



Department for Levelling Up,  
Housing & Communities

Mr Richard Murray  
Murray Planning Associates Ltd  
Gnd Floor Office, Challenger House,  
Rumbolds Hill  
Midhurst  
GU29 9BY

Our ref: APP/C3240/W/22/3293667  
Your ref: TWC/2021/0737

27 March 2023

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GREENTECH INVEST UK (1) LTD  
LAND AT LAND WEST OF NEW WORKS LANE, TELFORD, SHROPSHIRE  
APPLICATION REF: TWC/2021/0737**

*This decision was made by the Parliamentary Under-Secretary of State for Local Government and Building Safety, Lee Rowley MP, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mike Robins MSc BSc(Hons) MRTPI, who held a public local inquiry which opened on 20 June 2022 into your client's appeal against the decision of Telford and Wrekin Co-operative Council to refuse your client's application for planning permission for the installation of a Solar Farm and associated infrastructure, in accordance with application Ref. TWC/2021/0737, dated 26 April 2021.
2. On 17 May 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, but disagrees with his recommendation. He has decided to allow the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Policy and statutory considerations**

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

Department for Levelling Up, Housing & Communities  
Maria Stasiak, Decision Officer  
Planning Casework Unit  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Email: [PCC@levellingup.gov.uk](mailto:PCC@levellingup.gov.uk)

6. In this case the development plan consists of the Telford and Wrekin Local Plan, adopted in 2018. The Secretary of State considers that relevant development plan policies include those set out at IR3.5 and the Statement of Common Ground.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those documents listed at IR3.2.

## **Main issues**

### ***Landscape Character and Appearance***

8. For the reasons given at IR10.3-10.10, the Secretary of State agrees with the approach set out by the Inspector at IR10.10. In reaching his conclusions he has taken into account the Inspector's analysis at IR10.11-10.17 of the Wrekin Forest Strategic Landscape (WFSL), including the Inspector's assessment based on his site visit (IR10.17).

### *The Value of the Existing Site*

9. For the reasons given at IR10.18-10.23, the Secretary of State agrees with the Inspector that the site has genuine value in the variety of the landscapes that make up the WFSL (IR10.19). He further agrees that whilst its immediate visual appearance and structure could be improved, it nonetheless presents many of the Special Qualities of the Strategic Landscape (IR10.20). The Secretary of State recognises that the site has importance as a local access point, but agrees that it is not an important gateway site to the WFSL in the same way that the Forest Glen car park is (IR10.22).
10. The Secretary of State agrees that as a component of the WFSL the site also falls within and contributes to the setting of the AONB. He has also taken into account that the woodland to the south, the route of the footpaths and the topography limit direct views into or out of the AONB from the site itself. (IR10.23).

### *Effect of the Proposal on the Character and Appearance and its Value*

11. For the reasons given at IR10.24-10.32, the Secretary of State agrees with the Inspector that despite softening and screening offered by planting, the proposal would introduce a managed landscape and not an open, rural one (IR10.30). He agrees that for those using the site it would represent a substantial and significant change (IR10.28), and that the enclosure and limitation to views would materially degrade the experience of using the site as an entry or transit point (IR10.31). To this extent the Secretary of State agrees that the change in character to one of a developed and managed landscape would be at odds with the Special Qualities of the WFSL (IR10.31).
12. However, he also agrees with the Inspector's conclusion at IR10.24 that the plans are carefully thought out, with the fields being defined by considerable lengths of new hedgerow planting, and the footpaths being retained and extended in wide corridors with enhanced wildlife planting, and further agrees at IR10.27 that despite the far-reaching views, the solar farm would be a relatively small component of views up to the Wrekin area, and intervening woodland and boundary features would limit wider experience of the panels (IR10.27). He notes that the site can be traversed in a few minutes to enter into the wider landscape (IR10.29). Taking into account the fact that solar farms are often located in rural areas, he disagrees that the proposal would extend the urban fringe up to the very edge of the woodlands (IR10.32).

### *Conclusion on Landscape and Visual Effects*

13. For the reasons given at IR10.23 and IR10.35, the Secretary of State agrees with the Inspector in respect of the lack of intervisibility. He has further taken into account that only a relatively small part of those experiencing the AONB would approach or leave the area through the site (IR10.35), and has also agreed with the Inspector at IR10.24 that the plans are carefully thought out with considerable lengths of new hedgerow planting and retained and extended footpaths (paragraph 12 above). In line with paragraph 176 of the Framework, he has attributed great weight to conserving and enhancing landscape and scenic beauty in AONBs. However, given the specific factors arising in this case, he considers that there is very limited harm to the setting of the AONB, which carries very limited weight against the proposal. He further concludes that in line with paragraph 176 of the Framework the development is sensitively located and designed to avoid or minimise adverse impacts on the AONB. In the light of these conclusions, he does not consider that there is conflict with Policy P1 of the AONB Management Plan (IR10.42).
14. For the reasons given at IR10.33-34, IR36-10.42 and IR10.58, the Secretary of State agrees with the Inspector that despite the mitigation and the addition of the proposed footpath and enlarged parking, the proposal would materially affect the attractiveness of the recreational resource provided here and extend the distance for local people seeking the natural beauty and remoteness of the AONB and Wrekin forest landscape (IR10.34). He further agrees that the proposal would have a material adverse effect on the visual and landscape character of the site and the contribution that this site makes to the wider landscape (IR10.36), and would degrade the qualities of the Strategic Landscape (IR10.58). For the reasons given at IR10.42 and above, the Secretary of State agrees with the Inspector that the proposal would cause detrimental change to the Strategic Landscape, and would be in conflict with Local Plan Policy NE7.
15. For the reasons given in IR10.37-10.38 and IR10.58, the Secretary of State agrees that this is a valued landscape in Framework terms (paragraph 174(a)), and is also a landscape that is clearly valued by local residents (IR10.38 and IR10.58). It is also designated as a Strategic Landscape within a recent local plan and forms part of the setting of an AONB. The Secretary of State considers that it is a sensitive site, and agrees with the Inspector at IR10.38 that overall, significant weight should be attributed to the harm to landscape character and appearance.
16. However, taking into account his conclusions in paragraph 13 above relating to intervisibility and numbers or approaching or leaving the area through the site, the Secretary of State does not consider that it is a highly sensitive site (IR10.38). Further taking into account that the site is not an important gateway site to the WFSL (paragraph 9 above); and his conclusions in paragraphs 12 and 13 above, he does not agree with the Inspector that there is a significant adverse effect on the landscape or the amenity value of the area (IR10.39 and IR10.42), or that there is conflict with Policy WF1 of the AONB Management Plan (IR10.42). He further does not agree at IR10.64 that the harm is unacceptable in this case, or should carry substantial weight.

### *Other matters*

17. For the reasons given at IR10.44 and IR10.45, the Secretary of State agrees with the Inspector that issues associated with protected species can be addressed through conditions or legal undertakings (IR10.44) and further agrees there will be ecological enhancements associated with the proposals (IR10.45).

18. For the reasons given at IR10.46, the Secretary of State agrees with the Inspector that matters associated with flood risk and compaction must be addressed during the construction period and agrees that it is a matter that can be managed and a condition can require submission of schemes to manage such risks (IR10.46).
19. For the reasons given at IR10.47, the Secretary of State agrees with the Inspector that in relation to battery fire risk robust measures have to be in place but these can be secured by condition (IR10.47).
20. For the reasons given at IR10.48-10.49, the Secretary of State agrees with the Inspector that no material harm to highway safety would arise.
21. For the reasons given at 10.50-10.51, the Secretary of State agrees with the Inspector that noise would not be a factor in terms of direct impacts or impacts on the character of the area (IR10.50) and further agrees that the extended car park and picnic areas would be sufficiently removed from the residential properties to not represent any harm to their living conditions (IR10.51). For the reasons given at IR10.53-10.55, he further agrees with the Inspector's conclusions with respect to the effect on residential receptors, and does not consider that that the impact of the scheme represents a change in outlook from these properties so as to present unacceptable visual intrusion and conflict with Policy ER 1 in this regard (IR10.55).
22. For the reasons given at IR10.52, the Secretary of State agrees with the Inspector that with regard to Best and Most Versatile Land, the proposal would be compliant in this regard with reference to the Framework. He also agrees with the Inspector's conclusions at IR10.57.

### ***Benefits of the Proposal***

23. For the reasons given at IR10.60-10.61, the Secretary of State agrees with the Inspector that the Framework clearly supports increased use and supply of renewable energy (IR10.61). He further agrees that Local Plan Policy ER1 is generally permissive of renewable energy schemes, subject to a set of criteria that addresses protective elements including significant adverse effects on landscape and amenity, among others (IR10.61). For the reasons given in paragraphs 8-16 above, the Secretary of State has concluded that there is no significant adverse effect on landscape, and no significant adverse impact on local amenity. He has not found conflict with any other protective criteria in Local Plan Policy ER1, and overall concludes that the development is in accordance with this policy. He agrees with the Inspector that significant weight should be given to the production of electricity, identified as meeting the expected needs of up to 8,657 homes (IR10.61).
24. For the reasons give at IR10.61, the Secretary of State agrees with the Inspector that further benefits would arise from the enhanced biodiversity planting and measures and the additional permissive footpath links. The Secretary of State overall affords the ecological and other community benefits, such as an enlarged public car park and picnic area, new information boards and additional footpath (IR10.25), significant weight.
25. For the reasons given at IR10.62, the Secretary of State agrees with the Inspector that the operation in terms of the construction phase would make some contribution to the economy, carrying limited weight.

## **Planning conditions**

26. The Secretary of State has given consideration to the Inspector's analysis at IR9.1-9.8, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex A should form part of his decision.

## **Planning obligations**

27. Having had regard to the Inspector's analysis at IR9.9-9.12, the planning obligation dated 6 July 2022, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR9.9-9.12 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.

## **Planning balance and overall conclusion**

28. For the reasons given above, the Secretary of State considers that the appeal scheme would cause detrimental change to the Strategic Landscape, and is therefore not in accordance with Local Plan Policy NE7. He has concluded that the scheme is in accordance with Policy ER1. Given that Policy ER1 incorporates consideration of landscape harm, and that he has not found the landscape harm to be unacceptable, he considers that the appeal scheme is, on balance, in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

29. Weighing in favour of the proposal is the production of electricity which carries significant weight; the additional planting and community benefits which are afforded significant weight; and the economic benefits which are afforded limited weight.

30. Weighing against the proposal is the harm to the landscape character and appearance of the area, harm to the special qualities of the Strategic Landscape, which is also a 'valued landscape' attracting protection under the NPPF, and the very limited harm to the setting of the AONB. These combined harms are afforded significant weight. The Secretary of State does not consider that there is conflict with the AONB Management Plan.

31. Overall, the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.

32. The Secretary of State therefore concludes that the appeal should be allowed, and planning permission granted subject to conditions.

## **Formal decision**

33. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex A of this decision letter for the installation of a Solar Farm and associated infrastructure, in accordance with application Ref. TWC/2021/0737, dated 26 April 2021.

34. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

**Right to challenge the decision**

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

36. A copy of this letter has been sent to Telford and Wrekin Co-operative Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

Decision officer

*This decision was made by the Parliamentary Under-Secretary of State for Local Government and Building Safety, Lee Rowley MP, on behalf of the Secretary of State, and signed on his behalf*

## Annex A List of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in all respects in accordance with the following plans/drawings:
  - Location Plan
  - Proposed Site Layout Plan dated 18.05.22 Rev 1
  - Landscape Strategy 471/05.1 Rev D
  - Landscape Strategy 471/05.2 Rev D
  - 2020\_0001\_01: Typical Elevations Plan 1 – Solar Panels
  - 2020\_0001\_02: Typical Elevations Plan 2 – Inverter/Transformer Station, battery container and storage container
  - 2020\_0001\_03: Typical Elevations Plan 3 – Customer substation, DNO substation and monitoring and communications cabin
  - 2020\_0001\_04: Typical Elevations Plan 4 – CCTV post, deer fence/security gate and access track
  - 2020\_0002)05: Short Wood Cross-Sections Dated 18.05.22
  - Permissive Access Plan
- 3) Notwithstanding the approved plans contained in Condition 2, prior to their erection on site, details of the proposed layout, materials and finish including colour of all solar panels, frames, ancillary buildings, equipment and enclosures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.
- 4) Within 1 month of the date of first export of electricity confirmation shall be given in writing to the local planning authority of the date of first export to the Grid. The development hereby permitted shall cease on or before the expiry of a 40 year period from the date of first export of electricity. The land shall thereafter be restored to its former condition in accordance with a scheme of decommissioning work ("Decommissioning Scheme") and ecological assessment report ("the Ecological Assessment Report") detailing site requirements in respect of retaining ecological features.

The scheme of decommissioning work and the Ecological Assessment shall first be submitted to and approved in writing by the Local Planning Authority, no later than 39 years from the date of first export of electricity, and subsequently implemented as approved.
- 5) In the event the site ceases to generate electricity for a period of 12 months prior to the 40 year period, a scheme of decommissioning works ("the Early Decommissioning Scheme") and ecological assessment report (the Ecological Assessment Report"), detailing site requirements in respect of retaining ecological features, shall be submitted no later than 6 months from the end of the 12 month non-electricity generating period to the local planning authority and approved in writing.

The decommissioning works and ecological site requirements shall be carried out strictly in accordance with the approved schemes.

- 6) Within the year prior to decommissioning of the site, a programme of Highways and Transport works ("the Highway Decommissioning Scheme") associated with the decommissioning and remediation of the development site, including details of associated traffic movements, shall be submitted to and approved in writing by the Local Planning Authority. The details submitted must be approved prior to the commencement of decommissioning and then implemented as approved.
- 7) No development shall commence until;
  - a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
  - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed. This should include the submission of the approved site layout to illustrate the position of the mine entries and extent of the opencast workings.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

- 8) Prior to the first export of electricity, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 9) No development shall take place until details of the design and construction of the proposed site access off Dawley Road, together with details of the closure of the existing field access have been submitted to and approved in writing by the Local Planning Authority. The agreed details shall be fully implemented prior to the commencement of construction on site.
- 10) No development shall take place until details for the proposed surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed before the first export date to the Grid.
- 11) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following details;
  - a) Details for the protection of statutorily protected species and bird nesting prior to and during the construction period;
  - b) Tree, pond and hedgerow protection measures to be undertaken;
  - c) Details in relation to crossing of any public rights of way by construction traffic;
  - d) Measures to be taken to prevent mud from vehicles leaving the site during construction works being deposited on the public highway or other local roads;
  - e) Provisions to be made for the parking (including staff parking) and turning on site of operative and construction vehicles (including for loading and unloading) during the period of construction;
  - f) Storage of plant and materials (including any oil , fuel and chemicals) in constructing the development



- g) Any lighting during construction. (note: this must be directed in such a way as not to cause nuisance to adjoining properties, woodlands, bats or adjacent highway);
- h) Start and finish time of construction activity;
- i) Phasing of development.

The CEMP shall be adhered to throughout the duration of the construction period.

- 12) No development shall take place until a plan detailing the type and location of a suite of artificial nesting and/or roosting boxes for birds and bats has been submitted to, and agreed in writing with, the Local Planning Authority. The boxes shall be erected in accordance with the agreed details.

The following artificial nesting/roosting boxes shall be provided:

- a) A total of 8 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species;
- b) A total of 8 woodcrete artificial nesting boxes suitable for bird species such as robin, blackbird and tit species.

- 13) No development shall take place until a written scheme ("The Land Management Scheme") has been submitted to and approved in writing by the Local Planning Authority. The Scheme shall include, but not be limited to the details of:

- a) The extended car park;
- b) The picnic area;
- c) Permissive Footpaths;
- d) Areas of improved public accessibility.

The Land Management Scheme shall detail, but not be limited to, construction methods, timescale and maintenance and shall be implemented in full and retained thereafter.

- 14) No development shall take place until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of the battery storage system.

The BSMP shall be implemented as approved.

- 15) Prior to the commencement of construction on site, access visibility splays of a depth of 2.4 metres and a length of 120 metres, in general accordance with drawing no. ITL16505-GA-008 REV B, shall be provided, and these splays shall thereafter be kept free of any obstacles or obstructions.

- 16) No piling of foundations or installation of mounting frames shall take place until the areas shown on the approved plans for parking, loading, unloading and turning of vehicles has been provided, properly laid out, hard surfaced and drained. The space shall be maintained thereafter free of any impediment to its designated use.

- 17) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Institute of Lighting Professionals (ILP) Guidance Note 8: Bats and artificial lighting.

- 18) Within the three months prior to the commencement of development on the site a pre-commencement badger inspection shall be undertaken by an experienced ecologist and the outcome reported in writing to the Local Planning Authority. If continued, or new, evidence of badgers is recorded during the pre-commencement survey then the ecologist should set out appropriate actions to be taken during the works which may include; precautionary methods of working, timing restrictions, restrictions of activities around any identified setts and the requirement, or otherwise, for Badger Disturbance Licences from Natural England should the closure, disturbance or destruction of setts be necessary. IF required, these actions shall be implemented prior to construction beginning on site and retained thereafter.

Where a Badger Disturbance Licence is required a copy of the licence must be submitted to the Local Planning Authority prior to the commencement of licensable works.

- 19) The development shall be implemented in accordance with the approved Construction Traffic Management Plan and complied with at all times during construction work.
- 20) Development shall occur in accordance with the Post-Development – Habitat Retention, Enhancement and Creation measures and the Management Plan as set out in the Biodiversity Metric Report (Greenscape Environmental, Report reference MR 20-04 090.7 MR dated May 2022). This document sets out habitat management, site enhancements and monitoring. This document should be strictly followed unless otherwise approved in writing by the Local Planning Authority. Works shall be overseen and undertaken where appropriate by a licensed, suitably qualified and experienced ecologist.
- 21) Following the implementation of the Post-Development Habitat Retention, Enhancement and Creation measures, and no later than 1 year from the first export date to the Grid, biodiversity monitoring reports shall be undertaken and submitted to the local planning authority. These shall be undertaken in years 1, 3, 5, 10 and 15 following the first export date.

Should the expected biodiversity net gains not be achieved then a revised set of habitat retention, enhancement and creation measures shall be submitted to and approved in writing by the Local Planning Authority. The amended measures shall be implemented and retained in accordance with the approved details.



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# Report to the Secretary of State

**by Mike Robins MSc BSc(Hons) MRTPI**

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

**Date 21 September 2022**

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**APPEAL MADE BY**  
**GREENTECH INVEST UK**  
**against**  
**TELFORD and WREKIN CO-OPERATIVE COUNCIL**

Inquiry Opened on 20 June 2022  
Site Visit 24 June 2022

Land West of New Works Lane, Telford, Shropshire

File Ref: TWC/2021/0737  
Appeal Ref: APP/C3240/W/22/3293667

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**GLOSSARY**

AOD	Above Ordnance Datum
AONB	Shropshire Hills Area of Outstanding Natural Beauty.
BMV	Best and Most Versatile agricultural land
BNG	Biodiversity Net Gain
CCC	Climate Change Committee
CCTV	Closed circuit television cameras
Framework	National Planning Policy Framework (July 2021)
GLVIA3	Guidelines for Landscape and Visual Impact Assessment (3rd Edition)
Ha	Hectares
KWh	Kilowatt-hours
LCT	Landscape Character Type
LVIA	Landscape and Visual Impact Assessment
MW	Megawatts
nPPG	The National Planning Practice Guidance
PROW	Public right of way / Footpath
SL	Strategic Landscape
SLS	Telford & Wrekin Strategic Landscapes Study, 2015
SoCG	Statement of Common Ground
UU	Unilateral Undertaking
WFSL	Wrekin Forest Strategic Landscape
ZoI	Zone of Influence

**File Ref: APP/C3240/W/22/3293667**  
**Land West of New Works Lane, Telford, Shropshire**

- 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 Greentech Invest UK (1) Ltd against the decision of Telford and Wrekin Co-operative Council.
- The application Ref TWC/2021/0737, dated 26 April 2021, was refused by notice dated 12 November 2021.
- The development proposed is the installation of a Solar Farm and associated infrastructure.

