottom (lowest Skylark density) of the table. To contract, the highest densities are present in coastal marsh (0.76 pairs / ha) and organic set aside (0.56 pairs / ha). Arable farmland typically supports 0.28 pairs / ha.

5.1.5. Consequently, it is possible to be certain that the proposed compensation area supports very low numbers of breeding Skylark pairs due to current land management. The total size of the proposed compensation area is 25ha, of which 6ha of land will be managed for breeding Skylarks. Following the average density data presented in Fox (2022, CD 10.22), 25ha of intensive grazed pasture would be expected to support just 0.5 pairs of Skylark (25 x 0.02); improved grassland would likely support 1.25 pairs; and intensive silage 2 pairs. These figures are reduced again if only the 6ha of land proposed for management is considered (e.g., intensive grazed pasture would support 0.12 pairs). Whilst such figures may not be absolute, they fully demonstrate that the proposed compensation area, under current management, affords very poor-quality habitat for nesting Skylarks, and that the number of breeding pairs present each year must be very low.

5.2. Skylarks and Solar Farms

5.2.1. The impact of solar panels on Skylark is uncertain with a comparative study undertaken by Montag et al. (2016) suggesting that there was *"no overall difference in the number of Skylark territories when comparing solar plots to control plots".* However, recent opinions such as by Fox (2022, CD 10.22) and Solar Energy (2023; CD 10.3) suggest that whilst Skylarks may continue to display over solar farms it is unlikely that they will nest successfully within them because they have a strong requirement for unbroken sightlines from their nest sites. A review of the potential impacts of ground mounted photovoltaic solar panels by Taylor et al. (2019, CD 10.5) interprets Montag et al. (2016, CD 10.2) slightly differently. They state that this study *"found that skylark tended to use undeveloped control plots more than the solar farms"* but this was only statistically significant on one (of eleven) control plots, with no overall statistical difference.

5.2.2. I accept that nesting Skylarks can be negatively impacted by solar farms, but that the level of this impact is unproven and in the absence of more confirmatory research it is better to take a precautionary approach and provide mitigation and compensatory nesting areas for Skylark. Adopting a precautionary approach, it should be assumed that Skylarks are unlikely to breed within a typical solar farm.

5.2.3. The recent opinions by Fox (2022, CD 10.22) and Solar Energy (2023, CD 10.3) do, however, point out that Skylarks have been recorded many times foraging within solar arrays, and even feeding recently fledged young. They suggest that it is likely that these are fledglings that have dispersed from nearby nest sites, and the solar farms are providing nursery habitat. These regular observations of Skylarks within solar farms demonstrate that the birds are not precluded from feeding within solar sites. As such solar farms continue to provide a valuable habitat for the species, especially where intensively managed farmland is converted to more naturalistic grassland which supports higher invertebrate densities.

5.2.4. There is no evidence to suggest that solar farms negatively impact Skylark other than when nesting.

5.3. Other Breeding Bird Species

5.3.1. The predicted net gain in biodiversity of the site is highly likely to benefit most, possibly all, other breeding bird species present on or around the site, including Dunnock and Yellowhammer.

5.3.2. Dunnock breed in many different habitats but are likely to benefit from additional lengths of hedgerow, improved condition of hedgerows, and the replacement of arable with more diverse grassland.

5.3.3. Yellowhammer nest close to the ground in the bases of hedges, and therefore the additional lengths or hedgerows and the improved condition of hedgerows will also benefit this species. The provision of species rich grassland between the solar panels will provide seeds for Yellowhammer throughout the winter and invertebrates for feeding young.

5.3.4. As such, it is my view that the proposed development will be beneficial to many breeding bird species, including at least two which are afforded the same conservation status as Skylarks.

6. Material Considerations

6.1.1. It is accepted that Skylarks may be prohibited from nesting within the site following the installation of the proposed development. Mitigation and compensation have been provided on a precautionary basis, whereby the loss of all eleven pairs noted within the site during field surveys is assumed.

