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## Appeal Decision

Inquiry Held on 5 – 8 and 11 March 2024

Accompanied site visit made on 4 March 2024

Unaccompanied site visit made on 14 March 2024

**by David M H Rose BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26<sup>th</sup> March 2024**

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**Appeal Reference: APP/L3245/W/23/3332543**

**Land west of Berrington, Shrewsbury, Shropshire, SY5 6HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Econergy International Ltd against the decision of Shropshire Council.
  - The application Reference 22/04355/FUL, dated 26 August 2022, was refused by notice dated 16 May 2023.
  - The development proposed is: 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.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

#### Reasons for Refusal

2. The planning application was refused by Shropshire Council against Officer recommendation. The reasons given, in short, were:
  - (i). Loss of Best and Most Versatile Land – '*..... it is not considered that the applicant's justifications for this choice of site are sufficient to outweigh the adverse impact of losing the arable production potential .....'*
  - (ii). Adverse Visual Impact – '*..... potential to adversely affect the local landscape and visual amenities .....'*
  - (iii). Adverse Ecological Impact – '*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 .....<sup>1</sup>*

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<sup>1</sup> At the Inquiry it was conceded that the shooting and nesting seasons did not coincide and this part of the reason for refusal was not pursued

### Case Management Conference

3. I held a Case Management Conference on 4 January 2024, attended by the Council, the Appellant and the Rule 6(6) Party, Flour not Power, to discuss administrative and procedural matters. I set out the main issues, based on the reasons for refusal. In addition, in light of identified heritage assets within the locality of the appeal site, I included a further issue to reflect my statutory duty.
4. It was subsequently confirmed that Flour not Power intended to present evidence on selected heritage assets. This was set out in an addendum to its statement of case<sup>2</sup>. The Appellant provided a Heritage Note by way of response<sup>3</sup>; and Flour not Power submitted a Built Heritage Reappraisal<sup>4</sup>. It was agreed that the heritage issue would be considered on the basis of the written evidence provided.

### The Inquiry

5. The Inquiry was held in person on 5 – 8 March 2024 with closing submissions presented virtually on 11 March 2024. Prior to opening, I was informed by the parties that Flour not Power’s landscape witness would be unable to attend the Inquiry due to unforeseen compelling personal circumstances. The parties indicated that they would be content to table all of the landscape evidence in writing, so as to avoid adjournment and delay. I confirmed that the evidence could be considered in this way.
6. Two further matters are to be recorded. First, Notice No 1 was served, belatedly, on the Council, as landowner, on 19 February 2024, relating to a short section of cable route within the highway. At the opening of the Inquiry, the 21 day period for representations had not run its course. However, no representations have been submitted subsequently.
7. Second, a minor drafting error on the red line boundary of the application site had been identified by the Appellant. This relates to the north-western edge of the appeal site and the inclusion of a small strip of land that does not appear in the landowner’s title. No development or landscaping is proposed on that land. I am satisfied, absent any adverse representations, that the revised plan, and consequential amendments to other drawings, would not amount to a fundamental change to the application or result in procedural unfairness.

### Main Issues

8. At the opening of the Inquiry I announced the main issues as follows:
  - 1) The landscape and visual effects of the proposal, including the effects on users of public highways and on public viewpoints, taking account of the proposed mitigation measures<sup>5</sup>.
  - 2) The implications of, and the weight to be given to, the loss of best and most versatile agricultural land.

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<sup>2</sup> CD 4.14

<sup>3</sup> CD 12.8

<sup>4</sup> CD 14.3 Prepared by Dr Tim Jenkins, PhD, MA, BA(Hons) FRSA, FRHistS

<sup>5</sup> This issue differs from that identified at the Case Management Conference by the addition of the words ‘including ..... viewpoints’ to reflect the evidence presented

- 3) Whether the proposed off-site mitigation<sup>6</sup> would provide an appropriate safe and undisturbed environment for successful Skylark nesting.
- 4) The effect of the proposal on the setting and significance of heritage assets.
- 5) The nature and extent of the benefits of the proposal and whether these would outweigh any harm arising from the issues above.

## Reasons

### Issue One:

#### **The landscape and visual effects of the proposal, including the effects on users of public highways and on public viewpoints, taking account of the proposed mitigation measures**

#### **Introduction**

9. There is no dispute about the methodology used relating to landscape character and visual effects, including viewpoints and visualisations. It is common ground that the appeal site and the majority of the study area falls within the Estate Farmlands Landscape Character Type (LCT). It is also agreed that the site is not a 'valued landscape' for the purposes of paragraph 180 a) of the National Planning Policy Framework (the Framework).

#### **Landscape character**

10. The Shropshire Landscape Typology identifies the key characteristics of the Estate Farmlands as mixed farming land use; clustered settlement pattern; large country houses with associated parklands; planned woodland character and medium to large scale landscapes with framed views. They are described as gently rolling lowland and valley floor landscapes.
11. The parties agree, in general terms, that the landscape typology, as a whole, is capable of accommodating the sort of development proposed. The material difference arises in relation to the judgements on the landscape character of the appeal site and its immediate locality with Flour not Power promoting 'high' rather than 'medium' sensitivity. This is based largely on the openness of the site, in part; its elevation; lack of planned woodland blocks; and absence of framed views.
12. The Appellant acknowledges that there would be visibility of the south facing slopes within the appeal site, from the open countryside, which would extend to approximately 0.5km from the appeal site. The site is judged to be of high, rather than medium, susceptibility to the changes arising from the appeal proposal based on the consideration of the nature of the local landscape, which is currently undeveloped open countryside, and its relative openness to views from the south. I agree.
13. However, I disagree with the Appellant's claim that '*The site does, however, have some ability to accommodate the proposed development by building on the existing green infrastructure which is typical of the Estate Farmlands LCT which would help minimise the change to its baseline character*<sup>7</sup>'. In this regard, although the proposal would retain as many landscape features as possible, and provide reinforcement of hedgerows and additional planting, none of this would ameliorate the inevitable change to the baseline character when assessed in the locality of the site to the south.

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<sup>6</sup> 'mitigation' reflects the reason for refusal 3 – hereafter referred to as 'compensation' to reflect evidence

<sup>7</sup> CD 12.4 paragraph 6.2.4

14. I accept the Appellant's judgement on value and susceptibility, together, for the landscape character type. However, I consider that the lack of visual containment to the south of the appeal site, in particular, undermines the ability of the landscape to absorb the sort of development proposed without a fundamental change to its character at a localised level.
15. The Appellant's assessment of landscape effects during construction acknowledges that *'the character would change from relatively tranquil agricultural fields to a construction site with commensurate short-term movement and activity'*. Whilst localised in relation to the Estate Farmlands as a whole, activity is likely to be large in scale, intense and pervasive, spreading across a wide tract of open aspect countryside landscape. In my opinion, the Appellant has underestimated the 'short-term' effects.
16. The Appellant indicates that during operation, the overall effects at site level would be 'major/moderate' adverse and permanent. From the immediate locality it is said that *'The solar panels and ancillary equipment would permanently alter the character of the site from an arable field, however, the pastoral grassland beneath the panels would retain an element of agricultural use and the tranquility [sic] of the site would be largely unaffected. In addition, the appeal proposals would not affect the openness or scale of the landscape as it would not affect topography and would sit within the existing field structure'*.
17. To my mind, the perception of a retained agricultural use would be minimal as a significant part of the appeal site would be dominated by the proposed solar panels and related infrastructure. The appeal site would take on a wholly different character, and the nature and scale of the development would inevitably diminish the openness of the landscape, by spreading an incongruous form of development across a wide swathe of countryside, and fracturing its continuity.
18. Moreover, lines of rigid arrays, running counter-intuitively to site contours and aspect, would introduce disorder and conflict with the undulating topography of the appeal site. Although the proposal would sit within the existing field structure, this would offer little consolation to the undeniable serious adverse effect on landscape character at the local level.
19. The Appellant states that the changes *'..... would result in medium scale effects initially which would reduce to medium/small over the long term as the proposed planting matures; the landscape structure of the site would be strengthened albeit solar panels would remain perceptible on land as it rises to the north of the site'*. Again, whilst acknowledging that the maturity of the landscape structure will improve over time, I consider that its capability to absorb the development to any material degree would be minimal, given the nature of site topography and the limitations in the ability to secure meaningful foreground softening and filtering from the south.
20. In summary, I consider that the appeal proposal would have minimal effect on the Estate Farmlands typology. However, even with the benefit of intended mitigation, the proposed development would have a significant adverse impact on landscape character at the local level.