**Summary of Recommendation: That the appeal be dismissed.**

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**Procedural and Preliminary Matters**

- 1.1 The Inquiry was held in person, but as a consequence of ongoing Covid implications, it included some necessary elements held virtually; it sat for 4 days.
- 1.2 A virtual Case Management Conference (CMC) was held on 9 May 2022 to discuss procedural matters related to the Inquiry. The CMC was attended by the appellant, the Council and interested parties.
- 1.3 A request for a Screening Opinion was made on 23 December 2020 to the Secretary of State. Having taken into account the selection criteria in Schedule 3 to the 2017 Regulations the Secretary of State did not consider that the proposal was likely to have significant effects on the environment. As such, the proposal is not EIA development; I have no reason to disagree with that Opinion.
- 1.4 I was able to carry out an unaccompanied site visit, in accordance with an agreed itinerary, on the 20 June 2022 to the general area. This included publicly accessible viewpoints, including from The Wrekin itself. After the end of the presentation of evidence, I carried out an accompanied site visit on 24 June 2022, again following an agreed itinerary, including access to the appeal site and a visit to the nearby property of Fairhaven. I completed the visit on an unaccompanied basis, including the footpaths leading into the wider Wrekin Forest Strategic Landscape (WFSL).
- 1.5 On the 17 May 2022, the Secretary of State for Levelling Up, Housing and Communities (the Secretary of State), under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, directed that he would determine the appeal. The reason for this direction is that the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies.
- 1.6 Statements of Common Ground (SoCG) were submitted to address both the overarching scheme and ecology. These and all other documents associated with the scheme were made available virtually and can be accessed on Planning and Building Regulations Online – Telford and Wrekin Co-operative Council ([Telford & Wrekin Council](#)).
- 1.7 The Council's original reasons for refusal included Reason 2 which concerned

insufficient details regarding the impact of the proposal on designated sites and a range of protected species. Following a request at the CMC to seek consensus through preparation of a SoCG, the Council withdrew their reason of refusal following agreement with the appellant to an amended Biodiversity Metric. Further agreement was reached in moving panels away from Short Wood, and such changes were included in an amended Site Layout Plan and cross-section. In addition, the appellant agreed to an application to the Strategic Newt Licensing Scheme and a commitment to a Conservation Payment.

- 1.8 I discussed the matter of revised plans being offered at this late stage and sought comments from all parties to assess the circumstances under the Wheatcroft Principles. I am satisfied that no party would suffer any form of prejudice from my acceptance of these plans, a position that was also accepted by the Council.
- 1.9 Notwithstanding this agreement on ecology matters, I was conscious of the ongoing concerns of many opposing this scheme as to the impacts on the biodiversity of the site and local area, and held a round table session with the ecology witnesses to both confirm the circumstances of the updated plans and Metric, but also to consider the wider ecology concerns put by interested parties. These I have addressed in my Other Matter section below.
- 1.10 A signed Unilateral Undertaking, the UU, was submitted under s106 of the Town and Country Planning Act 1990, dated 6 July 2022. This addressed obligations regarding payments in relation to monitoring and the Conservation Payment. I deal with this in more detail in the Conditions section below.

## **The Site and Surroundings**

- 2.1 Although the wider area is recorded as the Wrekin Royal Forest from the 11<sup>th</sup> Century, the geology of this area has lent itself to varying levels of industrialisation over many years, not least the recent opencast mining. This is evidenced in the names of features, such as Limekiln Wood, or Coalmoor Road and the presence of a Scheduled Monument of coal mining almost immediately to the south and east of the site, preserving elements of tramways. Private mines are recorded in the Short Wood area up to about 1970, but it is the permission granted on appeal in 2009<sup>1</sup> for opencast mining including the appeal site and its restoration, that has led to the open grassland site experienced now.
- 2.2 The appeal site itself forms an irregular rectangle lying between Dawley Road/New Works Lane and Short Wood, an ancient woodland which connects through to the wider forest surrounding the highpoints of The Ercall and The Wrekin. These hills are prominent elements in the landscape with a complex geological history, and form important local landmarks and centres of walking and tourism in the area. They lie at the northern end of the Shropshire Hills Area of Outstanding Natural Beauty (AONB), the boundary of which lies a short distance to the south of the site.
- 2.3 Up until 2013, the site was part of the opencast coal mining operation, which began in 2010. The permission for this included a requirement for restoration

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<sup>1</sup> APP/C3240/A/08/2090405

and there are outstanding habitat management requirements on the site. While the SoCG records that some of the hedgerow planting has failed, the site now presents as open grazing land, with some undulations and dips. It has a predominant slope down from the south towards the M54 motorway, which provides a defining boundary feature to the urban areas of around Wellington to the north. It was reported that there is another solar farm application associated with the land between the site and the M54, referred to as the Steeraway scheme.

- 2.4 A small, free to use car park is found on the eastern side of the site, accessed off New Works Lane. This has connections to footpaths to the east which link into the nearby residential areas of Lawley to the west of Telford. These then connect to a surfaced path that crosses the site, entering Short Wood and on to Steeraway and subsequently Wellington to the north. From this, near the centre of the appeal site, a bridleway runs south to join an extensive footpath network that enters the AONB and links to paths around the Wrekin.
- 2.5 There are a number of houses along New Works Lane, including Fairview, which is the closest property to the car park.

### **Background and Planning Policy**

- 3.1 At a national level, the drive to boost delivery of renewable energy sources has come from increasing recognition of the impacts of climate change and the need to reduced dependence on fossil fuels. Legally binding targets are set to reduce emissions to Net Zero by 2050. White papers and government strategies have identified that there is an urgent need to decarbonise the energy sector.
- 3.2 In this context National Policy Statements (NPS), EN-1 and EN-3, identify the approach to delivering nationally strategic level energy schemes. Large-scale solar is not specifically addressed in EN-3, Renewable Energy Infrastructure, albeit it forms a part of the draft update to EN-3, published September 2021, which has not yet been designated. Nonetheless, this sets out that solar is a key part of the government's strategy for low cost decarbonisation of the energy sector.
- 3.3 In light of discussions at the Inquiry over the applicable weight of the NPS, it is important to set out that they are focused on national scale infrastructure, in this case schemes in excess of 50MW output. As a consequence, different policies and approaches apply, particularly in relation to the scale of associated benefits. The regime under the Planning Act 2008 is therefore different, although the NPSs acknowledge that they are likely to be a material consideration in decision making on relevant applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, an NPS is a material consideration should be judged on a case by case basis.
- 3.4 The proposal here is for a peak output of approximately 30MW and therefore falls to be considered under the Town and Country Planning regime, notably section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 3.5 In this context, the development plan includes the Telford and Wrekin Local Plan (the Local Plan), adopted in 2018. The full list of policies relevant to the appeal are set out in the SoCG. In particular, the Council's reasons for refusal alleged



non-compliance with Policies ER 1 and NE 7. Policy ER 1 is a generally supportive policy seeking to promote renewable energy, but includes a set of criteria that addresses protective elements including that of significant adverse effects on landscape, among others.

- 3.6 Policy NE 7 explicitly addresses the protection of the AONB and Strategic Landscapes. The site falls within the WFSL, one of two areas specifically identified in the Local Plan. These areas were informed by the Telford & Wrekin Strategic Landscapes Study, 2015 (the SLS), to which accompanying text to the policy indicates all development should have regard to. The Council refer to a third policy, BE 1, which, although referenced as applying to all developments, centres on urban design. To my mind, while there is some relevance in this policy it is reflective of the protective policy elements in Policy ER 1, which, along with NE 7, I consider the most important policies for consideration in this case. I deal with the compliance with these policies in my reasoning below.
- 3.7 The AONB was designated in 1958, with the area around the Wrekin being a key component of the area. The AONB Management Plan, approved in 2019, identifies a Zone of Influence (ZoI) around the designated boundary. This is not, it states, a formal designation but a recognition of the economic and social influence this high-quality landscape has beyond its boundary. Despite submission of a map showing the ZoI<sup>2</sup>, the resolution is not sufficiently detailed to confirm that the site forms part of this, but it appears to lie within or at least very close to it.
- 3.8 As confirmed by national and local policy, the AONB should be given the highest level of protection. Two policies are relevant, P1, confirming that protection of the AONB, and WF1, which notes that management of the Wrekin Forest area is crucial to the integrity of The Wrekin itself within the AONB and should be protected as far as possible.
- 3.9 An important material consideration is the National Planning Policy Framework (the Framework). The above policies are generally consistent with the Framework, which confirms that great weight should be given to conserving and enhancing landscape within AONBs<sup>3</sup>, and sets out that planning policies and decisions should protect and enhance valued landscapes, recognise the intrinsic character and beauty of the countryside and the wider benefits, including economic and other benefits of the best and most versatile agricultural land, and of trees and woodlands<sup>4</sup>.
- 3.10 It clearly recognises the need to plan positively for renewable energy that maximises the potential for suitable development while ensuring that adverse impacts are addressed satisfactorily<sup>5</sup>. The Framework notes that schemes need not justify the need for the energy and that authorities should approve schemes where the impacts are (or can be made) acceptable<sup>6</sup>. The national Planning Practice Guidance (nPPG), supports this, noting that increasing supplies from renewable sources where local environmental impact is acceptable, will help

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<sup>2</sup> ID4

<sup>3</sup> Paragraph 176

<sup>4</sup> Paragraph 174

<sup>5</sup> Paragraph 155

<sup>6</sup> Paragraph 158

make sure the UK has a secure energy supply, reduce greenhouse gases, slow down climate change and stimulate investment. Particular considerations for solar farms are addressed, noting that they can have a negative impact on a rural environment, particularly in undulating landscapes<sup>7</sup>.

## **The Proposal**

- 4.1 The proposed site extends to approximately 40 Hectares (Ha) of which about 30Ha would be covered by equipment including panels, six battery storage containers, five inverters and a substation. The site would have security fencing and gates as well CCTV surveillance cameras. The proposal would also include new hedgerow planting, a new wetland area and planting of trees and shrubs, as well as an extension to the car park, a viewing/picnic area, information panels and an additional permissive path along the western boundary linking to Dawley Road.
- 4.2 The site would have an estimated annual generation of 28,570,000 KWh/year, sufficient to meet the needs of approximately 8,657 houses and savings of some 15,142 tonnes of CO<sub>2</sub> per year.
- 4.3 While there will be traffic associated with the construction phase, the indicative programme suggests some 618 deliveries over a 6 month construction period. Peak construction periods are assessed as having approximately 20 two-way movements per day. Operationally, the site will only have the occasional visit for maintenance purposes.
- 4.4 The solar farm is proposed for a period of 40 years, with conditions being sought to ensure decommissioning to remove all operational equipment and returning the site to its present agricultural use.

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<sup>7</sup> nPPG Paragraph 013 Ref ID: 5-013-20150327

## The Case for the Appellant

- 5.1 The full submission made by the appellant can be found at ID11, the material points are as follows:

### Introduction

- 5.2 In paragraph 7.3 of his detailed landscape consultation response, the Council's consultant commenting on the original application, Mr. Harman<sup>8</sup>, concluded in respect of Policy ER 1 that:

*'Notwithstanding any adverse landscape effects that are likely to be experienced in the local landscape, on balance, these are not considered to be detrimental to landscape character, nor the visual amenity of most people living, travelling through or enjoying the landscape. However, in considering the findings of the LVIA, it is considered that the proposed development conflicts with some parts of Policy ER 1 where the visual amenity of recreational users and several residents would be compromised' (appellant's emphasis)*

- 5.3 In respect of Policy NE 7, he concluded in paragraph 7.5 that:

*"Although only affecting a relatively small part of the designated area, it is considered that the effects of the proposed development would result in a detrimental change to the quality of the local landscape"*

- 5.4 It is to be noted that the wording of Policy NE 7 refers to detrimental change to the quality of "the landscape" without the localised caveat entered by Mr. Harman, who did accept the localised nature of the effects.

- 5.5 Ms. Denmark borrowed the wording of such consultation response verbatim for the landscape and visual part of her professional report to committee. Reason for refusal 1 was worded as follows:

*"1. The proposals would result in detrimental change to the quality of the strategic landscape, failing to conserve and enhance the character of the landscape around the Shropshire Hills Area of [Outstanding] Natural Beauty. This would result in significant harm to the character of the area and thus impact on the enjoyment of the area by receptors using the local public rights of way. The proposed mitigation is insufficient to overcome these harms. As such the proposals are contrary to Policy ER 1 and NE 7 of the Telford and Wrekin Local Plan (2011-2031), paragraph 174 of the National Planning Policy Framework, and Policies P1 and WF1 of the Shropshire Hills AONB Management Plan (2019-2024).*

- 5.6 The appellant considers there has now been a shift away from 'localised' and by the time of writing his proof, and with no apparent justification, Mr. Harman had hardened his language and in paragraph 3.23 stated that:

*"Although the extent of landscape change and associated effects on the character and quality of the Strategic Landscape are quite localised, it is clearly*

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<sup>8</sup> ID1

*apparent that a large number of intrinsic qualities would be notably eroded through the introduction of a highly incongruous development. To this end, the strategic recreational function of this important scenic gateway landscape would be fundamentally damaged"*

- 5.7 With regard to impact, Mr. Harman has changed his position on harm, the appellant considers that the Council have 'overplayed their hand'.
- 5.8 The site has been subject to massive scale opencast mining which ripped up the local landscape around Huntington. As Mr. Murray indicated and as will be obvious from the site visit, it is a recently restored minerals site. Whether it be the absence of field boundaries, abnormal fencing and boundary treatments or the heavily engineered access track, it does not look or feel like normal countryside. It has a rather plain appearance with no defined landscape structure or pattern to the fields. It is of average quality.
- 5.9 The 'plainness' of the site is evident when considered against other parts of the WFSL that surround the Wrekin/Ercall ridge. As the important litmus test, a visitor does not 'feel' that they are within the forest when on the appeal site. As Mr. Enderby described for the appellant, the perception is of the area (including the site and the land between New Works Lane and Dawley Road) forming a transitional landscape between the urban fringe and the forest. For most people, the perception of being within the forest, as evident on the ground today, is when they physically enter the woodland or open parcels of land that are subsumed by the woodland, as is the case in some areas to the west.
- 5.10 Adverse change within the Wooded Estate lands LCT and WFSL would be limited to the site and immediate adjoining land. This change in character would not be evident from within the AONB, nor would it be evident in the wider landscape setting of the AONB. Whilst the site does provide some contribution to the wider setting of the AONB this is limited and the appeal site is not an intrinsic or important part of its setting.
- 5.11 The final part of that 'test' is around the high ground and undeveloped setting. There is no link to the high ground associated with the Site. The appellant says that the answer to the question of whether you feel within the strategic landscape when on the Site, is no.
- 5.12 The appellant accepts the rights of way across the southern part of the appeal site, readily accessed from the car park, provide access in to the woodland and fields beyond and other rights of way in the wider area. However, the term 'gateway' used for the Council by Mr. Harman suggests an elevated importance. In reality, the car park provides a readily accessible facility for local people "to exercise as they think fit" in the way Mr. Harman put it and as Ms. Denmark and local residents also described. Many local people use it for dog-walking, strolling with a pushchair or short circular walks. Exercise and enjoyment of being outside is more functional. Dwell times are relatively short. Visitors are already aware of the car park's existence and access to such routes. The car park is not signposted, not marked on any Ordnance Survey map and has no information boards illustrating the wider connections that are available in the area or to indicate that this is a 'gateway' into the AONB. Indeed, in the SoCG, the Council accept that it is *'a small car parking area adjacent to New Works Lane for 8 car*

*parking spaces ..... provided for local people to use as part of the restoration plan'.*

- 5.13 The local value and the attraction of the appeal site comes from its physical characteristics; location, facilities and connectivity. Local residents use it because it is close to town, has free parking, well-engineered and accessible tracks and good connections to the wider area. The appellant considers that landscape character, views that are available and its designated status are not key attractors. It is a locally valued site, valued by local people.
- 5.14 This is in stark contrast to the area at and around the Wrekin Forest Glen car park, which is signposted (including brown signs) from local roads, located between the Wrekin and Ercall. It is agreed by all parties that the core areas of the AONB are heavily used. Forest Glen provides information on the AONB and access routes with direct, well used routes up and around the hills. The Forest Glen car park in which parking fees apply, is small and often full, leading to significant levels of parking along the nearby roadsides and related traffic management/walker conflict issues.

#### Energy policy

- 5.15 The reason the appellant is at this Inquiry is because there is an immediate and pressing need for deployment of renewable energy generating infrastructure in the UK which is intrinsically linked to the legally binding obligations to reach "net zero" by 2050. The proposed development would make a material and appreciable contribution to meeting the amended Climate Change 2008 targets, having a capacity of 30MW and generating electricity to power approximately 8,650 homes. This would result in savings of carbon dioxide emissions during its operational period of c.15,000t CO<sub>2</sub> per annum. It is agreed with the Council that these benefits should carry significant weight in the planning balance.
- 5.16 It is also agreed with the Council, that Inspector Baird provided an accurate and succinct summary of renewable energy policy in paragraphs 52 to 55 of the recent Halloughton appeal decision<sup>9</sup>. Other than changing the energy generation figures to reflect the output of this particular scheme, the text in those paragraphs is recommended to the Inspector and Secretary of State in full.
- 5.17 Halloughton was a scheme considered under the Town and Country Planning Act (TCPA), but the Inspector still drew on both the extant EN-1 and EN-3 and their respective draft replacements. Mr. Murray has rightly drawn attention to these as material considerations; there is no legally binding requirement to do so, nor is one claimed, but they provide helpful policy guidance which should be considered. Consequently, whilst guidance in the NPS series may not be directly applicable in the TCPA context, it is talking about the same technology and the same spectrum of environmental effects. It makes no sense to ignore Central Government advice on how to approach technical issues relating to solar energy generation, notwithstanding the replacement EN-3 is in draft form. That this draft signals the intention of Central Government to bring solar energy generation within the scope of the NPSs is manifest.

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<sup>9</sup> APP/B3030/W/21/3279533

5.18 Solar energy lies at the heart of Central Government plans. Indeed, large scale solar is described as a “key building block” in the Energy White Paper. That adjective “key” is used repeatedly in the Solar Strategy Part I and II and the principal documents thereafter. It is interesting that in the Little Crow solar array consent, under the Planning Act 2008, the Secretary of State disagreed with the Examining Authority’s choice of weighting and at paragraph 4.32 thought it appropriate to accord “substantial positive weight” to the renewable energy benefits flowing from that scheme. The correction was important. In this case, and at this scale of development, “significant” weight is agreed with the Council. “Substantial” weight may be thought to be justified by the decision maker.

#### Decision making framework

5.19 For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan comprises the Telford & Wrekin Local Plan 2011–2031. There are a range of relevant local plan policies by which the proposed development will be assessed but the lead policy is Policy ER 1. Policy NE 7 deals with the AONB and Strategic Landscapes. Ms. Denmark agreed that all issues before this Inquiry can be dealt with using these two policies. Policy BE 1 has not been central and adds little.

5.20 There is an important difference of interpretation and application of Policy ER 1. The Council appeared to make much of something which is conceptually straight forward. The Council supports renewable energy development (excluding wind turbines) where it has been demonstrated that all of the five criteria (i) to (v) have been met. If one of the criteria (i) to (v) is not met then it is likely that Policy ER 1 will be breached.

5.21 Criterion (i) indicates that there should be no significant adverse effect on four topic areas:

- (a) highway safety
- (b) landscape or townscape
- (c) ecology and wildlife
- (d) heritage assets, areas or features of historical significance or amenity value;

5.22 When considering each of those topic areas, there will be a basket of effects, identified through assessment. For landscape or townscape that will be an LVIA. For ecology it will be a suite of surveys. For highway safety it might be a Transport Assessment.

5.23 In cross-examination, Ms. Denmark’s position for the Council was that if a single significant adverse effect was identified within any assessment then it should trigger an automatic fail of that topic area leading to an automatic failure against criterion (i) and leading to an automatic failure against Policy ER 1 as a whole. Such an extreme interpretation threatens to sterilise the purpose of Policy ER 1 as a vehicle for renewable energy deployment and which would be contrary to the Framework. Put shortly, on Ms. Denmark’s view, a single occurrence of a significant adverse effect within a topic area should trip the wire.

5.24 As set out by Mr. Murray, the appellant considers the correct way to interpret Policy ER 1 is to recognise that within assessments carried out within the topic

areas (a) to (d), there will be effects of varying types and magnitude within each topic area, including a basket of effects for landscape including character, visual, receptors, visitors and residents. Given the inevitability of harm caused by commercial scale renewable energy developments, some individual landscape and visual effects may well be significant. It largely depends on the receptor; if the receptor is a field, then the effect of a solar farm will always be significant. For a person standing on a footpath next to a new solar farm, it would be very odd if it wasn't assessed as a significant adverse effect.

- 5.25 Criterion (i) asks the decision maker to determine whether there would be a significant adverse effect on landscape in the singular. It is not asking a decision maker to pick through each and every single judgment to pick out the worst. Rather, looking at the basket of effects within the landscape topic in the round, the decision maker is asked whether the degree of harm caused a significant adverse effect overall.
- 5.26 In his role as an experienced planner, Mr. Murray's position for the appellant was clear that the results of the LVIA undertaken by Mr. Enderby do not indicate a breach of criterion (i). Within the landscape topic area, the basket of effects does not mean that there is a "significant adverse effect" on landscape overall. This is a matter of planning judgement for the decision maker.
- 5.27 Before leaving this topic, it is interesting to note that the Council itself does not apply Ms. Denmark's interpretation consistently. In relation to impacts on residential amenity including outlook (criterion ii), Mr. Enderby identifies a significant adverse effect. However, Ms. Denmark was clear that criterion ii is not breached. That presumably means that she was undertaking an internal balance within the topic area of residential amenity.
- 5.28 It is a similar point in relation to Policy NE 7. The policy provides that the Council will protect the borough's Strategic Landscapes from development which would cause "detrimental change" to the quality of the landscape. This does not mean that a single incidence of "detrimental change" should trip the wire. The appellant says that the policy should be given a straightforward interpretation which means that the basket of potential effects should be considered before an overall judgement is reached. Again, Mr. Murray was clear that the basket of effects identified by Mr. Enderby did not reach this threshold. This is a matter of planning judgement for the decision maker.
- 5.29 The appellant submits that the proposed development complies with Policy ER 1 including criteria (i) to (v) and Policy NE 7 whereas the Council does not. The appellant says other material considerations only seek to further strengthen the case for the grant of planning permission. If the appellant is wrong about compliance with Policy ER 1 and Policy NE 7 then that is not an end of the matter. Even if its case is not accepted, the appellant submits that any non-compliance with Policy ER 1 and NE 7 would be partial. Other material considerations would still justify the grant of planning permission. The Council will argue that wider benefits are insufficient to outweigh the harm. The difference of opinion regarding the extent and gravity of the harm to landscape character and visual amenity is why we are here.
- 5.30 In addition, the Shropshire Hills AONB Management Plan 2019-24 provides the

following two relevant policies: P1 Protection of the AONB and WF1, The Wrekin Forest.