6.1.2. The proposed development will not preclude Skylarks from using the site as a feeding area, and that the conversion of intensively managed arable land to species-rich grassland will very likely increase food abundance above existing levels under arable production. This is a crucial point, as low breeding productivity due to agricultural intensification is the widely acknowledged main driver of Skylark declines (e.g., Fox, 2022: CD 10.22). Increasing food availability through a change in land management within the site is likely to increase breeding productivity levels of Skylark pairs in the vicinity of the site, including those in the proposed Skylark compensation area. It is accepted that mitigation is required to provide breeding habitat; however, an assessment of the effects of the proposed development on Skylarks should also consider the continued availability of foraging habitat within the site, which will increase the abundance of invertebrate food availability. This in turn is likely to lead to improved breeding productivity, both on terms of the numbers of chicks reared and the number of nesting attempts by each pair per season.

6.1.3. A 6 ha area of land was identified for Skylark mitigation and compensation, and the management of this area is provided in a mitigation and management plan (ADAS, 2023b: CD 1.15). The area of compensation was allocated using an assumption that previous advice on management of land for Skylark in cereal fields (Natural England, 2024 (CD 10.7); Farm Wildlife, 2024 (CD 10.6)) suggested that Skylark plots are best at two plots per hectare. ADAS predicted that the 6 hectare compensation area could support 12 Skylark plots.

6.1.4. The land use of the compensation area since 2022 has been intensively cattle grazed pasture. This type of land use is not optimal for nesting Skylark and therefore it was judged that this land could be enhanced for nesting Skylark to provide compensation for an unpredictable number (up to eleven territories) of displaced birds from the solar farm.

6.1.5. The basic premise of ADAS (2023b: CD 1.15) is to improve the area as much as possible so that the carrying capacity of the habitat for nesting Skylark increases and the area can absorb Skylarks that might be displaced from the development site. The mitigation and management plan has been written to allow for two scenarios for future management of this land. The current land agent, Frances Steer from company Balfours, reported verbally to Mr Packer on 10 January 2023 that this land has been managed under Countryside Stewardship and Higher Level Stewardship as a low input grassland until 2022, and has since been intensively grazed by cattle. At the current time, an Environmental Screening Report has been submitted to Natural England for possible conversion of the pasture to arable.

6.1.6. If Natural England allow the conversion of the land to arable, the future land will be managed to maximise the number of Skylarks that could nest on it. The Skylark plots will

be created by either not being drilled during the winter, or by leaving the plots fallow over the winter and then retaining the plots during the spring. The 12 undrilled 16 m2 Skylark plots will not be harvested until after 1 August and the hedgerows will be managed to maintain unbroken visibility. The Skylark plots will not be created within existing trackways or tramlines. Harvesting of any crop will not take place before 1 August to avoid destroying nests or fledglings.

6.1.7. If the 6 ha area remains as pasture, the pasture will be managed for conservation purposes. Stocking densities will be limited to the densities shown on table 1 in ADAS (2023b: CD 1.15) at a maximum of 1 cow and suckling calf per hectare, and livestock will not be present between 1 April and 1 June to avoid trampling and maximise Skylark breeding success. Any mechanical operations will be timed to avoid the bird nesting season. The aim is to create a matrix of short sward with some longer areas of tussocky grasses.

6.1.8. If grass is cut for hay or silage, it will not be cut between April to June, and any subsequent cuts will be at least seven weeks apart to enable the success of later nests.

6.1.9. An RSPB Advisory Sheet (RSPB, undated) states that "Skylarks can nest successfully in grazed pastures if you can maintain a tussocky sward with a low stock rate through the spring and summer. Unimproved grasslands managed without inputs often hold high densities of Skylarks".

