

Opening Submissions on behalf of the Appellants

1. Introduction

1.1 This proposed 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 the Secretary of State and his appointed Inspectors have articulated multiple times, these benefits should carry 'significant' (or 'substantial', depending on the scale used) weight in the planning balance. The Berrington solar farm secured a grid offer in 2024 and if planning permission is granted, would get built and would contribute.

1.2 This is a scheme which was recommended for approval by the professional planning officers of the Council who understand the adopted development plan policies, who know the local area 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"

1.3 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. Surprisingly, 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.

1.4 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.

- 1.5 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.
- 1.6 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.
- 1.7 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. In this case, the Council has not attempted to allocate any sites for renewable energy schemes in its development plan.
- 1.8 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. 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.

2. Site selection and Best and Most Versatile Agricultural Land

Site selection

- 2.1 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.
- 2.2 Shropshire is an AONB authority with much of the south western portion within the AONB and its setting. The wider area is dominated by Best and Most Versatile agricultural land. This is a point made by the inspector in the recent *Ledwyche* appeal.
- 2.3 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) 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.

- 2.4 As above, 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 is very helpful in this regard and is commended to this inquiry.
- 2.5 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.
- 2.6 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*.
- 2.7 As Mr. Heslehurst comments in his evidence, it is not in a developers 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.
- 2.8 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.
- 2.9 The appeal scheme falls to be determined on its merits and upon consideration of the detailed evidence now before this inquiry, it is clear that the impacts arising from the proposed development would be acceptable in all regards.

Best and Most Versatile Agricultural Land

- 2.10 Policy and guidance is clear that you 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.
- 2.11 As above, the surrounding area is dominated by BMV Land with a high likelihood of BMV. This was noted at Ledwyche. 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.

- 2.12 The Council and Rule 6 party has criticized the Appellant for not undertaking soil surveys on alternative sites. 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.
- 2.13 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 it's pre-development condition. Ms Metcalfe also points out that there is the potential for improvement of the soil quality.
- 2.14 The Council has not submitted any evidence to suggest there is anything like a food security crisis. Ms Metcalfe's evidence suggests the UK is relatively self-sufficient. The site will continue to be used for livestock grazing, which is directly beneficial to food security.
- 2.15 One of the greatest threats to food security is of course climate change and biodiversity loss, both of which will be positively addressed by the proposals. The Appellant would draw attention to the very recent *Marden* decision, which directly addressed these matters.

3. Landscape and visual impacts

- 3.1 Unusually for a solar farm case, much of the evidence relating to landscape and visual harm is agreed. A Statement of Common Ground has been prepared. 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.

4. Ecology and biodiversity

- 4.1 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. These are important benefits to be weighed in the planning balance.
- 4.2 The issue of birds and this solar farm has been blown out of proportion by the Council and the Rule 6 party. In summary:
- (1) As Mr. Fearn concludes, adequate information has been gathered for the purposes of impact assessment. 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.
 - (2) 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 is confident about the levels of current usage of the compensation area by Skylarks. The compensation area is currently managed as 'intensive grazing' which is a habitat demonstrated to support very low numbers of breeding Skylarks;
 - (3) Mr. Fearn provides 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;
 - (4) 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 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 are reported to have ceased in 2022;
 - (5) 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 sufficient land for at least 11 pairs of Skylark, improve breeding productivity due to increased invertebrate availability and provide certainty of such measures over a 40-year period, and which would not be certain in the absence of the Proposed Development;
 - (6) 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;

- (7) pheasant shooting (and therefore disturbance) occurs during the winter (non-breeding) season, and predator control associated with pheasant rearing is likely to be in place to minimise harm to pheasants prior to release.

4.3 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 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.

4.4 A fully detailed cumulative assessment has not been undertaken following the conclusion in the EclA that no cumulative or residual impacts were anticipated.

5. Heritage

5.1 Heritage matters have been dealt with in writing. Whilst 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, the Appellant submits that there would be no harm caused to the significance of designated assets.

6. Development plan

6.1 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

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

6.2 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.

6.3 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'

6.4 Flour Not Power only alleges breaches with three policies in the Local Plan as set out in the Reasons for Refusal:

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

6.5 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

6.6 The Local Plan Review does not currently allocate any sites for solar development or identify where such development should occur. The Local Plan Review does not propose any new designations on the site.

7. Concluding remarks

7.1 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. Harm to landscape and visual amenity would be limited. Harm by reason of siting this solar farm on BMV land would be moderate. Ecological harm can be satisfactorily mitigated. Biodiversity benefits would be significant. Renewable energy benefits would be substantial. In each case where impacts do arise, impacts would be of an acceptable level and can be mitigated. Elected members have overstated the level of harm and understated the degree of benefit.

7.2 Nothing in the written evidence from the Council would suggest that planning permission should be refused. Nothing that has been seen from local residents would warrant refusal of planning permission. All matters that have been raised can be dealt with by way of planning condition or do not raise an impediment to the grant of planning permission at all.

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

David Hardy (Partner)

5th March 2024

CMS Cameron McKenna Nabarro Olswang LLP