

DATE:

2024

**UNILATERAL UNDERTAKING PURSUANT TO SECTION 106 TOWN AND COUNTRY
PLANNING ACT 1990 AND OTHER ENABLING POWERS**

RELATING TO LAND SOUTH OF BERRINGTON, SHREWSBURY, SHROPSHIRE SY5 6HA

**JUSTIN RICHARD STEVENSON, SIR CHARLES HOLCROFT BT and JOSHUA EUAN
NICHOLAS LOVEGROVE-FIELDEN**

and

SIR CHARLES ANTHONY CULCHETH HOLCROFT BT

and

ECONERGY INTERNATIONAL LIMITED

and

LLOYDS BANK PLC

to

SHROPSHIRE COUNCIL

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PARTIES

- (1) **JUSTIN RICHARD STEVENSON** of Wellfield, Dovaston, Oswestry SY10 8DP; **SIR CHARLES ANTHONY CULCHETH HOLCROFT BT** of Wrentnall House, Wrentnall, Pulverbatch, Shrewsbury, SY5 8ED and **JOSHUA EUAN NICHOLAS LOVEGROVE-FIELDEN** of Longden Manor, Pontesbury, Shrewsbury, SY5 0XH (the “**First Owner**”);
- (2) **SIR CHARLES ANTHONY CULCHETH HOLCROFT BT** of Wrentnall House, Wrentnall, Pulverbatch, Shrewsbury, SY5 8ED (the “**Second Owner**”);
- (3) **ECONERGY INTERNATIONAL LIMITED** company registration number 12669318 whose registered office is Part 1st Floor, 76-80 Old Broad Street, London, EC2M 1QP (the “**Developer**”); and
- (4) **LLOYDS BANK PLC** company registration number 00002065 whose registered office is situate at 25 Gresham Street, London EC2V 7HN (the “**Mortgagee**”);

TO

- (5) **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND (the “**Council**”).

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Application Site and Mitigation Site is situated and as such is the local planning authority entitled to enforce the planning obligations contained in this Deed.
- (B) The First Owner owns a beneficial interest in the Application Site pursuant to a settlement deed dated 17 January 2023 between (1) Sir Charles Anthony Culcheth Holcroft BT and (2) Sir Charles Anthony Culcheth Holcroft BT, Justin Richard Stevenson, and Joshua Euan Nicholas Lovegrove-Fielden.
- (C) The Second Owner is the freehold owner of the Mitigation Site and the Application Site which are together registered with title absolute at the Land Registry forming part of title number SL193575.
- (D) The Mortgagee has a charge dated 23 March 2020 over part of the Application Site referred to at entry numbers 10 and 11 of the charges register to title number SL193575.
- (E) The Planning Application was submitted by the Developer to the Council for the Development.
- (F) On 9 May 2023, the Council’s southern area planning committee resolved at its meeting to refuse to grant planning permission for the Development pursuant to the Planning Application and planning permission was refused on 16 May 2023.
- (G) The Developer has submitted the Appeal against the Council’s refusal.
- (H) The Parties enter into this Deed without prejudice to their respective submissions in respect of the Appeal.

- (I) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to proceed and agree that the obligations contained in this Deed may be enforced by the Council against the Owners (and the Mortgagee (but only in so far as the Mortgagee is a mortgagee in possession)) pursuant to the terms of this Deed.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Deed the following expressions shall have the following meanings:

“**Act**” means the Town and Country Planning Act 1990 (as amended);

“**Appeal**” means an appeal to the Secretary of State following the refusal of the Planning Application by the Council which has been given appeal reference number APP/L3245/W/23/3332543.

“**Application Site**” means the land edged red on the Plan;

“**Commencement of Development**” means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development except for the construction of site access as set out on drawing 111182-10-01 dated 05/22 submitted with the Planning Application begins to be carried out and the use of the terms “**Commence Development**” and “**Commence the development**” and “**Commenced**” and “**Commencement Date**” shall be construed accordingly;

“**Deed**” means this unilateral undertaking;

“**Development**” means development pursuant to the Planning Permission described as erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling;

“**Inspector**” means the inspector appointed on behalf of the Secretary of State to determine the Appeal;

“**Mitigation Site**” means the land edged blue on the Plan;

“**Owners**” means the First Owner and the Second Owner;

“**Parties**” means the parties to this Deed;

“**Plan**” means the plan attached to this Deed at Schedule 2;

“**Planning Application**” means the application made by the Developer to the Council for the Development validated by the Council on 27 September 2022 under reference number 22/04355/FUL;

“**Planning Permission**” means the Planning Permission that may be granted by the Inspector or the Secretary of State for the Development pursuant to the Appeal in the event that the appeal against refusal is upheld;

“**Secretary of State**” means the Secretary of State for Levelling Up, Housing and Communities (or any successor secretary of state from time to time);

“**Skylark Mitigation Strategy**” means the skylark mitigation strategy secured by way of planning condition attached to the Planning Permission and based on the principles set out in the Skylark Mitigation and Management Plan dated 1 May 2023 and attached to this Deed at Schedule 3 as may be amended from time to time in writing as agreed in writing by the Council at its absolute discretion.

2. INTERPRETATION

- 2.1 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 2.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.3 References to persons include firms’ companies’ corporations authorities or other bodies and vice versa.
- 2.4 References to Acts of Parliament statutory instruments or Government circulars or sections or paragraphs of such Acts statutory instruments or government circulars include any re-enactments amendments or replacements of them and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 The references to the parties named in this Deed shall, unless the context otherwise requires, include their successors in title and assigns and in the case of any local authority shall also include any successor in function.
- 2.6 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed.
- 2.7 References to clauses are to the clauses of this Deed.
- 2.8 References to Application Site or Mitigation Site shall include any part of it unless the context otherwise requires.
- 2.9 If any provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
- 2.10 Wherever there is more than one person named as a party and where an obligation falls to be performed by more than one person, the obligations can be enforced against every person so bound jointly and against each individually unless there is an express provision otherwise.
- 2.11 Any covenant on the Owners and/or the Mortgagee not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

3. STATUTORY PROVISIONS

- 3.1 This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 Localism Act 2011 and any other enabling powers.