6.1.10. The management of the mitigation area will be secured under a Section 106 agreement.

6.1.11. It is also relevant that Skylark populations in arable landscape are entirely subject to changes in farming practices; without any permissions the farmer is free to change to a crop which has reduced, or even no, suitability for Skylarks (or amend land use to intensively grazed pasture which is largely unsuitable for Skylarks). It therefore cannot be assumed that the current Skylark population of the Site would be maintained in the absence of the proposed development. The Skylark mitigation strategy provides a more secure future for the local Skylark population than a land management practice entirely focused on crop yields and driven by market forces. Subsequently, it is my view that the combined approach of creation of species-rich meadow grassland and a mitigation area is very likely to be beneficial for local Skylark populations, both in terms of overall numbers and also security over the forty year consent period.

6.1.12. Therefore it is my view that the proposed development will provide:

- Delivery of sufficient land for at least eleven pairs of skylarks within the mitigation and compensation area;
- Improved breeding productivity (numbers of chicks raised) due to increased invertebrate food availability within the site; and,
- Security of these measures over a forty-year period, which would not be certain in the absence of the proposed development.

6.1.13. The Skylark mitigation and management plan was written by ADAS and liaison was undertaken with Sophie Milburn (LPA Planning Ecologist) and Suzanne Wykes (LPA Specialist Practitioner (Ecology)). This resulted in a Memorandum from Sophie Milburn to

Graham French (LPA Principle Planning Officer) dated 9 May 2023. This memorandum recommended the application had "conditions and informatives to ensure the protection of wildlife and to provide ecological enhancements under NPPF, MD12 and CS17. The management of the skylark compensation areas will be secured in a section 106 agreement". No ecological reasons for refusal were suggested by the LPA ecologist.

6.1.14. A Shropshire Council Development Management Report dated 9 May 2023 by Tracy Darke, Assistant Director of Economy and Place, recommended approval of the application subject to conditions and a s106 legal agreement providing for off-site Skylark mitigation. This report states that "The proposed layout scheme now accommodates off-site 'Skylark Protection Areas' to the north of the proposed solar farm. These areas will be transformed into species rich grassland and will form a suitable habitat for skylarks. This would be secured by means of a s106 legal agreement". This report also states "SC Ecology has not objected to a number of ecological conditions linked to habitat/biodiversity management/enhancement … the applicant has identified a specific area for Skylark mitigation in fields to the immediate north of the proposed site and has put forward specific management measures for this area to ensure that the habitat remains optimal for Skylark throughout the operational life of the proposed development. These provisions would be secured by means of a s106 Legal Agreement. Subject to this it is concluded that the Proposed Development complies with relevant planning policy regarding ecology/biodiversity CS6, CS17, MD12".

7. Disturbance to the Mitigation Area

7.1.1. Objections to the development have been concerned that the proposed mitigation area has been used for a seasonal shooting. The land agent, Frances Steer has informed me that the mitigation land and the proposed development site have both been used for Pheasant shooting. It is my belief that if Pheasant shooting was likely to cause significant disturbance to nesting Skylark, they would also not nest on the development site, which it is known by our own surveys to not be the case.

7.1.2. Pheasant shooting can only legally take place during the season of 1 October to 1 February. This is not the breeding season for Skylarks. According to the British Trust for Ornithology (BTO, 2023), who collect nest record information for all wild birds, the median date when first clutches of Skylark are laid is 19 May. The range of dates of first Skylark clutches is between 20 April to 6 July, as Skylark can have up to four broods in any one year. Subsequently Pheasant shooting cannot affect nesting Skylark because Pheasant shooting and Skylark nesting periods do not coincide.

7.1.3. The only other shooting that can take place at other times of year is for the pest control of mammals (legal predator control such as Foxes), or of certain birds listed under general licenses to prevent serious damage or for the conservation of wild birds, flora or fauna of conservation concern. It is my view that any additional predator control will be beneficial for nesting Skylark.

7.1.4. It is relevant that an authoritative text on the species, a book titled 'The Skylark' (Donald, 2004), makes no reference of disturbance to breeding Skylarks through shooting activity. To my knowledge there is no evidence to suggest that shooting of Pheasant, or for pest control, has a negative effect on breeding Skylarks. It is inconceivable to me that shooting could cause disturbance to such a level that it would render the site as an unsafe environment for breeding Skylarks.

