

**TOWN & COUNTRY PLANNING APPEALS
(DETERMINATION BY INSPECTORS)
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

Land to the South of Cliff Hollow, Berrington, Shropshire

PINS Ref: APP/L3245/W/23/3332543

**OPENING STATEMENT OF
THE COUNCIL**



London · Birmingham · Bristol

Introduction

1. This is an appeal concerning a proposal for the installation of a solar farm and associated infrastructure (“the Proposed Development”) at Land to the South of Cliff Hollow, Berrington, Shropshire (“the Site”). The Proposed Development will occupy some 44.09 ha located in an area of open countryside to the southwest of the village of Berrington, Shropshire. It forms two field parcels, separated by a single-track road.¹

2. The Council does not shrink from the need for renewable energy infrastructure. That need is well-evidenced and nationally recognised. However, Members of the Southern Planning Committee considered there to be shortcomings with this proposal which justified three Reasons for Refusal (“RFRs”).² Those largely formed the basis of the main issues identified by the Inspector at the Case Management Conference (“CMC”) and, in summary, are as follows:
 - (i) The landscape and visual effects of the proposal, taking account of the proposed mitigation measures.

 - (ii) The implications of, and the weight to be given to, the loss of best and most versatile agricultural land (“BMVAL”).

 - (iii) Whether the proposed off-site mitigation would provide an appropriate safe and undisturbed environment for successful Skylark nesting.

 - (iv) The effect of the proposal on the setting and significance of heritage assets.

 - (v) The nature and extent of the benefits of the proposal and whether these would outweigh any harm arising from the issues above.

¹ §1.1.5 of the Planning Design and Access Statement.

² See CD3.2.

Landscape and visual effects of the proposal.

3. There would be unacceptable harm to the landscape character and also harm in visual amenity terms.
4. First, Mr Hurlstone explains how the existing rural landscape consisting of agricultural fields would be replaced by solar panels and their associated infrastructure.³ This would affect key characteristics of the local landscape character of the Estate Farmland LCT, and as such there would be a detrimental effect on the landscape character of both the site and the surrounding area. This is noted to be a major adverse in the immediate context and would be a “large” effect at year 15.⁴
5. Second, the Proposed Development would also have adverse visual impacts. From viewpoints 9, 10 and 14, even after mitigation. Wider expansive and high-quality views will be affected, to the south and east of the site. These are evident in particular from the PRoW network that surrounds the Site⁵ and in views from Cantlop to the east of the Site. From Viewpoint 11, one can see the panels very clearly to the west⁶, and from Viewpoint 15, they are evident to the north⁷ even once mitigation has established.
6. This is an unfortunate symptom arising from the sloping topography and the limited planting which is proposed. Accordingly, the clear views of this incongruous scheme from a number of publicly accessible locations will mean that they would never be mitigated in any effective way. Even with the boundary hedges growing to a height of 4m, this would have a limited effect in screening views from the development.
7. Consequently, there would be unacceptable landscape impacts arising from the Proposed Development.

³ See §5.3 of Hurlstone PoE.

⁴ See §4.11 of Hurlstone PoE.

⁵ Viewpoints 11, 12, 14, 15, and 16 best represent these.

⁶ Viewpoint 11, PRoW 0407/16/1

⁷ Viewpoint 15, PRoW 0407/SR/2 looking north towards the Site.

The Implications for the Best and Most Versatile Agricultural Land

8. The NPPF §180(b) requires that the economic and other benefits of the BMVAL be recognised. The PPG on renewable and low carbon energy also states that a local planning authority needs to consider (amongst other matters) whether (i) the proposed use of any agricultural land has been shown to be necessary and (ii) poorer quality land has been used in preference to higher quality land.⁸ The Written Ministerial Statement (“WMS”) accompanying the PPG is also quite clear that poorer quality land is to be used in preference to higher quality land and that any proposal for a solar farm needs to be justified by “*the most compelling evidence*”.⁹
9. The importance of BMVAL is also recognised in the Local Policy. Core Policy CS6 states that new development should make effective use of land and safeguard natural resources, including high-quality agricultural land. The value of agricultural land is also recognised in Policy DP26 of the emerging Local Plan which advocates the use of poorer quality land before land of a higher quality.
10. The Site Search exercise was confined to a narrow 3km corridor on either side of the powerline running between the substations at Bayston Hill and Cross Houses. This was a necessarily limited exercise. Within that 3km corridor, the Report Addendum quickly discounts brownfield sites from the site search due to the self-imposed restriction.¹⁰ Crucially, there is also a considerable amount of Grade 3 land even within the search area. There has also been no in-depth soil analysis of any of the other sites considered in the Report with all being given a blanket Grade 3 grading.¹¹
11. Whilst it may be possible to protect and maintain the soil’s physical characteristics¹², that does not account for the limitations in the flexibility and the use of the land over 40 years or the fact that the land is being given over for predominant energy generation. This would give rise to conflict with both the emerging, and extant Local Plan. For

⁸ §4.10 of Davies PoE.

⁹ §5.10 of Davies PoE.

¹⁰ §4.18 of Davies PoE.

¹¹ §4.21 of Davies PoE.

¹² §3.1.3 of ADAS Rebuttal.

these reasons (as set out in the evidence of Mr Davies), there will be policy conflict arising from the loss of the agricultural land over 40 years.

Whether the proposed off-site mitigation would provide an appropriate safe and undisturbed environment for successful Skylark nesting.

