

**Closing Submissions on behalf of the Appellant**

**1. Introduction**

- 1.1 One of the dangers in a week long inquiry such as this, where there are no reasonable barriers to the grant of planning permission is that secondary issues seem to take on a disproportionate amount of importance; a single glimpse of solar panels from a footpath or through a farm gate or the potential to displace a tiny number of Skylark territories (which is not accepted) in a stronghold of perhaps 14,000 pairs. In the midst of all that, the Council was keen to say that it “recognized” the renewable energy benefits of the scheme. That isn’t enough and happily the situation was rectified at the inquiry by Mr. Davies accepting that the renewable energy benefits of the scheme should carry ‘substantial’ weight in the planning balance. He also accepted that the broader biodiversity benefits of the scheme should attract ‘significant’ weight. On any interpretation of the evidence, the Council’s planning balance at the end of this inquiry is different to the one which it was drawing at the start of last week.
- 1.2 Nobody would be seeking to site solar farms in the open countryside if they were not necessary. They clearly are because central government has, for many years, stated that ‘need’ for renewable energy schemes such as this is a given. On a scheme specific basis, this solar farm would make a material and appreciable contribution to meeting the amended Climate Change 2008 targets, having a capacity of up to 30 MW and generating clean electricity to power approximately 7000 homes. As Mr. Davies reasoned to himself on the witness stand, that is a meaningful percentage share of all the households in Shropshire.
- 1.3 As the Secretary of State and his appointed Inspectors have articulated multiple times, these benefits should indeed carry ‘significant’ (or ‘substantial’, depending on the scale used) weight in the planning balance. Whichever scale is used, the degree of weight should be at the top. Just as importantly, the imperative is to grant permission for schemes which can be built and which will contribute towards renewable energy generation. The Berrington solar farm secured a grid offer in 2021 which is available from 2024. If planning permission is granted, this scheme would get built and would contribute and as Mr. Heslehurst indicated, that is a material consideration in its own right.
- 1.4 The degree of collaboration with professional planning officers is evident from the papers. The Appellant had worked with and satisfied professional officers, including landscape and ecology officers, up to and including the drafting of the officer report. The professional planning officers of the Council understand the adopted and emerging development plan policies, know the local area, know what the farmland and ecology is like and who are committed to preserving what is special about this part of Shropshire. Paragraph 7.6 of the report records that:
- “7.6 There have been no outstanding objections from technical consultees with respect to issues such as highways, trees, ecology and drainage. Detailed planning

conditions have been recommended to ensure the highest level of control of the development. Subject to this it is considered that the proposal also meets the criteria for development in the countryside as set out in the Core Strategy Policy CS5. The proposal is therefore in general accordance with the Development Plan. Overall, it is considered that the public benefits of the proposals including renewable energy provision are sufficient to outweigh any identified residual impacts and permission should be granted subject to the conditions set out in Appendix 1”

- 1.5 The Council has not sought to identify areas suitable for renewable energy development in either the adopted plan (which is not a surprise given that it dates back to 2011) or in the emerging plan. The appeal site is included on the siting possibilities map produced by Zero Carbon Shropshire for ground mounted solar development. Only limited weight can be attached to this because the document was not subject to formal public consultation other than a webinar and more accurate site specific information about ALC is now available but it is at least a starting point.
- 1.6 Shropshire Council declared a Climate Emergency on 16th May 2019. This represented a clear acknowledgement by the Council of the need to act on the causes of climate change. As he accepted in questioning, it wasn't mentioned anywhere in the proof of evidence of Mr Davies. If that is going to be something more than a hollow gesture then the Council needs to act on it by granting planning permission for acceptable renewable energy schemes such as this. Pursuant to national planning policy, every Council should seek to maximise renewable energy generation in its administrative area. Also missing from Mr. Davies' evidence is mention of the response to the planning application from the Council's own Climate Change Taskforce which clearly set out the need for additional renewable energy infrastructure and capacity locally.
- 1.7 This is a scheme which attracted no objections from technical consultees. It is now accepted that half of the ecology reason for refusal based on potential disturbance caused by shooting cannot be right as a matter of law; the shooting season does not cross-over with the Skylark breeding season at all. In relation to Skylarks, the Council has never sought:
  - (1) to argue that the scheme is EIA development for the purposes of the EIA Regulations by reason of a likely significant effect on the local Skylark population; and
  - (2) to argue that the scheme was in breach of Policy CS 8 on the basis there would be a significant adverse impact on the local Skylark population. Indeed, Mr. Davies confirmed that members had considered the point and agreed that no breach of Policy CS8 could be sustained and that was the reason why it did not feature in the reasons for refusal.
- 1.8 Refusal of planning permission bears all the hallmarks of being politically motivated which is why the Council has struggled to make good its opposition without seeking to exaggerate the importance of a number of topics. Councillor Wild cannot have it both ways; seeking to add gravitas to her objections by writing as a politician (Conservative Chair of the Transformation and Improvement Overview and Scrutiny Committee) but then seeking to make the same points as a local resident during the inquiry process. Politics have clearly got in the way of objective, professional officer-led planning in this case.

## **2. Renewable energy policy**

- 2.1 There is now no disagreement on the support at every level for and the weight to be attached to the benefits of solar energy generation. At a national level, the Climate Change Act 2008 enshrines in law, the requirement to meet 'net zero' by 2050. The Energy White Paper (December 2020) and the Net Zero Strategy (October 2021) both emphasised the measures required to transition to low carbon energy generation by 2035. The British Energy Security Strategy was published in April 2022 and set a target of increasing solar capacity fivefold by 2035.
- 2.2 The new National Policy Statements for Energy were designated as recently as 17th January 2024 and are important material considerations in this appeal. NPS EN-1 states that there is now a 'critical national priority' for the provision of low carbon infrastructure, which includes solar farms. NPS EN-3 sets out the Government's current policy for renewable development and represents the most up to date articulation of Government policy with regard to solar energy development. Whatever political chatter there may have been at various times over the last 18 months, it re-affirms the commitment in the BESS to increase solar capacity fivefold by 2035.
- 2.3 EN-3 has useful, practical things to say about solar farms. Access to a nearby grid connection is critical to solar farm. Solar farms are not prohibited on BMV land but of course their impacts should be considered. Consideration may be given as to whether the proposed development allows for continued agricultural use on the site.
- 2.4 The NPPF (December 2023) explains that when dealing with planning applications, planning authorities should not require a developer to demonstrate a need for low carbon or renewable energy projects and should recognise that even small scale projects can help reduce greenhouse gas emissions. Schemes should be approved if any impacts are, or can be made, acceptable. It is clear from paragraph 160(b) that both renewable energy scheme and the supporting infrastructure which is required to facilitate it should be treated in the same way. Furthermore, it identifies once areas have been identified for such projects, by local authorities in local plans, any subsequent applications should demonstrate how they would meet the criteria used in identifying suitable locations. As above, the Council has not attempted to allocate any sites for renewable energy schemes in its development plan.
- 2.5 Accordingly, solar energy continues to lie at the heart of Central Government plans. Indeed, large scale solar is described as a "key building block" in the Energy White Paper. That adjective "key" is used repeatedly in the Solar Strategy Part I and II and the principal documents thereafter. That is why the Appellant is here at all. This does not mean that there is *carte blanche* for renewable energy schemes such as this; far from it. A planning balance has to be struck in the normal way. When it is, it is clear that planning permission should be granted.