#### **Visual effects**

21. The parties agree on the assessment of the value and susceptibility of visual receptors with a 'high' sensitivity for users of public rights of way and

residential properties and a 'medium' sensitivity for road users in the vicinity of the site. I shall review the differing judgements reached by the parties on effects by reference to the main viewpoints in dispute.

**The public highway to Cantlop Mill (Viewpoints 2, 3, 4, 5 and 6)**

22. The single track public highway runs between the eastern and western fields of the appeal site and terminates at the former mill. It serves the residents of the former mill and also those who choose to walk the lane to, and beyond, the mill in the direction of Cantlop (noting the adverse condition of part of the route beyond the mill).
23. Although Flour not Power suggests that these viewpoints have been selected where there is optimal vegetation and where the road is sunken, I am satisfied that they are representative.
24. Indeed, much of the lane is bordered by hedgerow and parts of the route lie well below field level. Flour not Power's assertion that field hedgerows are '*..... degraded and gappy, outgrown and missing (in places) .....*' is overstated, in my view, and supplementary planting and management would be capable of remedying deficiencies within a modest timescale.
25. Starting with the construction phase, receptors would be able to see the progression of construction activity, either directly, obliquely or glimpsed, as it evolves on either side of the lane. This would be particularly acute where the access track crosses the highway from the western parcel and into the eastern field. The Appellant accepts that the scale of change for users of the lane would be 'large/medium' over a localised extent and short duration. In my opinion, as the highway passes between the two parcels of the construction site, I would assess the scale of change to be within the upper part of that range.
26. Taking the lane from the junction with Cliff Hollow Road, users would have more-or-less unimpeded views of the north-western sector of the eastern field parcel. This represents a small part of the overall development and prominence would be restricted to about 100m of the road. However, the nearest line of arrays, beyond the new boundary fence, would represent an immediate focus, above very limited foreground vegetation, at or near the break between land and sky. Nonetheless, reinforcement tree and hedgerow planting along the northern boundary would, at year fifteen, be capable of reducing the adverse impact to some degree.
27. The most telling impacts would be in the vicinity of the crossing points, where open gaps would provide views across the development parcels bringing the scale of the overall project to the fore. Although the panels would be set back from the road, the alignment of the arrays, parallel with the road and forming a seemingly unbroken mass, would be particularly noticeable, incapable of mitigation and highly uncharacteristic.
28. Elsewhere along the lane, impressions of the development would be fleeting and heavily filtered and reducing as hedgerow reinforcement matures.
29. Despite the harmful effects that I have described, these would not amount to '*a visually oppressive effect for users of the publicly maintained highway leading to Cantlop Mill .....*'<sup>8</sup> as alleged.

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<sup>8</sup> CD 3.2 Reason for Refusal 2; CD 4.11 paragraph 28

**Public Rights of Way 0407/16/1 (Viewpoint 11) and 0407/1/1 (Viewpoint 12)**

30. These two public rights of way run to the east of the appeal site with the former being the closer of the two. In addition, viewpoint 11 observes the eastern parcel at or close to the skyline, whereas in viewpoint 12 the eastern field sits firmly in a layered landscape with distant backdrop hills.
31. Given the manner in which these routes have wide and varied aspect, combined with undulating topography and vegetation, I disagree with Flour not Power's assessment that the magnitude of change from construction activity would be major adverse on the premise that the project, or part of it, would become the dominant feature or focal point of the view.
32. As to the operational phase, users of public right of way 0407/16/1 would experience the greater impacts, albeit views of the eastern field are not continuous as a result of undulating topography and intervening hedgerow boundaries.
33. Where there is open aspect, a wide expanse of the arrays would be highly dominant and intrusive in the mid-ground. They would be seen rising towards the crown of the eastern field and viewed either close to, or - in the case of the north-eastern corner - above the skyline. This would be in stark contrast to the backdrop hills to the west. On this basis, any reinforcement of the eastern boundary of the eastern parcel, by way of hedgerow planting and tree cover, would have minimal perceptible mitigating effect and the adverse intrusive impacts of the development would remain apparent for the duration of the project

**Public Right of Way 0407/5R/2 (Viewpoint 15)**

34. The right of way is situated some 0.5km (nearest point) south/south-west of the two appeal site parcels and directly west of the hamlet of Cantlop.
35. The two fields form a wide, almost continuous, arc in the undulating countryside. During the construction phase, the quintessential, tranquil, agricultural character and appearance of the appeal site would progressively give way to extensive change in the landscape with related activity and new infrastructure.
36. On completion, as with the construction phase, the entirety of the development would not be visible in a single view. The western parcel benefits from some screening from woodland outside its south-western corner and the lower sections of both fields are masked to varying degrees by vegetation and/or topography.
37. Nonetheless, the viewer would be looking over falling ground towards the Cound Brook and its vegetated corridor. The related rise in topography and the placing of arrays on ascending ground, across a wide swathe of countryside, would have a long-term marked adverse effect on visual amenity and the experience of walking to and from Cantlop. Additional landscaping, reinforcing the foreground hedgerows of the appeal site, would offer little solace to the overall extensive adverse impact.
38. For completeness, albeit not of any great importance, a significant part of the development in the western parcel, and a small element in the eastern



parcel, would be clearly visible from a field gateway (viewpoint 17) at the crossroads junction leading into Cantlop.

39. More significantly, from the unnamed road in Cantlop (Viewpoint 14), sizeable portions of the installation in the eastern sector of the western field and across the eastern parcel would be an inevitable large scale blemish on the landscape for the duration of the development. Whilst there is no alleged impact on the amenity of residential properties in this part of the hamlet, local residents would experience the transformation to the rural landscape on a daily basis.

**Other local highways (Viewpoints 1, 7, 9 and 19)**

40. Starting with Cliff Hollow Road, beyond the lane to Cantlop Mill (viewpoint 1), much of the single-width road is bordered by hedgerow or sunken below the site, with the exception of two distinct field openings which would provide oblique views into the western parcel.
41. Construction phase effects would be localised and limited. On completion, the arrays would be set back at varying distances from the road and with hedgerow reinforcement, where necessary, the majority of the infrastructure would not be discernible. Despite the illustrated dense tall planting proposed at viewpoint 1, resulting in the loss of an extensive vista, I consider that it would be possible to devise a scheme that would provide a better balance between mitigation and the open aspect at this point.
42. Continuing with Cliff Hollow Road, between Berrington and the lane to Cantlop Mill (viewpoint 7), impacts would be contained to a small part of the eastern parcel and a minor part of the western field. These are likely to remain for the former during the operation of the installation.
43. The road from Newmam Hall Cottages into Berrington, borders the eastern boundary of the eastern parcel. Hedgerow precludes or filters views into the field which would limit construction phase effects and, with hedgerow reinforcement, any longer term effects would be minimal.
44. Viewpoint 19 relates to the north-western corner of the western parcel which sits well above road level and is bordered by a good hedgerow. It is representative of the road from the Cliff Hollow crossroads leading to the main site entrance. Impacts here, either during the construction or operational phases would be very minor.

**Conclusion**

45. It is acknowledged that the Officer Report restricted its reference to visual impacts to those at Cantlop and from the road leading to Cantlop Mill. Moreover, the Council's landscape adviser had supported the Appellant's Landscape and Visual Assessment methodology and conclusions that *'the proposals can be accepted in terms of visual and landscape effects'*<sup>9</sup>.
46. I also note that the Council's landscape evidence accepts the landscape effects assessed by the Appellant; and the visual effects on local residential properties are also agreed. The assessed effects on users of three public rights of way are also confirmed.
47. The Council's decision to refuse planning permission, reason two, alleged adverse visual impact at the two locations referred to by the Officer and

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<sup>9</sup> CD 3.1 paragraphs 6.5.7 & 6.5.8

added other publicly accessible views from the Berrington Road and the Eaton Mascot Road. Further 'affected' locations have arisen from public representations and the evidence for Flour not Power.