- 3.2 The obligations contained at Schedule 1 to this Deed are planning obligations enforceable by the Council for the purposes of Section 106 of the Act and are entered into by the Owners and the Mortgagee with the intention that they bind the interests held in the Application Site held by the First Owner and the Second Owner and their respective successors and assigns and the Mitigation Site held by the Second Owner and its respective successors and assigns.
- 3.3 The obligations in this Deed are conditional upon the grant of the Planning Permission by the Inspector or the Secretary of State pursuant to the Appeal save for the provisions of clauses 7, 8, 12 and 13 which come into effect at the date of this Deed.
- 3.4 In the event that the Inspector concludes in the Decision Notice that any of the planning obligations set out in Schedule 1 to this Deed are not required and/or are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to that obligation in determining the Appeal then the relevant obligation shall from the date of the Decision Notice cease to have effect as set out in the Decision Notice and the Parties shall be under no obligation to comply with the relevant obligation in this Deed.
- 3.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site or Mitigation Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 3.6 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Application Site or the part of the Application Site in respect of which such breach occurs, or the Mitigation Site or the part of the Mitigation Site in respect of which such breach occurs but they will remain liable for any antecedent breaches of this Deed which occurred prior to parting with such interest.
- 3.7 The First Owner enters into this Deed with the effect of binding the Application Site and the Second Owner enters into this Deed with the effect of binding the Application Site and the Mitigation Site. The Mortgagee enters into this Deed to give its consent and agrees that its interest in part of the Application Site shall be bound by the terms of this Deed as if it has been registered as land charge prior to the creation of the Mortgagee's interest in the Application Site, subject to the terms of clause 9 of this Deed.

4. FUTURE PLANNING CONSENTS AND APPROVALS

- 4.1 In the event that any new planning permission is granted by the Council or an Inspector or the Secretary of State varying or removing conditions on the Planning Permission pursuant to section 73 of the Act, save and in so far as this Deed has been amended by way of a deed of variation prior to the grant of such planning permission, with effect from the date that any new planning permission is granted pursuant to section 73 of the Act:
- 4.1.1 the obligations in this Deed shall (in addition to continuing to bind the Development) relate to and bind all subsequent planning permissions without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to section 106 of the Act; and
- 4.1.2 the definitions of Planning Permission, Planning Application and Development in this Deed shall be construed to include references to any planning permissions

granted under section 73 of the Act and the development permitted by such subsequent planning permission.

5. THE OWNERS COVENANTS

5.1 The Owners and the Mortgagee covenant with the Council as set out in Schedule 1 to this Deed.

6. DETERMINATION OF DEED

6.1 This Deed shall be determined and have no further effect if the Planning Permission:

6.1.1 expires;

6.1.2 is varied or revoked other than at the request of the Developer; or

6.1.3 is quashed following a successful legal challenge.

7. LOCAL LAND CHARGE

This Deed is a local land charge and may be registered as such by the Council.

8. THIRD PARTIES

No provisions of this Deed shall be enforceable under the Contract (Rights of Third Parties) Act 1999.

9. MORTGAGEE PROTECTION

No mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) shall be liable for any breach of this Deed unless it takes possession of the Application Site or the Mitigation Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owners as if it had been executed and registered as a land charge prior to the creation of the mortgagee's interest in the Site.

10. DISPUTE RESOLUTION

10.1 Subject to Clause 10.2 below in the event of any dispute or difference arising between the Parties to this Deed touching or concerning any matter or thing arising out of this Deed such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and shall receive representations from the Parties in dispute and his decision shall be final and binding on the Parties to the dispute or difference (except in the case of manifest error or fraud) and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one party shall bear more than their due proportion they may recover the excess from the other as a debt).

10.2 In the absence of agreement between the Parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to Clause 10.1 above or as to the appropriate professional body within 14 Working Days after any party has given to the other Parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to Clause 10.1 above then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one party shall bear more than their due proportion they may recover the excess from the other as a debt).

11. INDEMNITY

11.1 In consideration of the Owners entering into this Deed on the date hereof the Developer hereby indemnifies and shall keep the Owners indemnified against all or any losses, costs, claims, liabilities, expenses and demands arising from:

11.1.1 all obligations of the Owners under this Deed;

11.1.2 any breach or non-performance of the obligations of the Developer under this Deed; save for where such losses, costs, claims, liabilities, expenses and demands arise out of any:

11.1.3 negligent act of the Owners;

11.1.4 breach or non-performance of any of the obligations contained in paragraphs 1 and 3 of Schedule 1 to this Deed by the Owners; or

11.1.5 are caused by the Owners allowing Commencement of Development by persons under its control without the prior written approval of the Developer.

12. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13. COSTS

The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,213.20.

14. WAIVER

No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants terms obligations or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms obligations or conditions or for acting upon any subsequent breach or default.

15. CHANGE IN OWNERSHIP

The Owners shall give to the Council as soon as practicably possible written notice of any change in ownership of any of their interests in the Application Site or Mitigation Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Application Site or Mitigation Site by reference to a plan.