## **3. Development plan**

- 3.1 As a starting point in drawing the planning balance, for the purposes of 38 (6) of the Planning and Compulsory Purchase Act 2004, the adopted development comprises:

- (1) Shropshire Core Strategy, Adopted 24th February 2011;
- (2) Site Management and Allocation of Development Document (SAMDev), Adopted 17th December 2015

3.2 As noted above, professional planning officers at the Council concluded that the proposed development was in general accordance with the adopted development plan.

3.3 The site is located within the Open Countryside (Core Strategy Policy CS6), and the western edge is located within a Mineral Safeguarding Area (SAMDev Policy MD16). Neither policy precludes solar development subject to meeting the provided criteria. There are no other designations on the site, and the Local Plan does not allocate any sites in the district for solar development.

3.4 The following policies are most relevant to this appeal:

- (1) Core Strategy Policy CS5 'Countryside and Green Belt'
- (2) Core Strategy Policy CS6 'Sustainable Design and Development Principles'
- (3) Core Strategy Policy CS8 'Facilities, Services and Infrastructure Provision'
- (4) Core Strategy Policy CS13 'Economic Development, Enterprise and Employment'
- (5) Core Strategy Policy CS17 'Environmental Networks'
- (6) SAMDev Policy MD2 'Sustainable Design'
- (7) SAMDev Policy MD8 'Infrastructure Provision'
- (8) SAMDev Policy MD12 'Natural Environment'
- (9) SAMDev Policy MD13 'Historic Environment'
- (10) SAMDev Policy MD16 'Mineral Safeguarding'

3.5 In the reasons for refusal, only three adopted policies are referred to:

- (1) Core Strategy Policy CS6 'Sustainable Design and Development Principles'
- (2) Core Strategy Policy CS17 'Environmental Networks'
- (3) SAMDev Policy MD12 'Natural Environment'

Flour Not Power ("FNP") only alleges breaches of these three adopted policies in the Local Plan.

3.6 Shropshire Council is in the process of preparing a new Local Plan Review. The Local Plan Review was submitted to the Secretary of State on 3rd September 2021 and is currently at examination. The Inspector's Interim Findings letter was issued 15th February 2023, requiring the Council to undertake additional work. The following emerging policies are most relevant to this appeal:

- (1) Policy SP3
- (2) Policy DP18
- (3) Policy DP26

3.7 Only emerging Policy DP26 is referred to in the reasons for refusal and then it is only Policy DP26(2)(k) in relation to BMV. The Council's position is that a Moderate degree of weight can be attached to this emerging policy, given the status of the emerging plan.

- 3.8 The Local Plan is expressly supportive of renewable energy development. Core Strategy Policy CS8 sets out that the Council will positively encourage infrastructure, where this has no significant adverse impact on recognised environmental assets, that mitigates and adapts to climate change, including decentralized, low carbon and renewable energy generation. As above, Mr. Davies was very candid; elected members did consider Policy CS8 but did not feel that breach of it had been demonstrated. Given that Policy CS8 is the lead policy in this case, pursuant to which all matters, including any potential impacts on Skylark could be dealt with, this really should be an end of the matter.
- 3.9 Amongst other things, CS Policy CS6 seeks to make efficient use of land and safeguard natural resources including high quality agricultural land. I will deal with the policy protection for Best and Most Versatile Agricultural land in the sections below.
- 3.10 Policy CS17 is concerned with Environmental Networks. As the policy states, development should identify, protect, enhance, expand and connect Shropshire's environmental assets, to create a multifunctional network of natural and historic resources. Clearly, the proposed development does not interfere with these strategic objectives. Nor, on any interpretation of the evidence does the proposed development "adversely affect the visual, ecological, geological, heritage or recreational values and functions of those assets, their immediate surroundings or their connecting corridors". Nor on any interpretation of the evidence does it breach bullet point 2 which requires a contribution to local distinctiveness. Policy CS17 is a strategic policy as is made clear by the explanatory memorandum and potential displacement of a tiny number of Skylark territories amongst what are substantial Biodiversity Net Gains overall cannot sensibly trigger a breach of it.
- 3.11 Policy MD12 is designed to avoid harm to Shropshire's natural assets and their conservation, enhancement and restoration. MD12(1) does not apply because it is agreed that there is no likely significant effect on an internationally designated site. There is no breach of Policy MD12(2)(ii) or (iii) because, even if 11 Skylark territories were to be displaced without mitigation and compensation (which of course is not the case), that would not represent a "significant adverse effect" on the conservation status of the local population which is the only sensible scale at which to judge it. As Mr. Fearn sought to argue, there is a clear difference between "priority species" in MD12(ii) and individual specimens, that is, each Skylark.
- 3.12 It cannot sensibly be argued that displacement of a single Skylark would trigger a breach of Policy MD12(2) which is what the Council and FNP seem to be arguing for. Impacts have to be considered on a scheme specific level, of course they do but for a "significant adverse effect" to occur, those scheme specific impacts have to be judged against a meaningful scale. Paragraphs 3.110 to 3.113 of the Explanatory Memorandum deal with adverse effects on the integrity of internationally designated sites and only then does the question of 'integrity' come into play.
- 3.13 As paragraph 3.114 demonstrates, the principle of Policy MD12 follows the well-established hierarchy of avoid, mitigate and compensate. The policy expressly provides that where the public benefits of the development clearly outweigh the value of any assets affected, adequate mitigation measures should be provided for any full or partial harm or loss. In this case, the substantial benefits of this solar scheme clearly outweigh

the value of undesignated arable farmland and adequate mitigation measures have been provided. At the bottom of the hierarchy, Policy MD12 allows for financial payments to be made for projects elsewhere in Shropshire. At this scale of likely impact on the 14,000 strong Skylark population, there is no breach of Policy MD12.