48. Taken in the round, it is my judgement that the proposed development would have a significant adverse effect on landscape character by changing its fundamental characteristics of a medium to large scale landscape at a local level.
49. In terms of visual effects, there would be some marked adverse effects arising from the construction phase but, more typically, from the long-term operational phase. Although these would not be consistent around the site, the most telling adverse effects would be from a southerly direction, reflecting the predominantly open southerly sloping orientation of the appeal site. The limitations of existing foreground filtering and the limited opportunity to remedy this through supplementary planting are a significant negative factor. The adverse impact of the scheme viewed from parts of public right of way 0407/16/1, in particular, is also an important factor.
50. In strategic policy terms, Core Strategy Policies CS6 and CS17, in short, require all development to (at least) protect the natural environment taking into account local context and character. SAMDev<sup>10</sup> Policy MD12 is of similar vein, cross-referenced to the above policies, and indicates that proposals having a significant adverse effect on '*..... visual amenity and landscape character and local distinctiveness*' will only be permitted if it can be clearly demonstrated that '*the social or economic benefits of the proposal outweigh the harm to the asset*'.
51. It is also relevant to recount the Planning Practice Guidance which advises: '*The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively*'.
52. Indeed, the Appellant does not shy away from acknowledging that the long-term effects would be '*moderate adverse and permanent*' and '*views from the south and east would be difficult to screen further*' beyond the mitigation proposed<sup>11</sup>.
53. Overall, whilst some landscape and visual harm is generally to be expected from solar developments of the scale proposed, and found to be acceptable, in this instance the extent of the appeal site, its topography and open aspect to views from the south and east, and the limited effects of minimising those, indicate significant negative weight should be carried into the planning balance within the fifth main issue.

**Issue Two:**

**The implications of, and the weight to be given to, the loss of best and most versatile agricultural land**

**Policy and guidance**

54. With reference to best and most versatile agricultural land, Core Strategy Policy CS6 requires all development to make the most effective use of land, including high quality agricultural land.

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<sup>10</sup> Site Allocations and Management of Development Plan (2015)

<sup>11</sup> IN20 paragraph 7.3 (11)



55. Policy DP26 (2k) of the Draft Local Plan, in relation to large scale ground mounted solar farm proposals, indicates that *'where a proposal requires the use of agricultural land, poorer quality land should be used in preference to land of a higher quality (see also Policy DP18)'*.
56. Policy DP18 (5) encourages the re-use of brownfield land; and DP18 (4) confirms that *'development should avoid Shropshire's best and most versatile agricultural land (grades 1, 2 and 3a) wherever possible, unless the need for and benefit of the development justifies the scale and nature of the loss'*.
57. In turn, the Framework, at paragraph 180, explains that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, *'recognising the intrinsic character and beauty of the countryside ..... including the economic and other benefits of the best and most versatile agricultural land .....'*
58. Footnote 62, in relation to paragraph 181 and guidance on plans, tells us: *'Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality .....'*
59. Allied to this, the Planning Practice Guidance<sup>12</sup> also confirms that *'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 .....'*
60. A further material consideration is the Written Ministerial Statement, made on 25 March 2015, which predated the Practice Guidance. By way of extract: *'Meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes unnecessary use of high quality agricultural land ..... we want to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence'*.
61. Most recently, National Policy Statement for Renewable Energy Infrastructure (EN-3)<sup>13</sup> states: *'While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of "Best and Most Versatile" agricultural land where possible'*.
62. Drawing these threads together, none of the documents, in particular the development plan, place an embargo on the use of best and most versatile agricultural land. In terms of material considerations, the Draft Local Plan, in general terms, follows the thrust of the Framework, the Planning Practice Guidance and EN-3. The Written Ministerial Statement, with its 'higher bar', remains extant alongside subsequent guidance.

#### **Site selection**

63. The Sequential Site Selection Report<sup>14</sup> accompanying the planning application, which claimed to have taken a *'robust approach to identify sequentially preferable sites for the proposed development'*, was criticised, by the Council, in the choice of brownfield sites for assessment and the failure to consider any other greenfield sites.

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<sup>12</sup> CD 6.2 Renewable and low carbon energy – Published 18 June 2015; last updated 14 August 2023

<sup>13</sup> CD 6.4 Paragraph 2.10.29 (November 2023)

<sup>14</sup> CD 1.13

64. The later Sequential Site Selection Report Addendum: Sites Assessment<sup>15</sup> was also derided by reference to its limited area of search, the size of land parcels assessed, lack of detail and the likelihood of lower grade agricultural land based on Natural England's Agricultural Land Classification (ALC) mapping.
65. It is evident that the key factor defining the area of search was based on the offer of a grid connection between the substations at Bayston Hill and Cross Houses. Whilst like-for-like land parcels might have been to some advantage, the document is in summary form and the ALC mapping identifies much of the land in the same category as the appeal site (60% probability of best and most versatile agricultural land).
66. To my mind, based on the critical importance of a viable grid connection, a 3km search area appears proportionate in the circumstances of this case. There are also a number of other important factors, described in the Addendum, which explain the exercise adopted by the Appellant.
67. It is easy for opponents to claim 'fundamental flaws' in the process by suggesting that there are large areas of likely poorer quality land elsewhere (mainly in the north of the county); there is no requirement to approach other landowners; and the analysis by sub-dividing one of the larger parcels identified in the Addendum, and surmising suitability, appears to be ruled out by the likelihood of another party promoting a scheme in the future.
68. Moreover, there is no policy requirement to carry out an evaluation of alternative sites or guidance on the contents of such reports. Understandably, they will be at a relatively 'high-level', as detailed assessment of sites within a given radius would be disproportionate. In any event, it would not be feasible to carry out detailed ALC assessments, for example, without the permission of landowners.
69. Further, the legal position is common ground with reference to *Bramley*<sup>16</sup> in which it was held '*..... the PPG does not mandate the consideration of alternatives. Still less does it require a sequential test be adopted .....'*

#### **Agricultural land quality**

70. I now turn to the site specific considerations and the composition of the appeal site in terms of agricultural land quality. It is common ground that approximately 88% of the land surveyed within the site is best and most versatile agricultural land.
71. The Agricultural Land Classification Survey<sup>17</sup>, that accompanied the planning application, reports 22.4ha of Grade 2 land; 12.4ha of Subgrade 3a land; and 4.9ha of Subgrade 3b land. It is recorded that 1.7ha was not surveyed.
72. The underlying geology is the Salop Formation – a mudstone and sandstone conglomerate. The soils over much of the site are shown as predominantly deep reddish fine loamy soils with some deep well drained coarse loamy soils, which are widespread across the district and the wider region.

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<sup>15</sup> CD 4.5

<sup>16</sup> CD 7.1 *Bramley Solar Farm Residents Group and Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 2842 (Admin)* before Mrs J Lang DBE (15 November 2023)