- 5.31 Policy WF1 is a management policy. It does not afford 'blanket' protection to the WFSL. It notes it should be protected 'as far as possible'. One of the identified 'priorities' for the management of the area includes 'improvements to access' (on page 58). Neither policy has featured heavily in the Inquiry and the appellant submits that they are entirely subservient to Policies ER 1 and NE 7.

## Landscape and Visual Effects

### Wrekin Forest Special Landscape Area

- 5.32 The Council argued that there was agreement that the site was properly included with the WFSL designation. The designation is the designation and the appellant cannot change that, but there is a question whether, with all the evidence presented here, it would have been designated now. However, nor can it be said that this view clouded Mr. Enderby's judgment; his LVIA was carried out in full accordance with appropriate methodology. The Council may disagree with the values he chose, but these were not a result of any view of the designation itself.
- 5.33 The WFSL is a local landscape designation and agreed to be a valued landscape in accordance with paragraph 174a of the Framework. The overall aim of the designation is 'to protect the special qualities of the iconic landscape of the Wrekin, its setting and views'. As discussed above, Mr. Harman felt that the test was a perceptual one; whether an observer feels to be within the forest.
- 5.34 It is accepted by the appellant that the appeal site falls within the WFSL designation. However, it is interesting to observe the background to the designation exercise set out in the Examining Inspector's report at Appendix 1 to Ms. Denmark's proof. The 2015 Study was carried out on areas which had already been pre-selected. Paragraph 2.4 of the Study indicates that a "key element" of the project was to define the boundaries of the strategic landscapes. In all cases, the authors used a boundary which is clearly identifiable on the ground and where a suitable road or track existed, they used a road or track.
- 5.35 Fieldwork was limited to a maximum of two days to cover the entire area and was completed in September 2015. Mr. Harman gave evidence of what he says he recalls seeing on the appeal site. It is difficult to reconcile the level of vegetation he describes with the timeline of restoration and planting presented in Mr. Murray's proof. What the appellant submits is that the roads were chosen as obvious boundaries and that inclusion of the appeal site was based on faith in the restoration proposals. Based on the known facts, in September 2015, the appeal site is highly unlikely to have been displaying characteristics that were homogenous with other parts of the WFSL. Further, it is agreed by all parties that the restoration of the coal mine has not taken well and as such, the site continues to display a contrasting appearance from that of other parts of the WFSL. As it transpires, Mr. Harman accepts that the coalfield restoration planting is struggling. Variations across the WFSL are to be expected and right at its periphery, the appeal site does not possess the 'feel' of the forest.
- 5.36 This is not a challenge to the decision to include it, but it is considered to be a fairly cursory inclusion based on an anticipated future. There are variations



across the WFSL and this is at the 'poorest' end of the spectrum for inclusion.

- 5.37 The Study notes that there has been a loss of landscape structure at the periphery of the area due to opencast mining. Mr. Harman agreed that reference was to the former Huntington opencast mine. It is also recognized, on page 46, that the urban and urban fringe development beyond the northern and eastern boundaries of the area also has a localized impact on landscape quality. These statements accord with the description in the Wooded Estatelands LCT which acknowledges that the development of Telford means that to the west of the town, landscape are now situated on the urban fringe.
- 5.38 The appeal site has a sense of place due principally to its relationship with the adjoining woodlands that contribute to its setting, particularly within the southern and central parts of the site, enhanced by the relationship with historical mining features. However, the visibility of the nearby built up areas engenders the perception of a transitional landscape between the wooded hills to the west/south west and Telford. The appeal site is more closely connected with the town and urban fringe than it is with the excitement of the higher ground beyond the woods. Mr. Harman agreed that there were no "key views" as defined of the higher ground from roads or footpaths within the site. The appellant considers that this essentially is an area of landscape where the special qualities of the WFSL are less vulnerable and more tolerant of changes from the solar farm. The site is unique. Set on the very edge, subject to past opencast mining and able to accept change.
- 5.39 Mr. Enderby provides a detailed commentary on the special qualities of the WFSL in his tables at paragraph 2.32 and 2.40 of his rebuttal proof. The contents of those tables is incorporated by reference into these submissions and it is not necessary to repeat them here.

#### AONB

- 5.40 The AONB's 'special qualities' are the qualities identified for the designated area. The appeal site is not within the AONB and is separate from it. It lies on the extreme periphery of the informal "Zone of Influence" which is identified on page 50 of the Management Plan. The proposed development would have no effect, a very localized effect and in some cases a beneficial effect on those qualities which are identified by Mr. Harman as being relevant.
- 5.41 There would be no effect on the defining hills of the AONB or on tranquillity, other than local short term disturbance at the time of construction and decommissioning. There would be no direct effect on woodlands, albeit the local setting of woodlands adjoining the site (which are also outside the AONB) would alter for the duration of the scheme. New planting would have a beneficial effect on vegetation cover along woodland edges. There would be a limited local effect on farmed countryside, although agricultural use would continue in five of the seven fields. Planting would also reintroduce landscape structure. Rights of way would not be affected physically albeit the context and experience of those routes within and immediately adjoining the site would be adversely affected. Positive effects would occur from the increase in parking capacity, something recognized as a benefit in the Wrekin Forest Plan together with the creation of informal access to larger areas of the site.

5.42 The effects of climate change on the landscape are of particular relevance. The AONB Management Plan notes that climate change *'is an overriding issue which affects all aspects of the Plan'*. With regard to large-scale renewable energy generation, it notes such installations should be outside the AONB and that this needs to be balanced with landscape protection. This is clear recognition that the resilience of the AONB and Forest's landscape (like all landscapes) are vulnerable to climate change and that renewable energy will help to mitigate the effects of climate change on the landscape. Again, this is a matter to be 'weighed in the balance'.

5.43 Overall, there would be small, very localized indirect adverse effect on the AONB characteristic of Diversity and Contrast, as it applies to the AONB's setting outside the designation itself.

#### Landscape character effects

5.44 As found by Mr Harman in his consultation response to the application, no Significant adverse landscape effects have been identified. The appellant considers there would be Moderately Significant landscape adverse effects on:

- The site's character, which would reduce as planting develops to establish a network of hedges and other vegetation which would help to assimilate the installation within its local landscape setting;
- The experience/perception of openness with the introduction of the arrays and fencing creating a more partially enclosed landscape. However, particular care has been taken to retain openness along rights of way by 'drawing back' parts of fields 5, 6 and 7 to allow open views of grassland for users of the adjoining rights of way, setting security fencing back from the routes and removing adjacent existing field fences. As planting develops it will create a more structured and enclosed character; being set back from the routes the planting would not enclose views of the adjoining woodlands;
- The experience/perception of sense of place with the site taking on a more developed character, although the adjoining woodlands would provide scale and the green corridors between fields would break up the development and planting would provide softening.

5.45 Balanced against these effects would be:

- Benefits provided by significant improvements in accessibility for informal recreation;
- The creation of a structured landscape pattern within the site with the establishment of proposed planting;
- Related ecological benefits (including ongoing appropriate management).

#### Visual effects

5.46 Significant and moderately significant adverse visual effects would be limited to those views experienced by users of the public rights of way within/adjoining the southern part of the site albeit that particular care has been taken to accommodate such routes by setting development back from them. The effects would be limited to users of these rights of way and the other routes (definitive or informal) that immediately adjoin this part of the site. In the usual way, the

visibility and related effects experienced by users would change with position and direction of travel and be of limited duration. Mr. Enderby timed a walk through the site from the car park at 6 minutes.

- 5.47 Significant adverse visual effects would be experienced by users of a 150 m section (approximately) of the bridleway south of field 7 (viewpoint 6) and a 300 m long section of the public footpath that runs between Short Wood and field 6 (viewpoint 8). These effects would moderate as planting establishes.
- 5.48 Users of footpath 38 which follows the track between fields 5 and 6, the byway between fields 6 and 7 and fields 7 and 5 and parts of the bridleway 7 to the east of field 7 would experience moderately significant adverse effects. The footpath and byway would be in much wider accessible green corridors. As planting develops, these effects would also reduce in all cases, except in the views experienced by users of public footpath 38.

#### Landscape strategy

- 5.49 The proposal has been developed to take account of landscape, visual and other environmental considerations, incorporating 'primary' and 'secondary' mitigation measures. A detailed Landscape Strategy for the site has been prepared (LVIA Plans 5.1 and 5.2). This includes the creation of wide green corridors along the rights of way in the southern part of the site to reduce the effects of the proposals on users, and significant planting comprising approximately:
- 7,500m<sup>2</sup> of native tree and shrub planting;
  - 3,850m<sup>2</sup> of native shrub planting;
  - 3,100m of new and supplemented native hedges; and
  - an area of wetland meadow would also be created.
- 5.50 The Landscape Strategy plans submitted with the LVIA have been altered slightly (Plans 5.1 and 5.2, Revision D) as a result of very recent discussions between the appellant's and Council's ecologists, principally to increase the distance between the security fence and Short Wood. These changes, whilst minor in landscape terms, would be beneficial providing a slightly wider area of land through which the proposed permissive paths would run; there are no issues arising with prejudice in consideration of these plans.

#### Visual component of residential amenity

- 5.51 The Council does not oppose the proposed development on the basis of impact on residential amenity. Residential receptors at four properties are likely to experience an adverse visual effect on views but only in views from certain windows, most of which would be at first floor level. The growth of proposed planting can be expected to reduce the visibility of the proposals in most of these views with the effects reducing over time. None of the views available from these properties would be blocked by the proposals. The spaces between arrays (depending on the angle of view), the undeveloped corridors between the fields and the low stature of the panels mean that the proposals would not have an overbearing effect on the outlook from these properties or unacceptable effect on the visual amenity of residents.

## Ecology

5.52 Reason for refusal 2 has now fallen away entirely. Ms. Marshall explained the nature of discussions between the appellant and the Council and what had been achieved. It is clear that the achievement of such substantial Biodiversity Net Gain (BNG) should attract significant weight in the planning balance. As was accepted by Ms. Denmark, the additional positive weight attaching to BNG can only have served to make the planning balance even more finely balanced than it clearly was at the time she wrote her officer report and the Council refused planning permission.

## Miscellaneous issues

5.53 It is not right to say that the community as a whole opposes the proposed development. Support has been given including the carefully reasoned submissions given on Tuesday morning. As is normally the case, the vast majority of the local population has not expressed either way. A relatively small number of local residents have expressed their views in opposition; but there is nothing unusual about such a spread of opinions for a renewable energy scheme.

5.54 The appellant considers that when separating out personal views from land use planning issues, all of the issues can be dealt with by way of planning conditions or are not material issues at all. Certainly, nothing said would warrant refusal. The appellant has dealt with noise and flood risk by commissioning professional reports, which are agreed by the Council, and the risk of battery fire can be dealt with by way of a planning condition.

5.55 The issue of precedent has been raised and is worthy of note. The appellant's case is firmly rooted in the particular characteristics of the appeal site and is not a more generalized statement about the suitability of the WFSL area for development, let alone residential development. Housing outside settlement limits does of course face a completely different policy matrix to renewable energy schemes which are highly likely to be located in the countryside. There would be no inconsistency between the refusal of residential development on a different site within the Strategic Landscape and a solar farm in this location.

## Concluding remarks

5.56 Responding to submission made after closure of the Inquiry regarding the Best and Most Versatile (BMV) agricultural land, the appellant considers comments made to the Environmental Audit Committee, 29 June 2022, were inconsistent with clearly stated national policy. The Council have agreed the land to be Grade 3b. Accordingly, for the purposes of this appeal, it is agreed that the site represents poorer quality land that does not comprise BMV agricultural land; it is a recently backfilled, opencast coal mine.

5.57 It is agreed that the installation itself would be an 'uncharacteristic' feature within the local landscape; all solar farms are likely to be uncharacteristic of their surroundings. Mr. Harman was keen to describe the array as 'industrial' in nature, a point repeated in the Council's closing statement, but such debate is unnecessary; it is a commercial solar farm, the characteristics and appearance of which are well understood. For the reasons set out by Mr. Murray for the appellant, this is not a foot-loose type of development. It cannot just be sited

elsewhere. Limiting constraints relating to grid connection, availability and cost, mean that the choice of appeal site has been undertaken carefully.

- 5.58 The appeal site is within a disturbed and recently restored landscape which lies within a part of the WFSL that is within the influence and visual envelope of the built up area of Telford. Mr. Enderby described it as a 'unique' site within the WFSL in this regard. This is in strong contrast to most other parts of the WFSL which have a strong rural character, strong sense of remoteness and being away from it all and which are most evidently unrelated to the urban area. The Council say it experiences tranquillity away from the motorway but you cannot escape the motorway noise on the Site. This is an engineered, transitional landscape between town and the magnificence of the forest and all that is splendid about the Wrekin.
- 5.59 It is clear from an objective reading of Ms. Denmark's officer report to committee that she considered the case to be finely balanced. It has become even more finely balanced with the additional positive weight afforded by Biodiversity Net Gain. The appellant submits that the correct appraisal falls on the right side the line. It would accord with the relevant policies in the adopted development plan when read as a whole, including meeting all criteria set out in Policy ER 1. The proposed development is also consistent with the objectives set out in NPS EN-1 and EN-3 and their emerging drafts whilst also being compliant with the directives set out in part 14 of the Framework.
- 5.60 The scheme would positively contribute towards the achievement of sustainable development. It would improve biodiversity. It would provide renewable energy infrastructure that would contribute towards building a strong, responsive carbon zero economy; social gains would be delivered by fostering a well-designed scheme which is safe for the environment.
- 5.61 The appellant considers that the site can accommodate the proposed solar park without significantly affecting the landscape character of the wider countryside or amenities of residents in the vicinity. The temporary and reversible nature of the development, together with the measures that are to be taken to enhance and encourage the ecological diversity of the site, mean that in the long term the site can be improved. Local residents are concerned about the restoration scheme not taking and poor management of that scheme. This can be rectified and a new regime instituted through the grant of planning permission through conditions to be enforced by the Council.
- 5.62 There is a need to get on with development of renewable energy generation. There is always somewhere else that a developer is told to look in the game of planning hopscotch. As Inspector Baird colourfully put it at Halloughton, it is not possible to make an omelette without breaking eggs. The very localised harm to this former opencast site means that the decision would be proportionate and in accordance with policy and guidance. In the appellant's view, this is the right scheme in the right place. This does not decry the value and enjoyment available at the Site; the localised degradation is insufficient to justify refusal.
- 5.63 Accordingly, for the reasons set out above and based on the detailed evidence given by Mr. Enderby, Ms. Marshall and Mr. Murray, the appellant respectfully requests that you recommend to the Secretary of State that planning permission

is granted for the proposed development in the form in which it has been sought. The appellant confirms acceptance of the pre-commencement conditions.

## **The Case for Telford and Wrekin Council**

6.1 The full submission made by TWC can be found at ID10, the material points are as follows:

### Introduction

- 6.2 This appeal turns on the importance of development being in the right place. The Council is supportive of solar energy, in the right place. As set out in the evidence of the Council's expert planning witness, Ms Denmark, the Council was one of the first local authorities to install its own commercial solar farm and it has welcomed and supported applications for renewable energy, from domestic rooftops to free standing schemes, to large-scale private installations, including consenting seven solar farms (one very recently), some larger than the appeal scheme. The Council supports the delivery of renewable energy and recognises its importance, but it must be the right scheme in the right location.
- 6.3 This properly reflects the local and national policy support for renewable energy, which recognises the urgency and importance of the transition to green energy, but not at any cost; and not in every place. While some adverse effects from solar development must be tolerated in order to achieve the crucial goal of maximising renewable energy and reaching net zero by 2050, this does not extend to significant adverse effects on a valued landscape, where the serious harmful impacts on the landscape, and on people's interaction with the landscape, cannot be mitigated.
- 6.4 The Site lies within a valued landscape, the WFSL, and is also part of the setting of the Shropshire Hills AONB (the boundary of which is approximately 120m away from the western boundary of the Site at its closest point). When the previous use of the site as an opencast coal mine was granted permission on appeal in 2009, the WFSL designation had not yet been adopted, meaning that it was not then considered to be part of a valued landscape. This is the first proposal for development of the Site to be considered in light of the Strategic Landscape designation and the local plan policy which protects that designation. The issue of landscape impact is key to the determination of the appeal.

### Landscape

- 6.5 The Site is located in open countryside and is approximately 40 hectares in total, comprising seven fields. It is bounded on the south-west and south by the beautiful ancient woodland of Short Wood. The northern boundary is comprised of a relatively dense hedgerow beyond which an open grassed field slopes down towards the M54; the north-western boundary is marked by a hedgerow on a low-lying ridge. Away from the motorway, the site exhibits a tranquil and often intimate quality, emphasised by the semi-natural character of nearby woodlands, which are designated for their nature conservation interest.
- 6.6 The landform of the site slopes quite noticeably with heights AOD ranging between approximately 210 m to the south and 142 m to the north; it also undulates from east to west<sup>10</sup>. The Inspector has had a number of opportunities

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<sup>10</sup> The landscape experts agree that the site fits the description in the T&W Strategic Landscape Study, 2015 (CD E1 Pg 41)

to view the Site and so to experience the landform and tranquillity, both of which are the subject of some disagreement between the parties.

### The Wrekin Forest Strategic Landscape

6.7 The Telford & Wrekin Strategic Landscapes Study, 2015 (CD E1) describes the WFSL as:

*"The Wrekin Forest Strategic Landscape includes the Wrekin itself, but also the land which surrounds it and forms its setting. This landscape has a strong and distinctive character, based on the proximity of the Wrekin, the presence of extensive woodland, ancient road and settlement patterns and a long history of farming and industry. It is an intimate landscape, often enclosed by trees and woodland, but with sudden long views. Much of the area has a sense of tranquillity and timelessness, especially away from the motorway."* (pg 40, Council emphasis added)

6.8 The Council's expert landscape evidence, given by Mr Harman, who was co-author of the Telford & Wrekin Strategic Landscapes Study, is that the landscape of the Site is particularly sensitive to the proposed development and the introduction of a large solar installation would result in an unacceptable detrimental change to the character and quality of the WFSL <sup>11</sup>.

6.9 The agreed position of the landscape experts, reached by the end of the Inquiry, is that the Site was properly included within the WFSL designation and no issue is taken with that designation, which was part of the Local Plan, was subject to a strategic study, reviewed and found to be sound. It is also agreed that the Site is within the setting of the AONB. Full weight should therefore be given to the fact that the Site is within the Strategic Landscape and forms part of the setting of the AONB; that Local Plan Policy NE 7 applies, as does the national policy requirement from paragraph 174(a) of the Framework to protect and enhance the valued landscape.

### Weakness of the Appellant's Landscape Case

6.10 Mr. Harman for the Council has, throughout his engagement with the application and the appeal, consistently stated that, although the appellant's LVIA is broadly "*fit for purpose*", it understated the assessment of some landscape and visual effects and sensitivity, and he had "*particular concern*" about the assessment of effects on the WFSL <sup>12</sup>.

6.11 His concern is justified. Two key elements of the approach to landscape effects taken by the appellant's landscape expert, Mr Enderby, have resulted, the Council say, in him understating the effects.

6.12 First, Mr. Enderby's evidence contains what is in effect a full frontal attack on the inclusion of the Site within the WFSL designation. It is absolutely clear that the standpoint from which Mr. Enderby's evidence was written was that he "questioned" – his own word – whether the site should be within the

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<sup>11</sup> Mr Harman's PoE Para 1.14

<sup>12</sup> ID1 pg 8; Proof §3.20



designation<sup>13</sup>. He considered that the Site conflicted with what he described as “*the definition*” of the extent of the designation and he considered that the Site does not display the “*particular and distinctive qualities of the wider SL area*”; he stated that the Site was of “*reduced landscape and visual quality*” compared to the rest of the designation and he repeatedly emphasised that the designation was very “*varied*”<sup>14</sup>.

6.13 This, inevitably, coloured Mr Enderby’s approach to two key issues: the value of the site and the importance of its role within the WFSL. By the time Mr Enderby rowed back from attacking the designation, in his cross-examination, it was, the Council say, too late. His assessment in the LVIA and his evidence to the Inquiry have been fatally swayed by his belief that the Site should not be within the designation.