8. The Potential for Likely Significant Effects

8.1.1. The Council's SS of 30th January questioned as to whether the application had considered the potential for Likely Significant Effects ('LSE'), stating that:

'On the 18th of January 2022 Natural England responded to the EIA Screening Consultation (reference 380253) from Econergy International Ltd. Natural England's advice was as follows "based on the materials supplied with the consultation, there is potential likely significant effects to statutorily designated sites and further assessment is required" (emphasis added). Further consideration on whether an Environmental Impact Assessment is required was recommended by Natural England.

There doesn't appear to be any evidence of how the applicant addressed this'.

8.1.2. For the avoidance of doubt, this issue is separate from that of Skylarks. It was not raised by the Planning Officer's report (CD 3.1) as a point of concern. There is no response to the planning application from Natural England.

8.1.3. Section 5.1 of the submitted EcIA report (CD 1.23) identifies statutorily designated sites for nature conservation, noting the presence of Berrington Pool Site of Special Scientific Interest (SSSI), 400m to the north of the site. The pool forms a component part of the Midland Meres & Mosses Ramsar Phase 1. It is acknowledged that the Ramsar designation is not specifically identified in the submitted EcIA report; however the qualifying features of the Ramsar designation are consistent with those of the SSSI and subsequently the relevant features have been identified. Table 6 of the submitted EcIA states that 'no impacts are likely to occur as a result of the development upon either this [Big Bog Local Wildlife Site] or any other statutory or non-statutory designated site'. As such it is incorrect to state that there is no evidence the application has not considered statutorily designated sites. It is also my view that there is no potential pathway for effects on the SSSI or Ramsar features from the proposed development. Further, the creation of species-rich meadow, combined with the removal of agricultural chemicals associated with arable production (i.e., current site use) is likely to be beneficial to the local environment, in particular for invertebrate species.

8.1.4. I am therefore of the view that the application has adequately addressed all matters relating to potential impacts on statutorily designated sites.

9. Cumulative Assessment

9.1.1. The Council's SS of 30th January notes that the EcIA, under section 6.3, states:

'There are no other developments within the area which could have cumulative impacts in associated with the proposed development. In addition, no negative residual effects have been identified as a result of the proposed development.

There does not appear to be any evidence of the cumulative impact assessment being undertaken i.e a list of sites/developments considered: other solar farms/potentially disturbing developments to skylark in the locality, developments with planning consent but not built out yet etc, or how these were assessed to arrive at this conclusion'.

9.1.2. It is accepted that the submitted EcIA does not include a list of sites considered for cumulative assessment. However, it is relevant that the application delivers a very substantial Biodiversity Net Gain (BNG), in addition to the delivery of a Skylark Mitigation and Management Plan.

9.1.3. The ADAS BNG report (ADAS, 2022) calculates that the proposed development will deliver a 121.34% net gain in habitats and a 76.47% net gain in hedgerows. The Skylark Mitigation and Management Plan will provide full mitigation for this species, and which will be secured over a forty-year period.

9.1.4. It is consequently evident that the proposed development will be beneficial to the wider environment. With this in mind, it is evident that the proposed development cannot lead to negative cumulative impacts and in fact will be reducing the overall effect of combined developments across a wider geographical area. I therefore do not believe that the Council's comment is relevant to the determination of the application or to the current Appeal.

10. Policy Compliance

10.1. Introduction

10.1.1. In this section I shall consider the various policies cited by the Council in reason for refusal 3 and in their subsequent Supplementary Statement of 30th January.

10.2. Core Strategy Policy CS17 and SAMDev policy MD12.

10.2.1. It in my view that the local policies Core Strategy Policy CS17 and SAMDev policy MD12 should consider the potential biodiversity net gain of the development site, together with any significant effects on all species of principle importance. A biodiversity net gain of 121.34% for habitats and 76.47% for hedgerows is predicted, which is a large increase. Of the three bird Species of Principal Importance that breed on the site (Dunnock, Yellowhammer and Skylark), this biodiversity and hedgerow increase is likely to positively impact Dunnock and Yellowhammer, but nesting Skylark may be negatively impacted in the absence of mitigation.