<sup>17</sup> CD 1.3

73. Flour not Power criticises the ALC for not mapping land of Grade 1 quality within the site. However, whilst it would have been possible to do so, there is no obfuscation as the survey details, within Appendix 3, identify those auger borings where Grade I land was found. Indeed, some 13 of the 41 sample points indicated Grade 1 land, grouped in the south-western and south-easterly corners of the western field and in similar locations in the eastern field. These tend to be within the more acutely sloping parts of the appeal site.
74. Whilst the key to the auger records lists ten potential limitations, including 'gradient', only two are recorded in the table of survey details, namely 'droughtiness' and 'wetness'. It is also noted that the Executive Summary to the ALC notes *'The main limitations to the agricultural use of the land include soil wetness or soil droughtiness'*.
75. Moreover, paragraph 1.1 states: *'The land is [sic] falls very gently (0- 3°) from the boundary with Cliff Hollow to the southern boundary. In the north-western part of the site there is a 'valley' feature with some slopes of 8°*. The MAFF guidelines<sup>18</sup> indicate the gradient limit for Grades 1 and 2 and Subgrade 3a to be of 7°.
76. The Appellant's proof, reinforced in evidence at the Inquiry, acknowledges the presence of Grade 1 profiles within the appeal site, noting that *'in the south part of the site the soil textures are variable and the land falls to the field boundary'*. Although recording in the ALC appears to have been somewhat superficial and vague, it is evident to me that parts of the appeal site are likely to be constrained by gradient.
77. On this basis, I accept that the surveyor undertaking the ALC was entitled, as a matter of professional judgement, to take a rounded view having particular regard to the MAFF descriptions of ALC grades and subgrades. In addition, the guidelines provide a framework for classifying land, recognising the effects of limiting factors and that variability within a discrete area is to be expected<sup>19</sup>; and the implications for soil management, cropping decisions and yields.
78. Flour not Power also suggested that some of the limitations could be remedied by irrigation. This would elevate a further four auger locations to Grade 1, three of which would be adjacent to other Grade 1 borings, and uplift three borings from Subgrade 3a to Grade 2. It acknowledges, however, that upgrading the land due to irrigation would not change the overall percentage of best and most versatile agricultural land within the appeal site.
79. It remained in dispute as to whether or not the MAFF guidelines on irrigation continued to be a relevant factor after 1997. Either way, and irrespective of the reservoir adjacent to the appeal site boundary, there is nothing to suggest that the discreet areas of 'better land' would determine the overall characteristics and use of either of the two fields forming the appeal site.

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<sup>18</sup> CD 9.1

<sup>19</sup> CD 9.1 – The Inspector notes that the guidance expects this to be identified where the mapping scale permits as indicated by Flour not Power

### **Construction and operational effects**

80. The primary comprehensive Statement of Common Ground between the Appellant and the Council accepts that the proposal is temporary; it will not result in permanent loss of agricultural land subject to adherence with a Soil Management Plan; and some agricultural activity, such as grazing, could continue during the operational phase.
81. In turn, the soil specific Statement of Common Ground between the Appellant and Flour not Power confirms that the outline soil management plan sets out the best practice methodology for the management of the soil resources; and that a detailed management plan can be prepared for the whole life - from pre-construction to decommissioning of the proposed solar farm - to ensure the protection and conservation of all soil resources and follow best practice to maintain the physical properties of the soils on site.
82. Two related points of dispute are whether there is an adverse impact resulting from the loss of arable production potential during the lifetime of the development; and whether the site would be capable of being reverted to best and most versatile agricultural land.
83. The Planning Practice Guidance confirms that the consideration of whether continued agricultural use is a material factor; and indicates that solar farms are normally temporary structures and planning conditions can be imposed to ensure the land is restored to its previous use.
84. National Policy Statement EN-3 explains that *'where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use .....'* It also encourages the development and implementation of a Soil Resources and Management Plan and confirms that a *'time limited consent, where granted, is described as temporary because there is a finite period for which it exists .....'*<sup>20</sup>.
85. The same document provides some detail in relation to mitigating potential effects on soils as follows: *'The Defra Construction code of practice for the sustainable use of soils on construction sites<sup>21</sup> provides guidance on ensuring that damage to soil during construction is mitigated and minimised. Mitigation measures focus on minimising damage to soil that remains in place, and minimising damage to soil being excavated and stockpiled. The measures aim to preserve soil health and soil structure to minimise soil carbon loss and maintain water infiltration and soil biodiversity. Mitigation measures for agricultural soils include use of green cover, multispecies cover crops - especially during the winter - minimising compaction and adding soil organic matter<sup>22</sup>.*
86. These extracts, in particular, undermine Flour not Power's view that *'there is little evidence provided that the site will ever return to formal agriculture, let alone arable farming, or that its fertility and soil health will be maintained'*. Further criticism is made of the content of the ALC and the outline soil management plan.
87. The declared purpose of the Soil Management Plan (Outline) is: *'to ensure the protection and conservation of soil resources on site; identify best practice to maintain the physical properties of the soils on site; provide on-site reference on the*

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<sup>20</sup> CD 6.4 paragraphs 2.10.32; 2.10.34; 2.10.66

<sup>21</sup> CD 9.2

<sup>22</sup> CD 6.4 paragraph 2.10.27

*management of the soil resource for site operators’; and ‘to ensure that the land is physically capable of reverting to arable production at the end of the life of the solar farm’.* It would apply at each of the three stages of the project, namely, construction, operation and de-commissioning.

88. I am satisfied that the document follows good practice, developed and established over a number of years and supplemented by the recent IEMA *‘A New Perspective on Land and Soil in Environmental Impact Assessment’*<sup>23</sup>. Draft condition 25 would secure further details before works could commence.
89. Although particular concern has been expressed about soil compaction, such factors as soil texture, moisture content and soil condition would be assessed; and works and trafficking would be controlled through the appropriate site management of operations in accordance with the scheme to be approved.
90. Indeed, whilst I acknowledge the concerns raised, the evidence of Flour not Power’s expert witness admits, having illustrated the kinds of soil structural damage that can occur, that *‘a detailed soil management plan is essential for the construction operation and decommissioning of the Solar Site’*<sup>24</sup>.
91. Overall, given the ability to determine methods of working with appropriate safeguards and monitoring, I am satisfied that soil structure, health and future productivity could be maintained.
92. Finally, although grazing livestock amongst solar arrays is not without difficulty, the Agricultural Good Practice Guidance for Solar Farms<sup>25</sup> confirms the common practice of grazing the land between and underneath the solar arrays typically by sheep or free-ranging poultry. It also sets out times when grazing might be restricted and indicates when pasture management interventions might be required.
93. In this regard, draft condition 21 would secure a scheme providing measures to facilitate sustainable grazing, including grass sward specification, potential stocking type and density and a monitoring regime. Whilst Flour not Power claims that *‘the reality is that ‘nothing’ grows under the panels, or that only weeds grow and must be sprayed’*, the Natural Capital Best Practice Guidance provides cogent reassurance.
94. Although maligned as an ‘industry publication’ under the banner of Solar Energy UK, the Forward is written by the Chair of Natural England. Whilst much of the document is aimed at natural capital enhancement, the role of sheep-grazing is recognised and guidance is provided on operational measures for grassland management and *‘control of injurious weeds’* without extensive recourse to chemical controls. Moreover, the single axis tracker system and employment of panels oriented east-west, as opposed to fixed tilt panels facing south, is likely to reduce under-panel shading.
95. Overall, I conclude that in relation to the construction, operational and decommissioning phases, there is nothing of substance to counter the Appellant’s position that the physical characteristics of the soil, subject to safeguarding measures, and land quality would remain at the end of a forty-year temporary permission.

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<sup>23</sup> CD 9.10 Institute of Environmental Management & Assessment (IEMA) Guide – February 2022

<sup>24</sup> CD 14.2 paragraph 5.25

<sup>25</sup> CD 9.3



### **Food production and food security**

96. Paragraph 124 b) of the Framework recognises the role of land for food production and Footnote 62 to paragraph 181 states: *'The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development'*.
97. It is understandable that the consideration of food security has attracted greater prominence with recent conflict in Ukraine and the Middle East. Prior to these events, the Agriculture Act 2020 imposed a new duty on the relevant Secretary of State to report to Parliament on food security in the United Kingdom at least once every three years.
98. The UK Food Security Report 2021, a weighty document, reflects the statement *'Food security has many dimensions. As a topic, it encompasses the state of global agriculture and markets on which the UK is reliant; the sources of raw materials and foodstuffs in the UK and abroad; the manufacturing, wholesale, and retail industries that ultimately bring food to shelves and plates, and their complex supply chains of inputs and logistics; and the systems of inspection that allow consumers to be confident their food is safe, authentic, and of a high standard'*<sup>26</sup>.
99. The document acknowledges that although the UK is around 75% self-sufficient in foodstuffs that can be produced domestically, almost half of food consumed in the UK is imported. It notes, under the heading *'Theme 1: Global Food Supply'*, that *'global food supply and availability has improved since 2010, which is a positive sign for the UK's overall food security'* and *'projected growth in agricultural production will be largely due to increasing cereal yields and efficiency improvements in meat and dairy production .....'* However, it warns that *'several factors threaten the stability and long-term sustainability of global food production: climate change and climate variability, biodiversity loss .....'*
100. A key message from *'Theme 2: UK food Supply Sources'* is: *'the biggest medium to long term risk to the UK's domestic production comes from climate change and other environmental pressures like soil degradation, water quality and biodiversity. Wheat yields dropped by 40% in 2020 due to heavy rainfall and droughts at bad times in the growing season. Although they have bounced back in 2021, this is an indicator of the effect that increasingly unreliable weather patterns may have on future production'*.
101. The two fields within the appeal site are currently used for arable crop production, on rotation, that can be used for food production or animal feeds, with oil seed rape also having industrial applications. It is estimated that the yield from a wheat crop covering the appeal site would be some 0.002% of the national yield and about 0.003% for an oat crop. The contribution to the county's cereal yield would be about 0.06%.
102. It can be seen that the potential contribution of the appeal site to county and national food supply production and security is very small and insufficient to tell against the appeal proposal. Indeed, there is a balance to be struck between the temporary loss of best and most versatile agricultural land and renewable energy generation.