6.14 This most clearly manifested itself in Mr Enderby’s decision, throughout the LVIA, to accord the Site “Medium” landscape value, despite it forming part of a designated valued landscape and being part of the setting of the AONB. Plainly, it should have been accorded “High” value. It also meant that Mr Enderby inevitably closed his mind to the potential that impact on the Site could result in detrimental change to the WFSL designation. Both of these mean that the Inspector and the Secretary of State cannot safely rely on his assessment.

6.15 Indeed, the theme that the Site should not have been included within the designation, has also shaped the appellant’s entire case on landscape:

- The appellant’s questions of Mr. Harman were all of a piece with attacking the designation of the site, going so far as to suggest (entirely wrongly) that the boundary of the designation was set by the Council before the SLS was undertaken; stubbornly insisting that when the Site was visited in September 2015 as part of the Study it must have been in poor condition, despite Mr. Harman’s clear evidence of his recollection; putting that the Site does not meet “the test” for inclusion articulated in the Study.
- Despite having heard, very clearly, Mr Enderby state in cross-examination that he accepts the Site should have been included within the WFSL designation and is not arguing it should not have been, Mr Murray stated that his view is that the Site should not have been designated. This has, inevitably, impinged on his assessment of the planning balance.

6.16 The second key elements of Mr Enderby’s approach to effects which resulted in them being understating is that he chose a methodology which inevitably meant that the landscape impacts on the Site and the visual impacts on people using the Site would skew towards medium rather than high. So, although Mr Enderby was very transparent about his methodology, as is required by GLVIA<sup>15</sup>, his methodological choices resulted in the skewing:

- As already canvassed, Mr Enderby chose throughout the LVIA to accord the Site medium landscape value with medium susceptibility to change (apart

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<sup>13</sup> Mr Enderby’s Proof §3.43 2nd bullet; §§7.35-7.37; Rebuttal §2.22

<sup>14</sup> Mr Enderby’s Proof §§3.43 and 7.11; Rebuttal §§2.24, 2.25, 2.26; 2.40 and 2.73

<sup>15</sup> CD-E2

from tranquillity, which he put at low susceptibility) (CD A11 eg pgs E3-E4);

- This played out particularly in the way Mr Enderby's, for the appellant, approached valuing the view from residences as opposed to valuing the view from footpaths: the former was valued as high; the latter as medium, despite it being precisely the same view.
- Turning to receptors, Mr Enderby followed GLVIA and treated residents as having high susceptibility to change, but departed from that guidance and treated people engaging in outdoor recreation and using public rights of way as having medium susceptibility. This is contrary to GLVIA<sup>16</sup>.

6.17 The upshot of these methodological choices is that two people, looking out on the same valued landscape, one from inside a house near the Site and the other from a footpath on the Site, would be looking at precisely the same landscape, but the value of the view that they would be seeing would be different, with impact of the development on the resident being a magnitude greater.

6.18 This, too, means that the Inspector and the Secretary of State cannot safely rely on Mr. Enderby's assessment.

6.19 To return briefly to what the appellant described as the "test" or "definition" for what would be included in the WFSL<sup>17</sup>, Mr. Harman made it clear in his evidence that this was not "the test", and that the methodology for determining the boundaries of the strategic landscapes was set out at section 2.4 on pg 13; that is plainly correct. Furthermore, the discussion of the "Boundary" of the WFSL on pg 51 is not just that part referred to by the appellant, that is "*the area in which an observer feels to be within the Wrekin Forest landscape*". The sentence continued, but more importantly was followed by a second sentence which Mr Enderby and the appellant consistently omitted: "*It contains the elevated areas of the Wrekin, and the undeveloped countryside which forms its setting*". The two sentences, taken fully and together, perfectly capture the Site.

6.20 Finally, as set out in Ms Denmark's evidence, the proposed WFSL designation was subject to robust critique and analysis by the Local Plan Inspector before he supported its inclusion in the Local Plan<sup>18</sup>.

6.21 Stepping back and drawing these matters together, the Inspector and the Secretary of State should eschew the narrative developed by the appellant, that the Site "pulls down the slope towards the urban fringe" of Telford, rather than "having the feel of being in the Wrekin Forest". The cogent, robust and reliable assessment of the Site is that given by Mr. Harman for the Council: it is a small but important part of the WFSL, which plays a strategic recreational function, significant in its own right and important as a scenic gateway into the valued landscape and the AONB.

## Recreational Use of the Site

6.22 Mr. Harman's evidence is that, with a well-connected network of public

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<sup>16</sup> CD-E2 - §6.33 pg 113

<sup>17</sup> CD E1 - pg 51 of the SLS.

<sup>18</sup> Ms. Denmark's Proof - §§3.8-3.11; Appendix 1

footpaths, bridleways and restricted byways, the Site provides an important recreational gateway function, underpinned by the enjoyment of the surrounding highly scenic landscape. It is important in its own right for recreation; it provides that gateway to the AONB and a gateway to the intermediate part of a number of walks, including the national T50 trail (along the southern boundary of the Site); the regionally important Hutchinson Way (which goes across the Site) and links with the regionally important Shropshire Way.

- 6.23 As evidenced by the Telford and East Shropshire Ramblers, one of the ways the Site is well known (despite not being signposted) is the Telford T50 website walks, and clear evidence was given that the New Works circular walk is a very popular part of the website to view and download. It is clearly part of a nationally published rights of way.
- 6.24 The appellant has sought to downplay the recreational importance of the Site, by suggesting it is mainly for local users for short exercise of dog-walking. First, that in and of itself is an important use. Second, that is plainly not its only use. The uncontroverted evidence from the local people who spoke at the Inquiry was that people come from across the area in order to use the Site for recreation; to access or use the wider walking trails and to access the Ercall. Councillor Seymour spoke to this. The Inspector heard from organised groups like the Shropshire Canicross group (running with dogs), the Bowring Walkers; the Lawley Village Walking and Cycling Group; the Telford and East Shropshire Ramblers; the Ramblers for Wellbeing Walking for Health walking groups (who often access the Site without a car from Wellington and Lawley, one of the only places that can occur) and members of the British Horse Society; British Horse Carriage Driving Society and Telford Bridleways Association. Councillor McClements spoke to the use by residents in Arleston Ward: families, walkers, runner, dog walkers, children, cyclists and horse riders. The Site is one of the only areas of walkable green space between the old town of Wellington and the new build areas of Telford.
- 6.25 Particularly detailed and convincing evidence was given by Anne Suffolk on behalf of the Telford and East Shropshire Ramblers. It is striking that she emphasised the group has not objected to every solar farm in the area, but have objected specifically to the appeal proposal given its particular impacts.
- 6.26 The Inquiry was told that the Site was used because it is considered to be tranquil and attractive, giving the illusion of being "away from it all" despite its proximity to residences and transport links. It is striking that both the Open Spaces Society and the Telford and East Shropshire Ramblers emphasised that they consider the site to be of high scenic value. That is the lived experience of people with long familiarity with being in the landscape and appreciating that landscape. The value of the Site and its views are not considered by the walkers to be diminished by the inclusion of Wellington within the view. In fact, the wide view over the Shropshire Plain, including built development, was appreciated. Both Ms Fahy and Mrs Lewis voiced opposition to the Site being considered to be "plain".
- 6.27 There was debate about what the impact of the development would be on this recreational use. The appellant sought to suggest that, in planning terms, the only change that would matter is if the development deterred people from their

walking or recreation altogether. This is not the correct approach. The credible and correct approach was that taken by Mr. Harman and Ms. Denmark for the Council, which is that, while the physical infrastructure of the rights of way will not change and new rights of way will be added, the experience of using the Site will significantly change and there will, on the whole, be a degraded experience. Many of the key features drawing the very wide range of people to the Site, from whom the Inquiry heard, will be diminished or lost. That weighs in the balance against the development.

## Conclusion on Landscape

6.28 Mr. Enderby's rebuttal statement for the appellant, for the first time accepted that the appeal proposal amounts to "detrimental change" to the landscape quality of the site<sup>19</sup>, but he does not consider that harm to be unacceptable. He also, for the first time, accepted that the level of landscape and visual intrusion caused by the development does "not strictly achieve" the policy aim in Policy ER 1 of preventing significant adverse effects to landscape<sup>20</sup>.

6.29 Mr. Harman's evidence for the Council is that the appeal proposal would have significant adverse effects on a number of the special qualities of the WFSL. It is notable that he used the correct methodology for assessing this impact, that is considering the special qualities from the perspective of the Site, rather than, as Mr Enderby did, considering those qualities from the perspective of the AONB looking into the Site. He also considered, in detail, the appellant's proposed mitigation and concluded that it would not avoid the harmful effects. Mr Enderby accepted that, particularly in the winter months, it is likely that the mitigation would filter views rather than screen the development. The undulating nature of the Site further undermines the effectiveness of the proposed mitigation.

6.30 Mr. Harman's conclusions, summarised, are that there would be an overall significant adverse effect on the Special Qualities of the WFSL, as exhibited by the Site. This conclusion is robust given his cogent analysis, unencumbered by the mistakes in approach made by the appellant. His conclusions are that the development will:

- notably detract from the composition of the nearby woodlands that contribute to the high scenic quality for which the local landscape is designated;
- detract from views to the important landforms of the Ercall and Maddock's Hill;
- compromise the undeveloped quality of the Site and its setting when viewed from nearby paths and settlements;
- notably detract from the natural colours and textures of the nearby woodland;
- significantly diminish the enjoyment of recreational users;
- result in the loss or interruption of stunning long range open views to the north and the shorter-range views towards nearby woodlands;

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<sup>19</sup> Mr Enderby Rebuttal §2.86

<sup>20</sup> Mr Enderby Rebuttal §2.7

- detract from the semi-natural character of nearby woodlands;
- introduce a highly uncharacteristic industrial land use that would detract from the pattern of farmland and woodlands in the locality;
- compromise the prevailing rural nature of historic rural lanes, tracks and footpaths where the proposed development is visible in close proximity; and
- compromise the strong rural character of the Site, and particularly to the south, the strong sense of tranquillity.

6.31 Mr. Harman has always accepted that the landscape and visual effects are quite localised. The Site is only part of the overall designation, but Mr Harman explained why it is an important part, particularly given its gateway function. On balance, his view is that the impacts are detrimental to the character and quality of the WFSL for the following reasons:

- a large number of special qualities that underpin the Strategic Landscape designation would be eroded and compromised by the introduction of an incongruous development;
- the distinct sense of place and the experience of tranquillity and rural character would be lost to views of extensive industrial infrastructure;
- the strategic recreational function of this important scenic gateway landscape would be fundamentally damaged; and
- the proposed development is highly uncharacteristic and it would be the largest area of built development within the prevailing undeveloped designated landscape.

6.32 Taking into account these factors, Mr Harman's evidence is that the proposed development results in detrimental change to the character and quality of the WFSL and thus significant harm to the landscape.

6.33 As set out below, the Council say that the result of this in planning policy terms is that the proposed development fails to comply with the key relevant local plan policies and the significant harm to the landscape weighs strongly against the grant of planning permission.

## Ecology

6.34 The second issue, ecology, is now the subject of agreement between the Council and the appellant, negotiated by the Council's Ecology and Green Infrastructure specialist, Miss Fran Lancaster. As reflected in the Ecology SoCG<sup>21</sup>, this agreement has been achieved because:

- The appellant has now provided significant information, including in relation to barn owls, skylarks and great crested newts, which it had not done at the time the application was considered by the Committee;

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<sup>21</sup> ID3

- The appellant accepted significant errors in the biodiversity metric work, which was only submitted as part of the appeal. The Appellant's ecologist made numerous corrections to the biodiversity metric in order to achieve a reasonable and justified figure of biodiversity net gain under the final negotiated position; and
- The appellant proposes to amend the scheme, as a result of discussions with Miss Lancaster, to remove some of the panels in order to achieve set back from Short Wood (an ancient woodland), thus preventing harm to that woodland. A change that the Council accept as narrow and directed at harm to Short Wood, and thus conforming with Wheatcroft Principles with no significant change, detriment to or prejudice to others.

6.35 The agreement between the parties has resulted in the removal of the second reason for refusal. It is agreed that the development will provide a Biodiversity Net Gain of 42.07% habitat units, and 129.97% hedgerow units and that any potential impacts on ecology can properly be mitigated by condition and through the Conservation Payment required in order to enter the site into the Strategic Newt Licencing Scheme.

## Planning Policy

### The Development Plan

6.36 The two key local plan policies relevant to the determination of the appeal are Policy ER 1 and Policy NE 7.

6.37 In a regrettable turn of events, at the Inquiry, the appellant changed its case to challenge the consistency of these policies with the Framework. They did so on an unjustified basis, drawn from Mr Hardy's questioning of Ms Denmark and subsequent re-characterisation of her answers, in particular referring to a "single integer of harm" phrase); a position unfortunately persisted with by the appellant's planning witness.

6.38 Turning first to Policy ER 1, the plain wording of the policy is that, in order to gain the support in the 'chapeau' to the policy, "all the following criteria have been met" (Council emphasis added). "All the criteria" means the numbered criteria i)-v) and any criteria further specified within each criterion. As a matter of principle, there is no difficulty with a planning policy adopting this approach.

6.39 Turning to the criteria, the argument focused on criterion i). Ms Denmark emphasised, based on the plain wording of the criterion, that what is required is that an applicant demonstrate there not be any significant effects on each of the listed matters. An effect, or an impact, even a negative effect or impact, is not sufficient to breach the policy. What is required is a significant adverse effect.

6.40 Turning to consideration of each of the listed elements, and whether there is any "significant adverse effect" caused by a proposed development in relation to each of them, Ms Denmark said that there was a "balancing exercise" as part of the ER 1 assessment, where one considers the impacts "*in isolation, with mitigation, and makes a judgment whether proposals would give rise to significant adverse effects.*" This does not, as the appellant tried to portray, give rise to a situation where the Council picks one single significant adverse impact

out of, for example, an LVIA where a variety of impacts and mitigations are discussed, and concludes the policy is breached.

- 6.41 Mr Murray accepted that, for each of the elements of criterion i), if there was a residual significant adverse effect after taking into account the “basket of effects”, “in the round”, then that would properly be sufficient to breach the policy. While the term “basket of policies” is well known in planning case law, in particular concerning whether the tilted balance has properly been applied, the appellant did not suggest that the “basket of effects” approach has any precedent and accepted it was a loose term. It appeared at times that Mr Murray and Ms Denmark were saying the same thing about the correct approach to Policy ER 1; at other times it was unclear what Mr Murray’s view was of the correct approach. Finally, Mr Murray accepted that criterion v) did not cause him concerns and did not mean that a private rather than community scheme would inevitably breach the policy.
- 6.42 The Council’s case is that Policies ER 1 and NE 7 are fully consistent with the Framework. Looking first at Policy ER 1, paragraph 155(a) of the Framework requires policies to provide a positive strategy for energy from renewable and low carbon energy resources “*that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts)*”. That allows for policies where, if there are significant adverse impacts even after mitigation applied, policy support will not be provided.
- 6.43 As Ms. Denmark submitted, and as evidenced by the solar farms granted permission under Policy ER 1, it is wrong to suppose, as the appellant does, that every large solar installation will result in significant adverse impacts. NPS EN1 supports this.
- 6.44 Moving on to Policy NE 7, Ms Denmark again correctly emphasised the plain wording of the policy: there will be lack of compliance where development would cause “detrimental change to the quality of the landscape” – i.e. to the quality of the Strategic Landscape. Yet again, the appellant’s suggestion that any landscape detriment would be sufficient, is simply incorrect and fails to apply the language of the policy. Ms Denmark emphasised that the point is narrow because what is being talked about is a change which is so significant that it is detrimental to the landscape quality of the designated area. As she rightly said, an adverse impact from one window would not result in detrimental change to the landscape quality of the designated area. She again emphasised that there is a “balancing act” when considering whether a detrimental change is caused, looking at the proposal as a whole.
- 6.45 Mr Murray expressed the same concerns with Policy NE 7 and with ER 1, including his difficulty with the “basket of effects”.
- 6.46 Paragraph 174(a) of the Framework provides that planning policies should “*contribute to and enhance the natural and local environment by ...protecting and enhancing valued landscapes*” (Council emphasis added). Policy NE 7 reflects that very wording – “protect” – and does so in a way that is entirely compatible with the Framework and the higher level of policy protection it gives to valued landscapes.

## The Appeal Proposal Does not Comply with the Development Plan

- 6.47 It is the Council's case that the appeal proposal does not comply with either Policy ER 1 or NE 7. Nor does it comply with a third relevant policy, BE 1.
- 6.48 In light of Mr. Harman's evidence for the Council, both on the extent and nature of the landscape impact and on the flaws in the Mr Enderby's approach, the appeal proposal does result in significant adverse effects on landscape. Accordingly, the appellant cannot demonstrate that there will not be a significant adverse effect on the landscape and does not gain the support of the policy. That amounts to lack of compliance with Policy ER 1.
- 6.49 The appellant's contention that the appeal proposal complies with Policy ER 1 is undermined by two things: (1) it is reliant on Mr Enderby's flawed analysis; and (2) it is inevitably coloured by Mr Murray's unjustified belief that the Site should not have been included within the Designated Landscape, meaning that he will necessarily have underestimated the seriousness of the landscape impact.
- 6.50 Turning to Policy NE 7, the Council consider that it is absolutely plain that the only analysis on which the Inspector and the Secretary of State can safely rely in this regard is that given by Ms Denmark. She alone in her proof of evidence undertook the correct assessment of compliance with the second limb on Policy NE 7 concerning protection of the Strategic Landscapes from development which would cause detrimental change to the quality of the landscape.
- 6.51 As Mr Murray very candidly admitted, his assessment in his proof of evidence omits this entirely. Instead, in his proof, he erroneously undertook his assessment of compliance with Policy NE 7 under the first limb, relevant only to the AONB (paras 7.31-7.33). Mr Murray accepted that is not relevant to the Council's case. Insofar as he addressed the correct aspect of Policy NE 7, that was a short paragraph in the appellant's Planning Statement, with little analysis.
- 6.52 Finally, as Ms Denmark stated in the Committee Report and in her proof of evidence, and supported by Mr Harman, the proposed development fails to comply with Policy BE 1 because the significant adverse effect on the landscape means the proposal fails to respond to its context and landscape setting. The appellant disagrees that the policy applies because it concerns design; the Council contends that design policies are equally relevant to renewable energy developments as to other developments, which can be designed in a way that is sensitive to the requirements of the policy.

## Other Material Considerations

### National Policy on Climate

- 6.53 The Council's case on the relevant national policy is set out in Ms Denmark's evidence<sup>22</sup>. The Council accepts that there is significant policy support for renewable energy, but not at any cost and not in every place, not where there are harmful impacts on the landscape and on people's interaction with the landscape, which cannot be mitigated.

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<sup>22</sup> Ms Denmark PoE - §§4.4-4.21



6.54 One matter needs to be addressed in relation to these policies: the appellant's case on the correct approach to NPS EN1, EN3 and the emerging versions of those ENs, based on the Cleve Hill and Little Crow decisions. Very significant care must be taken with drawing the sort of direct parallels with these cases relied on by the appellant. As Ms Denmark pointed out, the legal requirement under section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine applications in accordance with the development plan does not apply to applications under the Planning Act 2008. Instead, the NPS fulfil the main policy role and take precedence over the development plan, which is rendered a material consideration. Given that, under the 2008 Act, the role of the development plan and the NPS is essentially reversed from that played by those policies in decision-making under section 38(6) of the 2004 Act, the Secretary of State's approach to the NPSs and the emerging NPSs cannot simply be transposed from one setting to the other.

#### The Shropshire Hills AONB Management Plan

6.55 Another material planning consideration is the Shropshire Hills AONB Management Plan 2019-24<sup>23</sup>. This is a statutory document as set out in the Countryside and Rights of Way Act 2000. Climate change is acknowledged as being an overriding issue affecting all aspects of the Plan. The Management Plan supports activity to reduce greenhouse gas emissions, such as appropriate forms of renewable energy, but requires that "large scale renewable energy generation", which Mr Murray accepts applies to the appeal scheme, must be "balanced with landscape protection".

6.56 Policy P1 viii) of the Management Plan relates to development in the area around the AONB. Development proposals are required to take account of the special qualities and landscape quality of the setting of the AONB.

6.57 Policy WF1 within the Plan sets out that the landscape quality of the wider Wrekin Forest area should be protected as far as possible. It is notable, as Mr Harman stated, that this relates not just to the Wrekin Forest within the AONB but to the whole of the Wrekin Forest, including that protected only by the WFSL. The Plan also identifies a "zone of influence" around the AONB<sup>24</sup>, which incorporates the appeal site and includes the WFSL.

6.58 Accordingly, the significant landscape harm to the WFSL means that the appeal proposal runs counter to the Shropshire Hills AONB Management Plan.