10.2.2. Mitigation, and the creation and management of an adjacent off-site compensation area for Skylark means that the local population of this species is highly unlikely to be significantly negatively impacted by the proposed solar farm and other bird species of principal importance will be positively impacted. The change in land management of the site will provide increased foraging opportunities for Skylarks, which in turn will improve breeding productivity. When combined with the proposed Skylark mitigation strategy, the overall effect on Skylark populations is likely to be beneficial over the forty-year consent period.

10.2.3. I therefore consider that the proposed development does not contradict either Core Strategy Policy CS17 and SAMDev policy MD12

10.3. Part 3 of Policy DP26 and DP12 of the emerging local plan

10.3.1. Policy DP26 relates to strategic, renewable and low carbon infrastructure. Part 3 of the policy states that 'The assessment should be proportionate to the development proposed and include sufficient information to allow for an accurate evaluation of all impacts, both negative and positive. It should cover necessary ancillary development such as security measures, lighting, access tracks and fencing. Impacts should be considered cumulatively against those existing or consented development types with similar impacts in the surrounding area. Mitigation measures to remove or reduce adverse impacts should be identified'.

10.3.2. It is my view that the submitted assessment is proportionate to the proposed development, and that this allows for an accurate evaluation of impacts. Cumulative effects have been considered, and mitigation measures identified. I therefore see no evidence that the proposed development fails to accord with Policy DP26, part 3.

10.3.3. Policy DP12 of the emerging local plan includes eight sections. Of these, I consider Sections 3 to 7 to be of relevance to the Appeal.

10.3.4. Section 3 considers Biodiversity Net Gain, and states that the avoidance of harm to Shropshire's natural assets and their conservation, enhancement and restoration will be achieved by 'Ensuring that all development delivers at least a 10% net gain for biodiversity in accordance with the Environment Act, any future Local Nature Recovery Strategy (LNRS) and policies DP14, DP15, DP16 and DP22'. Noting the proposed development will deliver a BNG of 121.34% for habitat units and 76.47% for hedgerow units, it is evident that the criteria set out in Section 3 of Policy DP12 are substantially met and exceeded. This, I believe, is a clear benefit of the scheme.

10.3.5. Section 4 of Policy DP12 states that the avoidance of harm to Shropshire's natural assets and their conservation, enhancement and restoration will be achieved by ensuring that proposals which are likely to have an adverse effect on priority species are accompanied by an Ecological Impact Assessment which is carried out by suitably qualified professionals in accordance with industry standards. This test is clearly met, and is detailed in the submitted EcIA (CD 1.23).

10.3.6. Section 5 of Policy DP12 sets test which must be met before development can be permitted. These tests relate to the consideration of satisfactory alternatives and the social and economic benefits of a scheme. I am not qualified to consider such tests and therefore do not comment further on Section 5 of the policy.

10.3.7. Section 6 requires the provision of mitigation measures to reduce harm, and subsequent compensation measures for residual harm. The paragraph notes the compensation measures will only be accepted as a last resort, and that appropriate conditions and/or obligations will be used to ensure measures are fully implemented and monitored. The proposed Skylark Mitigation and Compensation Strategy ensures that harm is reduced for this species by virtue of the provision of species-rich grassland. Off-site compensation measures provide breeding habitat for unavoidable effects which cannot be mitigated on-site (i.e., the loss of breeding habitat), and the strategy includes a monitoring regime (along with outline remedial measures). It is therefore my view that the application is in accordance with Section 6 of Policy DP12.

10.3.8. Finally, Section 7 of Policy DP12 requires applications to maximise opportunities to increase the quantity, quality and connectivity of natural assets. It is evident that the improved quality of the habitats within the site, as demonstrated by the substantial BNG increases achieved, fully accords with the requirements of Section 7.

10.3.9. Overall, then, it is my view that the proposed development is in accordance with the Policy DP12 of the emerging local plan.