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<sup>26</sup> CD 9.5 page 7 'What is food security'.



### **Farm diversification**

103. The Appellant's Agricultural Production Assessment<sup>27</sup> indicates that Berrington Farm extends to 152.6ha. Some 58ha was entered into an Entry Level and Higher Level Stewardship Agreement in 2012 with related payments. These will reduce as a result of the Agricultural Transition and the farm business will lose a significant part of its income. It is said that the appeal proposal would provide an additional income stream to support the wider agricultural enterprise and result in biodiversity net gains.
104. It is argued by the Appellant that the proposal would represent economic diversification within Core Strategy Policy CS13. This is disputed by the Council, claiming that such proposals lie out-with the types of development anticipated by the policy. However, this is at odds with the position the Council took at the Kemberton Inquiry by reference to paragraph 56 of the appeal decision: '*..... at the inquiry, the Council acknowledged that the use of agricultural land for solar energy is an example of economic activity associated with agricultural and farm diversification even if not listed as such in this policy .....<sup>28</sup>*'.
105. Policy CS13 reads: '*Shropshire Council, working with its partners, will plan positively to develop and diversify the Shropshire economy, supporting enterprise, and seeking to deliver sustainable economic growth and prosperous communities. In doing so, particular emphasis will be placed on: ..... in rural areas, recognising the continued importance of farming for food production and supporting rural enterprise and diversification of the economy, in particular areas of economic activity associated with agricultural and farm diversification, forestry, green tourism and leisure, food and drink processing, and promotion of local food and supply chains. Development proposals must accord with Policy CS5*'.
106. To my mind, the policy does not clearly define, or indeed restrict, '*farm diversification*' and the explanatory text takes matters no further in its reference to '*agricultural and non-agricultural farm diversification*'. Plain reading does not indicate to me that the proposal would conflict with Policy CS13.

### **Conclusion**

107. In summary, I am satisfied that the Site Sequential Selection Report and its Addendum provides clear support for the development of the proposed solar farm on the appeal site. Inevitably, for the lifetime of the development, best and most versatile land would not be capable of use for its full agricultural potential, albeit some grazing could take place. However, the site would be capable of restoration to at least its current quality at the end of the forty year period. I have found no adverse effects relating to food production and food security and there would be a benefit to the farm business arising from the proposal.
108. In my opinion, the harm arising from the failure to make the most effective use of high quality agricultural land, and conflict with Core Policy CS6, is a factor of moderate negative weight. Draft Local Plan Policies DP26(k) and DP18(4), which merit moderate weight consistent with progress to adoption, when read together, seek to avoid the loss of best and most versatile agricultural land wherever possible, unless the need for, and benefit of, the development justifies the scale and nature of the loss. National guidance is also a material consideration. These are matters for further consideration in the assessment of the fifth main issue and the overall planning balance.

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<sup>27</sup> CD 1.20

<sup>28</sup> CD 7.40 paragraphs 55 -56

**Issue Three:**

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

**Introduction**

109. It is noted that the Appellant and the Council agree that sufficient environmental information is available for the purposes of impact assessment. I do not have a contrary view.
110. By way of background, the Officer Report contains brief reference to Skylarks subsumed within the Ecology sub-section of 'Other environmental considerations' as follows:

*'An Updated Layout Plan and Landscape Masterplan have been prepared in response to comments received from SC Ecology. The updates are: ..... Skylark Protection Areas: The proposed layout scheme now accommodates off-site 'Skylark Protection Areas' to the north of the proposed solar farm. These areas will be transformed into species rich grassland and will form suitable habitat for skylarks. This would be secured by means of a s106 legal agreement .....*

*SC Ecology has not objected subject to a number of ecological conditions linked to habitat / biodiversity management / enhancement (included in Appendix 1). They requested further information in relation to mitigation for effects on Skylark habitat. In response the applicant has identified a specific area for Skylark mitigation in fields to the immediate north of the proposed site and has put forward specific management measures for this area to ensure that the habitat remains optimal for Skylark throughout the operational life of the proposed development. These provisions would be secured by means of a s106 Legal Agreement. Subject to this it is concluded that the Proposed Development complies with relevant planning policy regarding ecology / biodiversity (CS6, CS17, MD12).<sup>29</sup>*

111. In turn the decision to refuse planning permission states:

*'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<sup>30</sup>.*

112. During the Inquiry it was conceded that the shooting and nesting seasons did not coincide and this part of the reason for refusal was not pursued.

**Planning policy and guidance**

113. At this point it is helpful to set out the two relevant policies. Core Strategy Policy CS17 is a multi-dimensional policy seeking to '..... protect, enhance, expand and connect Shropshire's environmental assets .....'. SAMDev Policy MD12, the natural environment, provides a more definite requirement:

*'In accordance with Policies CS6, CS17 and through applying the guidance in the Natural Environment SPD, the avoidance of harm to Shropshire's natural assets and their conservation, enhancement and restoration will be achieved by ..... ensuring*

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<sup>29</sup> CD 3.1 paragraphs 6.7.7 & 6.7.8

<sup>30</sup> CD 3.2 Reason 3

*that proposals which are likely to have a significant adverse effect, directly, indirectly or cumulatively on any of the following ..... priority species ..... will only be permitted if it can be clearly demonstrated that:*

*a) there is no satisfactory alternative means of avoiding such impacts through re-design or by relocating on an alternative site and;*

*b) the social or economic benefits of the proposal outweigh the harm to the asset.*

*In all cases, a hierarchy of mitigation then compensation measures will be sought’.*

114. In its Supplementary Statement of Case, the Council identified as relevant to its case Policies DP12 and DP26 of the emerging Local Plan. The former, in relation to priority species, repeats a) and b) of SAMDev Policy MD12 and adds:

*‘Ensuring that where proposals meet these tests, mitigation measures to reduce the harm will be sought in the first instance. Compensation measures for residual harm will only be accepted as a last resort. Mitigation and compensation measures must be demonstrated to be achievable and be in accordance with policies DP14, DP15, DP16, DP17, DP19, DP22 and DP23. Appropriate conditions and/or planning obligations will be used to ensure that such measures are fully implemented and monitored where required’.*

115. Draft Policy DP26, in relation to new strategic infrastructure, indicates that new non-wind renewable and low carbon development will be supported where its impact is, or can be made acceptable and is cross-referenced to Draft Policy DP12.

116. The Framework at paragraph 185 b), in relation to plans, seeks ‘..... the protection and recovery of priority species .....’. In relation to determining planning applications, at paragraph 186 a), the following principle should be applied:

*‘if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused’.*

117. Circular 06/2005<sup>31</sup> advises that all species of birds are protected within Great Britain under the provisions of the Wildlife and Countryside Act 1981. Paragraphs 96 – 99, in relation to the conservation of species protected by law are to be read as a whole, but the focus of controversy at the Inquiry was paragraph 99:

*‘It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision .....’.*

118. Further, the Skylark is listed as a species of principal importance in England under section 41 of the Natural Environment and Rural Communities Act 2006. They are also on the Red List in the Birds of Conservation Concern in the UK 2021.