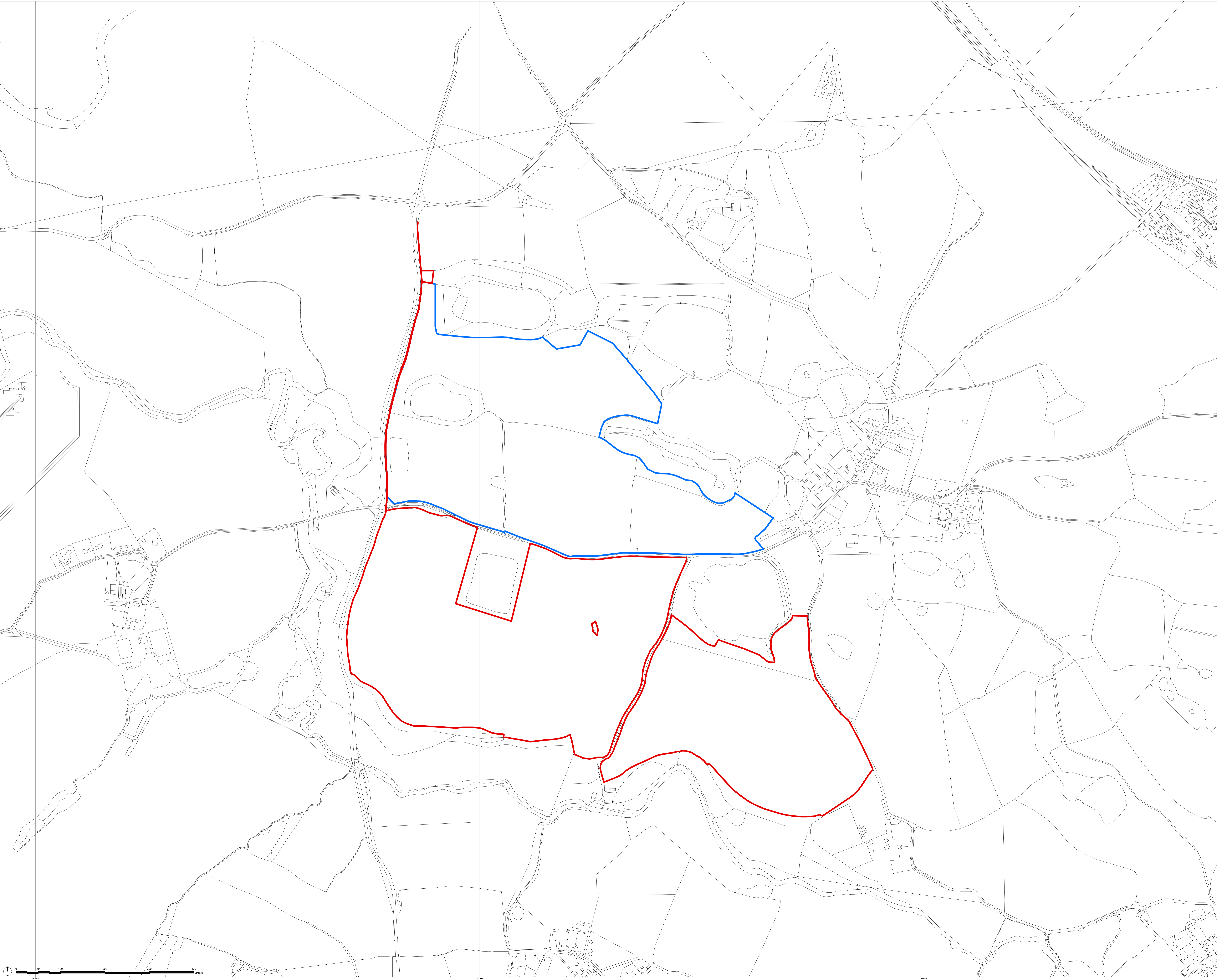
SCHEDULE 1
OWNERS' COVENANTS

The Owners covenant (to the extent that such obligations are applicable to their respective interests in the Mitigation Site and/or the Application Site, as relevant) with the Council:

1. Prior to Commencement of Development to implement the Skylark Mitigation Strategy secured by way of planning condition attached to the Planning Permission;
2. Not to Commence Development unless and until the Skylark Mitigation Strategy has been implemented in full and written confirmation of such implementation has been issued to the Council; and
3. To maintain the Skylark Mitigation Strategy for the lifetime of the Development.

SCHEDULE 2
THE PLAN


LEGEND
▬ Site boundary
▬ Ownership Boundary



07	Boundary Amendments	20/02/2024
06	Blue Checkmark Line	05/10/2023
05	Amendments	26/04/2022
04	Boundary Amendments	24/01/2022
03	Boundary Amendments	01/07/2022
02	Boundary Amendments	08/03/2022
01	Issue	02/12/2021

Client:
Econergy International LTD
 Project:
Berrington Solar Farm
 Drawing Title:
Site Location Plan
 Drawing No: 1051487-ADAS-XX-XX-DR-P-8006
 Scale: 1:2,500 at A0
 Drawn by: SC
 Checked by: RG
 Date: 20/02/2024

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SCHEDULE 3
SKYLARK MITIGATION AND MANAGEMENT PLAN

Skylark Mitigation and Management Plan



Land South of Berrington, Shrewsbury

Principal Author: Daniel Watson

Project Code/ADAS Ref:

Address:

RSK ADAS Ltd
Portview Road,
Avonmouth,
Bristol,
BS11 9DE

Date: 1 May 2023




Version: 1

Commissioned For:

Jacques Carboni,
ADAS Planning,
4205 Park Approach,
Leeds,
LS15 8GB



Quality Assurance

Revision	Date	Author	Checked	Approved
00	1 May 2023	Daniel Watson BSc (Hons) 	Joseph Dyson BSc (Hons) MCIEEM 	James Packer BSc(Hons) CEcol MCIEEM 

The information which ADAS has prepared and provided is true and has been prepared and provided in accordance with the CIEEM's Code of Professional Conduct. We confirm that the opinions expressed are our true and professional bona fide opinions.

