

Town and Country Planning Act 1990
Econergy International Ltd
Land west of Berrington, Shrewsbury, Shropshire, SY5 6HA
Appeal reference: APP/L3245/W/23/3332543

Opening Submissions on behalf of the Appellant

1. Introduction

- 1.1 As the Inspector will be aware, the original planning application was validated by Shropshire Council on 27th September 2022, and reported to Shropshire Southern Area Planning Committee on 9th May 2023. At the time of the Planning Committee, the application was not subject to any objections from any of the Council's technical consultees. There had been 194 representations in support of the proposals, 107 representations objecting, and 2 neutral.
- 1.2 By a decision notice dated 16th May 2023, the application was refused against Officer recommendation for approval, with three reasons for refusal relating to:
- (1) Loss of Best and Most Versatile Agricultural Land;
 - (2) visual impact; and
 - (3) ecology impact. The Decision Notice refusing Planning Permission was issued by the Council on 16th May 2023.
- 1.3 The subsequent appeal (APP/L3245/W/23/3332543) was dismissed by Inspector Rose but his decision was subsequently subject to Statutory Challenge and quashed, without resistance from the Secretary of State by an Order dated 2nd July 2024. Inspector Rose was simply wrong on the matters of skylark mitigation and the appropriateness of the legal mechanism to secure it which were of determinative importance to his overall decision.
- 1.4 Subsequent to the quashing of the appeal decision, the Council confirmed that it did not oppose the proposed development on account of various changes in circumstances since the public inquiry, including (then) proposed revisions to the NPPF, recent appeal decisions and the High Court case as well as financial considerations.
- 1.5 The Appellant subsequently undertook additional ecological survey work, the absence of which had been an important consideration for Inspector Rose as well as making a number of physical changes to the scheme to address comments by the Inspector and by the Rule 6 Party including:
- (1) Enhanced Landscaping Plan to provide additional screening, produced and agreed in collaboration with the Rule 6 Party;
 - (2) Traffic Management Plan produced and agreed in collaboration with the Rule 6 Party, to provide greater certainty that any highways impact will be suitably managed;
 - (3) Landscape Maintenance Plan, including provisions requiring maintenance and replacement planting, to be carried out were

necessary for a minimum of 10 years from completion of the development.

- 1.6 Following the collaborative approach adopted by the Appellant and the changes made, the Rule 6 Party also does not object to the proposed development and has withdrawn from the Appeal.
- 1.7 Accordingly, the position is that no statutory consultee has raised an objection and neither the Council nor the Rule 6 Party oppose the scheme. Planning permission should be granted for this important, policy compliant scheme without delay.

2. Legal principles applying to the previous decision

- 2.1 Where the Court quashes a planning permission, the decision maker must start the decision making again, with a clean sheet, having regard to the development plan and other material considerations, including material considerations which have emerged since the matter was originally considered (see *Kingswood District Council v Secretary of State for the Environment* (1989) 57 P&CR 153 (Graham Eyre QC sitting as a Deputy High Court Judge)).
- 2.2 A quashed decision is incapable of having any legal effect on the rights and duties of the parties.
- 2.3 A decision maker is entitled to change its/his/her mind in any fresh decision making. Any differences in judgments may require explanation.
- 2.4 Whether a previously quashed decision is a material consideration for the purposes of the second decision is a fact specific assessment.
- 2.5 It is unlawful for the subsequent decision maker to ignore the implications of a previously quashed decision, without further analysis.
- 2.6 It is agreed that the proposed amendments to the scheme represent material improvements to the scheme which was considered by Inspector Rose.

3. Matters which are agreed

Planning Policy

- 3.1 The adopted Development Plan for the purposes of 38 (6) of the Planning and Compulsory Purchase Act 2004, comprises the following:
 - Shropshire Core Strategy, Adopted 24th February 2011
 - Site Management and Allocation of Development Document (SAMDev), Adopted 17th December 2015
- 3.2 The site is located within the Open Countryside (Core Strategy Policy CS6), and the western edge is located within a Mineral Safeguarding Area (SAMDev

Policy MD16). Neither policy precludes solar development subject to meeting the provided criteria.

3.3 There are no other designations on the site, and the Local Plan does not allocate any sites in the district for solar development.