- 3.14 Within the emerging Local Plan, Policy DP26 is interesting because, on its face, the lead renewable energy policy sets a higher test in relation to loss of BMV than Policy DP18 to which it expressly refers. This cannot be right. Policy DP18 would be complied with because “the need for and benefit of the development justifies the scale and nature of the loss”.
- 3.15 The professional planning officers were correct in their view that the proposed development would comply with all relevant development plan policies. None of the evidence heard at the inquiry would lead to a different result.

#### **4. Site selection**

- 4.1 The appeal site is formed of two large agricultural field parcels, separated by a single-track road. Berrington village is located to the north of the site and Cantlop is to the south. Cross Houses is located just over 1km to the east. The appeal site is in the open countryside but is not subject to any designations for landscape or ecology.
- 4.2 The legal position is common ground. Specifically, in relation to solar farms (including those which have an impact on a range of interests including designated heritage assets) the very recent decision in *Bramley Solar Power Residents Group v SSLUHC* [2023] EWHC 2842 (Admin) (CD7.1) is binding on this hearing and settles the law. In dismissing the claim for a statutory challenge, Lang J held that in the case of a solar farm, neither the PPG nor EN-1 mandates a consideration of alternative sites. Still less do they require a sequential test to be applied. Lang J specifically rejected the submission that the PPG and/or EN-1 imposed such a duty whenever permission is sought for a solar farm.
- 4.3 EN-3 recognises that access to a viable grid connection is critical for any solar farm. Without it, no solar farm is going to get built. There is also a very well documented shortage of grid connections nationally, which is hampering the nation’s ability to deliver the level of renewable energy infrastructure that is required. In his proof of evidence, Mr. Heslehurst, refers to the speech of Prime Minister Rishi Sunak, in which he describes this acute problem. The *Scruton* appeal decision (CD7.19) is very helpful in this regard.
- 4.4 As Mr. Heslehurst gave evidence, developers do not typically instruct a planning-style sequential document prior to signing-up a proposed site. They do internal due diligence. They review constraints using mapping software and consider suitability of sites. In this case, the developer was satisfied that the appeal site was clearly suitable. When invited to review the site, the professional team of consultants agreed.
- 4.5 The Site Selection Report sets out what had been considered in a format suitable for submission as part of a planning application. Because this issue was raised repeatedly in interested party objections and in the decision notice, the Appellant provided further detail in the addendum report submitted with the appeal. This provides more background

to the process that had already been undertaken and more than meets any requirement set out by the High Court in *Bramley*.

- 4.6 As Mr. Heslehurst comments in his evidence, it is not in a developer's interest to progress sites that are encumbered with significant planning risk. Furthermore, this Appellant was encouraged by the Council's initially positive reception to the proposals, which persisted right up until committee.
- 4.7 ADAS works with a lot of solar developers nationally and are familiar with best practice. It also routinely reviews the approach of others. In this case ADAS has clearly set out the methodology employed and provided clear maps to explaining how decisions were made. It is a large search area. Many site selection type reports for other developments have been endorsed elsewhere, often where they did not include any detailed search, or where the search area is smaller. Indeed, 3km is on the higher end of the spectrum. In evidence Mr. Heslehurst confirmed to the Inspector that it was appropriate to the site and exceeds the approach taken elsewhere but not everywhere. This is a matter of planning judgement on the facts of this case.
- 4.8 In the Statement of Common Ground, it is agreed that:

"6.7 The parties agree that there is no policy or legislative requirement to carry out 'sequential testing' for solar farms.

6.8 The parties agree that there is no validation requirement to submit a Site Selection Report.

6.9 In situations where the Applicant decides to prepare a Site Selection Report, there is no national or local guidance on how this should be carried out, including on matters such as search area or site search criteria, and how this should be presented."

- 4.9 The very recent *Kemberton* appeal (CD7.40) which was determined against the same suite of Shropshire policies (nothing that the scheme was in the Green Belt as well) is very helpful. Paragraph 48 provides as follows:

"48. It was highlighted that the SSP was not submitted when the planning application was lodged but later in the determination period. However, there is no national or local policy requirement to carry out an assessment of alternative sites for solar farm developments and to submit this as part of an application. From the evidence before me I am satisfied that the SSP explains adequately the process the appellant went through in identifying potential sites. Moreover, whilst the land on the other side of the B4379 may be closer to the sub-station the evidence shows it is not available for such developments."

## **5. Best and Most Versatile Agricultural Land**

- 5.1 Again, the *Kemberton* appeal decision (CD7.40) is helpful in this regard. Paragraphs 41 to 43 provides as follows:

- “41. Amongst other things, CS Policy CS6 seeks to make efficient use of land and safeguard natural resources including high quality agricultural land. Whilst paragraph 180b of the Framework states that planning decisions should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land, it does not prevent the use of such land for nonagricultural uses. Further guidance regarding the use of BMV land is provided in footnote 62 of the Framework. This footnote is linked to paragraph 181 not 180b, and the former relates to plan making not decision taking. However even if it is considered to be relevant to decision taking it simply indicates that the availability of land for food production is a consideration to be taken into account, rather than preventing the use of such land.
42. The Written Ministerial Statement on solar energy (25 March 2015) indicates that the use of BMV for solar farms has to be justified by the most compelling evidence.
43. In addition, The Planning Practice Guidance (PPG) on renewable and low carbon energy, which also dates from 2015, provides a list of planning considerations that relate to large scale ground mounted solar photovoltaic farms<sup>1</sup>. These include: encouraging the effective use of land by focussing such developments on previously developed and non-agricultural land provided it is not of high environmental value; and where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays”
- 5.2 It is agreed that the Ministerial Statement is a material consideration. However there is a question regarding the relationship between the WMS which announced changes to the PPG and what the PPG actually says. The preferred view is that the policy guidance which is set out in the PPG is the way by which a developer demonstrates the acceptability of being on agricultural land and potentially on BMV land by “the most compelling evidence”. Regardless, in this case, the Appellant has provided “the most compelling evidence” of why it is on agricultural land and why it has on BMV land.
- 5.3 Accordingly, policy and guidance is clear that a developer should try to use lower grade agricultural land where possible. However, policy absolutely does not say that development of solar farms on BMV Land is prohibited. Policy clearly sets out guidance for what decision makers should consider when development on BMV is considered necessary.
- 5.4 In the Statement of Common Ground, it is agreed that:
- “6.10 It is agreed that Natural England’s regional ALC mapping indicates that the site is Grade 3 agricultural land. The countryside in the wider surrounding area is indicated as being either Grade 2 or Grade 3 agricultural land.
- 6.11 It is agreed that, at the point of due diligence and selecting a site, it is reasonable to rely on the Natural England mapping to avoid the highest-Grade land where possible.