Disclaimer

RSK ADAS Ltd (ADAS) has prepared this report for the sole use of the client, showing reasonable skill and care, for the intended purposes as stated in the agreement under which this work was completed. The report may not be relied upon by any other party without the express agreement of the client and ADAS. No other warranty, expressed or implied, is made as to the professional advice included in this report.

Where any data supplied by the client or from other sources have been used, it has been assumed that the information is correct. No responsibility can be accepted by ADAS for inaccuracies in the data supplied by any other party. The conclusions and recommendations in this report are based on the assumption that all relevant information has been supplied by those bodies from whom it was requested.

No part of this report may be copied or duplicated without the express permission of ADAS and the party for whom it was prepared.

Where field investigations have been carried out, these have been restricted to a level of detail required to achieve the stated objectives of the work.

This work has been undertaken in accordance with the quality management system of RSK ADAS Ltd.

Revision History

ADAS Ref (Revision number)	Date	Amendment
00	25/04/2023	INITIAL REPORT

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Summary

ADAS was commissioned to provide a Skylark Mitigation Strategy and recommendations for management following consultation with Shropshire Council Local Planning Authority (LPA) in relation to a proposed solar PV development at land to the southwest of Berrington, Shropshire (central grid ref: SJ 52741 07125).

The strategy was to include some analysis of existing best practices and research, and to identify an appropriate approach to ensure the long-term persistence of Skylark at the site, during and following the development.

The following mitigation measures were considered integral to the strategy:

- Timing of the works as not to impact breeding bird assemblages on site (greatest impacts likely between March – August)
- Ecological supervision / safeguarding of nests if works take place within the breeding season (March – August inclusive)
- Identifying suitable areas off site for compensation measures to be implemented
- Practical management strategies required for successful persistence of Skylark populations on site.

In addition to the mitigation measures proposed above, liaison with the landowner and LPA led to the identification of areas immediately adjacent to the development site which could be utilised for compensation. It was proposed that, pending confirmation of long-term land use; either (i) the entire area earmarked as the compensation area would be managed in totality following conservation grazing practices or (ii) if the land was used for arable crop production, a total of 6 ha was required for the compensation area, and that a total of 12 Skylark plots be created within this area. Some consideration of habitat management, including the timing of harvesting and hedgerow management, was included in the strategy.

It was recommended that a long-term monitoring effort (of no less than five years) be undertaken both within the compensation and operational areas of the site to obtain baseline data to inform the success of the strategy.

1 Introduction

1.1 Strategy Objectives

The aim of the Skylark Mitigation and Management Plan is to identify the requirements of the known population of Skylark *Alauda arvensis* on site, to identify an appropriate mitigation and compensation strategy and to provide signposting for conservation objections that will allow for the strategy to be successfully deployed.

Consideration of the requirements of Skylark at both the population and individual level will be discussed, with the most up-to date research utilised to ensure a deliverable, bespoke strategy which can be successfully implemented to secure the long-term persistence of the species at the site. Ecological constraints to the proposed works and make recommendations for mitigation or opportunities for enhancement that can be incorporated into the design.

1.2 Site Description

The site was located on the land to the southwest of Berrington, Shrewsbury, SY5 6HQ (Central Grid Reference: SJ 52312 06495). The site was comprised of large arable and grassland fields approximately 44.06 ha, within one of these fields was a large lagoon. The site was bound by narrow single-track roads along the eastern, northern, and western boundary which led to arable fields in the east, livestock fields to the north. A small woodland to the south concealed Cound Brook which is approximately 3 m wide and relatively fast flowing. The wider area generally consists of arable farmland with small residential areas to the north-east, west, and south. To the north of the site is Berrington Pool Site of Special Scientific Interest (SSSI). Figure 1 below shows the site boundary.



Figure 1. Site location and wider landscape (site indicated by white line boundary) Imagery taken from ADAS Mapping Tool. © 2023 Microsoft Corporation, © 2023 Maxar, © CNES (2023) Distribution Airbus DS

1.3 Description of the Proposed Development

The proposal is for the erection of a solar photovoltaic (PV) array, with a total export capacity of up to 30 MW (Drawing:1051487-ADAS-XX-XX-DR-PL-8000). Each of the solar panels will be mounted on a fixed panel system. The panels are covered by high transparency solar glass with an anti-reflective coating which minimises glare and glint, whilst also aiding in the maximum absorption of the available sunlight. The panels are dark grey/blue in colour. All internal aspects (including ponds) are to be retained within a minimum of a 5 m buffer around these aspects. The hedgerows surrounding the site are also to be retained however, a small section at each access point may need to be removed to improve the access for plant. At this time there is no plans for any vegetation clearance to take place as part of the works. An outline of the proposed development is given in Appendix 1.

1.4 Summary of prior ecological and planning authority input

A range of ecological surveys have been undertaken on site since 2021, most pertinent to this report were breeding bird surveys undertaken during 2022. The breeding bird survey flagged the presence of a number of Birds of Conservation Concern (BoCC) which included 11 Skylark territories within the development area (ADAS, 2023).

Following data provided in support of the planning application (reference: 22/04355/FUL) a number of objections were raised, including “The loss of skylark habitat on the site is not acceptable. Replacement nesting habitat needs to be provided on the site as part of the site design.” from Sophie Milburn (Shropshire Council Planning Ecologist).

Consultation with the LPA, Shropshire Council and the landowner was on-going throughout March and April 2023, before an agreement with Suzanne Wykes (Specialist Practitioner (Ecology) at Shropshire Council) was reached on 20 April 2023 that a bespoke Skylark mitigation strategy would be required to discharge the planning condition in line with policy CS17 of the Shropshire Local Development Framework Adopted Core Strategy 2006-2026.