#### The Planning Balance

6.59 The appeal scheme conflicts with Policies ER 1, NE 7 and BE 1 of the Local Plan and therefore the development plan taken as a whole. Accordingly, the presumption against the grant of planning permission under section 38(6) of the Planning and Compulsory Purchase Act 2004 comes into play. Permission should be refused unless material considerations indicate otherwise.

6.60 The Council's case is that the Inspector and the Secretary of State can put very

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<sup>23</sup> CD-D2 and ID4

<sup>24</sup> ID4

little weight indeed on Mr Murray's analysis of the planning balance. It became clear during his cross-examination that he had omitted key elements of analysis from his proof. As already mentioned, on the crucial issue of landscape impact Mr Murray persisted in his belief that the Site should not have been designated, in the face of clear evidence by his own expert landscape witness. That alone renders Mr Murray's judgment questionable. More pertinent, however, is that Mr Murray's approach to the inclusion of the Site within the WFSL has inevitably coloured his analysis of the planning balance, such that he has not given sufficient weight to the impact on the strategic landscape; indeed, to the extent that he omitted completely the relevant assessment concerning the strategic landscape under Policy NE 7 from his proof and also omitted entirely any assessment under paragraph 174(a) of the Framework.

- 6.61 Mr Murray also attempted to rely on other appeal decisions, both s78 decisions and decisions under the National Infrastructure regime, as a guide to how the planning balance should be undertaken, in particular where landscape harm is in play. As emphasised by Ms Denmark and accepted by Mr Murray, these decisions are not "alike", such that they require consistency of decision-making under the *North Wiltshire* principle and *DLA Delivery Limited v Baroness Cumberlege of Newick* [2018] EWCA Civ 1305. It would be unhelpful, in the Council's view, for reliance to be placed on the approach to weight or balance in those decisions.

#### Benefits

- 6.62 There are a number of benefits of the proposal. The parties agree that the proposal will deliver a Biodiversity Net Gain which should be given significant weight. The climate change benefit must also be given significant weight as the parties agree the proposal will have a capacity of approximately 30MW. The proposal is thus supported by paragraph 152 of the Framework, as it contributes to radical reductions in greenhouse gas emissions.
- 6.63 The other community benefits of the appeal scheme, including the enlarged public car park and picnic area, new information boards and a new permissive path<sup>25</sup> and the local economic opportunities carry minimal weight in the Council's view. There is also some benefit arising from the fact that the site will be decommissioned in due course.

#### Harms

- 6.64 The key harm is the significant adverse impact on the landscape character of the WFSL. Further harms arise to the recreational enjoyment of the Site. While the proposed development will be temporary, the parties agree that the Inspector and the Secretary of State should approach this as if the effects were long term and permanent, due to the 40 year period proposed.
- 6.65 The character of the landscape has an important role to play in making a positive contribution to the setting of the adjacent Shropshire Hills AONB. The significant impact that the proposal would have on this also weighs against the grant of permission. The Site, and the WFSL, are specifically identified as part of the area of ZoI to the AONB within the AONB Management Plan.

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<sup>25</sup> CD-A12

6.66 Finally, and importantly, the significant landscape harm to a valued landscape means that the proposal does not comply with paragraph 174(a) of the Framework as it does not protect and enhance the valued landscape.

6.67 Accordingly, on balance, while there are material considerations which point towards the grant of planning permission, these do not overcome the presumption, as a result of lack of compliance with the development plan, taking into consideration the material considerations, that weigh against the grant of planning permission.

#### Conclusion

6.68 The Council and the appellant both agree that there is a climate emergency and urgent action needs to be taken to avoid and reduce greenhouse gas emissions, in particular through renewable energy development. Solar power is undeniably important and a necessary part of the UK's energy transition. However, in the race to ramp up our response to the climate crisis, we must avoid what has come to be known as maladaptation, the adoption of climate positive measures which have other unacceptable negative consequences. On balance, the serious harm to a valued landscape, and people's enjoyment of that landscape, outweigh the benefits, and material considerations do not overcome the presumption against the grant of planning permission, given lack of compliance with the development plan; this is the right development, but in the wrong place.

## **The Case for other persons appearing at the Inquiry**

7. A number of interested parties, either individuals or those representing groups or organisations made oral representations to the Inquiry. Their complete statements are included under ID2 but the material points are set out here, albeit where necessary avoiding repetition:

### **Statement by Councillor Jacqui Seymour - Objecting.**

- 7.1 Councillor Seymour is the ward councillor for the area and also presented the impact statements for the Bowring Walkers and Shropshire Canicross.
- 7.2 The area has been subject to 30 plus years of applications for opencast coal mining, resulting in a limited 3 year permission on the current site with strict conditions to return it to agricultural standards. This is an ongoing commitment.
- 7.3 Since then, the need to properly protect this area has been recognised by the Council and incorporated into the Local Plan. This recognised the unique quality and value of the area around the Wrekin and its associated landscapes of The Ercall and the AONB. These can be viewed from many parts of the Borough and Shropshire, and the solar panels, which, even after 10 years of growth would not be hidden, would be a blight. In many cases the view would be of the unappealing rear of the panels. The principle of protection of the WFSL was upheld on an appeal in 2016 on Land South of the Priory<sup>26</sup>.
- 7.4 There is also the issue of flood risk. Towards the end of the opencast activity there was a major incident when water, draining down the hill, overflowed the collecting pool at the bottom of the hill adjacent to Dawley Road and flooded over the road and poured onto the M54 causing the motorway to be closed for a substantial period.
- 7.5 Although returning the land to agricultural use has again soaked up the rain, an existing solar farm, erected on very flat ground elsewhere in the ward caused considerable damage to a neighbouring farm through flooding arising from the fact that during construction the ground became compacted, preventing rain from soaking away. I do not think the appellant has even begun to understand or appreciate the consequences here.
- 7.6 There are a large number of objections from the general public, including from those not against solar panels in principle. This is because people who live locally or who come from across the Borough or even further, use this area for walking, with and without dogs, riding or just enjoying time in a beautiful, natural environment with its expanding herds of deer so near a busy, built-up area.
- 7.7 The appellant has made a great deal of proposed enhancements to the walking routes. However, the rights of way existed long before the mining and have already been enhanced as part of its restoration. As to the proposals for a viewing area and larger car park, I and many others completely fail to understand or comprehend why anyone would want to come and walk, or for

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<sup>26</sup> APP/C3240/W/16/3143217

that matter picnic, looking at a vast number of solar panels, inside 6 foot fencing and all to the tune of humming generators. Instead of encouraging people to explore the local area rather than The Wrekin itself, it will drive people towards it.

**Statement by Councillor Dave Cooper- Objecting.**

- 7.8 Councillor Cooper is representing Little Wenlock Parish Council and also presented the impact statements for the British Horse Society, British Horse Driving Society and Telford Bridleways Association.
- 7.9 A resident for 29 years and Parish Councillor since 2021, he stated that the Parish objects because the site lies within the WFSL area and is very close to the AONB and the ancient woodland of Short Wood.
- 7.10 The proposal would result in a detrimental change to the strategic landscape, failing to conserve and/or enhance the character of the landscape around the Shropshire Hills AONB. This would result in significant harm and thus impact on the enjoyment of the area by receptors using the public rights of way, contrary to Local Plan Policies ER 1 and NE 7, paragraph 174 of the Framework and Policies P1 and WF1 of the AONB Management Plan. The proposed mitigation is insufficient to overcome these harms.
- 7.11 Receptors are not only those within our parish but the site sits in close proximity to Lawley Village, with 5,700 homes. Consequently, for approximately 10,000 people this is the closest point of open countryside. While we recognise the requirement for renewable energy, having just gone through the pandemic and the restrictions to interact with others, this has taught us the value to both our physical and mental health, the benefits that open green space brings.
- 7.12 Little Wenlock have declared a climate emergency, our village hall has been converted to a heat pump and has solar panels, many in the Parish use the same technology and have moved to electric vehicles; as such we recognise the need for change in our energy consumption and generation and consider that planning applications should require consideration of energy saving and generation measures. Our request is that the Secretary of State looks at long-term solutions that bring such measures in at the point of use and mitigates against using huge swathes of our valuable green spaces.

**Statement by Councillor Dorothy Roberts- Objecting.**

- 7.13 Councillor Roberts is the Mayor of Wellington Town Council, spoke for that Council and presented a statement from Councillor Giles Luter.
- 7.14 If the solar farm is allowed in the Strategic Landscape, it will open up the whole area to other applications making the purpose of the protection meaningless.
- 7.15 The basis of the Strategic Landscape arose from many months of discussion and the report states that it is not just the Wrekin, The Ercall and other key sites but the surrounding wider landscape, providing a setting to the core area and a connection to surrounding landscapes and nearby urban areas; it provides a buffer around the ancient woodland giving it further protection.

- 7.16 The site is brownfield land because of the mining, so could, in theory, be used for development. Elsewhere, for example in Sunderland, such land has been made into a Country Park. Telford is becoming more densely populated and this is particularly true in the area to the east of the Site, which in recent years has seen a huge increase in housebuilding.
- 7.17 Providing pathways through the solar farm is no substitute for the open countryside. My experience of a guided walk through a solar farm was not an uplifting experience, if anything the reverse is true.
- 7.18 The developers state that in 40 years the land would be returned to its original state, who if any of us will be here to ensure that this happens; it will never be reversed.

**Statement by Councillor Angela McClements- Objecting.**

- 7.19 Councillor McClements is the Ward member for Arleston and Chair of Telford and Wrekin Health and Wellbeing Board, and presented the impact statement for the Lawley Walking and Cycling Routes Group.
- 7.20 The solar farm will have a massive impact on the lives of many Arleston residents who use the area daily to walk, many with their dogs, through Steeraway leading to New Works. I have had the pleasure of a guided walk to paths around New Works taking in the beautiful and amazing views full of woodland flora and fauna.
- 7.21 The area is used daily by families, walkers, runners, dog walkers, children, cyclists, horse-riders, and numbers have significantly increased since Covid. We are lucky to have such a glorious green space on our doorstep and more and more people are now enjoying the countryside for their health and wellbeing and the newly launched Telford T50 walk website promotes the walks around New Works with their 'beautiful views'
- 7.22 I wholeheartedly agree with the Council who said it would be difficult to find a more sensitive site, and it is important to understand how much residents across the area value the much-loved famous landmark of The Ercall and The Wrekin, which overlooks, blends into and compliments the New Works area. As a Councillor I have supported solar farms in the Borough when they have been in the right place, and New Works in not the right place.
- 7.23 The Pandemic has made many aware of how much we value outdoor spaces. There is increasingly compelling evidence showing that access to greenspaces really matters for our health, and it is now formally recognised that green environments are associated with reduced levels of depression, anxiety and fatigue and can enhance quality of life.
- 7.24 Nature is playing a greater part in our physical and mental well-being, and this is supported by survey data and how people can benefit from Green Social Prescribing. The Site is a vital part of the open, green and natural space network for the local communities of Wellington, Lawley, Little Wenlock and other areas of Telford. We are not only lucky to have it but it has never been more important to preserve it. The prospect of walking alongside acres of solar panels in this area, used and appreciated by so many people, is unthinkable. Yes solar

farms are needed, but in the right place and there is clear and conclusive evidence that this is not the right place.

**Statement by Councillor John Yorke- Objecting.**

- 7.25 Councillor Yorke is the Parish Councillor for Lawley and Overdale, appearing for the parish who unanimously voted to object to the application. He also presented a statement from the Lawley Village Community Association.
- 7.26 A precedent has been set against development in this area utilising open space and identified to remain so via the Local Plan, including that on Land South of the Priory.
- 7.27 Dawley Road, and a final access route on Lawley Drive, is the mandatory traffic route from the M54 and an identified area of traffic concern with an active community speed watch group. There has been 1 serious injury on Dawley Road and 6 slight and 3 serious personal injuries on Lawley Drive. Both are bordered by residential development and the traffic volumes that exist would not welcome the addition served up by construction traffic.
- 7.28 We would point out that the proposed access/egress onto/off the highway with 120m visibility splays, may be acceptable for the posted speed limit but the nature of the road is likely to see figures well above the mandatory limit.
- 7.29 There would be 6 ugly containers, purportedly to be painted to match the surroundings but this can never be effectively attained, with one further pre-fab building. 77,000 panels, 3m high where it is unlikely that boundary screening will shield over a compete year. Metal access gates would not be in keeping, and security fencing and 3m high cameras, would also not reflect the agricultural nature of the area.
- 7.30 There would be impacts on walkers at a time when central government implores the population to exercise more. The area is used extensively and it would be devastating to lose what is a golden gem in the area. The Site has previous conditions on it returning the land to farmland. This spanned over 5 years, with an estimate of 15 years to return to pre-conditions. This scheme would sterilise it for 40 more years with another 20 to return to normality.
- 7.31 Some 150,000 acres of farmland capable of food growth is lost every year in the UK; this is not sustainable. This proposal would take a hatchet through the needs and expectations of those for whom attractive open space is necessary for mental health and connecting with the outdoors again. This scheme has a wide range of negative impacts and must be dismissed.

**Statement by Anne Suffolk – Telford & East Shropshire Ramblers and the Open Spaces Society- Objecting.**

- 7.32 Anne Suffolk is the Chair and vice-Chair of groups associated with the Ramblers Association. She is also the author of the Telford T50 – 50 mile walking guide – a walk that crosses the site. These comments also incorporate those made by Marion Shaw, Chair of the Open Spaces Society

7.33 We reiterate that we are in favour of solar farms to reduce our footprint and help us adapt to climate change and for a sustainable legacy. However, we consider this proposal goes against our policy to safeguard important landscapes that are of high value. The Ramblers Association policy states that:

*"PV arrays should be installed as close to the point of use as possible, with particular use made of roofs on homes and large public or commercial buildings. When there is a need for large-scale solar PV arrays (Solar Farms) these should be sensitively situated so that they do not damage valued landscapes. Planning authorities should seek to avoid permitting such large scale development in National Parks, Area of Outstanding Natural Beauty and other areas of high scenic value".*

7.34 We believe the site lies within an area of "high scenic value", the WFSL, and would conflict with the Local Plan. The SLS (2015) was produced to support the Local Plan and identified key strategic landscapes in the Borough and their sensitivity to development and change. The Local Plan seeks to protect these areas from determinantal change.

7.35 Green corridors are as important for people as they are for wildlife, and solar farms are not 'farms' they are a form of industrial development. This site is the only area of walkable open space between the old town of Wellington and the new build areas around Lawley. This will, with the other solar farm proposal at Steeraway, change the area into one continuous, industrial and urban area between these two major population centres. This landscape is one of the most well-walked areas in the Local Authority area, valued by walkers for its wide open vistas to the Shropshire Plain and beyond. Footpaths are not being lost but increasingly they are corralled into fences and hedges between houses and factories. It is now rare for people to be able to walk with wide open spaces and extensive countryside views; a key reason why the Council wishes to protect this whole area.

7.36 The paths across the site link to important major linear footpaths, including the Shropshire Way, The Hutchison Way and the Telford T50. This trail, commemorating Telford's 50<sup>th</sup> birthday has been particularly effective in encouraging people to explore their local area. Nearly 3,000 people have bought the guide, many more have downloaded the free walking guide leaflets from the website, which has had 5,500 visitors in the last 12 months. The page most visited before people leave the website is the New Works circular walks page, it is the fifth most visited page on the site and views of this site feature highly in photos taken by walkers of the trail.

7.37 The Hutchison trail links Wellington and Newport; the section between Steeraway and New Works is one of the few open spaces with a countryside feel left on the walk. It is a 'priority' and 'major' path promoted by the Council.

7.38 The area around New Works is directly walkable within 20 minutes by residents of the new Lawley development; there is no other extensive areas of countryside available for this community to access. It is also a short walk for people from the town of Wellington. One of the beauties of areas like this is they give you the illusion of being 'away from it all' and having the place to oneself.



- 7.39 People approaching and leaving the AONB and SSSI area of The Ercall and The Wrekin and much further afield also use these paths.
- 7.40 This area forms part of the buffer zone around the AONB and is adjacent to local nature reserves and Short Wood. Sighting of wild mammals, birds and insects are common and they are free to wander and fly across the area. When asked what they value most about Britain, the second most popular answer is 'the countryside'. An easily accessible open green space is vitally important, walking in and alongside woodland is particularly important. Research has pointed out the benefits and economic value of such walks.
- 7.41 We have reservations that the panels will be under-grazed by sheep, likewise the difficulties of maintaining wild flower meadows under the shaded areas of the panels. However, we do welcome the proposals to plant for diversity and that some of the paths are noted as bridleways, shared by walkers, horse-riders and off-road cyclists, and that they are well-used.
- 7.42 We also recognised that some ramblers may take a view that it is better to save the planet than save a view, or that a solar installation is preferable to housing. However, we cannot see housing ever being granted here, likewise we do not feel this merits the "exceptional circumstances" threshold for meeting the Council's carbon neutral targets. There are five solar farms permitted in Telford and more in the pipeline. Many are also crossed by rights of way, such as that at Cheswell Grange. Although living close by, neither myself, the Ramblers or the Open Space Society have objected to or commented on those applications. We believe that the Council have taken an individual decision on this case balancing the aims for a carbon neutral future against the need to preserve the wider environment; their conclusion should be respected.

**CPRE – Greg Sinclair - Objecting.**

- 7.43 Solar photovoltaics are an important part of our energy supply in the climate emergency, but CPRE consider the government has given the solar industry carte blanche to develop large greenfield sites which damage our countryside and ignore the huge potential of roof mounted solar. CPRE is a passionate advocate for climate action but the need for energy does not justify damaging development and strong policies are needed that enable schemes that minimise landscape impacts, secure real nature recovery opportunities and enjoy the support of local communities.
- 7.44 The UK is not self-sufficient in food production. Farmland is important to the locality and the UK in general for food production. Parts of the proposed site have been used for cereals and rape seed for some years.
- 7.45 Part of the site is very prominent and visible from as far away as 10 kms and will be seen from the M54, from where drivers will see the backside of panels on what is currently farmland.
- 7.46 There has been no significant report addressing fire risk. Fires can start within the panels and control equipment and the outcome can be catastrophic. Lithium batteries can fail and lead to thermal runaway, releasing toxic gases. Vast quantities of water are required which then leads to toxic runoff. Recently a

recycling depot fire sent smoke across the M54 for weeks; a solar farm fire could easily lead to impacts on Lawley or even Telford centre.

7.47 Telford is a mixed rural and urban area; it does not have swathes of land devoid of farming or housing or of no interest to the community. We need to maintain the resources that currently help to improve the life of the community and biodiversity.

7.48 The CPRE response included commentary on another solar farm application, the Steeraway scheme, which is not before this Inquiry.

**Sarah Fahey – Local Resident - Objecting**

7.49 There is a simple reason to dismiss this application on the basis of landscape, visual impact and amenity. Objections have come from all surrounding local councils, our MP Mark Pritchard, local walking groups and individuals. Although objectors accept the need for sustainable energy, we should utilise the many acres of industrial rooftops in preference to destroying the well-loved and well-used New Works site.

7.50 The local population is growing faster than average population growth and it is these communities that use and rely on the open space New Works provides. During the pandemic, numbers visiting have increased and continue to do so. It is noted that since the start of 2018, no other application for solar has been recovered by the Secretary of State. It is crucial that the local community are listened to.

7.51 The site lies entirely within the WFSL developed to protect the area after opencast mining was approved in 2009. The regeneration, despite making New Works very popular has not yet come to fruition.

7.52 The application disregards current and local and national policy guidelines. Every part of this proposal is out of keeping with the rural location of open fields, farming and woodland; the offer of an extended car park and picnic area to encourage visitors would alone change the atmosphere of the area and the additional walking routes proposed would be through the solar fields; what pleasure would there be in that? This is not a theme park but an area where walkers can see a wide range of birds, including barn owls and skylarks, watch the seasons change and observe the lives of deer that frequent the area and experience the excitement of seeing bats fly at dusk.

7.53 It is not easy to balance the needs of communities, wildlife and sustainability but this land is simply not the place for a solar farm. This is a unique site with unique value to the community.

**Jocelyn Lewis – Local resident and representing the “Stop Steeraway and New Works Solar Farms” Campaign Group - Objecting.**

7.54 The New Works solar farm would consist of 64,000 panels and equipment, including battery storage, would be in existence for 40 years and would change this beautiful landscape forever.

