

APPEAL REF: APP/L3245/W/23/3332543

APPEAL AGAINST THE REFUSAL BY SHROPSHIRE COUNCIL OF AN APPLICATION (REF 22/04355/FUL) FOR ERECTION OF AN UP TO 30 MW SOLAR PV ARRAY, COMPRISING GROUND MOUNTED SOLAR PV PANELS, VEHICULAR ACCESS, INTERNAL ACCESS TRACKS, LANDSCAPING AND ASSOCIATED INFRASTRUCTURE, INCLUDING SECURITY FENCING, CCTV, CLIENT STORAGE CONTAINERS AND GRID CONNECTION INFRASTRUCTURE, INCLUDING SUBSTATION BUILDINGS AND OFF-SITE CABLING

AT LAND WEST OF BERRINGTON, SHREWSBURY, SHROPSHIRE SY5 6HA

APPELLANT: ECONERGY INTERNATIONAL LTD

STATEMENT OF CASE FOR FLOUR NOT POWER



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INTRODUCTION & BACKGROUND

1. This Statement of Case is submitted by the Rule 6 Party, Flour Not Power (“FNP”), which comprises a group of local residents in response to an appeal by Eenergy International Ltd against the refusal of Planning Application 22/04355/FUL for the following reasons:
 - a. *88.2% of the land within the 44.09-hectare site is best and most versatile quality with 54.1% being the higher Grade 2 quality. It is not considered that the renewable energy benefits of the proposals or the applicant’s justifications for this choice of site are sufficient to outweigh the adverse impact of losing the arable production potential of this best and most versatile land for the 40-year duration of the proposed solar farm, assuming the land is physically capable of reverting to intensive arable production at the end of this time period. The proposals are therefore contrary to paragraph 174B of the NPPF and Core Strategy Policy CS6 (and the accompanying explanatory paragraphs). The proposal is also contrary to policy DP26(part 2.k) of the emerging Shropshire Local Plan which states that solar farm developments should use lower grade land in preference to best and most versatile land.*
 - b. *The proposed solar farm site would potentially have a visually oppressive effect for users of the publicly maintained highway leading to Cantlop Mill which bisects the site. This is due to the height difference of up to 6m locally between the highway and the top of the proposed arrays. The proposals would also have an adverse effect on existing expansive and high-quality views in the vicinity of the public footpath at Cantlop which is in an elevated position overlooking the site. Other publicly accessible views of a generally pristine rural environment exist from the Berrington Road to the north and the Eaton Mascot Road to the east. Additional field margin planting has been proposed and solar arrays have been pulled back in some margins with the objective of seeking to reduce such views. However, full screening is not physically possible due to the local topography, and it is not certain how effective planting would be as a visual mitigation measure. The proposals therefore have the potential to adversely affect the local landscape and visual amenities from a number of public viewpoints surrounding the site due to the replacement of the current arable*

fields with solar arrays and associated built infrastructure. This conflicts with Core Strategy Policies CS6, CS17 and SAMDev policy MD12.

- c. 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.*

2. The appeal is to be redetermined following the quashing, pursuant to an Order dated 2 July 2024, of an appeal decision letter (“DL”) by Inspector Rose dated 26 March 2024, which followed a public inquiry, on the following grounds:

- a. The Inspector erred in his application of the Natural England guidance when considering the adequacy of the compensation land at DL/136-137. In finding that the proposed development failed to avoid significant adverse impacts, he incorrectly focused on whether there would be a net loss of breeding pairs of Skylarks. That is not an approach which is consistent with the guidance which he was purporting to apply which seeks to achieve “no net loss” of habitat, and not numbers of a species. As a result, Ground 1 of the challenge is made out.*
- b. The Claimant and First Defendant further agree that the Inspector’s approach to the proposed Grampian condition was not a lawful one nor has he provided any sufficient reasoning for his conclusions at DL/183-184 to reject the proposed condition. As a result, Grounds 3 and 4 of the challenge is made out.*

3. In its High Court challenge to the DL, the appellant advanced other grounds, but these were not determined/considered. The DL was therefore quashed only for the reasons set out above. FNP will argue that the conclusions reached by Inspector Rose in respect of other matters therefore carry weight in the redetermination of the appeal.

4. The Statement of Case, and an Addendum, which were submitted by FNP in respect of the first appeal, are **attached**. It is not proposed to repeat those here, and instead to supplement the submissions in those documents, and set out relevant policy changes since the DL was issued.