2 Eurasian Skylark – species context

2.1 Overview of Skylark ecology

The Skylark is a bird of open countryside in the UK, inhabiting open habitats in both upland and lowland areas. The species is sedentary or partially migratory, with populations in upland areas moving to lower altitudes or coastal areas for the winter. The species begins to establish territories as early as February, with the main nesting period between 20 April and 06 July, with the mean first date that clutches are laid being 19 May (BTO, 2023). Skylark is capable of producing up to four broods due to this extended breeding season, typically laying three or four eggs per clutch. The incubation period of the Skylark is typically 12 to 14 days, with the fledglings remaining in the nest for a further 11 to 15 days.

The species is best described as a generalist in terms of diet; during the winter Skylarks form groups and are frequently found foraging in set-aside or stubble for grain (Gillings *et al.*, 2005). Studies have shown that large cereal stubble fields (<4.3 ha) with no or very low boundary features are the optimal habitat for winter foraging particularly for grains (Geiger *et al.*, 2013), whilst winter cereal crops provided sustenance via cereal leaves (Donald *et al.*, 2001).

During the breeding season the availability of invertebrate prey is a key factor in site selection, with Coleoptera, Diptera, Lepidoptera, Hymenoptera and Araneae accounting for 91% of the nestling diet in some areas (Ottens *et al.*, 2014), Foraging areas such as field margins (Ottens *et al.*, 2014) and undrilled or wide spaced rows support higher density of prey items (Smith *et al.*, 2009). Access to areas where levels of invertebrate prey are consistent throughout the breeding season has been shown to be a core driver in breeding locations at the site level (Puttmanns *et al.*, 2022).

Factors other than dietary requirements have been proven to affect the population density of the species, with mean vegetation height and size of site two key indicators as to whether a location is suitable for breeding (Rahman *et al.*, 2012), with historic research showing a preference of crop height of between 20 cm – 50 cm, particularly in areas where no or low boundary features were present (Wilson *et al.*, 1997).

2.2 Conservation Status

In the UK, the Skylark was once considered an integral part of the countryside, however, the species status as a common farmland bird has changed significantly since the 1970's. In the UK the breeding population decreased between 1970 and 2013 by 60% (Hayhow *et al.*, 2015), with a further decrease of 15% between 1995 and 2020, with an estimated 1.6 million territories remaining in the UK (Harris *et al.*, 2022) – for comparison, the population between 1988 – 1991 was estimated to be approximately 2 million territories (Browne *et al.*, 2000).

As a consequence of these dramatic declines, the species is included on the Red List of Birds of Conservation Concern (BoCC). The Red list is the category for those species which are considered to be the most urgent conservation priority and where the breeding population has declined by at least 50% over the last 25 years. These species may also be globally threatened or have suffered an historic decline in the period 1800 to 1995.

Skylark is also listed under Annex 1 of the Birds Directive (2009 as amended) and is a UK Biodiversity Action Plan (BAP) species as it is one of a number of species identified as being threatened and therefore requiring targeted conservation action to reverse the species declines.

2.3 Legislation

All breeding wild birds, including Skylark, are protected under the Wildlife and Countryside Act 1981 (as amended). Under the Wildlife and Countryside Act, a wild bird is defined as any bird of a species that is resident in or is a visitor to the European Territory of any member state in a wild state.

All birds, their nests and eggs are protected and it is thus an offence, with certain exceptions to:

- intentionally kill, injure or take any wild bird;
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built;
- intentionally take or destroy the egg of any wild bird;
- have in one's possession or control any wild bird, dead or alive, or any part of a wild bird, which has been taken in contravention of the Act or the Protection of Birds Act 1954;
- have in one's possession or control any egg or part of an egg which has been taken in contravention of the Act or the Protection of Birds Act 1954;
- use traps or similar items to kill, injure or take wild birds; and
- have in one's possession or control any bird of a species occurring on Schedule 4 of the Act unless registered, and in most cases ringed, in accordance with the Secretary of State's regulations.

2.4 Habitat requirements

Skylark is a widespread species in the UK, occurring across England, Wales and Scotland, though in Ireland the species is less frequent. Populations can broadly be split on the basis of two discrete habitat preferences; upland and lowland. The population density is highest in upland areas, where it occurs on moorland and bogs. In lowland areas, arable farmland is the most important habitat for the species, with lower numbers occurring in heathland, marsh, coastal and pasture (Harris *et al.*, 2023). Lowland cereal crops are considered to be the most important habitat for the species in the UK in terms of the overall numbers of breeding pairs supported, however population density in these areas is lower due to a shorter

breeding season as a result of harvesting (Donald and Vickery, 2000). The presence of field margins is considered integral to the habitat requirements for the species, as studies have shown that margins are preferred above all other habitats for foraging purposes, particularly during the breeding season (Kuiper *et al.*, 2013). Availability of suitable invertebrate prey items (Ottens *et al.*, 2014), site size (Rahman *et al.*, 2012) and low or no boundary features (Wilson *et al.*, 1997) are the primary factors influencing the presence or absence of Skylark in lowland habitats. Studies have also shown that the presence of Skylark plots and additional tramlines in winter cereals increased the number of breeding territories (Schmidt *et al.*, 2017), highlighting the value of such conservation measures.

2.5 Population and distribution on site

A total of four breeding bird surveys were undertaken on site in the spring of 2022 by ADAS Ecologist Daniel Watson BSc (Hons). The results of the surveys found a total of 11 occupied territories within the survey area across all surveyed land parcels. A maximum of seven territories were in Land Parcel 1 (LP1, OS Grid Reference centroid SJ 52120 06489), with four in LP2 (OS Grid Reference centroid SJ 52603 06353). A particularly high density was noted around the fringes of the farmland reservoir in LP1 (OS Grid Reference centroid SJ 52026 06662), with a minimum of five territories in this area alone. At the time of the survey both LP1 and LP2 were arable.