- 7.55 The appellant claims only moderate significant landscape effects, but the 2.9m panels will be protected by security fencing, and walkers will be unable to see anything but these man-made structures.
- 7.56 Instead of being 'rather plain', the area has a unique quality of openness affording extensive views across fields, woods and ultimately the encroaching urban landscape below. One finds dips and pools within the area, created over centuries of industrial use and a reminder of what this land has already given to the community.
- 7.57 The site sits within the WFSL, without this buffer of open and unspoilt land, the survival of numerous wildlife and cultural sites such as Short Woods, Limekiln Woods and ultimately The Wrekin itself would be in peril.
- 7.58 The fact that the Borough supports access to this area takes the pressure off other busy areas; it is a destination in its own right as well as a gateway to other parts of the WFSL. You have heard the powerful impact statements from a range of groups and organisations in the area.
- 7.59 It will be at least 10 years, if not longer, before any planting on the site is sufficient to shield walkers to some degree from the sight of solar panels littered across the landscape.
- 7.60 Studies suggest that there will be noise, and means that those enjoying the countryside would be accompanied by equipment noise rather than birdsong or the sound of wind in the grass.
- 7.61 The AONB management plan recognises that the boundary is drawn tightly around the wooded hills and the surrounding area is very important for its setting. The SLS also noted that its intention was to ensure development and change are accommodated without compromising the special qualities of the landscape and to help to prevent detrimental impacts on views; this protected landscape takes up only a tiny part of the Borough's 290 square kilometres.
- 7.62 A recent Minister for Energy and Climate Change noted that solar farms cannot be supported '*if they ride roughshod over the views of local communities.*' He stated that '*meeting our energy needs should not be used to justify the wrong development in the wrong location.*'
- 7.63 Another former Secretary of State noted that '*public acceptability for solar energy is being eroded by the public response to large-scale solar farms which have sometimes been sited insensitively...protecting the global environment is not an excuse to trash the local environment.*'
- 7.64 The local campaign group has over 1000 members; there will be no local benefits, no local jobs, no local energy benefit, a larger car park is not needed, a picnic areas is not needed to view an industrialised landscape, information panels are not needed and could be installed without the development if desired. The existing rights of way should remain with the current rural landscape as their backdrop.
- 7.65 The appellant states that they do not consider the site will have an industrial appearance, they think it would be better described as engineered or man-made.

Whichever adjective is used, the visual impact on the beautiful strategic landscape would be significantly harmful and would not accord with policies. Unlike the opencast mining it will be a long-term change and a permanent one. The Secretary of State noted in the Badsell Road Scheme<sup>27</sup> that 25 years was a considerable period and the so-called temporary nature was not relevant when making his decision, and consequently not taking into account the reversibility of the project.

7.66 This is not a derelict, unused mining site. This is a much loved and well-used community asset, which we are on the brink of losing to industrialisation. The effect on the AONB setting, countryside and recreation are unacceptable, the essential tranquil character of the area would be lost and the appearance and intrinsic landscape quality, currently protected by the Local Plan, would be destroyed in favour of an investment opportunity and potentially set a precedent for development in the strategic landscape.

7.67 The proposal cannot be said to be in the public interest and should be dismissed.

**Mrs Mary Corley (Virtual) - Local Resident – Objecting.**

7.68 Mrs Corley was representing the estate of B Corley of Fairhaven, a property near to the site.

7.69 There would be harm to the landscape and harm to the area. It would add utilitarian buildings, which should better reflect the vernacular. However, the main focus is the impact on Fairhaven. Views from the property would be significantly affected.

7.70 The Glint and Glare studies say the conifers to the west would screen the property but this is not a feature in the appellant's control and, in any case, do not screen the upper floors. If it is to go ahead it should be moved further from the house with additional planting.

7.71 Noise has not been properly addressed and should be considered, including the issue of noise and disturbance from any extension of the car park.

**Howard Betts – Chairman of Little Wenlock Parish Council – Supporting.**

7.72 Mr. Betts confirmed that he was speaking in a personal capacity at the Inquiry, and quoted from the Shropshire Association of Local Councils (SALC) Guide to Good Planning Practice, that his overriding duty is to the whole community and not just the people in his local area.

7.73 There is a climate emergency, recognised by the Council and the Parish. New Works Solar Farm will make a small but significant contribution to this national endeavour.

7.74 He personally supports the solar farm because this is currently poor agricultural land, reclaimed after opencast mining and the environmental impact is relatively benign. The developers have endeavoured to address various concerns. It will

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<sup>27</sup> PP/M2270/A/14/2226557

be visible, but a visible demonstration of our local commitment to helping to make the world a better place. There is no requirement for power generators to be invisible.

- 7.75 There is a well-organised campaign against solar farms, but there is also a large, silent body of people who are concerned about climate change; democratic processes and Inquiries like this are the correct processes for making these decisions. We are making decisions for a huge number of young people who are too young to vote but will be more affected than any of us by climate change.
- 7.76 We need renewable energy here in Shropshire but are a long way from the sea and onshore wind is effectively ruled out. It might be better to have panels on all the houses and factories built in Telford in the last 20+ years but that opportunity has been lost. The Council were challenged to do so by Friends of the Earth 25 years ago but despite adopted policy it has had little effect. Only recently has the Council voted to develop guidelines on planning for solar farms.
- 7.77 Little Wenlock has a long history of coping with industrial activities including huge opencast coal mining and landfill activities over many decades. The Parish Council has been actively involved in restoration and he is confident this will be the case when the Solar Farm reaches the end of its working life. If we don't all address climate change, the environment will be changed beyond all recognition in the 40 years of this project. The restoration requirement do not compare with those associated with the mining activities.
- 7.78 It is not the task of this Inquiry to set or change planning policy. But going back to the SALC guidance, it is the task, the over-riding duty on this Inquiry, to implement the existing policy for the benefit of the whole community, which I contend is much wider than those who have voiced their opposition so eloquently.

### **Mr Robert Saunders - Supporting**

- 7.79 The Council is a member of the Marches Local Enterprise Partnership, which includes in its Vision for 2030:
- Locally generated renewable energy meeting 50% of local demand;
  - 1000 new jobs in the Low Carbon and Environmental and Goods Sector; and
  - Cuts in carbon emissions in line with UK targets.
- 7.80 The government has a range of strategies and commitments to cutting emissions and decarbonising the power system. Local authorities are working with their communities to achieve carbon neutrality by 2030, and Telford & Wrekin have declared a Climate Emergency.
- 7.81 We cannot rely on national government to deliver. Nuclear power is slow to progress and highly expensive, and offshore wind is slow from concept to commissioning. Onshore wind is effectively prohibited, leaving solar power as essentially the only practicable option.
- 7.82 In this instance, the New Works Solar farm would have an installed capacity of 30MW, the equivalent on domestic roofs would require some 1000 homes installing 3 KW systems; about 1 in 8 of all local homes.

- 7.83 The urgency of the need to deliver new renewable power generation is driven by the most recent reports from the IPCC.
- 7.84 All of us have responsibility for where we are today, because of decisions made or not made in the past. We have to make the best of it and make difficult decisions now, ones that ideally we may not wish to make. There is conflict between local and national planning policies and energy and climate policies and ambitions; it is a question of weighing the balance.
- 7.85 Some local residents oppose this application on the grounds of protecting the WFSL. Many more local people have not expressed a view.
- 7.86 Rejection of the application exposes the area to future applications from the landowner, which will be increasingly attractive as Telford expands, yet this scheme would effectively protect the site from commercial or housing development for some 40 years. It would protect its agricultural status and facilitate significant biodiversity enhancement. This is not agricultural land of the highest quality, but land previously opencast and of poorer agricultural value today.
- 7.87 The urgent need for a greater supply of renewable energy is clear and obvious, arguably it has been so for many years. There are national and local commitments to dramatically increasing the supply. Science from around the world is showing the extreme CO<sub>2</sub> levels and climate impacts including sea-level rise predictions.
- 7.88 The application actually protects and enhances the local area, it can address mental health in that it would be physical proof and reassurance to young people of the communities willingness to respond to the climate challenge. The current Prime Minister has said we need to take advantage of Britain's sunshine, and not dodge, as has been done for years, the big decisions on energy.

### **Impact Statements Submitted in Objection at the Inquiry**

- 7.89 As part of submissions made to the Inquiry a number of impact statements were also submitted, these form part of the ID2 bundle and are referenced above. The material points are as follows:

#### **Shropshire Canicross (Paul Kalinuckas)**

- 7.90 Since its foundation 6 years ago, the Canicross members have been running with their dogs on local trails in the Telford & Wrekin area. One of the most popular trails is around New Works as this has on off-road car park and tracks leading into and around Short Woods and Limekiln Woods. It is a wide open space with good visibility making it ideal for running at speed. The siting of a solar farm would significantly change the countryside which makes the area so attractive and would almost certainly curtail our activities there.

#### **Bowring Walkers (Paul Kalinuckas)**

- 7.91 Established during the pandemic, the Boring Walkers provide a weekly organised walk from Bowring Park in Wellington, with an average of 15 people joining on

the Monday walks. As we have grown the route has extended to include Short Woods, Limekiln Woods and New Works. Members seek tranquil and attractive walking routes to enjoy the local countryside to contribute to health and well-being. The introduction of the solar farm would preclude us from walking in this area due to the unsightliness of the panels and the loss of the attractive open environment around New Works.

### **British Horse Society, British Horse Driving Society and Telford Bridleways Association**

7.92 Submitted by Sally-Anne Robinson, a resident of New Works Lane with 50 years knowledge of the area and the Access Officer for Shropshire, Shrewsbury and Atcham for the British Driving Society (horse carriage). Speaking on behalf of 557 Facebook members and the Telford Bridleway Association.

7.93 There are three main reason for our strong objections:

- a) The proposed siting of the facility encroaches on the only off-road, safe, multi-user group green corridor running from Telford Town Centre to the Wrekin.
- b) The inclusion in the plans of a recreational route to the west and north is ill-conceived and would lead users to exit onto the busy Dawley Road where the route back to parking would be on a single paved footpath. This would be along a stretch of road with known black spots, and a recorded fatality from 50 years ago, when there was less traffic than now.
- c) There has been mining development of the site in the past and promises made to the local community concerning restoration have still not come to fruition, resulting in a lack of faith that any further promises will become reality. A route called 'The Trundle' has still to be installed and should cross the site, but the landowners of the proposed development have prevented its use by locking access gates.

7.94 The primary objection is the encroachment on the green corridor between Telford and The Wrekin. The pandemic has increased people's appreciation for outdoor spaces they can access, this includes rights of way. The Wrekin became very popular, so much so that parking has become an issue and a one-way traffic system introduced. With parking fees and increase driving costs, local people will be seeking alternate means to access the area without the need to use their car. The only off-road and safe continuous, multi-user public right of way connecting Telford directly with The Wrekin crosses through the proposed solar farm site. To develop this area would destroy this green corridor which is there for the public wanting to escape the urban conurbation.

### **Councillor Giles Luther**

7.95 The need for renewable energy to combat climate change and for self-sufficiency is appreciated. There have been schemes in the Borough but these projects have been thoughtfully and appropriately placed. This project is more to do with profit at the detriment of the local environment. The proposed site would be 97 acres, 57 football pitches, and far from blending in, the panels will be 2.9m high with security gates and fencing. There will be over 70 CCTV cameras installed on

posts up to 3m high, along with battery storage units, sub-stations and associated other units.

7.96 This will clearly have a long-lasting, devastating impact on the local environment, which the developer has admitted will take at least a decade to recover from. As Councillors we are elected to represent the people and the overwhelming view of the electorate is that they don't want this application or feel it is appropriate. It was unanimously rejected by the Town Council planning committee; it was a cross-party decision and not a case of being anti-solar but an issue of the application being the right idea in the wrong place.

#### **Lawley Village Walks and Cycling Routes Group (Julie Ketteringham)**

7.97 The group was set up during lockdown to enable people in the local area to find out information about free walking and cycling routes in the area. New Works and Steeraway have proved very popular for our members who regularly use this amenity for a wide range of purposes.

7.98 It is easy to access on foot for the growing population of Lawley providing safe and accessible routes for people of a wide range of ability levels. It is particularly busy at the weekend when the majority of groups and families have free time, and it would be misleading to suggest the area is underused based on a single Inspection visit.

7.99 I have walked the area from early in the morning to late at night and have met people enjoying the freedom to do the same. It provides excellent opportunities for wildlife spotting, walking, running and photography and a much needed green space to the growing population of Lawley village and wider community use. The proposed solar site would have a significant negative impact.

#### **Lawley Village Community Group (Helen Gordon – Director and Chairperson)**

7.100 The community group was formed to bring residents of Lawley together due to the vast number of houses being developed in the area. This urban development will consist of 3,350 houses on completion, leading to a total of 7,400, anywhere between 12,500 and 15,000 people.

7.101 Lawley has enjoyed the benefit of footpaths on its doorstep, and the newer population expect and appreciate the Site for safe conditions to walk, cycle enjoy views, take photographs, bird watching etc. New Works has a history of industrialisation; however, the Council's planning expectations do not envision the western side of Dawley Road having any further development and it would be unwise to let such intrusion happen.

7.102 All ages appreciate the need for green energy, but it must be on a balanced view and the scheme would make the area unsightly and increase the carbon footprint of those in the village needing to take exercise elsewhere. There is another application on the nearby site of Steeraway, which although not part of this appeal would make it more difficult for the Council to mount a successful argument against it, as such our doubts and fears would be doubled.

#### **Written Submissions**



- 8.1 At the application stage the Council reported over 200 representations, including one from the local MP Mark Pritchard. In response to notification of the appeal, there were 28 individual letters of representation, 3 in support of the scheme and 25 opposing. Many of these were from interested parties who presented to the Inquiry and whose comments are dealt with above.
- 8.2 The matters raised are substantially the same as those raised above other than in relation to comments from owners of the subdivided parcels of Short Wood, who raised concerns that excluding deer from the appeal site area would lead to increased problems with deer foraging in the woodland.
- 8.3 A further written submission was made and accepted after the Inquiry closed<sup>28</sup>. To ensure fairness, the appellant was given full opportunity to respond to this new evidence<sup>29</sup>. This concerned comments at a government committee meeting, made by George Eustace, Secretary of State for Defra, in relation to best and most versatile agricultural land suggesting that Grade 3b fell within the definition of BMV land. I deal with this in my section on other matters below.

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<sup>28</sup> ID12

<sup>29</sup> ID13

## Conditions

- 9.1 Were the Secretary of State to consider that this proposal should be allowed and permission granted, I have considered possible conditions that should be applied.
- 9.2 The suggested conditions were discussed at the Inquiry based on a final agreed draft between the main parties<sup>30</sup>. The focus of the discussions was to ensure that all matters of control and mitigation were properly addressed and all conditions were necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects. Following these discussions, I am satisfied that, for the reasons stated, all these conditions meet the tests and, in the event that permission were to be granted, they should be imposed as set out in the attached Appendix 4.
- 9.3 The draft conditions may have been altered in minor terms so that they comply with the tests or avoid duplication. The additional conditions, concerning delivery of the additional elements of the proposal outside of the solar infrastructure and addressing battery fire safety, are also included.
- 9.4 Turning to reasons, the relevant conditions are listed in (). In addition to the implementation and plans conditions (1, 2), I have imposed a requirement to finalise details, as a number of the approved plans are shown as 'typical' (3), these are necessary to provide certainty. As the development is a temporary one, the restoration requirement is set out for both the end of that 40 year period (4) or, if export of electricity ceases during that period, at any time before that (5) to minimise impact and ensure restoration. To address any highway implications, a Highway Decommissioning Scheme is sought (6) as well as details of the visibility splays and access to the site (9, 15), provision of adequate parking and turning on site (16) and securing of the Construction Traffic Management Plan (19).
- 9.5 To address potential land stability issues, in light of the past mining history of the site, conditions are necessary for intrusive site investigation and declaration (7, 8). To address flood risk, a scheme for surface water drainage is necessary (10). Also, to address the risk and management of battery fires, a condition is necessary in order to ensure assessment of risk and implementation of a Battery Safety Management Plan (14).
- 9.6 To address potential traffic. Noise, dust and other environmental effects, a Construction Environmental Management Plan is necessary (11) for the construction period. To address biodiversity and protected species across the site and to support bird and bat populations, conditions for nesting and roosting boxes and lighting are required (12, 17). For potential badger populations, updated surveys are necessary (18). Habitat enhancements and mitigation are to be secured long term to deliver the expected Biodiversity Net Gain, and it is necessary to ensure delivery, and any updated approach if expected enhancements are not achieved (20, 21)
- 9.7 The proposal commits to a number of additional features, including improvements to the car park and footpaths, although identified in the

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<sup>30</sup> In CD B6, but with additional conditions provided at ID7

description of development, details of these need to be agreed and implemented (13).

- 9.8 Conditions 7, 9, 10, 11, 12, 13 and 14 require matters to be approved before development commences. This is necessary because these conditions address impacts that would occur during construction, or schemes of work that need to be agreed before construction commences in the interests of site stability, highway safety, flood risk, protected species, fire risk and the delivery of land management commitments. The appellant has provided written agreement of these pre-commencement conditions in their Closing Statement.

### **Planning Obligation**

- 9.9 I have assessed the revised s106 Undertaking<sup>31</sup>, signed and dated 6 July 2022, in light of the Community Infrastructure (CIL) Regulations 2010 and paragraph 57 of the National Planning Policy Framework (the Framework), which state that planning obligations must only be sought where they meet the following tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

- 9.10 The Schedule sets out obligations to a Conservation Payment and to a Monitoring Payment. On request, the Council supplied full justification of these payments<sup>32</sup>, which relate to a Strategic Newt Licensing (SNL) Scheme. The SNL allows the developer to undertake actions, which would otherwise be an offence, allowing for the moving of newts with the support of an ecologist.

- 9.11 The SNL scheme is a mitigation licence under regulation 55 of the Conservation of Habitats and Species Regulations 2017 (as amended), and justified in accordance with Policy NE 1 of the Local Plan and paragraph 179 of the Framework. The payment supports provision of conservation measures for great crested newts through restoration and provision of new habitats. In addition a monitoring payment to allow for assessment and compliance by the Council is also required.

- 9.12 These matters were discussed at the Inquiry, and I am satisfied that each of the obligations are necessary to make the development acceptable in planning terms and all meet the requirements of CIL Regulation 122 and Framework paragraph 57.

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<sup>31</sup> ID14

<sup>32</sup> ID9

## **Inspector's Conclusions**

10.1 Taking account of the evidence in this case, including the submissions and representations on which I have reported above, I have reached the following conclusions. References in square brackets [] are to earlier paragraphs in this report.

### **Introduction**

10.2 Following a full assessment of the submissions from both the main parties and others interested in the appeal, I now set out the main issues as:

- the effect of the proposal on the landscape character and appearance of the area, including that of the Shropshire Hills Area of Outstanding Natural Beauty (AONB), including the effect on recreational users;
- whether the proposal would conflict with the development plan and if so whether there are any material considerations that would outweigh that conflict; the planning balance.

### **Landscape Character and Appearance**

10.3 The appellant submitted an LVIA and a proof of evidence from the consultancy who prepared that LVIA. The Council's landscape evidence was from a consultant who was co-author of the SLS, and consultant for the original application assessment by the Council. His comments from that consultation were supplied as ID1. No alternative LVIA was submitted.

10.4 The appellant's arguments, simply put, are that although the site is identified as being within the WFSL, its mining history and recent restoration leads to it being considered as a transitional urban landscape that is not strongly representative of the special qualities of the WFSL. They accept that there would be material changes to the site commensurate with the introduction of panels to an open, rural site, but much of this harm would be mitigated through careful siting and extensive planting.

10.5 They conclude that there would be only moderately significant adverse landscape effects on the site's character, which would reduce over time; on the experience/perception of openness; and on the sense of place, with the site taking on a more developed character, although woodland would provide scale and green corridors between the fields would break up the development with planting providing softening. [5.44]

10.6 Noting there would be some significant and moderately significant adverse visual effects, they argue these are limited to the experience of those on the public rights of way within and immediately adjoining the site, and would be of limited duration, reducing with time as planting matures. There was no disagreement with the Council on the effect on residential receptors, a matter I address in my other matters section. [5.46]

10.7 The Council, based on their original consultation response and committee report, considered the LVIA to be broadly fit for purpose but underestimating the landscape and visual effects, particularly in relation to the WFSL. As a result

they considered there would be a detrimental change to the quality of the local landscape and conflict with Policy in relation to the visual amenity of recreational users. [6.10, 6.11]

- 10.8 In evidence to this Inquiry, it was argued that the site makes an important contribution to the character and quality of the WFSL and a distinctive setting to the AONB. The Council and local residents consider it to be a gateway site and an important recreational resource, and while the effects would be localised, they would be detrimental, eroding the special qualities that underpin the WFSL and its sense of place, and would introduce a highly uncharacteristic form of development into this undeveloped, designated landscape. [6.21, 6.22, 7.58]
- 10.9 While the appellant suggests that the Council position has changed in the run up to the Inquiry, referring to findings such as 'highly incongruous', 'notably eroding' the intrinsic qualities resulting in 'fundamental damage', I disagree. The evidence is accepting that landscape and visual effects are relatively localised, albeit the area contributes to a wider landscape and thus can be consistent with findings of significant harm. [5.4, 5.6, 6.31]
- 10.10 It strikes me that to assess the relative differences in the party's cases and to understand the scale of harm, it is necessary to consider the role of the Strategic Landscapes (SL); the existing value of the site within that landscape and the setting of the AONB; the importance of the site as a recreational resource and the effects of the proposal on the character and appearance of the site; and its value as a component of the WFSL and as a recreational resource.