10.4. Paragraph 185 b of the National Planning Policy Framework, 2023

10.4.1. Paragraph 185 b) of the National Planning Policy Framework (2023) states:

To protect and enhance biodiversity and geodiversity, plans should:

b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

10.4.2. For the same reasons I have provided in my preceding paragraphs, it is my view that the proposed development does not contradict paragraph 185 b) of the NPPF, 2023.

11. Summary

11.1.1. I have carefully considered Reason for Refusal 3, both in terms of the potential for the proposed development to affect populations of Skylarks, and also in terms of policy compliance.

11.1.2. In the absence of mitigation, it is accepted that the proposed development has the potential to displace up to 11 nesting pairs of Skylarks; however, the Appeal Site will continue to provide a foraging resource for birds in the surrounding area. The Appellant has secured land adjacent to the Appeal Site, and which is of sufficient scale to accommodate at least the displaced pairs of Skylarks anticipated. A Skylark mitigation has been provided by the Appellant, and it is my view that the flexible approach proposed which will enable adequate mitigation for both alternative land uses of the mitigation area (i.e, pasture of arable use). Subsequently, the proposed development is unlikely to lead to a reduction to Skylark populations at a local scale. The mitigation measures proposed will be implemented for the 40-year duration of the proposed development, and subsequently provide greater certainty for the security of Skylark populations for the medium to long term.

11.1.3. Habitat enhancement measures within the Appeal Site, which provide a Biodiversity Net Gain in habitats of 121.34% and a 76.47% net gain in hedgerows, will provide benefits for other farmland birds with identical conservation status to Skylark (notably Yellowhammer and Dunnock)

11.1.4. Subsequently, it is my view that the proposed development accords with Core Strategy Policy CS17 and SAMDev policy MD12, and with Part 3 of Policy DP26 and DP12 of the emerging local plan. It is also my view that the proposed development is in compliance with paragraph 185 b of the National Planning Policy Framework, 2023.

12. References

ADAS (2022) Biodiversity Net Gain Assessment, Solar Farm on Land South of Berrington. Report for Econergy International Ltd.

ADAS (2023a) Ecological Impact Assessment, Solar Farm on Land South of Berrington. Report for Econergy International Ltd.

ADAS (2023b) Skylark Mitigation and Management Plan. Land South of Berrington, Shrewsbury. Report for Econergy International Ltd.

Bird Survey & Assessment Steering Group (2023). Bird Survey Guidelines for assessing ecological impacts, v.1.1.1. https://birdsurveyguidelines.org [15 January 2024].

Donald, P.F. 2004. The Skylark. T. & A. D. Poyser, London.

Farm Wildlife (2024) Skylark Plots; https://farmwildlife.info/how-to-do-it/farmed-area/skylark-plots/#. [Online] Accessed 26 January 2024

Fox, H. (2022). Blithe Spirit: Are Skylarks Being Overlooked in Impact Assessment? In Practice, September 2022, Issue 17. Available online at: https://www.clarksonwoods.co.uk/blog/2022/10/12/are-skylarks-being-overlooked-in-impact-assessment/

Taylor. R, Conway, J. Gabb, O & Gillespie, J. (2019) Potential ecological impacts of ground-mounted photovoltaic solar panels. Report by BSG. [Online] Accessed 18 January 2024

BTO (2023) https://www.bto.org/understanding-birds/birdfacts/skylark [Online] Last accessed: 15 January 2024

Montag, H. Parker, G. Clarkson, T (2016) The Effects of Solar Farms on Local Biodiversity: A comparative Study. Clarkson and Woods and Wychwood Biodiversity.

Natural England (2024) AB4: Skylark Plots; https://www.gov.uk/countryside-stewardship-grants/skylark-plots-ab4. [Online] Accessed: 26 January 2024.

RSPB (undated) Farming for Birds: Skylark. Advisory leaflet.

Solar Energy UK (2023) Solar Habitat: Ecological trends on solar farms in the UK. Solar Trade Association.