PLANNING POLICY

5. Shropshire Council is reviewing its local plan. The Draft Shropshire Local Plan (2016 – 2038) was submitted to the Secretary of State for examination on 3 September 2021. As of August 2024, examination is ongoing. The hearing sessions on the second stage of the examination will open in October 2024. At present, FNP considers that the policies in the emerging plan should be given limited weight.
 6. As to national policy, since the appeal was first determined in March 2024:
 - a. A Written Ministerial Statement was made on 15 May 2024 entitled “Solar and protecting our Food Security and Best and Most Versatile (BMV) Land”. FNP will argue that there is now an increased focus on the protection of BMV land, and that as the grade increases, the onus on developers to show that it is necessary increases;
 - b. A consultation on proposed changes to the National Planning Policy Framework (“NPPF”) has been announced, including:
 - i. A new paragraph 164, which says that local planning authorities should “*support planning applications for all forms of renewable and low carbon development*”, and “*give significant weight to the proposal’s contribution to renewable energy generation and a net zero future*”;
 - ii. An amendment to footnote 64, to delete the following: “*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*”, leaving “*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*”.
- FNP will argue that the NPPF as it stands currently should be given full weight, and that the proposed changes carry no weight unless and until they are brought into force.

REASON FOR REFUSAL 1 – BEST AND MOST VERSATILE AGRICULTURAL LAND

7. FNP will argue that Inspector Rose's conclusion in the DL, that the harm arising from the failure to make the most effective use of high quality agricultural land, and conflict with policy, is a factor of moderate negative weight, was an appropriate conclusion to reach based on the policy position when the DL was issued.
8. FNP will argue that the Written Ministerial Statement made on 15 May 2024, after the DL was issued, places an increased emphasis on protecting BMV land, and that there is now a greater onus on the appellant to show that the use of the appeal site is necessary.
9. FNP will argue that the weight which should be attached to the harm arising from the failure to make the most effective use of high quality agricultural land and the policy conflict is now greater than moderate negative.
10. In the event that the change to footnote 64 in the NPPF is brought into force, FNP will argue that the proposed change does not materially affect the position given that it retains the requirement that areas of poorer quality land should be preferred to those of a higher quality where significant development of agricultural land is demonstrated to be necessary.
11. FNP supports the Inspectors conclusions on BMV, and argues that the appellant's Agricultural Land Classification report does not recognise the Grade 1 land on the appeal site, and that it also does not take into account the availability of irrigation in the calculations and assessments of droughtiness. Consequently, much of the site is downgraded due to droughtiness, which could be remedied by irrigation.

REASON FOR REFUSAL 2 – LANDSCAPE AND VISUAL IMPACT

12. FNP will present evidence which demonstrates that, due to topography, and lack of mitigation, the landscape is not able to absorb the development without a fundamental change to its character, the scheme would be dominant in the landscape and diminish openness, the site would take on a wholly different character, and would lead to a significant, adverse effect.
13. FNP will argue that, in terms of landscape character sensitivity, overall there is a high sensitivity.

14. FNP will argue that during construction, there will be a substantial magnitude of change, and that the combination of the high landscape sensitivity combined with a major magnitude of change, would result in a large or very large level of effect.
15. FNP will argue that the operational phase at Year 1 and Year 15 would lead to a major, adverse effect, and that the proposed mitigation measures are unlikely to significantly offset or reduce these effects (in the long term) and that the residual effect would remain major, adverse.
16. FNP will also present evidence which demonstrates that the proposal would have an unacceptable impact on users of public rights of way and residents, and that Inspector Rose's conclusions, that the 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*", was an appropriate one.

REASON FOR REFUSAL 3 – ECOLOGY AND SKYLARKS

17. FNP intends to present evidence which demonstrates that there would be significant harm to Skylarks as a result of their displacement from the appeal site, which could not be avoided through locating on an alternative site with less harmful impacts, adequately mitigated, or compensated for.
18. The evidence presented to date demonstrates that there is a very high density of breeding Skylarks on the proposed development site, by national and County standards.
19. FNP will argue that the appellant has not properly surveyed the proposed mitigation land, such that it cannot be certain that the proposed mitigation is suitable, and that the extent of the proposed mitigation land is inadequate.

HERITAGE

20. FNP notes Inspector Rose's conclusions that the proposal would have a neutral effect on the setting and significance of heritage assets, and does not intend to present evidence on this.

CONCLUSION

21. FNP will argue that, when considered in the round, the proposal is not consistent with the development plan as a whole, and that there are no material considerations which indicate that the appeal should not be determined in accordance with the development plan.

OTHER MATTERS

22. **Appeal procedure.** FNP consider that cross-examination is considered necessary in respect of the evidence on ecology / Skylarks, not least because of the very different positions taken by the parties on this.

23. It is considered that the landscape and BMV issues could be dealt with by way of a hearing/round table discussion if the issues between the parties had been sufficiently narrowed in a Statement of Common Ground.

24. **Relevant appeal decisions.** FNP will refer to relevant planning appeal decisions which have been issued since the DL. These will be agreed with the other parties and provided as Core Documents.