3.4 The parties agree that the following policies are most relevant to this appeal:

- Core Strategy Policy CS5 'Countryside and Green Belt'
- Core Strategy Policy CS6 'Sustainable Design and Development Principles'
- Core Strategy Policy CS8 'Facilities, Services and Infrastructure Provision'
- Core Strategy Policy CS13 'Economic Development, Enterprise and Employment'
- Core Strategy Policy CS17 'Environmental Networks'
- SAMDev Policy MD2 'Sustainable Design'
- SAMDev Policy MD8 'Infrastructure Provision'
- SAMDev Policy MD12 'Natural Environment'
- SAMDev Policy MD13 'Historic Environment'
- SAMDev Policy MD16 'Mineral Safeguarding'

Emerging Local Plan

3.5 Shropshire Council is in the process of preparing a new Local Plan Review. The Local Plan Review was submitted to the Secretary of State on 3rd September 2021 and has since encountered significant delays. On 29th October 2024, the Planning Inspector suspended further hearings, citing "significant concerns about the soundness of the Plan in respect of a number of areas".

3.6 Paragraph 48 of the National Planning Policy Framework December 2024 (NPPF) sets out that weight may be afforded to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections, and the degree of consistency with the Framework. The parties agree that relevant policies in the emerging plan can be afforded limited weight.

3.7 It is agreed that the following emerging policies are most relevant to this appeal:

- Policy SP3
- Policy DP16
- Policy DP17
- Policy DP18
- Policy DP26

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

NPPF (December 2024)

- 3.9 Paragraph 163 of the NPPF (December 2024) states that the need to mitigate and adapt to climate change should also be considered in preparing and assessing planning applications, taking into account the full range of potential climate change impacts.
- 3.10 Paragraph 168 of the NPPF (December 2024) advises that when determining planning applications for renewable development, Local Planning Authorities should give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future.
- 3.11 It is agreed that there is clear support at the national level for solar energy developments as a form of renewable and low carbon energy development and that significant weight should be given to the benefits associated with the scheme.

Clean Power 2030

- 3.12 Subsequent to the previous appeal decision, the UK Government published the Clean Power 2030 Action Plan on 13th December 2024 which sets out how the UK will achieve a fully decarbonised electricity system by 2030.
- 3.13 Clean Power 2030 emphasises the need for rapid deployment of renewable energy infrastructure, including solar development, representing clear intent on the part of the new Government to actively support solar development.

Local Policy

- 3.14 The Local Plan is expressly supportive of renewable energy development. Core Strategy Policy CS8 sets out that the Council will positively encourage infrastructure, where this has no significant adverse impact on recognised environmental assets, that mitigates and adapts to climate change, including decentralized, low carbon and renewable energy generation.
- 3.15 It is common ground that the proposed development would not result in a significant adverse impact on recognised environmental assets.

Climate Change

- 3.16 Shropshire Council declared a 'Climate Emergency' on 16th May 2019 and subsequently adopted a Climate Strategy and Action Plan on 17th December 2020.
- 3.17 It is agreed that there is a Climate Emergency and a need to deliver new renewable energy infrastructure including solar within Shropshire.

Best and Most Versatile Agricultural Land

- 3.18 The matter of Best and Most Versatile Agricultural Land was examined in detail at the original planning inquiry. The Appellant and the Rule 6 Party provided expert witnesses, who were cross examined in full. The Inspector's decision covers the matter in detail (paras 54-108), including policy and guidance, site selection, agricultural land quality, construction and operational effects, food production and security and farm diversification. The Inspector concluded that the Site Selection Report and its Addendum provides 'clear support' for the development.
- 3.19 Overall the Inspector gave moderate negative weight to the harm arising from the failure to make most effective use of high-quality agricultural land and conflict with Core Policy CS6. The parties are agreed that this finding is fair and proportionate and should be followed in this redetermination appeal.