- 6.12 As part of the planning application, a site-specific Agricultural Land Classification (ALC) Survey was undertaken, which identified that the site is a mixture of Grade 2, Grade 3a and Grade 3b. The site does not contain any Grade 1 agricultural land.
- 6.13 It is agreed that the ALC Grade of the Appeal site is broadly consistent with that of the rest of the search area.
- 6.14 It is agreed that some agricultural activity, such as grazing, can continue on the Appeal site throughout the operational phase of the development.
- 6.15 It is agreed that the Local Planning Authority has no powers to control whether the site is currently used for arable or grazing purposes.”
- 5.5 Accordingly, the surrounding area is dominated by BMV Land with a high likelihood of BMV. This was noted at *Ledwyche* (CD7.9). Just like everywhere else, solar is needed in Shropshire and there is a duty falling on the Council to maximise generation. Just because Shropshire has a high proportion of BMV land, does not mean that it should be forgiven for not doing its bit. Indeed, given the Council’s own Climate Change Taskforce highlighting a significant need for multiple sites and heavy constraints such as the AONB, it is inevitable that some of these are going to come forward on BMV land.
- 5.6 The Council and Rule 6 party has criticized the Appellant for not undertaking soil surveys on alternative sites which directly contradicts the agreement that no sequential testing or alternative sites analysis is required. This is neither required nor realistic. The recent High Court decision in *Lullington* does not purport to lay down general guidelines for off-site auguring. That case involved a very narrow point of legal challenge to an Inspector’s decision on the basis of rationality; the very high threshold was not reached on the particular wording in the decision letter. The local area is not one dominated by undifferentiated Grade 3 land with Grade 3(a) being BMV and Grade 3(b) not being BMV. There is a high likelihood of BMV land across the local area.
- 5.7 Nor does the policy require something “beyond a sequential test” as was suggested by Mr. Davies whatever that may be.
- 5.8 In terms of impact, if the proposed development was approved, the appeal site would no longer be used for arable purposes for a period of 40-years. However some agricultural activity can continue on the site. As Ms Metcalfe has described, the land will be subject to strict adherence to a Soil Management Plan which ensures that the qualities of the soil will be safeguarded for the future. At the end of the operational period, the panels will be removed and the land restored to its pre-development condition. Ms Metcalfe also points out that there is the potential for improvement of the soil quality.
- 5.9 In relation to food security, the contribution from the appeal site to national yield is 0.002% and county 0.06%. This are de minimis figures and inconsequentially small. National threats to food production and energy security is beyond the scope of assessment by any individual appellant. As Mr. Heslehurst stated, the main threats to UK Food production come from climate change, the pressures on soil health and biodiversity. As stated by Dr. Alona Armstrong from Lancaster University to the Environmental Audit Committee in January 2023 (CD9.11), Dr Alona Armstrong ‘we

need to be moving away from single-use land. Many solar parks are grazed, and they are co-producing energy and food.’

- 5.10 Mr. Franklin’s evidence in relation to potential threats to food security was not accepted at the *Thaxted* inquiry (CD7.8). He confirmed that he was not providing any additional evidence to this inquiry. There is no appeal decision before this inquiry where planning permission has been refused for a solar farm because of a proven threat to national food security.
- 5.11 In relation to economic diversification, it is clear that the solar farm would represent economic diversification within Policy CS13. The fact that solar farms are not specifically listed on the face of the policy and should therefore be excluded as was argued by Mr. Davies is not a credible approach. Again, the decision at *Kemberton* (CD7.40) is helpful in this regard. Amongst the large number of appeal decisions, the decision at *Thaxted* (CD7.8) is also helpful on all matters relating to all the arguments which the Council and FNP seek to raise.

## 6. Soil

### Agricultural Land Classification

- 6.1 Mrs Metcalfe is a soil scientist with RSK ADAS Ltd and has a national reputation in the field. Alongside her other positions, she was employed as a Research Officer in the Ministry of Agriculture, Fisheries and Food (now Department of the Environment and Rural Affairs (Defra)). One of the academic jobs she has done is to teach on courses run by the British Society of Soil Science including the Introduction to Agricultural Land Classification course which Mr. Franklin attended on 22<sup>nd</sup> and 23<sup>rd</sup> November 2023 at Cranfield University. She was manifestly authoritative and reliable.
- 6.2 By contrast, the evidence of Mr. Franklin was troubled. As the Director of an agricultural consultancy, it is extraordinary that he claimed not to understand the law of trespass and had not been forthcoming about “walking all over the site” and taking soil samples without permission until questioned. He described the written opinion of one of the leading soil scientists in the United Kingdom at Natural England on the topic of irrigation as a “random email”. Finally, he gave very similar evidence at the *Thaxted* appeal and his evidence was not accepted.
- 6.3 The ALC Guidelines have been followed during the ADAS ALC survey (CD 9.1) and are reflected in the Appellant’s ALC report (CD 1.3). The findings in Table 4.3 of CD 1.3 – Table 4.3 show:
- (1) Grade 2 22.4 ha;
  - (2) Subgrade 3a 12.4ha; and
  - (3) Subgrade 3b 4.9

This is the correct classification and the best evidence before this inquiry.

