

Town and Country Planning Act 1990

Statement of Case

On behalf of Flour not Power

**APPEAL ON BEHALF OF ECONERGY INTERNATIONAL LTD AGAINST THE REFUSAL OF SHROPSHIRE COUNTY COUNCIL OF AN APPLICATION 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.**

**Land To the West Of Berrington, Shrewsbury, Shropshire SY5 6HA.**

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

LPA Ref: 22/04355/FUL and 23/03207/REF

## 1. INTRODUCTION

- a. This appeal statement has been prepared on behalf of Flour not Power, a group comprising of residents living within the settlements of Berrington and Cantlop, Shropshire in response to the appeal by Econergy International Ltd following the refusal of Planning Application 22/04355/FUL for the following reasons:

*(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.*

## SITE AND SURROUNDINGS

2. The Application Site extends to 44.09 hectares (ha) of agricultural land and is located in an area of open countryside to the south-west of the village of Berrington. The Site is formed of two field parcels, separated by a single-track road.
3. There is an existing Site access to the northern Site boundary on Cliff Hollow, a further farm access to the eastern Site boundary, as well as from the unnamed single-track road running through the centre of the Site.
4. The Site is currently in agricultural use and is bound on all sides by hedgerow and occasional trees. The character of the Site surroundings is mixed. The village of Berrington is located circa 250m to the north of the Site, and immediately to the west is Boreton Solar Farm. Condover Solar Farm is also located circa 670m to the south west of the Site.
5. The topography of the Site is undulating, with the area of highest ground comprising the northern section of the Site. There are no Public Right of Ways (PRoW) running through the Site. However, outside of the Site there is a route running in a north west to south east orientation through Berrington to the north (Ref's 8905, 6259 and 8900). There is also route from the west which terminates at Shrewsbury Road (Ref. 5342) and a route running in a west to east orientation through Cantlop (Ref's 12641 and 12642). A public highway also runs through the middle of the two fields which comprise the site. The gradient of the site makes it visually prominent from the south.

## APPEAL PROPOSALS

6. The application is for a solar generating facility with a capacity of 30 megawatts. The solar farm would consist of the following:
  - Boundary Fencing
  - Customer Sub-Stations
  - MV Power Stations
  - Fencing and CCTV Cameras
  - Landscaping Works
  - Internal Access Tracks
  - Welfare Units
  - Compound Area/Track Type 1
  - Waterless Toilet
  - Britcabs x 3
  - Set Down Area
  - Other associated infrastructure
7. The solar arrays would be laid out in multiple parallel rows running north-south across the site covering c80% of the site. The panels would track the sun throughout the day.
8. Construction would take six months and the solar farm would have an operational lifespan of 40 years.

## **PLANNING HISTORY**

9. The Council provided a screening opinion (22/00006/SCR) on the 15 December 2021 in relation to the EIA regulations.
10. Pre-application advice was subsequently provided under PREAPP/22/00002 on 8<sup>th</sup> March 2022.

## **PLANNING POLICY**

11. Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise.
12. For the purposes of the assessment of this application, the development plan presently comprises the adopted Shropshire Council Local Development Framework Core Strategy 2011, the Site Allocations and Management of Development (SAMDev) Plan.
13. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these should be applied. National Planning Practice Guidance (NPPG) consists of a range of guidance webpages addressing specific planning matters. The NPPF and NPPG represent material planning considerations in the planning application process.
14. Shropshire Council is at an advanced stage of a Local Plan Review. The Draft Shropshire Local Plan (2016 – 2038) which represents a fully formed version of the Local Plan, was submitted to the Secretary of State for examination on the 3rd of September 2021. As of October 2023, the Examination of the Local Plan is ongoing and therefore can only be given limited weight.

### **Development Plan Policy**

15. The following Development Plan Policies are relevant in relation to this appeal:
  - Core Strategy Policies:
  - CS1 Strategic Approach
  - CS5 Countryside And Green Belt
  - CS6 Sustainable Design And Development Principles
  - CS8 Facilities, Services And Infrastructure Provision
  - CS13 Economic Development, Enterprise And Employment
  - CS17 Environmental Networks
  - CS18 Sustainable Water Management

Site Allocations and Management of Development (SAMDev) Plan Policies:

- MD1 Scale and Distribution of development
- MD2 Sustainable Design MD6 Green Belt And Safeguarded Land
- MD7b General Management Of Development In The Countryside  
MD8 Infrastructure Provision
- MD12 Natural Environment

### **National Planning Policy and Guidance**

16. The NPPF will also inform the Council's case focusing on the following parts

- 2. Achieving sustainable development
- 6. Building a strong, competitive economy
- 11. Making effective use of land
- 12. Achieving well designed places
- 14. Meeting the challenge of climate change, flooding and coastal change
- 15. Conserving and enhancing the natural environment

17. The council may also refer to advice in the Government's Planning Practice Guidance (NPPG) including on some or all of the following subjects: Green Belt. Natural Environment, Renewable and Low Carbon Energy.