3 Mitigation

3.1 Prior to and during works

Ahead of and during the construction phase of the development, the following considerations will be adopted to reduce impacts to Skylarks and other birds breeding on site.

3.1.1 Timings of works

It is recommended that works are undertaken outside of the breeding season (March – August inclusive) to avoid the risk of committing an offence by damaging or destroying nests or young of birds actively breeding on site. Where groundworks cannot be undertaken outside of the breeding season, works should be subject to supervision or a nesting bird check (see 3.1.2).

3.1.2 Requirement for ECoW

If works are to be undertaken within the breeding season (March – August inclusive), a suitably experienced person will undertake a nesting bird check of all areas to be impacted – this includes areas suitable for ground-nesting birds such as Skylark. If any nests are located at this point, it is recommended that the position of these are made known to all on site, and that a suitable exclusion zone so as to safeguard the nest is installed.

3.2 Identification of suitable compensation areas

Following consultation with the client and the landowner, the nearest suitable land for compensation was immediately north of the site boundary in four parcels currently used for arable or grazing/silage production. The identified area amounted to a total of approximately 25 ha and will easily accommodate the minimum required area of 6 ha. The use of the land for compensation and mitigation purposes has been agreed with the landowner and client at the time of writing. This area is shown within Appendix 2.

4 Compensation

4.1 Proposed Compensation areas

Following consultation with the client, landowner and LPA, land to the north of the development was earmarked as the proposed compensation area. The current land use within these areas is for grazing, with the current land use likely to persist following development. It should be noted that at present, the LPA is being asked to pre-empt that current Higher Level Stewardship (HLS) land will revert to arable as the stewardship scheme ends. However, some current HLS land may not be suitable for arable reversion due to its grade, or to its proximity to the Berrington Pool Site of Scientific Special Interest.

As a result of this potential change of land use, proposals for compensation have been considered for both grazing on pasture (current land use) and conversion to arable.

4.1.1 Proposal if land maintained as pasture

At present the main land use is pasture for grazing, with a different method of management required to provide suitable compensation areas for Skylark. The area will be grazed in a less intensive manner, with low stocking density to create a matrix of shorter and tussocky grassland suitable for nesting and foraging Skylark. The stocking densities are provided in Table 1. Livestock must not be present on the land between April – June to avoid impacts to ground nesting birds such as trampling and/or predation. Detailed requirements for conservation grazing are detailed in Section 4.2.

Table 1: Livestock stocking rates for conservation grazing (FAS, 2017; KWT, 2012; DEFRA, 2022; EU 2009)

Livestock Type	Livestock units per ha
Cow and suckling calf	1.0
Cattle >24 months	1.0
Cattle 6 – 24 months	0.6
Ewe (including lamb)	0.15

4.1.2 Proposal if land use changes to arable

The proposed mitigation will be carried out with the proposed specification of two territories/plots per/ha (the minimum density as identified in RSPB, 2023). A total of 11 territories were present on site at the time of surveying, therefore a total area of 6 ha is required to accommodate the 11 territories/plots. It should be noted that 5.5 ha is the agreed minimum in line with the RSPB guidance however, in the

interests of providing sufficient compensation area, the population size has been rounded up to 12 territories.

Each plot must be a minimum of 16 m square in area and 3 m wide (eg 4x4 m, or 3x6 m) and must remain fallow over the autumn/winter, and undrilled (or left bare) during the spring period. Plots should be cut/cleared in the autumn (after 01 August) to avoid impacts to birds nesting within the vicinity.

The proposed design and location of the Skylark Plots are shown in Appendix 2.

4.2 Habitat Management requirements (pasture)

The following requirements are needed to ensure that the compensation area of the site remains suitable for breeding Skylark for the duration of the solar scheme if maintained as pasture:

- All land identified within the compensation area retained as grazing pasture must be managed for conservation purposes (Appendix 2).
- Stocking density will be determined by the livestock type used, and the stock rate must not exceed the unit per ha ratios set out in Table 1.
- Livestock must not be present within the compensation area between 01 April and 01 June to maximise Skylark breeding success
- Adjustments to the number of livestock present must be reviewed on an annual basis to avoid over or under grazing of areas. A matrix of short sward, longer grasses and areas of tussocky grassland provide the best opportunities for breeding and foraging birds including Skylark.
- Wherever possible, mechanical operations (eg muck spreading, harrowing, topping) should be timed before or after the breeding season in fields with ground-nesting birds.
- If any areas within the compensation area is used for a silage crop, it must not be cut between April June and any subsequent cuts must be at least seven weeks apart to enable success of later nests.
- Hedgerows will be managed around the boundaries of the compensation area to ensure that the skyline remains mostly unbroken. Hedges will be cut between January and March to ensure that winter foraging opportunities for other species are not lost, and impacts to breeding birds utilising the hedges are avoided.
- A commitment to provision of the mitigation area and management for the 40-year duration of the solar scheme is anticipated.