- 6.4 Mr. Franklin alleges that significant grade inflation should be factored in. With the use of irrigation at the appeal site, he states that some 5ha should be mapped as Grade 1 rather than Grade 2 and some 4ha should be mapped as Grade 2 rather than Subgrade

- 3a. Such grade changes depend entirely on the assumed availability of irrigation at the appeal site.
- 6.5 As Mrs. Metcalfe explained, following a review of the ALC revised guidelines in 1996 the use of irrigation within the ALC system was seen as inconsistent with the general ALC approach which sought to classify land according to the extent to which 'it's physical and chemical characteristics impose long-term limitations on agricultural use for food production'. The removal of the consideration of irrigation in the ALC methodology was reflected in the 1997 version of PPG7 and confirmed by Natural England. The ALC system is identical for England and Wales. Accordingly, the clarification provided in the ALC FAQ published on the Welsh Government web page Agricultural land classification: frequently asked questions (gov.wales) is also relevant for England.
- 6.6 Even if irrigation had remained part of the ALC methodology (which it did not), assumptions have been made by Mr. Franklin about its use and effectiveness without reference to any evidence. The ALC Guidelines (CD 9.1 Irrigation page 27) state that irrigation is taken into account in the ALC grading where it is current or recent practice. The adequacy of the irrigation water supply is also considered. The irrigation reservoir adjacent the Appeal site was built in 1997 and has not been used since 2010. It was intended to supply irrigation water to the land lying north of Cliff Hollow and not the appeal site or compensation land. As Mrs. Metcalfe indicated, this is some 14 years ago and cannot be considered current or recent practice.
- 6.7 The ALC guidelines 1988 have been correctly used in the ADAS assessment of the land and irrigation is no longer a factor within the ALC system.
- 6.8 Mr. Franklin also misunderstands the difference between soil profiles and soil grading. In terms of soils and farming in the western part of the appeal site there are light textured or sandy soils. There are gradients close to the limit for Subgrade 3a when measured with a handheld clinometer. To the southeast of the irrigation reservoir there is soil which can be described as heavy, being of a clayey nature. The land contrasts the land in the western part of the site in range of crops that can be grown and may have lower yields than other parts of the appeal site. Much of the site has medium textured soils- sandy clay loam overlying clay.
- 6.9 During the survey in January 2022 there were some soil profiles which Mrs. Metcalfe recorded in the field as being of Grade 1 quality. The locations of these soil profiles are on or close to the boundaries of the appeal site (CD1.3 Appendix 1/Appendix 3), where the land falls to the boundary (soil profile numbers 8,14,16,19, 28,27,28,33,34,39,40,41) As she described, slopes are short and the gradient is variable along the field boundary where the land falls from the 'plateau'.
- 6.10 The description of Grade 1 land is given 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 include top fruit, soft fruit, salad crops and winter harvested vegetables. Yields are high and less variable than on land of lower quality.' Given the locations of the soil profiles, based on her longstanding experience, Mrs. Metcalfe's professional judgment was that this land would not fit that description. For this reason, the Grade 1 profile were included in the land mapped as Grade 2 which is more appropriate.

6.11 The introduction to the ALC Guidelines (CD 9.1 page 8) provides that 'the guidelines provide a consistent basis for land classification but, given the complex and variable nature of the factors assessed and the wide range of circumstances in which they can occur, it is not possible to prescribe for every possible situation. It may sometime be necessary to take account of special or local circumstances when classifying land. The local circumstance on the appeal site which were taken into account by Mrs. Metcalfe was the fall of the land towards the field boundary. This is entirely appropriate.

### **Soil management**

6.12 In terms of soil management, there is no longer any disagreement. An outline soil management plan has been prepared (CD 4.6), which sets out the practice required to protect soil resources. Soil management plans are not new and Mrs. Metcalfe and ADAS are experienced in their use. The Defra Construction Code of Practice for the Sustainable Use of Soil on Construction Sites (2009) was developed primarily to promote the better protection of soil resources in the construction sector. In the normal way, a Detailed Soil Management Plan will be worked up and submitted for approval to the Council.

6.13 In the areas of the tracks and inverters the topsoil will be removed in suitable soil moisture conditions and stored in soil bunds. The base of the tracks and inverters will be covered with geo textile and then suitable stone. At the end of the solar farm's life the stones and geo-textile membrane will be removed and topsoil re-instated. The total land area to be disturbed is about 0.42 ha.

6.14 Soil compaction is a risk on any land whether on a construction site or agricultural context. Management is by controlling and restricting the traffic movement to when the moisture state of the soil is such that the risk structural damage is minimal. Soil compaction generally occurs when there are compressive forces applied to the soil from wheels of a tractor or other machinery, when the soil is in an unsuitable condition. Implementation of a soil management plan would ensure that there is no physical loss of the soil characteristics and resultant grade of the land in the operational lifetime of the site. In overall planning, the Field Capacity Day figure (149 days) is used to indicate the main months when work can be planned- late March to late November. On site day to day assessment are undertaken prior to any workings. All traffic across the site should use defined routes.

6.15 Soils are classified into groups according their resilience to structural damage when handled in a dry condition. (CD 4.6 Soil Management Plan Table 2). This is based on topsoil texture with light texture sandy soils having the highest resilience and heavy textured soils such as clay having the lowest resilience. Much of the appeal site is classified as having a medium resilience to structural soil damage. Based on her experience on other sites where a detailed soil management plan has been implemented, Mrs. Metcalfe was clear that the physical characteristics of the soil and land quality will remain.

6.16 There would be no adverse impact resulting from the use of the BMV Land. There is no planning control for high quality agricultural land to be used for food production. The appeal site can still be used for food production in the form of livestock grazing. The ALC grading does not necessarily reflect the current land use. There are studies that show

that converting arable land to grassland results in an increase in the soil organic content. Soil organic matter (CD 12.7 Cranfield Guide to Better Soil Structure) provides benefits.

## **7. Landscape and visual impacts**

7.1 Unusually for a solar farm case, much of the evidence relating to landscape and visual harm is agreed between the Appellant and the Council. The position of FNP is an outlier. As reported in the Officer Report to Committee, the Council Landscape Officer raised no objection to the proposed development.

7.2 A Statement of Common Ground has been prepared. Evidence has been taken in writing. The additional viewpoints identified by FNP make no difference whatever to the overall conclusions of Mr. Leaver and the weighting of 'Limited harm' given to landscape and visual amenity harm, when taken in the round, by Mr. Heslehurst.