### **Draft Shropshire Local Plan**

18. Policies that would be relevant include:

- SP1. The Shropshire Test
- SP2. Strategic Approach
- SP3. Climate Change
- SP4. Sustainable Development
- SP10. Managing Development in The Countryside
- DP11. Minimising Carbon Emissions
- DP12. The Natural Environment
- DP16. Landscaping and New Development
- DP17. Landscaping and Visual Amenity

## DP26. Strategic, Renewable and Low Carbon Infrastructure

### **LEGISLATION**

19. Policies that are also relevant include:

- Wildlife and Countryside Act 1981
- Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006
- Environmental Plan and the Environmental Act 2021

## **SUMMARY OF THE FLOUR NOT POWER'S CASE**

### **Refusal Reason 1**

20. Flour not Power will provide local resident statements in support of this refusal reason.
21. Flour not Power will provide evidence to demonstrate that the proposed development is not in accordance with the adopted Development Plan conflicting with 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.
22. Flour not Power will provide evidence to demonstrate that the proposed development fails to recognise the importance of the Grade 2 and 3a agricultural land for farming for food production and fails to promote rural enterprise referencing Core Strategy Policy CS13. Flour not Power will provide evidence demonstrating that the proposed development does not contribute to and enhance the natural and local environment by recognising the wider economic benefits from natural capital of this best and most versatile (BMV) agricultural land in accordance with Section 174B of the NPPF.
23. Flour not Power will provide evidence to demonstrate that the renewable energy benefits of the proposals and the applicant's justifications for this choice of site are insufficient 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.
24. Flour not Power will also provide evidence to demonstrate that land, which is more appropriate for a solar farm use, is available in the vicinity.

## Refusal Reason 2

25. Flour not Power will provide local resident statements in support of this refusal reason.
26. Flour not Power will provide evidence to demonstrate that the proposed development is not in accordance with the adopted Development Plan conflicting with Core Strategy Policies CS6 and CS17 and SAMDev Plan MD12. In addition, Section 15 of the NPPF and NPPGs Natural Environment (2019) and Renewable and Low Carbon Energy (2015) and DP17 of the Draft Local Plan will be referred to.
27. Flour not Power will provide evidence to demonstrate that the proposed development conflicts with Development Plan strategy to maintain and enhance countryside vitality and character. The social and economic benefits of the proposed development are not consistent with this strategy.
28. Flour not Power will provide evidence to demonstrate that the proposed development conflicts significantly with the views of the affected local community who bestow substantial value to the existing landscape character.
29. Flour not Power will provide evidence that solar farm site would have a visually oppressive effect for users of the publicly maintained highway leading to Cantlop Mill which bisects the site.
30. Flour not Power will provide evidence that due to the height difference of up to 6 metres 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.
31. Flour not Power will provide evidence to demonstrate that effective screening of the site is not physically possible due to the local topography, and that such a measure would not provide an effective visual mitigation measure given the undulating nature of the site and its surrounds.
32. Flour not Power will provide evidence to demonstrate that the proposals will adversely impact the local landscape character and visual amenities from a number of public viewpoints as well as several dwellings surrounding the site due to the replacement of the current arable fields with solar arrays and associated built infrastructure.

33. Flour not Power will provide evidence to demonstrate that less visually prominent sites which are considered more appropriate for a development of this type are available in the locality.

### Refusal Reason 3

34. Flour not Power will provide local resident statements in support of this refusal reason.
35. Flour not Power will provide statements and/or testimony in support of this refusal reason from specialist ornithological ecologists.
36. Flour not Power will provide evidence to demonstrate that the proposed development is not in accordance with the adopted Development Plan conflicting with Core Strategy Policy CS17 and SAMDev policy MD12.
37. Flour not Power will provide evidence to demonstrate that the proposed mitigation for the loss of skylark nesting opportunity by providing protected plots on land to the immediate north of the site is insufficient to accommodate the displaced skylarks.
38. Flour not Power will provide evidence to demonstrate that the site of the proposed new skylark nesting opportunities is of a different character.
39. Flour not Power will also present evidence to show that the general area in which the mitigation is proposed is also used for extensive shooting of a large variety of animal and bird species throughout the year.
40. Flour not Power will present evidence that the commercial shoot nearby is a year-round activity. Habitat, vermin control and management is an all year round activity.
41. Flour not Power will evidence 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.

## **CONCLUSIONS**

41. Flour not Power will demonstrate that the proposed development is not consistent with the policies of either The Development Plan or the NPPF. There are no other material considerations to justify departing from the Development Plan.
42. For this reason and following submission of proofs of evidence by expert witnesses covering the issues identified above, Flour not Power's case will conclude by respectfully requesting that the appeal be dismissed.

## **OTHER MATTERS**

Flour not Power will engage with the appellant on the production of a Statement of Common Ground. It is the intention to submit an agreed and signed version of a Statement of Common Ground in advance of the commencement of the Public Inquiry.