Landscape and Visual

- 3.20 The SoCG dated February 2024, as agreed by Shropshire Council, noted the suitability of the ADAS LVA methodology, the extent of landscape setting and character type and the need for the proposed development to be cognisant of '*the intrinsic beauty of the countryside*' (NPPF 2024, Para 174 (b)), albeit it is agreed that the site is not part of a valued landscape. It was also agreed that whilst the mitigation measures provided a means to improve landscape structure, green infrastructure and biodiversity value the final detail of the proposed landscaping would remain a matter to be considered pursuant to a detailed submission.
- 3.21 Areas of disagreement centred on the level of harm that would be experienced by landscape and visual receptors at a local level with regard to the site and the effectiveness of the proposed mitigation measures.
- 3.22 Following the quashing of the appeal decision letter, the Appellant revisited the site and held a number of meetings including a site walkover with members of the Rule 6 party to address its concerns regarding visual impacts from local roads and properties.
- 3.23 In response, additional planting has been added to the Landscape Masterplan. In particular, new native mixed woodland and hedgerow planting to further screen the proposed development and reinforce the existing landscape structure is proposed. Details of planting mixes have also been included to provide further reassurance of the type and density of planting with the preparation of a landscape and ecological management plan (LEMP) to remain a matter to be conditioned.
- 3.25 Whilst it is accepted that some localised effects on landscape character and visual amenity will result from the proposed development, it is agreed that none would be unacceptable and the proposed amendments to the scheme represent material improvements to the scheme which was considered by the previous Inspector and are sufficient to overcome the concerns raised by him and those of the local people who would be most affected by the proposed development.

Skylarks

- 3.26 It is agreed that the matter of skylark mitigation can be secured via condition and Section 106 Agreement such that all legislative, regulatory and policy concerns can be dealt with satisfactorily.
- 3.27 Additional survey information has been submitted by the Appellant which was not available to the previous Inspector.
- 3.28 The Appellant specifically rejects the concerns raised by Inspector Rose in paragraph 183 of his decision letter regarding the responsibility of a Local Planning Authority to discharge planning conditions in the normal way.

Heritage

- 3.29 The proposed development would have a neutral effect on the setting and significance of heritage assets, in line with the findings of the original Inspector.

Flooding and Drainage

- 3.30 The Appeal site is located within Flood Risk Zone 1 and will not result in increased flood risk off-site. The Council's drainage team did not object to the planning application subject to soakaways being secured. It is agreed between the parties that the Appeal proposal is acceptable in relation to flooding and drainage.

Glint and Glare

- 3.31 There is no objection based on glint and glare impacts which could potentially affect road users, airports and airfields.

Highways

- 3.32 The proposed development would not give rise to unacceptable levels of traffic and trip generation and will not cause any harm to the safety of the users of the Public Highway network. Following discussions with the Rule 6 Party, the Appellant has introduced Traffic Management Plan (ref: 111182-TMP-REV01) to address highways concerns raised by local people. It is agreed that the proposed amendments are acceptable and an improvement over what was considered by the previous Inspector.

4. Benefits

Mitigating climate change and transitioning to a low carbon economy

- 4.1 The proposed development has the potential to offset the average annual UK electricity consumption of approximately 7,000 households per annum. This is a benefit that should be given significant weight.

Energy Security

- 4.2 The proposed development would contribute towards ensuring an independent, secure energy supply which is a benefit that should be given significant weight.

Biodiversity Net Gains

- 4.3 The proposed development will deliver substantial Biodiversity Net Gain.

Green Jobs and the Transition to a Green Economy

- 4.4 As set out in the comments by the Council's own Climate Taskforce to the planning application, it is envisaged that the renewable energy sector can become a major local industry with significant employment and wealth generation for Shropshire.
- 4.5 The proposed development is for a large-scale solar development, which will result in the creation of new job opportunities both during the construction and operational phases. This is a benefit that attracts moderate weight in the planning balance.

5. Concluding remarks

- 5.1 Solar energy continues to lie at the heart of Central Government plans. This does not mean that there is *carte blanche* for renewable energy schemes such as this; far from it. A planning balance has to be struck in the normal way. When it is struck, it is clear that planning permission should be granted.
- 5.2 This is an important, policy compliant scheme which has been held up in the planning process because of politicised decision making on the part of the Council in the first instance and an unlawful decision by Inspector Rose on appeal.
- 5.3 There are no justifiable objections to the proposed development and now that concerns regarding skylark mitigation have been resolved and material improvements have been made to reduce local effects which are of importance to the local community, planning permission should be granted without delay.

David Hardy (Partner)

18th February 2025

CMS Cameron McKenna Nabarro Olswang LLP