7.3 In summary:

- (1) The site would be gradually built out over a period of up to 6 months. The main effects would result from construction of site access track and the erection of the solar panel array across the site, with installation of ancillary equipment and cable routing having a lesser effect. There would be a small loss of existing hedgerow planting to accommodate the 7m wide site access and almost no perceptible change in terms of existing landform. Landscape effects would be at most Moderate due to the direct changes to the landscape of the site itself and would reduce to Moderate/Minor within the local Estate Farmlands LCT to within 0.5km and Negligible thereafter. Visual effects would be, at most, Moderate Adverse for the users of the public road to Cantlop Mill who would experience some close range views of the construction stage;
- (2) The appeal site is free of any local or national landscape designation and is not located within a protected landscape area. It is not a valued landscape in terms of the NPPF, paragraph 180. Quite properly, Mr. Leaver has assessed it as a landscape of community value. Local people value local landscapes;
- (3) The landscape sensitivity is medium;
- (4) People using the local roads and footpaths near to the site are all of High/Medium sensitivity, including local road users adjacent to the site. All of these routes are used recreationally, where there will be focus and appreciation of views and susceptibility is therefore high. The views available are of community value;
- (5) Operational effects on roads would be at most Moderate/Minor for two local roads, Berrington Road and the road to Cantlop Mill. In both cases there would be a combination of partial views of the site from sections of road (between 100-150m length) and open framed views from field entrances. Representative views are shown on viewpoints 1, 7 and 8 for Berrington Road and viewpoints 2, 3, 4, 5 and 6 for the road to Cantlop Mill (LVA Appendix 2, CD 1.18);
- (6) A number of photomontages have been created to illustrate the changes in views from completion to year 15 of the scheme. The photomontage for viewpoint 1 illustrates how the existing gap in the hedgerow can be effectively closed with planting to screen views from Berrington road (LVA Appendix 2B, CD 1.18);
- (7) Two photomontages have been created to illustrate views from the road to Cantlop Mill. The photomontage of viewpoint 2 (LVA Appendix 2B, CD 1.18) illustrates how new infill hedge and tree planting will help to screen existing views of the northern

edge of the eastern field when travelling south. The photomontage of viewpoint 4 (LVA Appendix 2B, CD 1.18) illustrates how proposed panels would be set back from the road and would not be seen over the top of the hedgerow; sections illustrating this arrangement are provided in the Landscape Statement of Case (CD 4.3);

- (8) As a result, Mr. Leaver finds that effects will reduce to Minor adverse in the case of receptors using both roads by year 15, as infill hedgerow and hedgerow trees mature to screen and filter views;
- (9) Local footpath users would experience effects as high as Moderate adverse in views from the south and east as illustrated by viewpoint 11 (PRoW 0407/16/1), viewpoint 12 (0407/1/1) and viewpoint 15 (PRoW 0407/5R/2) (LVA Appendix 2, CD 1.18). The photomontages for views 11 and 15 (LVA Appendix 2B, CD 1.18) illustrate that reinforcing the existing planting to lower slopes will only have a limited effect on views, hence these Moderate levels of effect are considered to be permanent for the duration of the scheme;
- (10) The purpose of the landscape strategy, as illustrated on the Masterplan, Figure 6 within the submitted LVA (LVA Appendix 2B, CD 1.18), is to provide potential landscape and biodiversity enhancements and mitigation. In terms of screening elements this primarily takes the form of reinforcing existing hedgerows to close up any gaps and then managing hedgerows to a height of 4m. Additional filtering of views will be achieved by the planting of hedgerow trees;
- (11) Mitigation measures are sufficient for the proposed development. All long-term effects would be Moderate/Minor or less, with the exception of views from the south and east of the site which would Moderate adverse and permanent. Views from the south and east would be difficult to screen further as any planting to lower slopes would likely take more than 30+ years to begin to mitigate views further. Hence, further tree planting would have only very limited further mitigation potential and has therefore been discounted.

## **8. Ecology and biodiversity**

### **Biodiversity Net Gain**

- 8.1 The appeal site is currently an arable field. In some ways, the Council is arguing against the considerable biodiversity benefits of the scheme in favour of retaining an ecologically sterile environment. It is the antithesis of the governments stated aims of restoring nature. The appeal site would be planted with species rich grassland and continue to be used for agricultural purposes during the operation of the solar farm, with grazing areas for livestock beneath the panels. Hedgerows will be gapped up and reinforced around the site, and biodiversity enhancements will deliver net gains of 123% in habitats and 76% in hedgerows. It is now common ground between the Appellant and the Council that these important benefits should attract significant weight in the planning balance.

### **Skylarks**

- 8.2 Largely because there isn't anything else to focus on, the issue of the potential impact of this solar farm on Skylarks has been blown out of all proportion by the Council and FNP. Potential harm to Skylarks is a material consideration and is important but there is a risk of it becoming a determinative issue when, whatever view of the evidence is taken, it ought not to be.

- 8.3 On behalf of the Council, Ms. Corfe considers that the appeal site is of importance for Skylarks and that the breeding bird assemblage is arguably of County value (paragraph 4.31 of her evidence, final bullet-point on page 16). This is not supported by the Skylark population figures she presents, nor by the valuation process of the breeding bird assemblage that she then provides.
- 8.4 Table 1 of Ms. Corfe's evidence (page 17) uses Local Wildlife Site (LWS) evaluation criteria in an attempt to demonstrate the value of the Site for Skylarks; however, this is demonstrably incorrect. Ms. Corfe's Table 1 presents six criteria used to select LWS in Shropshire, used here to define locations which could be considered as of County level importance for birds. The implication is that the Site may have been undervalued for Skylarks and other breeding birds due to inadequate survey effort. However, the Skylark population of the Site fails to meet any of the 6 criteria and would have to be unfeasibly large to do so.
- 8.5 Row 1 of the Table states that a site must regularly support 'either 0.1% of a national population, or 1% of the total Shropshire population' to be considered as of County value. Ms. Corfe then presents Shropshire population figures of 3,501 – 15,000 breeding pairs (which are not referenced). Even using the lowest population presented by Ms. Corfe, the 11 Site pairs equate to just 0.314% of the Shropshire Skylark population. Using the higher population (15,000 pairs), the Site supports only 0.073% of the County's Skylarks. As such, based solely on the figures presented by Ms. Corfe, the appeal site falls well below the 1% county threshold which would demonstrate County level importance.
- 8.6 Based on the lowest population estimate, the appeal site would have to support a minimum of 35 pairs. This would equate to 1.26 pairs per hectare, which is far higher than any habitat-type supports; the highest densities are found on coastal marshes, averaging 0.76 pairs per hectare (from Table 1 of Fox 2022 (CD 10.22)).
- 8.7 In row 2 of Table 1, Ms. Corfe then states that the Site 'would have been identified as hosting the joint 5th highest population in the county'. This is not borne-out in Appendix F, which simply presents a few representative examples rather than an exhaustive list of sites. It is untenable that a Site supporting 11 pairs of Skylark could be the joint 5th highest population in a county which supports between 3,500 and 15,000 breeding pairs (0.314% - 0.073%). The two points contradict each other.
- 8.8 It is worth also noting that Mr. Smith's evidence (CD 14.4) cites a county population of just under 14,000 pairs in 2011 (quoting his own work from 2019). This is the only referenced source of county population in the evidence. It is not feasible that the county population could have dropped from 14,000 pairs in 2011 to 3,500 pairs currently. This would be a drop of 75%, which is far higher than the national average decline which Mr. Smith cites as 16% across England between 1995 and 2021 (Section 3, paragraph 6 of his evidence). Applying this national average decline percentage, a realistic worse-case population for the County would be around 11,750 pairs currently. Using this population estimate, the appeal site would host 0.094% of the Shropshire population and remains well below the 1% threshold cited by Ms. Corfe.