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<sup>31</sup> IN4

### **Ecological Impact Assessment and development of a Skylark strategy**

119. The July 2022 assessment that accompanied the planning application reported the findings of the breeding bird surveys in the earlier part of the year, recording a total of 24 species breeding on the appeal site of which five species were red listed and seven were amber listed birds of conservation concern. The high number of Skylarks was of particular note with a minimum of 11 territories across the site. The site was assessed as 'site and local importance' for birds.
120. Despite the importance of Skylarks, a declining species, and the anticipation of a net loss of habitat on site, the assessment assumed no significant effects on the population at local, regional or national levels as a result of the development. It concluded '*similar alternative habitat is present within the immediate area, with Skylark present in all adjoining land parcels outside of the site boundary, and therefore no significant local scale impacts are expected*<sup>32</sup>. This has the hallmarks of being naïve and superficial.
121. The amended report (January 2023) aimed to provide some remedy, noting the research of others that Skylarks are unlikely to nest amongst solar arrays, offered Skylark Protection Areas to be maintained as suitable nesting habitats alongside '*..... similar alternative habitat present within the immediate area .....* <sup>33</sup>.
122. Exchanges of correspondence between the Council and the Appellant sought to resolve the Council's concerns about the adequacy and effectiveness of the proposed mitigation measures. In turn, the Appellant's Skylark Mitigation and Management Plan (May 2023) identified 25ha of land to the north of the appeal site ('the compensation land') that was considered to be the nearest suitable land for compensation '*..... and will easily accommodate the minimum required area of 6ha*<sup>34</sup>.
123. Management regimes and conservation objectives were identified should the land be retained as pasture or if it were to revert to arable use.

### **Establishing the relevant baselines**

124. The Council was particularly critical of the Appellant's approach to, and recording of, the breeding bird survey on the appeal site and the presentation of information. Whilst it was countered that the absence of mid/late season surveys was a reasonable exercise of professional judgement, it is notable that the survey report was completed in July 2022 shortly before the submission of the planning application. I also accept that record keeping might have been fuller and more transparent. Nonetheless, there is firm evidence of the importance of the appeal site to nesting Skylarks and I am content that the criticisms do not go to the heart of this main issue.
125. The absence of corresponding surveys on the compensation land is understandable and would have served little informative purpose given the hitherto regime of intensive cattle grazing which is not conducive to Skylark nesting habitat.

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<sup>32</sup> CD 1.24E [Superseded] section 6.1.9

<sup>33</sup> CD 1.23 section 6.2.5

<sup>34</sup> CD 1.15 section 3.2

### **The compensation land**

126. The essence of this point, emerging from a lengthy debate at the Inquiry, is whether or not the compensation land would provide adequate nesting habitat for Skylarks displaced from the appeal site. The Appellant's case, simply put, is that the Unilateral Undertaking, reinforced by a negatively worded planning condition, would provide certainty.
127. Schedule 1 of the Unilateral Undertaking provides:
- 'The Owners covenant (to the extent that such obligations are applicable to their respective interests in the Mitigation Site and/or the Application Site as relevant) with the Council:*
1. *Prior to Commencement of Development to implement the Skylark Mitigation Strategy secured by way of planning condition attached to the Planning Permission;*
  2. *Not to Commence Development unless and until the Skylark Mitigation Strategy has been implemented in full and written confirmation of such implementation has been issued to the Council; and*
  3. *To Maintain the Skylark Mitigation for the lifetime of the Development'.*
128. In turn, draft condition 28<sup>35</sup> would preclude development until the Skylark Mitigation Strategy, following the principles of the May 2023 version with the addition of six criteria, has been submitted to and approved in writing by the local planning authority.
129. The Planning Practice Guidance confirms that conditions requiring works on land that is not controlled by an applicant can be imposed in a negative form (a Grampian condition), prohibiting development authorised by a planning permission until a specified action has been taken. However, such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. It is not suggested that there are 'no prospects' and I agree.
130. Nonetheless, a number of matters of disagreement remain in play. The first, regarding the lack of certainty about the future use and management regime for the mitigation land, flows from the ending of the Higher Level Stewardship Scheme and the potential for the site to revert to arable use (subject to approval by Natural England). Nonetheless, the Mitigation Strategy provides a series of principles for either of the outcomes.
131. The Appellant's witness was confident that the implementation of the mitigation strategy would provide adequate compensation for the displaced pairs of Skylarks. This was not just in terms of numbers but also by improving breeding productivity due to increased invertebrate availability on a qualitative basis. He also highlighted the certainty that would occur over the lifetime of the development as opposed to the unrestricted ability of a farmer to change cropping regimes without consideration of Skylark provision.
132. However, that leaves in doubt the potential habitat carrying capacity of the compensation land which ultimately will depend on future land use. Irrespective of the debate about the possible conversion to arable, various

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<sup>35</sup> The draft condition is not agreed by the Council or Flour not Power

uses, including the spontaneous suggestion of organic set-aside, were canvassed in evidence reflecting an ascending hierarchy favourable to Skylarks.

133. It is said '*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*'<sup>36</sup>. In my opinion, although the objective would be to seek to maximise this, and noting the interaction between qualitative and quantitative habitat provision, it does not assist in establishing the extent to which Skylarks might be affected.
134. Moreover, it was argued that any potential impacts, to the extent that they might occur, would not be significant in terms of either the local, county or national populations and the conservation status of the species would be maintained.
135. Indeed, the development plan and the Framework are written in the language of avoiding 'significant' adverse impacts. In addition, the development plan is phrased on the basis of avoiding harm to Shropshire's natural assets and their conservation, enhancement and restoration.
136. However, that does not suggest to me that impacts on protected species should be considered at what would be an artificially broad geographical area, since it would take a very substantial single loss or a cumulation of losses to reach such a high bar. To my mind, it is relevant to consider the materiality related to a site specific proposal. In fact, Natural England's standing advice<sup>37</sup> talks of '*no net loss*' when assessing a planning application.
137. Natural England's advice also counters the claim that disproportionate consideration has been given to Skylarks on the basis that, in the Appellant's experience, it is not usual to provide mitigation based on a definitive number of pairs of birds or number of animals. Insofar as I accept that proposition in general terms, here we have a recorded baseline of a minimum number of breeding pairs. If there is to be no net loss, then it would not be unreasonable to provide equivalence through compensation measures to the extent reasonably possible.
138. Further to this point, whilst I recognise that the improvements to hedgerows, boundaries and margins on the appeal site would be of benefit to other red-listed breeding bird species, there is nothing to suggest that gains for one or more other species should be a counterbalance for a proposal which would displace another priority species in decline.
139. During the Inquiry, extensive reference was made, in particular, to an article by Harry Fox MCIEEM under the banner '*Blithe Spirit: Are Skylarks Being Overlooked in Impact Assessment*'. Although the paper is intended to provide a starting point for discussion and re-examination on ground-nesting birds (GNBs) mitigation, and carries minimal weight, it does highlight some understandable concerns by reference to the following extracts:

*'While the fortunes of GNBs may be dramatically influenced by changes in agricultural policy, piecemeal developments have the potential to exacerbate local declines and place greater pressure on remaining habitats to absorb displaced birds*

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<sup>36</sup> IN20 paragraph 8.16 (8)

<sup>37</sup> CD 10.11 page 11



*..... it would appear there is an inconsistency in understanding of not only skylark ecology, but opinion on what might constitute an impact, and what mitigation could be employed .....<sup>38</sup>.*

### **Conclusion**

140. From the foregoing it can be seen that the Appellant's initial premise, that Skylarks would simply seek nesting opportunities elsewhere, evolved through several iterations culminating in an eventual proposition to provide off-site compensation.
141. I am in no doubt that the appeal proposal is likely to have a significant adverse effect on a priority species, notably the Skylark which attracts significant negative weight. It has also been shown that there is no satisfactory alternative means of avoiding the adverse effect through re-design or by re-locating on an alternative site. Development plan policy requires a corresponding exercise of balancing the social or economic benefits of the proposal.
142. I return to this, and the consideration of the Grampian condition and Unilateral Undertaking in Issue Five and the planning balance below.