12. Skylarks are one of the most threatened species, protected by the Wildlife and Countryside Act 1981 (which covers all nesting birds) and the Natural Environment and Rural Communities Act (“NERC 2006”). It is a species which has declined by 63% since 1967 and is red listed which is a measure of its conservation status.¹³ It is also part of a well-reported, wider decline of farmland birds, and is of particular local concern.¹⁴
13. The appeal site lies within a particularly important area for the species – see Shropshire Bird Report 2022 which shows that the area to the east of Berrington supports a stronghold of singing/breeding skylark.¹⁵
14. Ms Corfe provides a critical assessment of the shortcomings in the Ecological Impact assessment (“EcIA”): she identifies a lack of information in terms of the habitats assessed, the protected species surveyed, such as breeding and winter bird surveys, reptiles, and great crested newts as well as uncertainty surrounding the mitigation land, and the scheme proposed.
15. Critically, Ms Corfe explains how:
 - a. The lack of survey data from June to August 2022 means that Skylark (as a species with multiple broods) are unlikely to have been fully identified even on the application site.¹⁶

¹³ §4.32 of Corfe PoE.

¹⁴ See Corfe Rebuttal PoE §2.20.

¹⁵ See Appendix F of Corfe PoE.

¹⁶ §4.31 of Corfe PoE.

- b. The way in which the survey has been undertaken is, itself, problematic – with fewer visits than expected¹⁷ start and end times not being recorded, a failure to record whether the surveys were completed during wet or dry weather conditions and so a failure to record how Skylark are using the Application Site and the proposed mitigation land during the breeding and winter period.¹⁸ There was no indication about the location or number of survey transects, or zones of influence shown in the figures presenting the survey findings .¹⁹
- c. That the carrying capacity of the compensation land is unknown.
- d. The compensation land has not been surveyed at all to understand how many Skylark (if any) hold territories on that land, or whether further territories can be accommodated – that is a critical omission which means that the carrying capacity of the mitigation land cannot be identified. This is in circumstances where the recognisance visit of January 2024 seems to suggest that there were skylarks on the compensation land in any event.
- e. There is also uncertainty about the impact on wintering birds²⁰.

16. Last week, the Appellant suggested that this issue could be overcome by using a pre-commencement condition. The Council remains of the view that these are errors which are fundamental, and such a condition would not overcome those issues.

17. Given the in-principle objection (arising from the inadequate survey work), the Council considered that it could not be party to a s106 agreement, and instead, has sought to provide comments on the Unilateral Undertaking proposed by the Appellant. However, that has several shortcomings too, which will be set out by the Council during the discussion on the UU /and conditions. This includes concerns about the parties who are bound, concerns about the baseline and whether or not the land has carrying capacity to accommodate further territories, uncertainty about land management practices on

¹⁷ See Corfe Rebuttal §§2.12 and 2.13.

¹⁸ Ibid.

¹⁹ See Corfe Rebuttal §2.25.

²⁰ See §2.23 of Corfe Rebuttal

that land, including a lack of consent from Natural England to allow reversion to arable land to accommodate Skylarks, which may itself have adverse environmental consequences including on other environmentally sensitive areas nearby (see Berrington SSSI for example).

18. In short, requiring such further survey work to be undertaken as part of a pre-commencement conditioned Skylark Mitigation Strategy would be contrary to the guidance in Circular 06/2005²¹ and also the British Standard.²²
19. As a result of this multitude of shortcomings, the mitigation proposed is ineffective and results in conflict with Policies CS17 and MD12 as well as DP12 and DP26 of the emerging Local Plan. Moreover, §186(a) of the NPPF gives clear instruction that if significant harm to biodiversity resulting from a development cannot be avoided, mitigated, or compensated, then planning permission should be refused. That is the conclusion that the Council would invite the Inspector to draw here.

The effect of the proposal on the setting and significance of heritage assets.

20. Impacts upon the significance of heritage assets did not form a Reason for Refusal, and so the Council would duly invite the Inspector to consider the assessment undertaken by the Officer assessing this application.²³

The Planning Balance

21. The benefits of the generation of renewable energy are recognised. However, there are several critical shortcomings with this particular scheme, and accordingly, Mr Davies who presents the planning evidence on behalf of the Council is of the view that planning

²¹ See §98 and 99 of that document.

²² Circular 06/2005: “*The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.*”. Whilst Circular 06/2005 does not define what it considers to be “exceptional circumstances” this is to some extent defined in BS42020 A Code of Practice for Biodiversity in Planning and Development. None of those apply in this case.

²³ See Section 6.6 of the Officer Report (CD3.1)

permission ought to be refused. In due course, the Inspector will be respectfully invited to dismiss the appeal.

SIGNED DAVIES

No5 Chambers

3 March 2024

Schedule of Appearances

Sioned Davies,

Counsel, No.5 Chambers

instructed by Kim Brown, Shropshire Council

She will be calling:

Tom Hurlstone

BA (Hons) MLA CMLI
Senior Associate Director
Waterman Infrastructure & Environment Ltd

Diane Corfe

CBiol, MRSB, MCIEEM
BSc (Joint Hons Botany and Zoology) Environmental Biology,
MSc Environmental Engineering.
Technical Director – National Ecology Service Lead
Waterman Infrastructure & Environment Ltd

Mike Davies

MRICS, MRTPI, MCIQB, MCMI, IHBC.

MBA, MA Architecture & Urban Design, MSc Real Estate, PG
Diploma in Urban & Regional Planning, PG Diploma Building
Conservation.
Consultant Planner, Shropshire Council

Kim Brown

Legal Team Leader Regulatory and Environment,
Shropshire Council