8.9 It is also relevant that Appendix F of Ms. Corfe's evidence, an extract from the 2022 Shropshire Bird Report, presents the current status of the species in the county as follows:

Shropshire Status:	Common Resident
Shropshire Conservation Status:	Green List (green being those of least concern)

By any metric, the appeal site is not exceptionally important for Skylarks.

8.10 With reference to the adequacy of bird surveys and the valuation of the Site, in paragraph 4.31 of her proof (final bullet point), Ms. Corfe states that the appeal site may have been undervalued for its breeding bird assemblage, again referring to the LWS selection criteria she presents as Table 1. The final row of Table 1 deals with valuing bird assemblages. This states that for a Site to be of LWS value (and therefore of County importance), it must support at least 50 breeding bird species.

8.11 The bird surveys of the appeal site identified 24 breeding species, which is typical number for an arable farm. Even if some species were missed, it is entirely unrealistic to consider that a further 26 breeding species could be present because the large majority of the appeal site is arable land which is widely acknowledged to be a very poor-quality habitat for all but a handful of breeding bird species (and more so for biodiversity in general).

8.12 In addition to Skylark, there were a further five Priority breeding bird species recorded as breeding on the appeal site in the 2022 surveys. These are Song Thrush, Linnet, Reed Bunting, Dunnock and Yellowhammer. All five species are afforded the same level of protection under the NERC Act as Skylark, but BoCC status varies (either red or amber listed). All five other Priority breeding bird species will be beneficially impacted by the proposed development; all are dependent on hedgerow and boundary features which will be retained and enhanced as part of the Proposed Development's BNG offering.

8.13 Further, other Priority (non-bird) species are likely to be present on or close to the appeal site, in particular Hedgehog, Brown Hare and Common Toad as well as various invertebrates. Great-crested Newt is also a Priority Species. These Priority mammal, amphibian, and invertebrate species will all benefit from the BNG delivered through the Proposed Development. Skylark has been afforded disproportionate weight by the Council and FNP during this appeal.

### **Mitigation and compensation**

8.14 As Mr. Fearn explained, for all other species, it is not usual to provide mitigation based on a definitive number of pairs or number of animals. Mr. Fearn said that he had never seen a development where the number of pairs of, for example, Linnet or Song Thrush are considered as the basis for mitigation, nor the number of Toads or Hedgehogs. In this case, on the basis of what the Council and FNP now say, this logic seems to apply only, and disproportionately, to Skylarks and this solar farm.

8.15 Even where a higher level of protection is awarded to a species (e.g. European Protected species), the test applied is to maintain the 'Favourable Conservation Status' (FCS) of that species, which is different from applying an absolute mitigation approach. There is simply no need to prove that the mitigation area can support 11 pairs of Skylark.



The test is whether or not the conservation status of this species is maintained, which, at any geographical scale beyond the appeal site itself, it would be.

8.16 In summary:

- (1) It is common ground between the Appellant and the Council that sufficient environmental information is available for the Inspector to make a lawful decision to grant planning permission. As a result, adequate information has been gathered for the purposes of impact assessment;
- (2) The number of Skylarks identified as breeding within the appeal site are consistent with average densities in published research (notably Fox 2022, CD 10.22). Adequate data for ground-nesting birds has been gathered. All other breeding bird species present on/around the site will be unaffected (as boundary features are retained and enhanced), and in fact will benefit from the proposed development.
- (3) Whilst breeding bird surveys of the proposed Skylark compensation area have not been undertaken, the relationship between Skylarks and habitat types is very well understood. Mr. Fearn and the decision maker can be confident about the levels of current usage of the compensation area by Skylarks. The compensation area is currently managed as 'intensively grazed pasture' which is a habitat demonstrated to support very low numbers of breeding Skylarks and which is at the bottom of the hierarchy;
- (4) Mr. Fearn provided an overview of the latest published research on the impact of solar farm developments on breeding Skylarks. The paper by Fox (2022) (CD 10.22) is particularly relevant, along with research published in 2023 by Solar Energy UK (CD 10.3). These key documents demonstrate that Skylarks are not entirely precluded from solar farms, and in fact will continue to forage within them. As such, the critical issue is the loss of a breeding location, rather than an absolute sterilisation of an area;
- (5) The Council accept that it would be lawful to attach a Grampian condition to any permission. The Appellant proposes the combination of a Grampian condition and Unilateral Undertaking to provide a robust mechanism for compensation. The Skylark Mitigation Strategy would follow the principles set out in the Skylark Mitigation and Management Plan produced by ADAS, the basic premise of which is to improve the area as much as possible for nesting Skylarks, so that it can absorb pairs displaced from breeding in the Appeal Site. The detail will be provided to and controlled by the Council;
- (6) The Skylark Mitigation and Management Plan allows for two scenarios so as to be adaptable in the event of a change of land management practices. The land has previously been managed under government funded agri-environment schemes (Countryside Stewardship and Higher-Level Stewardship), but these schemes ceased in 2022;
- (7) Mr. Fearn considers that, with the implementation of a Skylark Mitigation Strategy based on the Skylark Mitigation and Management Plan, the proposed development will provide adequate mitigation and compensation for land for 11 pairs of Skylark, not just in terms of numbers but also by improving breeding productivity due to increased invertebrate availability on a qualitative basis. The Skylark Mitigation Strategy would provide certainty of such measures over a 40-year period which would not be certain in the absence of the Proposed Development. As matters stand, agricultural and planning policy allows the farmer to change land use without consideration given to Skylarks;

- (8) Precisely how far up the hierarchy of habitat carrying capacity can be achieved will be a matter for discussion with and control by the Council. However, there is no reason why the Appellant cannot work with the Council to aim for as high up the hierarchy as possible, including Organic Set Aside. There are no hard impediments to this but the adequacy of the Skylark Mitigation Strategy does not depend on it. Non-organic set aside (or fallow land) would be a huge improvement in carrying capacity over the intensively grazed pasture land which is currently there;
- (9) The Appellant's approach to Skylark mitigation was prepared in collaboration with the Council's own ecologists, and Shropshire County Ecology did not object to the application, subject to delivery of suitable mitigation; and
- (10) It is agreed that pheasant shooting (and therefore disturbance) cannot overlap with Skylark breeding periods.