### **Issue Four:**

#### **The effect of the proposal on the setting and significance of heritage assets**

### **Introduction**

143. The Framework establishes that heritage assets *'are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations'*.
144. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses in considering whether to grant planning permission for development which affects a listed building or its setting.
145. The Appellant's Built Heritage Statement recorded 31 designated heritage assets within a 1km radius of the appeal site; and none within its boundaries. It concluded that *'..... the majority of the designated heritage assets within the 1km study area and beyond have no potential to be affected by the proposed development'*. Closer analysis indicated that *'only five designated heritage assets could potentially be affected by the proposed development'*; and *'..... the proposed development will result in no negative impact on the heritage significance of these designated heritage assets via any change to their setting'<sup>39</sup>.*
146. Flour not Power's Built Heritage Reappraisal notes the limitations of the Appellant's survey site visit and seeks to demonstrate the intrinsic interconnectivity of the Cound Brook valley through the Parish as an important part of a wider heritage environment.

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<sup>38</sup> CD 10.22 page 2

<sup>39</sup> CD 1.6 section 8 Conclusions

147. It is said that *'most of the extant historic buildings in the area demonstrate the link between the land and its people'<sup>40</sup>. 'The parish today presents a layout and appearance bearing a strong resemblance to its seventeenth century character and it is one of several villages nearby (including Conover and Acton Burnell) that are fine examples of pre-industrial rural Shropshire life and as such this landscape forms a characterization that needs to be taken into account when considering the impact of the setting of historic assets by the proposed development'<sup>41</sup>.*
148. Flour not Power identifies four 'key heritage assets' which it considers to be at most risk of negative impact from the proposed development.

#### **Cantlop Bridge Grade II\* Listed Building**

149. Cantlop Bridge was opened in 1813 to a Thomas Telford approved design. It is an important early example of a single-span cast-iron bridge which displays particularly well-executed detailing. It survives in its original form and retains its original ironwork and masonry and is considered to be the only Telford-approved cast-iron bridge remaining in situ in Shropshire.
150. In addition to the significance of the bridge itself, the setting of the structure contributes to its significance. Its functional purpose is intrinsically linked to the Cound Brook, the original road alignment on each side of the bridge and the immediate surrounding fields. There is also a wider associated connection as the bridge was built by public subscription collected from the residents of Berrington and Cantlop. The bridge replaced a ford across the brook and provided an alternative to the small mill bridge at Cantlop Mill.
151. The appeal site is some 125m to the north at its closest point, elevated and with its facing slope clothed in trees. Although the wooded area has been thinned, post-dating the photographic images before me, topography and remaining tree cover limit the extent of setting. Moreover, the proposed arrays would be further removed by their set back within the appeal site.
152. Flour not Power suggests that the proposed development would be visible from a wider area, and argue that the setting of the bridge includes the historic turnpike which serves as a tourist route today linking nationally important heritage sites.
153. Nonetheless, this does not change my perception of significance derived from setting. Overall, I conclude that the proposal would not affect the heritage significance of the bridge or how it is experienced. As such the proposal would have a neutral effect.

#### **Berrington Farm House Grade II Listed Building**

154. The farmhouse dates from the seventeenth century with later extensions, retaining much of its historic fabric. It has an extensive range of traditional farm buildings and yard to the rear and the farmhouse has prominence and standing from the road running through the village.
155. The farmhouse is perceptible in longer-distant views, notably from Cantlop. The farm was once part of the estate of Sir Edward Joseph Smythe of Acton Burnell Castle, High Sheriff of Shropshire. An advertisement of 1887 lists the farm with 389 acres.

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<sup>40</sup> CD 14.3 paragraph 4.13

<sup>41</sup> CD 14.3 paragraph 4.23

156. It is acknowledged that there was once an historical functional relationship between the farmhouse and the appeal site, having formed part of its agricultural landholding.
157. Flour not Power suggests that the view from the property contributes to its heritage significance within the wider landscape, sharing much of its historical significance with other listed buildings in the wider area.
158. The farmhouse occupies a prominent position in the settlement and has wide-ranging views from its principal south-easterly aspect. However, it does not directly overlook the appeal site which is situated obliquely to the south-west of the house; on falling ground, with intervening landscape cover; and with the eastern field being one field removed from Cliff Hollow Road.
159. In terms of the relationship from the wider countryside, although the arrays would form an obvious component of the immediate foreground, the significance of the farmhouse as a prominent building with historic connection to the wider landscape, and the appeal site itself, would not be lost.
160. On this basis, I consider that the proposed development would not materially harm the understanding of the asset within the context of the Cound Brook valley, or wider, and the effect of the appeal scheme would be neutral.

**Newman Hall Cottages Grade II Listed Building**

161. Newman Hall Cottages, now a single dwelling, dates from the seventeenth century. It was remodelled in the eighteenth century and extended at the beginning of the twentieth century. The isolated former cottages were home to 'ordinary' labourers who worked in the countryside and provide understanding of rural life.
162. However, there is no documented direct historical functional or economic relationship with the appeal site. It is to be noted that the dwelling, as currently presented, does not have primary aspect towards the appeal site and it is substantially larger than the original cottages. Moreover, there is some intervening established vegetation, additional planting could be secured and the arrays would be set back from the appeal site boundary.
163. Overall, I am satisfied that the proposal would neither sever the association of the cottages with the agricultural landscape or reduce the understanding or significance of the asset and how it is experienced as part of a wider appreciation of the historic landscape. Accordingly, the proposal would have a neutral effect.

**Cantlop Mill – Locally Listed**

164. The former corn mill has a longstanding importance with the local community. Its access road, between the eastern and western fields of the appeal site, was once the main communication route between Cantlop and Berrington and bridging point over the Cound Brook. The mill was rebuilt, with public subscription, in 1854 after a fire. There is evidence that in the nineteenth century the tenant of the mill, a potato grower, also cultivated several fields, including those that comprise the appeal site.
165. The former mill and associated buildings sit deep in a tree-covered valley, close to, but well below the level of, and screened from the appeal site. There is therefore no direct visual connection between the asset and the appeal site.

166. Flour not Power argues that it is the association of the ancient route between the hamlets that constitutes the heritage significance of setting. Although glimpses of the arrays either side of this artery would be evident, and with wider views where the access track between the two fields crosses the public highway, I am satisfied that this would not adversely affect the heritage significance of the mill complex or how it is experienced. On this basis the effect of the proposal would be neutral.

### **Conclusion**

167. From my analysis of the material before me, and my site visits, I am satisfied that the detail in the Appellant's Built Heritage Statement was proportionate to the importance of the assets concerned. In turn, this has been supplemented by the Appellant's Heritage Note and Flour not Power's Built Heritage Reappraisal. Having considered all of this material I conclude, in light of my statutory duty, that the appeal proposal would have a neutral effect on the setting and significance of heritage assets.

### **Issue Five:**

#### **The nature and extent of the benefits of the proposal and whether these would outweigh any harm arising from the issues above**

168. The benefits of renewable energy generation are not in dispute and can be recorded briefly without undermining their importance. Principally, the proposal would generate enough electricity to power approximately 7,000 homes annually giving a CO<sub>2</sub> saving of approximately 6,000 tons per annum. The planning application was supported by the Council's Climate Change Task Force<sup>42</sup>.
169. The development plan is dated and, understandably, does not identify areas suitable for renewable energy development; and the emerging local plan does not go beyond a criteria based policy in DP26. The Council declared a Climate Emergency in May 2019 as an acknowledgement that it needed to act on climate change.
170. The appeal site is included on the broad brush siting possibilities map produced by Zero Carbon Shropshire<sup>43</sup> for ground mounted solar development, albeit meriting very little weight.
171. In terms of the development plan, no breach of Core Strategy Policy CS8 was alleged: *'The development of sustainable places in Shropshire ..... will be assisted by ..... positively encouraging infrastructure, where this has no significant adverse impact on recognised environmental assets, that mitigates and adapts to climate change, including decentralised, low carbon and renewable energy generation .....*'. The Officer Report also confirmed that the proposal met the criteria for development in the countryside set out by Core Policy CS5. I note also that the Report cites Core Strategy Objective 9 which *aims 'to promote a low carbon Shropshire .....*'.