#### The Wrekin Forest Strategic Landscape

- 10.11 The SLs in Telford & Wrekin were assessed under the SLS in 2015. This study identified three landscapes, of which the Wrekin Forest was one. Its purpose is stated as being to provide an evidence base to inform the Local Plan and to identify and assess the SLs and their sensitivity to change. Despite suggestions made in the Inquiry that the boundaries of the SLs were set prior to the study, it explicitly states that one of its objectives was to identify the extent of each SL. I am satisfied that while the general areas were set out by the Council for assessment, the detail on their extents does not appear to have been fixed before the SLS was carried out. [5.34, 6.15]
- 10.12 Central to this SL is clearly the 'whale-back' ridge of The Wrekin and The Ercall hills, which also fall within the AONB. Nonetheless, the designation includes the land which surrounds it and provides its setting, described as an intimate landscape, often enclosed by trees and woodland but with sudden long views. The area is identified as being extremely popular for recreation. [6.7]
- 10.13 A number of Landscape Character Types (LCT) are identified within the area, with the appeal site falling within a large swathe of land to the east of the ridge identified as Wooded Estatelands. While the very northern part of the site is adjacent to the WFSL boundary, which runs along Dawley Road here, the main part of the appeal site is separated from the boundary by fields to the other side of New Works Lane, with these identified as being within the LCT of Coalfields.
- 10.14 The Wooded Estatelands LCT is identified as exhibiting a rolling landform; large blocks of ancient woodland; large country houses with associated parklands; and

mixed agricultural land use. Notwithstanding its recent history and that the woodlands are just outside of the site; it exhibits a number of these traits.

- 10.15 Further, a number of natural and cultural influences, as well as visual and perceptual qualities are set out in the SLS, which identifies the functions of the Wrekin Forest as being popular for locals and visitors for informal recreation, outdoor learning and an important backdrop and skyline for Wellington and Telford as well as a landscape setting for settlements. The Wrekin, it states, has a strong sense of place and culture and contributes to the local identity for many residents. It notes that it is generally in good condition and largely retains its structural elements, despite some loss at the periphery from opencast mining, while urban and urban fringe development beyond the northern and eastern boundaries has a localised impact on landscape quality.<sup>33</sup>
- 10.16 The study sets out an appraisal of the Special Qualities of the landscape and its visibility.<sup>34</sup>
- 10.17 My own walks and drives through this landscape bear out its attractive scenic qualities. There is a clear differential between the more open farmland to the west, the dramatic central hills and the wooded slopes and open spaces to the east. I found the variety in the landscape a key element, particularly on this eastern side, with enclosed and intimate paths within woodland opening out into surprise areas of protected glades or open water, while others provided views of the hills or, in contrast, long views out over the open plains. While the views from the Hills are perhaps the strongest characteristic, the approach routes and wider footpath network create a contrasting, alternately enclosed or open landscape, which allows opportunities for isolation, tranquillity and a genuine sense of separation from the surrounding urban areas.

#### The Value of the Existing Site

- 10.18 The appeal site bears the marks of its former mining history with limited structural elements left within the landscape and a fairly utilitarian agricultural character. While the appellant refers to this as 'rather plain', open upland grazing is a typology appreciated by many in providing expansive open views. It does so here, not only of the woodland so characteristic of this part of the landscape, but also with views out over the lowlands and plains to the north and east. While these encompass the urban fringe development of Telford, including some overtly industrial forms, and the residential areas of Wellington, these are at distance and dwarfed by the scale of the view. In association with strong hedge boundaries along New Works Lane, open fields retained to the other side of the lane and the established rural character, to my mind, this area presents a strong and clear separation from the urban areas to the north and east. [5.8, 5.9, 6.26, 7.35, 7.56]
- 10.19 In this way, I consider that it has genuine value in the variety of landscapes that make up the WFSL. To emerge from the woodland to these open views is an integral part of the experience of this landscape. The Wrekin and The Ercall themselves are not visible from the site, being screened by intermediate

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<sup>33</sup> CD E1 – p41

<sup>34</sup> CD E1 – Table p47

topography, Mattocks Hill, and woodland, including Short Wood and Limekiln Wood. Nonetheless, entering the footpath network from New Works Lane, feels very much like entering into a peaceful, rural and relatively tranquil landscape of contrasting but strong textures, changing colours and openness, as described in the SLS.

10.20 The SLS postulates that the boundary is set to define the area within which an observer 'feels' to be within the Wrekin Forest landscape. It is not a uniform landscape and the site, while I accept its immediate visual appearance and structure could be improved, nonetheless presents many of the Special Qualities, including a strongly rural feel, an uneven patchwork of fields and woodland and stunning panoramic views.

10.21 While to the northern part of the site, the influence of the M54 is felt in background noise, heading south and west an increasing sense of tranquillity is present and the site forms a vitally important entry point for local residents from the surrounding urban areas and potentially others from further afield. The car park is not large, the site and routes are not prominently displayed from the road. However, clear waymarkers are in place for both local trails as well as regionally important routes, including the Hutchison Way and the Telford T50. Overall, while I agree with the Council that this is not the sole test of whether land falls within the designation, the site 'feels' an integral part of the WFSL. [5.33, 6.19, 6.21]

10.22 I note the appellant argues that it is not an important gateway site in the way that the Forest Glen car park is, and I agree to an extent. However, this should not diminish its importance as a local access point, and the commentary of a number of local walking, cycling and horse riding groups do bear this out. [5.14, 6.21, 6.22, 6.31, 7.11, 7.36, 7.58]

10.23 As a component of the WFSL it also falls within and contributes to the setting of the AONB. However, the woodland to the south, the route of the footpaths and the topography limit direct views into or out of the AONB from the site itself. [5.10, 5.40, 5.43, 6.9]

#### Effect of the Proposal on the Character and Appearance and its Value

10.24 Many of those opposing the scheme perceive the introduction of a solar farm here as being a wholesale change to an unremitting sea of grey panels. I am convinced that this would not be the case. The plans are carefully thought out, the site extends to around 40Ha, but panels would only cover a proportion of that. The fields would be defined by considerable lengths of new hedgerow planting and the footpaths would be retained and extended in wide corridors with enhanced wildlife planting. The associated structures would be of a similar scale to the panel heights and set within the area of the panels themselves. [5.44, 5.48, 5.49, 5.51, 7.7, 7.17, 7.24, 7.29, 7.35],

10.25 In addition to the new footpath routes, and I deal with the highway implications of that in my other matters section, the car park would be enlarged and a picnic area and information centre set out within an area of enhanced planting. While I note the cynicism of some to such proposal, solar farms are an important component of the necessary change in the UK's energy supply and there are many, including some who presented to the Inquiry, who welcome them. Such

facilities would enable others to appreciate the commitment to renewable energy and potentially more people to use the site as a starting point for access into the wider WFSL. [7.72, 7.79]

- 10.26 While there can be no question that there is a significant landscape and visual change associated with them, there are many solar farms that have been successfully integrated into rural landscapes. I note that the Council refer me to a number of large-scale solar farms<sup>35</sup> they have permitted in recent years. Nonetheless, in light of my findings on the value of this landscape, it is necessary to consider the impacts of the introduction of this scheme here. [5.56, 6.2, 6.43, 7.22, 7.42]
- 10.27 Both the Council and appellant's landscape witnesses refer to effects being somewhat localised, although their overall conclusions on harm are different. Despite the far-reaching views, the solar farm would be a relatively small component of views up to the Wrekin area and intervening woodland and boundary features would limit wider experience of the panels. Some very limited and fleeting views could be achieved of the northern part of the site from the M54, but not at its closest point where it lies within a cutting, and there is an identified viewpoint off the waymarked route on The Ercall, which also overlooks the northern fields 1 and 2, Viewpoint 17. [5.4, 5.46, 6.31]
- 10.28 Nonetheless, for those using the site, whether as a close and easily accessible site for a short walk or travelling on the local and long-distance routes, it would represent a substantial and significant change.
- 10.29 Visually, the slope down the site and the undulations across it, would limit the extent of screening that hedgerow planting can give. The site, even when planting matures, would be a considerably more enclosed experience, with possible glimpsed views over the plains with panels in the foreground, or alternating views of hedgerows, the panels and the woodland. While the site could be traversed in a few minutes to enter into the wider landscape, for many this will be their starting off point, their introduction to the WFSL, for others, their destination, and it will unavoidably be perceived as a developed site. [5.46, 6.26, 6.29, 6.30]
- 10.30 In terms of character, a number of those opposing the scheme declared it would be an industrial landscape, but this was suggested by the appellant as being more a man-made one. I do not consider solar farms to be overtly industrial per se, but they do introduce hard surfaces, angular structures and man-made materials; and contribute to a site taking on a more industrial and developed character. Despite softening and screening offered by planting, this would introduce a managed landscape and not an open, rural one. [5.44, 6.30, 6.31]
- 10.31 This enclosure and limitation to views would also materially degrade the experience of those using the site as an entry or transit point. This change in character to one of a developed and managed landscape would be at odds with the Special Qualities of the WFSL. It would no longer feel part of that landscape but an area to pass through before entering the woodlands. [5.33, 5.38, 5.39, 6.29,

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<sup>35</sup> Referred to as 5, 6 or 7, although I note one is a very recent decision.



6.30, 6.31]

10.32 I note the appellant argues that this is a transitional landscape more related to the urban fringe than the WFSL; I disagree. As set out above there is still separation by the fields to the east and despite the few houses along New Works Lane, there is no real connection with the urban areas other than in the long views out over Telford. Certainly if walking to the site from Lawley, one would experience the transitional area as being the other side of New Works Lane and unquestionably, the feel when entering the appeal site is of entering the countryside. The proposal would fundamentally change that and would extend the urban fringe up to the very edge of the woodlands. [5.9, 5.38, 5.58, 6.21]

#### The Implications for the WFSL, the AONB and the Recreational Resource

10.33 The impact on the character of this area would have a material effect on the WFSL, the way that it is experienced and the integrity of the designation. This is not just a value based on the 'hope' that restoration will eventually provide a more naturalised range of planting across the site, but because of its current open and expansive character. There could undoubtedly be improvements to the individual components of the site, such as enhanced planting of hedgerow divisions, which would elevate it visually, but this does not undermine its current value to the character of the area. [5.35, 5.37, 5.41, 5.45, 6.26]

10.34 Despite the mitigation and the addition of the proposed footpath and enlarged parking, it would materially affect the attractiveness of the recreational resource provided here and extend the distance for local people seeking the natural beauty and remoteness of the AONB and Wrekin forest landscape. I am conscious that it is a relatively new resource, clearly such access would not have been possible during the mining period. However, I have no reason to doubt that in 2015, when the SLS survey work was underway, the site was already accessible and of value, and restoration is slowly improving the area. The value to local residents is clearly highlighted by the concerns expressed in this Inquiry. [6.24, 6.25, 6.26]

10.35 Although forming part of the AONB setting there would be no intervisibility, and only a relatively small part of those experiencing the AONB would approach or leave the area through the site. To my mind this limits the effect the proposal would have on the setting, so while great weight must be afforded to conservation of the AONB, any harm and weight arising must be tempered by this.

#### Conclusion on Landscape and Visual Effects

10.36 Taking all these matters into account, I consider that the proposal would have a material adverse effect on the visual and landscape character of the site and the contribution that this site makes to the wider landscape. It is a truism that all solar farms will cause some harm when developed within rural sites, I was referred a number of times to the quotation referenced by a colleague in his consideration of the Halloughton appeal decision in this regard. Nonetheless,

there are degrees of such harm and very different circumstances in which they are experienced. [5.62]

- 10.37 Despite the appellant's comments on the value of the site and questions around its original identification as part of the WFSL, they nonetheless accept that it is within the designation and must be considered as a valued landscape in Framework terms. I have reviewed the examining Inspector's findings in relation to the SLS and the SL designations<sup>36</sup>, particularly that to identify such areas as valued landscapes required robust justification. It is clear that my colleague considered that the Wrekin Forest designation and the lands encompassing its setting were adequately justified; I have no reason to disagree. [5.33, 5.34, 6.4, 6.9, 6.14, 6.15, 6.20]
- 10.38 As a valued landscape, designated within a recent local plan and forming part of the setting of an AONB, it is concluded that this is a highly sensitive site. While the harmful effects of the proposal on the appearance of the site would be relatively localised and experienced, in particular, by those walking to and through the site, this is an important recreational resource and a well-visited site. It is reasonable to conclude that the weight given to the harm is significant.
- 10.39 The effect on landscape character is the loss of a component which contributes to the special qualities of the designated landscape. This has a wider implication than the site itself, and I consider that the harm has been underplayed by the appellant. There are a number of interventions that could be considered to enhance the site, but the overall scheme would enclose and truncate views and would alter the character from a rural and increasingly remote site to a developed urban fringe. I consider this to be a significant adverse effect.
- 10.40 While it can be argued that the development is a temporary one and can be returned in some improved condition at the end of the 40 year period, this must be considered with some level of reason. 40 years is a considerable length of time during which the recreational resource and the value of a site designated to provide access for the appreciation of the geology, landform and variety of landscapes would be substantially altered. In this case, I can give little support to the proposal arising from its temporary nature. [5.61, 6.64, 7.18, 7.30, 7.65]
- 10.41 I note the appellant argues that they feel the Council have taken an overly strict approach to their interpretation of the criteria based approach in Local Plan Policy ER 1. On my review, I hold no concerns over their approach. The Council found compliance with aspects of ER 1 as well as harms. To my mind they correctly assessed those harms in the round, not just taking a single aspect of harm and finding non-compliance as a result; their approach to the matter of residential amenity to or the absence of community involvement bears this out. [5.20, 5.23, 5.24, 6.38, 6.39, 6.41]
- 10.42 Accordingly, I find conflict with Local Plan Policy NE 7, as I have found that the proposal would cause detrimental change to the Strategic Landscape, and with Policy ER 1, as this represents a significant adverse effect on the landscape and amenity value of the area. Such policy conflict must be weighed against supporting policies and the benefits of the scheme in the planning balance. Such

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<sup>36</sup> Ms. Denmark Proof Appendix 1

conflict extends to the AONB Management Plan Policy P1, which seeks protection of the AONB and its setting, and Policy WF1, which seeks protection of the landscape quality of the wider Wrekin Forest area.

### **Other Matters**

- 10.43 Turning to other matters, I note the concerns of the local parish councils, organisations and interested parties on the impacts on ecology, flood risk, fire, highways safety, noise and the loss of agricultural land, and from local land owners and residents on the visual impacts and deer foraging.
- 10.44 The ecological value of the appeal site itself is limited by its recent history. Semi-improved grassland tends to have less value for many species than marginal habitats or wetlands. I appreciate that it potentially plays a role in bat or barn owl foraging and ground nesting birds, but I am satisfied that these have been properly appraised by the appellant and issues associated with all protected species, including great crested newts, can be addressed through conditions or legal undertakings. [7.40, 7.52]
- 10.45 The agreement reached during the Inquiry confirmed the extent of biodiversity net gain associated with the scheme and changes and additions to the already extensive planting proposed, and overall, I consider that there will be ecological enhancement associated with the proposals. [5.52, 6.34, 6.35]
- 10.46 I am conscious that this is a sloping site and while the panels themselves do not necessarily introduce greater areas of hardstanding to contribute to increased flood risk, compaction caused during their installation or from run off direct from the panels in operation, can. The scheme was accompanied by a flood risk assessment, which considered these matters, noting the generally accepted situation in relation to infiltration and impermeable areas. This is a matter that must be addressed during the construction period, but it is one that can be managed and a condition can require submission of schemes to manage such risks. [5.54, 7.4, 7.5]
- 10.47 Battery fire risk has been an issue since there were incidents some years ago with thermal runaway in lithium battery cells. Technology has moved on and battery storage is now recognised as an important contributor to solar farm energy production and is recognised in national policy and guidance. Robust measures have to be in place but these can be secured by condition. [5.54, 7.46]
- 10.48 The car park, although accessible by rights of way, is off a relatively small lane without footways. Notwithstanding the concerns of local residents as to speeds on this lane, I note the findings of the transport assessment and proposed provision of visibility splays fully conform with guidance and were acceptable to the Council and the Highway Authority. [7.28]
- 10.49 I note further concerns that those utilising the proposed extended permissive route linking back to Dawley Road to the north, may return either on foot or on horseback, initially along Dawley Road, with a single footway, and then along New Works Lane, with none. Although accidents statistics are referred to these were, in terms of the fatality, from a very long time ago and the comprehensive transport assessment considered highway safety risk and previous accidents. Many footpaths join and finish on rural roads. In this case, Dawley Road does

have a footway, albeit it relatively narrow. The additional footpath would provide improved access for those walking along this road, and would give access to the wider site somewhat closer to the population centres beyond the M54, where previously they may have accessed the footpath network along the narrower New Works Lane. Overall, I find no material harm to highway safety would arise. [7.27, 7.93]

- 10.50 I was referred to noise associated with the panels and the equipment, suggesting that there would be a noticeable background noise experienced by those walking across the site. The appellant commissioned an Environmental Noise Impact Assessment, which concluded that there would be no impacts, generally because the use of fans in inverter designs have been significantly reduced, and any noise producing equipment would be sited at distance from the houses and footpaths. I am satisfied that noise would not be a factor in terms of direct impacts or impacts on the character of the area. [5.54, 7.60]
- 10.51 A further concern was in relation to noise associated with the extended car park and picnic area proposed. While this may encourage longer stays and more activity, I consider it would be sufficiently removed from the residential properties to not represent any harm to their living conditions. [7.71]
- 10.52 The site was assessed for the quality of its agricultural land and found to be rated as Grade 3b; this was not challenged and was accepted by the Council. The comments made by the Secretary of State for Defra that Grade 3b land should be considered as BMV land, as set out in the late representations<sup>37</sup>, is potentially relevant because the Framework seeks to recognise the value of such land, guidance suggest the preferential use of poorer grade land, while a Ministerial Statement<sup>38</sup> suggests that any proposal on BMV land should be justified by the most compelling evidence. The appellants correctly point out that the scheme must be considered under the Framework, which provides a definition which excludes Grade 3b land. While this may indicate an inconsistency between government departments, decisions should be taken on the basis of the latest and most up-to-date planning policy and guidance. At present this would appear to be as set out in the Framework; against which the proposal would be compliant in this regard. [5.41, 5.56, 7.86, 8.3]
- 10.53 The LVIA considered the effect on residential receptors, of which there are a number associated with the houses along New Works Lane. In terms of residential receptors, it concluded there would be significant effects but only from certain windows, which it was suggested would reduce over time because of existing or proposed planting. I note the Council position was that the effect on resident amenity would not be sufficient to justify refusal. [5.51, 7.69, 7.70]
- 10.54 I had the opportunity to view the site from Fairhaven, but acknowledge similar views would be available from other properties on New Works Lane. I can understand the concern and possible frustration of residents who would have experienced the opencast mining on the site in the past and would have had a number of years of relative peace and enhanced open views since; there would be some harm to their views. However, the obtained views would be limited to

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<sup>37</sup> ID12

<sup>38</sup> Planning Update - Statement made on 25 March 2015 – Eric Pickles

only a few of the upstairs windows and most properties would have alternative outlook and most appear to have fairly substantial boundary hedging, presumably a legacy of the mining period. The scheme would be drawn back from the boundaries, in part to allow for intervening planting, and while the impacts would be significant initially, they would reduce over time, albeit a choice to remove private screening could increase the effects.

10.55 While this can be considered a negative effect of the proposal, I do not consider that it represents a change in outlook from these properties so as to present unacceptable visual intrusion and conflict with Policy ER 1 in this regard.

10.56 There are deer living within the area, they were noted in many comments to the Inquiry and seen during my own visits to the site. They will use the open grassland but are mobile species generally preferring cover. The scheme would close off quite large areas of the site, but would not prevent their traversing the site on the enlarged green corridors. This may lead to their increased use of the surrounding woodland, but I have no compelling evidence to suggest that this would alter their current use of the wider area in a way detrimental to the woodlands. [8.2]

10.57 Finally, concerns were raised that granting permission here would set a precedent for further development within the WFSL. Notwithstanding my recommendation, if the Secretary of State were to allow this appeal, I cannot see that this would set any form of precedent. I am conscious of the concerns regarding another solar farm proposal on adjoining fields to the north. However, such a scheme must be considered on its own merits; it is likely to have different visual and character constraints and implications, and it is these that are the determinative considerations in such cases. Furthermore, solar farms also come with considerations of the benefits of providing renewable energy, which I address below in my planning balance, and should not be seen as presenting any form of precedent for other types of development within the strategic landscape, whose particular characteristics must be considered on their own merits. [5.55, 7.66]

### **Overall Planning Balance**

10.58 I have set out that above that I consider that the proposal would result in harm to the landscape character and appearance of the area and degrade the qualities of the Strategic Landscape. This is a valued landscape in Framework terms, it is also a landscape that is clearly valued by local residents. Furthermore, while I have found only limited effects on the setting of the AONB, it is of high sensitivity and that harm too must be weighed in the balance. However, the significant benefits associated with the production of renewable energy, and other benefits must be weighed against this harm.

10.59 Accordingly, it is necessary to consider the benefits of the proposal, and the compliance with local and national policy and guidance in relation to renewable energy to understand whether the adverse impacts are unacceptable.