8.17 Some reliance has been placed by the Council and FNP on the appeal decision at *Manuden* (CD7.26) but this has been misread and requires careful reading. The Inspector was dealing with at least three species of Principal Importance and not just Skylarks (even though particular reference was made to them). Mitigation for Skylarks which was trailed in the Ecological Impact Assessment could not be made good because no legal agreement pursuant to section 106 was provided. Nor was there any indication given about where within the application site such mitigation could be provided. Finally, it was unclear about how provision could be made for other Species of Principal Importance such as Yellowhammer and Yellow Wagtail. Paragraphs 64 and 65 then provides as follows:

"64. The potential biodiversity improvements arising from the proposal are noted. These include improvements in foraging areas, in soil qualities, and in hedgerows. However, the proposal would result in significant harm to Species of Principal Importance and their habitats. This is harm that cannot be avoided, adequately mitigated, and there is no mechanism to secure compensation for. Paragraph 180 of the Framework indicates that planning permission should be refused in such circumstances.

65. The proposal in this case would fail to conserve and enhance biodiversity, the Duty of which falls on public bodies in England under Section 40 of NERC. It is contrary to Policy GEN7 of the LP which sets out that development that would have a harmful effect on wildlife will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation and where the site includes protected species or habitats for protected species measures to mitigate and/or compensate for the potential impacts of the development, secured by planning condition or condition, will be required."

References in paragraph 69 are to European Protected Species and not to bird species, which include Skylark but which are not limited to them, identified above.

8.18 Accordingly, no legal mechanism was in place to deliver any mitigation to any of bird species. In relation to Skylark, the position is completely different here; even on a worst case basis (which is not accepted), the number of displaced territories is nowhere near the number at Manuden. Further, as Mr. Fearn gave evidence, there is mitigation secured by both condition and legal undertaking which would benefit multiple other

species. In short, the appeal decision on Manuden, another case in which there was no inquiry to discuss the points fully, has been misread and relied on too heavily as a result.

- 8.19 In its unreasonably belated Supplementary Statement of 30th January, the Council questioned whether the application has considered the potential for Likely Significant Effects (LSE) on the Midlands Meres and Mosses Phase 1 Ramsar Site. This is a procedural requirement, is a separate issue entirely to that of Skylarks, was not raised in the planning officer's report and Natural England has not responded to the planning application. The farmer has made an application to change the compensation land from intensively grazed pasture to arable. That is a process completely divorced from this planning application and one over which the Appellant has no control. However, in the event that the planning permission is granted, the farmer would be legally bound to comply with the approved Skylark Mitigation Strategy, whatever that prescribes for the land.
- 8.20 Both the Council and FNP have sought to argue that imposition of a Grampian condition would be contrary to Circular 06/2005 on the basis that a condition cannot secure further surveys unless exceptional circumstances have been demonstrated. This is simply wrong. The Grampian condition simply requires submission and approval of a Skylark Mitigation Strategy. The detail of that will be discussed and agreed with the Council. Based on the evidence of Mrs. Metcalfe, Mr. Fearn and Mr. Heslehurst, no further survey work would be required in relation to this planning application. No permissions are required for The Berrington Pool Site of Special Scientific Interest (SSSI) is a component part of the afore mentioned Ramsar, and that the SSSI has been considered in the Appellant's EclA for the proposed development. All such procedural matters would be dealt with at the time the Appellant makes an application to discharge the Grampian condition. There is sufficient evidence and sufficient certainty to grant planning permission now.
- 8.21 A fully detailed cumulative assessment has not been undertaken following the conclusion in the EclA that no cumulative or residual impacts were anticipated.

## **9. Heritage**

- 9.1 Heritage matters have been dealt with in writing. For the reasons set out, the Appellant submits that there would be no harm caused to the significance of any designated heritage asset. The Council agrees with this view.
- 9.2 As with all heritage cases, care needs to be exercised during decision making. If the Inspector takes the view that some harm to the significance of a designated heritage asset would be caused, however slight, full regard should be had to the statutory duty in section 66(1) of the P(LB and CA) Act 1990 and national planning policy contained in the NPPF. Any such harm, were it to be identified, would be at the lowest end of Less than Substantial Harm and would be outweighed by the wider benefits of the scheme.

## **10. Concluding remarks**

10.1 The professional planning officers of the Council got it right. As Mr. Heslehurst concludes, the Appellant has given careful consideration to the reasons for refusal, relevant planning policy and other material considerations.

10.2 In terms of the planning balance:

### **Harm**

Landscape and visual amenity: Limited weight

Harm by reason of siting this solar farm on BMV land: Moderate weight at worst

Ecological harm can be satisfactorily mitigated: No harm or negligible harm if the view was taken that some displacement of Skylark territories would occur

### **Benefits**

Biodiversity: Significant weight

Renewable energy: Substantial weight

Economic diversity: Limited weight

10.3 In each case where any other impacts do arise, impacts would be of an acceptable level and can be mitigated. For the reasons set out above, elected members have overstated the level of harm and understated the degree of benefit. Nothing in the evidence produced by the Council or FNP would suggest that planning permission should be refused.

10.4 This is an important, policy compliant scheme which has been held up in the planning process because of politicised decision making on the part of the Council. This inquiry has been very helpful in illuminating the correct weight that should be attached to the various competing interests.

10.5 Bearing in mind all of the above submission and based on the evidence it will call, in due course, the Appellants respectfully requests that planning permission is granted for the proposed development in the form in which it has been sought.

**David Hardy (Partner)**

**11<sup>th</sup> March 2024**

**CMS Cameron McKenna Nabarro Olswang LLP**