4.3 Habitat Management requirements (arable)

The following requirements are recommended to ensure that the compensation area of the site remains suitable for breeding Skylark for the duration of the solar scheme if converted to arable:

- A total of 6 ha of land will be managed for Skylark to compensate for the loss of habitat following the development at Berrington.
- A total of 12 Skylark plots will be created within the mitigation area at a density of 1 plot per 0.5 ha.
- Each Skylark plot will cover an area of 16 m² as a minimum, and will not be located within existing trackways within the field (i.e. created away from any area where vehicles regularly pass).
- Within the compensation area, 16 m² undrilled plots will be created by either (i) not being drilled during the winter and therefore creating a matrix of low vegetation and bare ground suitable for foraging; or (ii) leaving the 16 m² plots fallow over the winter period, and then retaining the 16 m² plots as undrilled during the spring. The option of sowing the crop as normal and spraying with herbicide to create the plot by 31 December was not considered as appropriate due to the environmental impacts of using herbicides such as glyphosate.
- Harvesting of any crop sown within the mitigation areas will not take place before 01 August to avoid any risk of destroying nests, or killing or injuring fledglings or adults breeding within the mitigation area. It is considered that this measure will increase fecundity, and improve the genetic diversity and resilience of local Skylark populations.
- Hedgerows will be managed around the boundaries of the compensation area to ensure that the skyline remains mostly unbroken. Hedges will be cut between January and March to ensure that winter foraging opportunities for other species are not lost, and impacts to breeding birds utilising the hedges are avoided.
- A commitment to provision of the mitigation area and management for the 40-year duration of the solar scheme is required.

4.4 Population Monitoring

Due to a lack of data surrounding the persistence of Skylarks in mitigation/compensation areas post development, an annual follow up breeding bird survey will be conducted to establish the number and location of territories on site. Data on the persistence of Skylarks within solar arrays and mitigation areas is contrary at best, with the sole study conducted by a consultancy and not peer-reviewed (Montag *et al.*, 2016).

It is anticipated that if sufficient compensatory areas are provided on the basis of current available best practice and are managed in an appropriate and sympathetic manner, Skylark populations will be static or increasing on site. However, without follow up surveys, this outcome remains hypothetical and arguably unsubstantiated. One annual survey will be undertaken in peak breeding season for Skylark (early – mid May) which will record the number and location of territories on site, along with any evidence of breeding (such as carrying food, nesting materials or faecal sacs) within both the compensation area and within the solar arrays. The visits should be undertaken every year for a period of five years to provide a suitable basis for some analysis of the population dynamics on site. If the population on site declines, corrective measures to ensure the longevity of the population must be undertaken. These will be bespoke in nature pending the cause of any decline, and may include the following options; signage for public awareness to reduce disturbance, supplementary winter feeding, changing location of plots, predator management or other measures.

5 Conservation Objectives

Table 2 below provides an overview of the conservation objectives for the Skylark mitigation and management strategy. It should be noted that although the measures set out below cover only a period of five years post development, the measures are considered sufficient to enable the longevity of the Skylark population on site for the duration of the operational lifespan of the Solar PV arrays.

Table 2: Conservation objectives

Action	Objective	Goal	Outcome
Arable			
Creation of habitat	To set aside a minimum of 6 ha of suitable habitat suitable for breeding and foraging Skylark	To provide long term suitable habitat to mitigate the loss of breeding areas of the current population of Skylark on site	To safeguard the population at the site and local level
Management of habitat	To create a total of 12 Skylark plots within the compensation areas	To provide long term suitable habitat to mitigate the loss of breeding areas of the current population of Skylark on site	To safeguard the population at the site and local level
Monitoring of population	To monitor the population of Skylark both within the mitigation area and within the development area for a period of five years	To establish baseline data to inform the success or otherwise of the proposed strategy, and enable a dynamic approach to site management as required	To inform viable mitigation approaches for the species at this and similar sites in the future
Pasture			
Creation of habitat	To create habitat within the compensation area suitable for breeding and foraging Skylark	To provide long term suitable habitat to mitigate the loss of breeding areas of the current population of Skylark on site	To safeguard the population at the site and local level
Management of habitat	To utilize conservation grazing methods to create a grassland with a variation in vegetation height and structure suitable for Skylark	To provide long term suitable habitat to mitigate the loss of breeding areas of the current population of Skylark on site	To safeguard the population at the site and local level
Monitoring of habitat and population	To monitor both the population and habitat structure to ensure that conservation grazing is delivering the most optimal habitat for Skylark	To establish baseline data to inform the success or otherwise of the proposed strategy, and enable a dynamic approach to site management as required	To inform viable mitigation approaches for the species at this and similar sites in the future

6 Conclusions

It is proposed that a compensation area is required for either (i) a conservation grazing strategy to create a suitably varied grassland ideal for breeding and foraging Skylark or (ii) the creation of 12 Skylark plots in a 6 ha area, as per the findings of the breeding bird survey undertaken by ADAS in 2020. A total of four parcels of land have been identified as being suitable for compensation immediately north of the development area.

If the area is used for grazing, conservation grazing using low stocking densities will be implemented, and will follow stocking rates set out within this document. Grazing will cease between 01 April and 01 June to avoid impacts to ground nesting birds. Habitat structure and Skylark population monitoring will be utilised to ensure that adjustments to stocking rate (depending on over/under grazing) are made to optimize habitats.

If the area is used for arable crop production, Skylark plots will be created covering an area of 16 m² to provide suitable foraging areas for the species during the breeding season. The plots will be created by either (i) not being drilled during the during the winter, or (ii) leaving the plots fallow over the winter period, and then being retained as undrilled areas in the following spring.

Additional habitat management should include the annual trimming of hedgerows around the boundaries of the compensation area in the late winter period (January – March) to ensure that habitat within the compensation area are suitable for Skylark, whilst avoiding impacts to nesting birds, or opportunities for winter foraging.

Long term monitoring of the site will take place for a minimum of five years to gather baseline data on the population dynamics and distribution of Skylarks both within the mitigation area and also within the solar arrays themselves. This data should be collected annually, and a report with analysis of the findings and any further recommendations for management techniques be submitted at the end of the five year period.

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Appendix 1: Proposed Plans



- LEGEND**
- Existing hedgerow retained
 - Grassland under solar panels
 - Existing trees retained
 - Proposed hedgerow
 - Proposed tree planting
 - Existing pond
 - Existing bird cover crop
 - Public Right of Way (PRow)
 - Beehive opportunity points

1. Proposed hedgerow to the property the southern boundary to screen views from Cliff Hollow Road.
2. Proposed tree planting to filter views from the north of the site.
3. Proposed tree planting and hedgerow planting to filter views from the houses to the north.
4. Proposed Impact Mitigation Areas
5. Existing bird cover crop.