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<sup>42</sup> CD 3.1 paragraph 4.3

<sup>43</sup> 'Zero Carbon Shropshire is an action-driven partnership of local people and businesses, all dedicated to helping our county fight climate change. Together, we're taking a co-ordinated, collaborative response to the climate and ecological crisis at local level'.

172. At the national level, the amended Climate Change 2008 targets are material and guidance on renewable energy provision includes, but is not limited to, the topic specific Planning Practice Guidance, the Framework, the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3).
173. Overall, the Council's planning witness accepted that the renewable energy benefits of the proposal should carry substantial weight. Given the policy imperative, and the fact that the Appellant has secured a grid offer that is available from 2024, I agree.
174. In terms of biodiversity net gain, hedgerows would be reinforced around the appeal site and the fields would be planted with species rich grassland. The proposal would deliver net gains of 123% in habitats and 76% in hedgerows for the appeal site. These important benefits attract significant weight.
175. The economic and employment benefits of the appeal scheme relate principally to the construction phase, and in turn the employment generated by decommissioning, and I apportion limited weight.
176. Set against these benefits is the significant harm to landscape character and visual amenity at a local level. The harm arising from the failure to make the most effective use of high quality agricultural land carries moderate weight. There are no adverse effects in terms of heritage assets.
177. In closing, it was said for the Appellant that '*secondary issues seem to [have] take[n] on a disproportionate importance ..... or the potential to displace a tiny number of Skylark territories (which is not accepted) in a stronghold of perhaps 14,000 pairs .....<sup>44</sup>*'. That might appear to be the case on the basis of the Officer's favourable recommendation and the Committee's third reason for refusal alleging adverse impacts, partly on an unsupportable premise, on Skylarks.
178. However, on the evidence before me, and having regard to local and national policies, there is a clear mandate for consideration by the decision maker. The starting point is, in the knowledge that the appeal site is used by Skylarks for nesting, the inevitable displacement of a protected species is a very strong material consideration.
179. Application of the hierarchy of avoid, mitigate or compensate ultimately became grounded in the latter. But even then, the ability to compensate rests on a scheme yet to be produced and to be secured by a Grampian condition in tandem with the Unilateral Undertaking.
180. Whilst having no criticism of the covenant within Schedule 1 as such, I am not convinced that the nature and effectiveness of the intended mitigation measures are sufficiently understood and well-developed to provide sufficient reassurance.
181. In this regard, certainty is not required, in that the Council would have the final sanction of refusing later details that did not adequately secure an acceptable scheme of compensation.
182. Reverting to the Planning Practice Guidance on conditions, the following is of importance:

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<sup>44</sup> IN20 Paragraph 1.1

*For non outline applications ..... it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted.*

*Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (eg provision of car parking spaces)<sup>45</sup>.*

*Where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used .....<sup>46</sup>.*

183. Taking this step by step, there are matters of importance that are not fully described in the proposal before me. That said, the Skylark Mitigation and Management Strategy sets out guiding principles to be followed. Further, the Appellant has sanctioned the condition. The claim is, if the details were found to be unacceptable, the Council would simply refuse to endorse them with a resultant embargo on the ability to implement the planning permission. However, in my opinion and in the alternative, if the compensation scheme was found to be unacceptable, and it was the only impedance to the development and all its benefits, the Council would be faced with a balance between the two single opposing interests, out-with the balancing exercise of this decision.
184. On this basis, I am not satisfied that this issue should be deferred to another day and I attach significant weight to the impact of the proposal on Skylarks, a priority species in decline.
185. Turning to the final planning balance, having satisfied myself that there are no other matters that should influence the balance to a material degree, the proposal would not protect and enhance the diversity, high quality and local character of Shropshire's natural environment and it would be in conflict with Core Strategy Policy CS17. It would similarly be at odds with Policy CS6, bullet 4, which is worded to reflect CS17 and a measure of conflict with bullet 7 in that, whilst the natural resource of high quality land could be safeguarded, it would be under-used for a period of up to forty years.
186. SAMDev Policy MD12 rests on determining the balance between harm and benefits. Finally, in relation to the emerging Local Plan, Policy DP26 supports non-wind renewable development where its impact is, or can be made, acceptable and DP12 again requires an overall balance.
187. Considering the proposal in the round, and in light of the many facets of national guidance, I conclude that the nature and extent of the benefits of the proposal do not outweigh the harm that I have identified and the proposal would be in conflict with the development plan read as a whole. Having decided that the planning conditions before me would not make the development acceptable, I dismiss the appeal.

*David MH Rose*

Inspector

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<sup>45</sup> I do not read this as a 'closed list'

<sup>46</sup> Paragraph 006 Reference ID:21a-006-20140306



## **ANNEX A: APPEARANCES**

### **For Econergy International Ltd**

David Hardy  
Partner CMS

Instructed by  
Econergy International Ltd

#### **He called**

Howard Fearn  
MSc MCIEEM

Director  
Avian Ecology Ltd

Ruth Metcalfe  
BSc(Hons) M AgrE CEnv MIAgrE

Soil Scientist  
RSK ADAS Ltd

Anthony Heslehurst  
MPlan MRTPI

Director  
RSK ADAS Ltd

Daniel Leaver (evidence in writing)  
CMLI

Associate Director  
Stephenson Halliday

### **For Shropshire Council**

Sioned Davies, Barrister No5 Chambers  
Counsel for the Local Authority

Instructed by  
Kim Brown, Legal Team Leader  
Regulatory and Environment  
Shropshire Council

#### **She called**

Diane Corfe  
BSc (Hons) MSc RSB CBIOL CIEEM

Technical Director  
Waterman Infrastructure and  
Environment Ltd

Mike Davies  
MBA MRICS MRTPI MCIQB MCMi IHBC<sup>47</sup>

Consultant Planner  
Shropshire Council

Tom Hurlstone (evidence in writing)  
BA (Hons) MLA CMLI

Senior Associate Director  
Waterman Infrastructure and  
Environment Ltd

### **For Flour Not Power**

Odette Chalaby, Barrister No5 Chambers  
Counsel for the R6(6) Party

Instructed by  
Mark Turner, Partner  
Aaron and Partners Solicitors

#### **She called**

Sam Franklin  
BSc(Hons) MSc MRICS FAAV FBIAC MISoilSci

Director  
Landscape Land and Property Ltd

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<sup>47</sup> Full qualifications set out in CD 13.2 paragraph 1.1

James Bullock (evidence in writing) CMLI	Director Zebra Landscape Architects Limited
Leo Smith (evidence in writing) BSc (Hons)	Editor The Birds of Shropshire
Dr Tim Jenkins (evidence in writing) PhD MA BA(Hons) FRSA FRHistS	Heritage Consulting

### **Interested Persons**

Dr Simon Briercliffe	Local Resident
Elliot Thomas	Local Resident
Tre	Local Resident
David King	Local Resident
Hamish Eccles	Local Resident
Hugh Elliott	Local Resident
Mary Elliott	Local Resident
John Dryburgh	Local Resident
Claire Wild	Local Resident

### **ANNEX B: INQUIRY DOCUMENTS**

- IN1 Opening on behalf of Econergy International Ltd
- IN2 Opening on behalf of Flour Not Power
- IN3 Opening on behalf of Shropshire Council
- IN4 Circular 06/2005
- IN5 Statement by Dr Simon Briercliffe
- IN6 Statement by Eliot Thomas
- IN7 Statement by Tre
- IN8 Statement by David King
- IN9 Statement by Hamish Eccles
- IN10 Statement by Hugh Elliott
- IN11 Statement by Mary Elliott
- IN12 Statement by John Dryburgh
- IN13 Statement by Claire Wild
- IN14 Council's Unilateral Undertaking Position Statement

- IN15 Final Draft Unilateral Undertaking
- IN16 Schedule 2 Site Location Plan
- IN17 Schedule 3 Skylark Mitigation and Management Plan
- IN18 List of Suggested Conditions (V5)
- IN19 Condition 12 Plan – Construction and Traffic Access Route
- IN20 Appellant’s Closing Statement
- IN21 Flour not Power’s Closing Statement
- IN22 Council’s Closing Statement
- IN23 Appellant’s Response to the Council’s Position Statement (IN14)
- IN24 Signed Unilateral Undertaking

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