10.60 As set out in the Background section to this report, this country is actively seeking to promote renewable source and reduce its reliance on fossil fuels sources as it moves towards its legal commitment to net-zero. National

strategies call on large-scale solar as one of the key technologies to assist in this. The development plan is generally permissive of renewable energy schemes, and the Framework clearly supports increased use and supply of renewable energy. It states that applications should be approved where the impacts are, or can be made, acceptable. [5.15, 5.16, 5.17, 6.52, 6.54]

- 10.61 Significant weight must be given to the production of electricity, identified as meeting the expected needs of up to 8,657 homes. Further benefits would arise from the enhanced biodiversity planting and measures and the additional permissive footpath links, again attracting significant weight. There would not be a loss of all agricultural use, as it is accepted some could continue during operation of the solar farm, and the site is on land identified in the Framework as of poorer quality. The scheme is a temporary one meaning the site would be returned to agricultural use at some stage; however, this represents only neutral weight in light of the proposed length of the temporary period.
- 10.62 Finally, the operation in terms of the construction phase would make some contribution to the economy, albeit it is not clear how much would contribute locally. I have found the weight to be given to this benefit quite limited.
- 10.63 The countryside is an asset that needs to meet conflicting demands. It is valued for its beauty, for the pleasure and health benefits it gives to those who access it, yet it must provide food and other agricultural products and now is expected to meet the need to diversify and decarbonise our energy sector. These conflicting needs are brought into stark relief here and while the overall thrust of government policy may be in favour of renewable sources, this does not give them primacy over the other demands.
- 10.64 This is a designated landscape, a valued landscape where the proposal would lead to material change, degrading its value as part of that landscape and the experience of those using it. Mitigation is proposed and I have accepted that there has been care in the layout and additional measures included to enhance some structural aspects of the site. Nonetheless, these do not make the harm acceptable in this case and substantial weight arises against the scheme on that basis.
- 10.65 Consequently, I would recommend that there is clear conflict with the development plan as a whole and insufficient material considerations to suggest a decision otherwise than in accordance with it. I accept that this is a balanced decision and based on relative weights of the benefits against the harms. A different account could be drawn, in which case I have set out conditions were the Secretary of State to find otherwise.

### **Inspector's Recommendations**

- 11.1 Accordingly, for the reasons given above, I recommend, on balance, that the appeal should be dismissed.

*Mike Robins*

INSPECTOR

## **APPENDIX 1 Appearances at the Inquiry**

### FOR THE APPELLANT:

David Hardy of Counsel  
LLB(Hons), BCL(Hons)(Oxon)

Instructed by Squire Patton Boggs (UK) Ltd

who called:

Chris Enderby,  
Dip LA, CMLI

Director Enderby Associates Ltd

Peta Marshall,  
BSc, MA, MCIEEM, PIEMA

Director, Greenscape Environmental Ltd

Richard Murray  
MSC Spatial Planning, Licentiate  
Member RTPi

Director, Murray Planning Associates Ltd

### FOR TELFORD & WREKIN COUNCIL:

Estelle Dehon KC  
BA(Hons) LLB (Wits) BCL  
MPhil(Oxon)

Instructed by the solicitor for Telford &  
Wrekin Council

who called:

Douglas Harman  
MLPN, CMLI

Douglas Harman Landscape Planning

Fran Lancaster BSc, MSc,  
MCIEEM

Ecology Specialist – Telford & Wrekin Council  
-Atkins

Karen Denmark  
BA(Hons) PG DipTP MRTPI

Principal Planning Officer - Telford & Wrekin  
Council

### INTERESTED PERSONS:

Cllr Jaquie Seymour  
Cllr Dave Cooper  
Cllr Dorothy Roberts  
Cllr Angela McClements  
Cllr John Yorke  
Anne Suffolk

Ward Councillor  
Little Wenlock Parish Council  
Wellington Town Council  
Wellington Town Council, Health & Wellbeing Officer  
Lawley & Overdale Parish Council  
Ramblers Association

Greg Sinclair	CPRE
Sarah Fahy	Local Resident
Jocelyn Lewis	Local Resident & representative of "Stop Steeraway and New Works Solar Farms"
Howard Betts	Interested Party
Mary Cawley	Representing Local Residents
Robert Saunders	Interested Party

## APPENDIX 2 Documents submitted during the Inquiry

Ref	Document
ID1	Mr Harman's Comments to the Planning Application
ID2	Interest party's Statements bundle
ID3	Ecology Statement of Common Ground
ID4	Extract, Page 50 AONB Management Plan
ID5	Agreed Outputs and CO2 savings
ID6	British Horse Society Guidance on Solar farms
ID7	Proposed further conditions
ID8	Draft Revised s106
ID9	Council justification for Conservation payment
ID10	Council Closing Statement
ID11	Appellant Closing Statement
ID12	Committee Report and video George Eustace comments
ID13	Appellant's response to ID12
ID14	Completed s106 Unilateral Undertaking



## APPENDIX 3 Core documents

### A – Planning Application

#### Documents:

A1	Application Forms dated 26/04/2021
A2	Agricultural Land Classification Report, prepared by Soil Environment Services Ltd
A3 – A3a	Ecology Appraisal, Prepared by Greenscape Environmental, dated 18 <sup>th</sup> August 2020
A3b	Ecology Appraisal – Bat and Barn Owl, Prepared by Greenscape Environmental, dated October 2021
A3c	Ecology Appraisal – Hedgerows, Prepared by Greenscape Environmental
A3d	Greenscape Environmental report reference 20-04 090.5R dated October 2021
A3e	LPA Officer response to Ecology Appraisal, dated 21 <sup>st</sup> September 2021
A4	Coal Mining Risk Assessment, prepared by RSK Geosciences
A5	Construction Programme and Construction Management Plan, prepared by iTransport
A6	Design and Access Statement, prepared by Greentech
A7	Flood Risk Assessment & Outline Surface Water Drainage Strategy, Prepared by RSK
A8	Glint and Glare Study, prepared by Pager Power
A9	Historic Environment Desk-Based Assessment, prepared by Cotswold Archaeology
A10	Land and Habitat Enhancement Plan, prepared by Greentech dated
A 11 - A11a	Landscape and Visual Impact Assessment, prepared by Enderby Associates
A11b	Landscape and Visual Impact Assessment Plan 1
A11c	Landscape and Visual Impact Assessment Plan 2
A11d	Landscape and Visual Impact Assessment Plan 3
A11e	Landscape and Visual Impact Assessment Plan Set 4
A11f	Landscape and Visual Impact Assessment Plan Set 5
A11g	Landscape and Visual Impact Assessment Plan Set 6
A12	Planning Statement, prepared by Murray Planning Associates Ltd

#### Drawings:

A13	Location Pan
A14	Site Layout Plan by Greentech, dated May 2021
A15	Permissive Public Access Land and carpark extension plan
A16	New Works Woodland/Panel Cross Section dwg no. 2020_0001_05
A17	Typical Elevations Plan 1 – Solar Panels dwg no. 2020_0001_01
A18	Typical Elevations Plan 2 – Inverter/transformer station, battery & storage containers dwg no. 2020_0001_02
A19	Typical Elevations Plan 3 – Customer & DNO substation, monitoring & communications dwg no. 2020_0001_03
A20	Typical Elevations Plan 4 – CCTV post, deer fence and gate, access track dwg no. 2020_0001_04
A21	Site Layout & Mining History Plan
A24	Site Access Arrangement with 2.4mx120m Visibility Splays dwg no. ITL16505-GA008 Rev B
A25	Swept Path Analysis dwg no. ITL16505-GA-009 Rev A

**Committee Report Documents:**

A22	Committee Report dated 20th October 2021
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**Decision Notice:**

A23	Decision Notice dated 12 <sup>th</sup> November 2021
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**B - Planning Appeal****Appeal Administration:**

B1	Planning Appeal Form
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**Statements of Case:**

B2	Appellant SoC
B3	Telford & Wrekin Council (TWC) SoC

**Statement of Common Ground:**

B4	Agreed Statement of Common Ground
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**Proofs of Evidence:**

B5	B5a - Appellant Planning proof of Evidence and Appendices
	B5b - Appellant Landscape Proof of Evidence and Appendices
	B5c - Appellant Ecology Proof of Evidence and Appendices
	B5d - TWC Planning Proof of Evidence
	B5e - TWC Landscape Proof of Evidence
	BEf - TWC Ecology Proof of Evidence

**Conditions:**

B6 -	Agreed List of Conditions
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**Additional Inquiry documents and revised plans/documents:**

B7a	Biodiversity Net Gain Assessment Metric, dated (on the 'start' tab) 02.02.2022 V3
B7b	Biodiversity Net Gain Assessment Metric, dated (on the 'start' tab) 19.05.2022 V4
B7c	The Biodiversity Metric Report by Greenscape Environmental Ltd, dated February 2022
B7d	The Biodiversity Metric Report by Greenscape Environmental Ltd, dated May 2022
B8	Amended Landscape Strategy Sheet 1 by Enderby Associates 471/05.1 Rev D
B9	Amended Landscape Strategy Sheet 2 by Enderby Associates 471/05.2 Rev D
B10	The Site Layout plan by Greentech (Rev. 1), dated 18.05.2022
B11	The Tree shading Plan (Final) by Greentech, dated 18.05.2022
B12	New Works The Woodland/ Panel Cross-Section (number 2020_0001_05) showing measured buffer distances, dated 18.05.2022

B13	The letter relating to impacts upon Barn Owl by Greenscape Environmental Ltd, dated 16 <sup>th</sup> May 2022.
B14	The Update of the Ecology Appraisal by Greenscape Environmental Ltd, dated May 2022

### **C – National Planning Policy, Guidance and Legislation**

C1	National Planning Policy Framework (July 2021)
C2	National Planning Practice Guide (Electronic Version only)
C3	C3a - Overarching National Policy Statement for Energy (EN-1) (July 2011) C3b - Draft National Policy Statement for Energy (EN-1) (September 2021)
C4	C4a - National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011) C4b - Draft National Policy Statement for Renewable Energy Infrastructure (EN-3)
C5	UK Government Solar Strategy 2014
C6	Written Ministerial Statement on Solar Energy: protecting the local and global environment made on 25 March 2015
C7	Climate Change Act 2008
C8	Climate Change Act (2050 target amendment) Order 2019
C9	<u>Clean Growth Strategy published by the Department for Business, Energy and Industrial Strategy (BEIS) in October 2017</u>
C10	<u>UK Parliament declaration of an Environmental and Climate Change Emergency in May 2019</u>
C11	<u>Energy White Paper: Powering our Net Zero Future published in December 2020</u>
C12	<u>UK Government press release of acceleration of carbon reduction to 2035, dated April 2021</u>
C13	<u>The latest version of the 'Digest' of United Kingdom Energy Statistics</u>
C14	<u>UK Energy Statistics Press Release published by the Department for Business, Energy &amp; Industrial Strategy, June 2020.</u>
C15	<u>'Achieving Net Zero' published by the National Audit Office in December 2020</u>
C16	<u>UK Energy in Brief, published by the Department for Business, Energy &amp; Industrial Strategy, 2021.</u>
C17	<u>Net Zero Strategy: Build Back Greener, dated October 2021.</u>
C18	<u>The Climate Crisis: A Guide for Local Authorities on Planning for Climate Change, prepared by the Town and County Planning Association, dated October 2021</u> C19 - British Energy Security Strategy, dated 7 <sup>th</sup> April 2022

### **D – Local Planning Policy, Guidance and Documents**

D1	Telford and Wrekin Local Plan (2011-2031)
D2	Shropshire Hills AONB Management Plan 2019- 2024

D3	Shropshire County Council (2006) The Shropshire Landscape Typology
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**E – Landscape**

E1	Fiona Fyffe Associates (2015), Telford & Wrekin Strategic Landscapes Study
E2	The Guidelines for Landscape and Visual Impact Assessment, Third Edition, published by Landscape Institute and the Institute of Environmental Management and Assessment (2013)
E3	Shropshire Hills Position Statement on AONB boundary, February 2008
E4	No document
E5	The Wrekin Forest Plan 2015-2020

**F – Ecology**

F1	UKCSMR Limited, Huntingdon Lane, Restoration Plan, 191/D03[RevB] dated 30-06-2016
F2	Barn Owl Trust- Barn Owls and Rural Planning applications, A Guide, 2015
F3	New Works TWC Ecologist 21.9.2021
F4	Greenscape Report reference 20-04-90.5R dated May 2022 including updated surveys.
F5	Gov.UK - Ancient Woodland, ancient trees, and veteran trees: advice for making planning decisions (Guidance from Natural England and Forestry Commission dated 14 January 2022)
F6	Ground-mounted Solar Panels and Barn Owls- The Barn Owl Trust
F7	Evidence review of The Impact of Solar farms on birds, bats and general ecology
F8	Royal Society for the Protection of Birds blog post-dated 16 March 2020 by Rob Shotton, MRes student at Worcester University summarising results of research of bird use of solar farms.

**G – Relevant Decisions, Legal Judgements and Officer Reports**

G1	Secretary of State's Decision Letter for Little Crow Solar Park, Scunthorpe, dated 05/04/2022
G2	Development Consent Order as made by Secretary of State for Little Crow Solar Park, Scunthorpe, dated 05/04/2022
G3	Application for Land north of Halloughton, Southwell Solar Farm (Appeal Ref: APP/B3030/W/21/3279533) Appeal decision, dated 18 <sup>th</sup> February 2022
G4	Examining Authority's Report of Findings and Conclusions for Cleeve Hill Solar Park (Ref.EN010085), dated 28 <sup>th</sup> February 2020
G5	Application for Cleeve Hill Solar Park Order – Decision Letter (Ref.EN010085), dated 28 <sup>th</sup> May 2020
G6	Extract (paragraphs 490 – 512) from APP/C3240/A/08/2090405 – Land off Huntington Lane, Telford

**H – Secretary of State Request for a Screening Direction**

H1	Secretary of State's Screening Decision Letter, dated 18 <sup>th</sup> January 2021
H2	Secretary of State Screening Direction – Written Statement

#### **APPENDIX 4 Recommended conditions should permission be granted**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in all respects in accordance with the following plans/drawings:
  - Location Plan
  - Proposed Site Layout Plan dated 18.05.22 Rev 1
  - Landscape Strategy 471/05.1 Rev D
  - Landscape Strategy 471/05.2 Rev D
  - 2020\_0001\_01: Typical Elevations Plan 1 – Solar Panels
  - 2020\_0001\_02: Typical Elevations Plan 2 – Inverter/Transformer Station, battery container and storage container
  - 2020\_0001\_03: Typical Elevations Plan 3 – Customer substation, DNO substation and monitoring and communications cabin
  - 2020\_0001\_04: Typical Elevations Plan 4 – CCTV post, deer fence/security gate and access track
  - 2020\_0002)05: Short Wood Cross-Sections Dated 18.05.22
  - Permissive Access Plan
- 3) Notwithstanding the approved plans contained in Condition 2, prior to their erection on site, details of the proposed layout, materials and finish including colour of all solar panels, frames, ancillary buildings, equipment and enclosures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.
- 4) Within 1 month of the date of first export of electricity confirmation shall be given in writing to the local planning authority of the date of first export to the Grid. The development hereby permitted shall cease on or before the expiry of a 40 year period from the date of first export of electricity. The land shall thereafter be restored to its former condition in accordance with a scheme of decommissioning work ("Decommissioning Scheme") and ecological assessment report ("the Ecological Assessment Report") detailing site requirements in respect of retaining ecological features.

The scheme of decommissioning work and the Ecological Assessment shall first be submitted to and approved in writing by the Local Planning Authority, no later than 39 years from the date of first export of electricity, and subsequently implemented as approved.
- 5) In the event the site ceases to generate electricity for a period of 12 months prior to the 40 year period, a scheme of decommissioning works ("the Early Decommissioning Scheme") and ecological assessment report (the Ecological Assessment Report"), detailing site requirements in respect of retaining ecological features, shall be submitted no later than 6 months from the end of the 12 month non-electricity generating period to the local planning authority and approved in writing.

The decommissioning works and ecological site requirements shall be carried out strictly in accordance with the approved schemes.

- 6) Within the year prior to decommissioning of the site, a programme of Highways and Transport works ("the Highway Decommissioning Scheme") associated with the decommissioning and remediation of the development site, including details of associated traffic movements, shall be submitted to and approved in writing by the Local Planning Authority. The details submitted must be approved prior to the commencement of decommissioning and then implemented as approved.
- 7) No development shall commence until;
  - a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
  - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed. This should include the submission of the approved site layout to illustrate the position of the mine entries and extent of the opencast workings.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

- 8) Prior to the first export of electricity, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 9) No development shall take place until details of the design and construction of the proposed site access off Dawley Road, together with details of the closure of the existing field access have been submitted to and approved in writing by the Local Planning Authority. The agreed details shall be fully implemented prior to the commencement of construction on site.
- 10) No development shall take place until details for the proposed surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed before the first export date to the Grid.
- 11) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following details;
  - a) Details for the protection of statutorily protected species and bird nesting prior to and during the construction period;
  - b) Tree, pond and hedgerow protection measures to be undertaken;
  - c) Details in relation to crossing of any public rights of way by construction traffic;

- d) Measures to be taken to prevent mud from vehicles leaving the site during construction works being deposited on the public highway or other local roads;
- e) Provisions to be made for the parking (including staff parking) and turning on site of operative and construction vehicles (including for loading and unloading) during the period of construction;
- f) Storage of plant and materials (including any oil , fuel and chemicals) in constructing the development
- g) Any lighting during construction. (note: this must be directed in such a way as not to cause nuisance to adjoining properties, woodlands, bats or adjacent highway);
- h) Start and finish time of construction activity;
- i) Phasing of development.

The CEMP shall be adhered to throughout the duration of the construction period.

- 12) No development shall take place until a plan detailing the type and location of a suite of artificial nesting and/or roosting boxes for birds and bats has been submitted to, and agreed in writing with, the Local Planning Authority. The boxes shall be erected in accordance with the agreed details.

The following artificial nesting/roosting boxes shall be provided:

- a) A total of 8 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species;
- b) A total of 8 woodcrete artificial nesting boxes suitable for bird species such as robin, blackbird and tit species.

- 13) No development shall take place until a written scheme ("The Land Management Scheme") has been submitted to and approved in writing by the Local Planning Authority. The Scheme shall include, but not be limited to the details of:

- a) The extended car park;
- b) The picnic area;
- c) Permissive Footpaths;
- d) Areas of improved public accessibility.

The Land Management Scheme shall detail, but not be limited to, construction methods, timescale and maintenance and shall be implemented in full and retained thereafter.

- 14) No development shall take place until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of the battery storage system.

The BSMP shall be implemented as approved.

- 15) Prior to the commencement of construction on site, access visibility splays of a depth of 2.4 metres and a length of 120 metres, in general accordance with drawing no. ITL16505-GA-008 REV B, shall be provided, and these splays shall thereafter be kept free of any obstacles or obstructions.

- 16) No piling of foundations or installation of mounting frames shall take place until the areas shown on the approved plans for parking, loading, unloading and turning of vehicles has been provided, properly laid out, hard surfaced and drained. The space shall be maintained thereafter free of any impediment to its designated use.
- 17) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Institute of Lighting Professionals (ILP) Guidance Note 8: Bats and artificial lighting.
- 18) Within the three months prior to the commencement of development on the site a pre-commencement badger inspection shall be undertaken by an experienced ecologist and the outcome reported in writing to the Local Planning Authority. If continued, or new, evidence of badgers is recorded during the pre-commencement survey then the ecologist should set out appropriate actions to be taken during the works which may include; precautionary methods of working, timing restrictions, restrictions of activities around any identified setts and the requirement, or otherwise, for Badger Disturbance Licences from Natural England should the closure, disturbance or destruction of setts be necessary. IF required, these actions shall be implemented prior to construction beginning on site and retained thereafter.

Where a Badger Disturbance Licence is required a copy of the licence must be submitted to the Local Planning Authority prior to the commencement of licensable works.

- 19) The development shall be implemented in accordance with the approved Construction Traffic Management Plan and complied with at all times during construction work.
- 20) Development shall occur in accordance with the Post-Development – Habitat Retention, Enhancement and Creation measures and the Management Plan as set out in the Biodiversity Metric Report (Greenscape Environmental, Report reference MR 20-04 090.7 MR dated May 2022). This document sets out habitat management, site enhancements and monitoring. This document should be strictly followed unless otherwise approved in writing by the Local Planning Authority. Works shall be overseen and undertaken where appropriate by a licensed, suitably qualified and experienced ecologist.
- 21) Following the implementation of the Post-Development Habitat Retention, Enhancement and Creation measures, and no later than 1 year from the first export date to the Grid, biodiversity monitoring reports shall be undertaken and submitted to the local planning authority. These shall be undertaken in years 1, 3, 5, 10 and 15 following the first export date.

Should the expected biodiversity net gains not be achieved then a revised set of habitat retention, enhancement and creation measures shall be submitted to and approved in writing by the Local Planning Authority. The amended measures shall be implemented and retained in accordance with the approved details.





# Department for Levelling Up, Housing & Communities

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

## SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

## SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

## SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.