Notes: Please note this plan does not include the proposed solar array extent.

11	Minor Amendments	09/01/2023
10	Text Amendments	09/01/2023
09	Layout Amendments	09/01/2023
08	Layout Amendments	21/12/2022
07	Amendments	17/08/2022
06	Amendments	01/07/2022
05	Amendments	23/05/2022
04	Layout Amendments	17/05/2022
03	Layout Amendments	14/05/2022
02	Boundary Amendments	13/03/2022
01	-	13/01/2022
Rev	Issue Details	Date

Client:
Ecoenergy International LTD

Project:
Berrington Solar Farm

Drawing Title:
Landscape Masterplan

Drawing No. 10514837-ADAS-XI-XX-DR-L-8001

Scale: 1:2,500 at A1

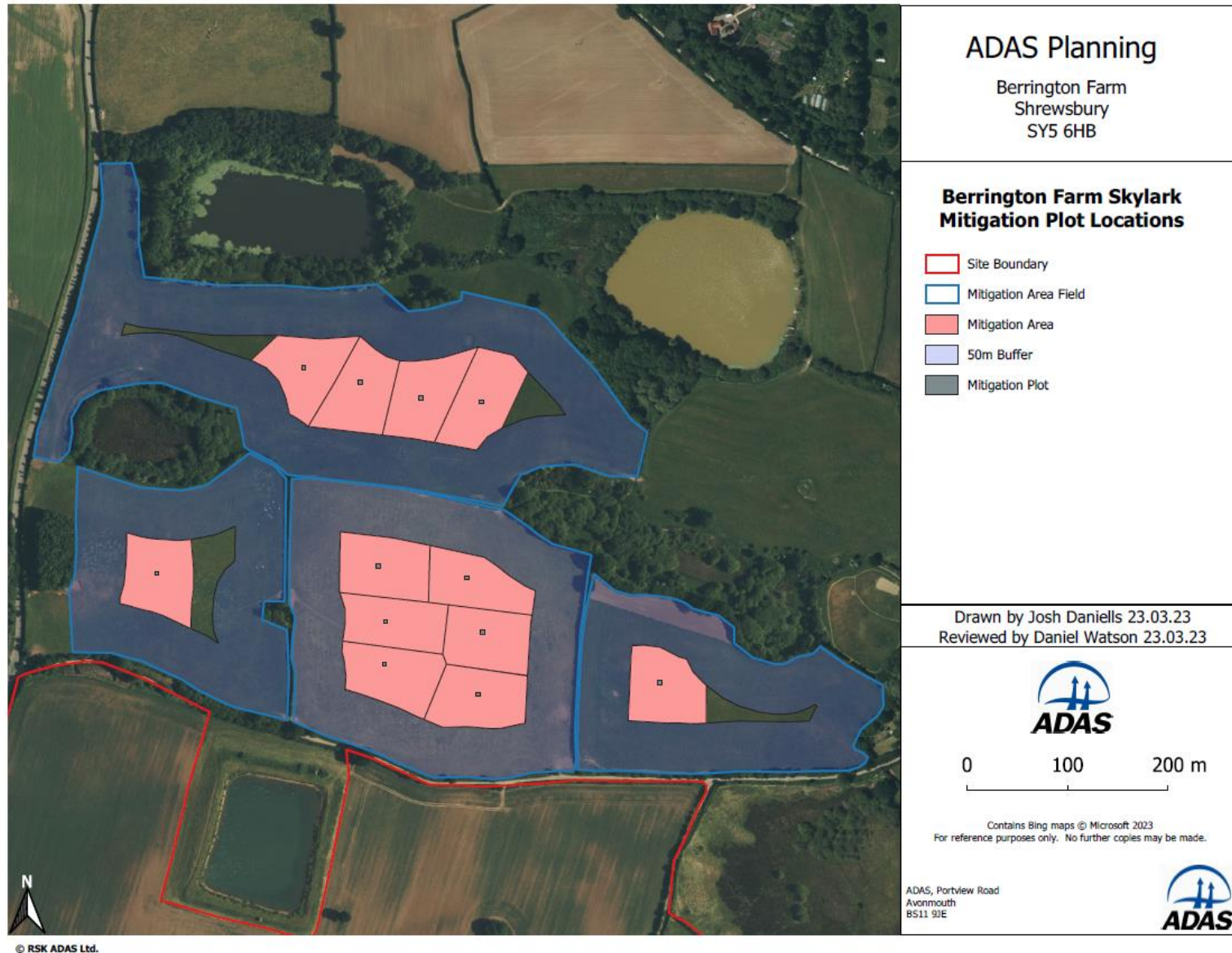
Drawn by: IH Date: 12/01/2023

Checked by: DH Date: 12/01/2023

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Appendix 2: Proposed Mitigation areas



IN WITNESS whereof this instrument has been executed as a Deed by the parties to this Deed the day and year first before written

Signed as a deed by)
JUSTIN RICHARD STEVENSON)
In the presence of:)

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Signed as a deed by)
JOSHUA EUAN NICHOLAS LOVEGROVE-FIELDEN)
In the presence of:)

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Signed as a deed by)
SIR CHARLES ANTHONY CULCHETH HOLCROFT BT)
In the presence of:)

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Executed as a deed by)
ECONERGY INTERNATIONAL LIMITED)
acting by a director)
In the presence of:)
Director

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Executed as a deed by affixing)
THE COMMON SEAL of)
LLOYDS BANK PLC)
in the presence of)

Authorised Signatory