

From: [REDACTED]
To: [Sunnica Energy Farm](#)
Subject: Request by the Applicant in Respect of the Timing of the Preliminary Meeting / Examination
Date: 18 May 2022 12:13:32
Attachments: [Sunnica DCO Examination Timetable 18052022.pdf](#)

Dear Sirs,

Please find attached a letter concerning the above on behalf of the Say No To Sunnica Action Group Ltd. This is a response to the Examining Authority's letter dated 4 May 2022.

Best regards

Andrew Munro

Munro Consulting

munroconsulting

[REDACTED]

[REDACTED]

[REDACTED]



18 May 2022

Dear Mr Kean,

Planning Act 2008 (as amended)

Application by Sunnica Ltd for an Order Granting Development Consent for the Sunnica Energy Farm

Request by the Applicant in Respect of the Timing of the Preliminary Meeting / Examination

Introduction

1. The Say No to Sunnica Action Group Limited (**SNTS**), an interested party (ID No 20031080) in the Sunnica Energy Farm DCO Examination. We write further to your letter of 4 May 2022 requesting comments on Sunnica Ltd's application to delay the Preliminary Meeting for the examination to mid-July.

Summary

2. The short point we make is that the timetable proposed by Sunnica and their solicitors as well as the assumptions made in their letter to PINS and the Examining Authority requesting the amendment are untenable and likely to cause significant prejudice to many registered Interested Parties who are members of this Group as well as prejudice to SNTS itself, also an Interested Party. We represent local residents, and parish councils as well as racehorse training organisations in the area affected and are advised by counsel and consultants. They will be involved in advising us as to the impact of the proposed Option 3 substation of which we have received no details from Sunnica even as to its proposed location, nor are we able to start to assess its impact until mid-July it seems, as Sunnica is not prepared to release details. To assume that we and local residents of the area will have nothing of particular relevance to say about the Option 3 proposals whether in consultation or subsequent submissions is high handed and does Sunnica no credit whatsoever. The prejudice is compounded by the fact that July is one of the busiest months of the year in the flat horseracing calendar and many local residents are on booked holidays in July.

In More Detail

3. Our more detailed response to your letter is as follows:

Whether the Preliminary Meeting should be delayed until mid-July 2022	The Examining Authority must be satisfied that no material prejudice will be occasioned on any registered Interested Party because of this delay, including SNTS. If such prejudice would occur, the Examining Authority must avoid such prejudice by proposing an alternative date for the Preliminary Meeting. In addition, the Examining Authority must be satisfied that the examination will properly proceed from the date of the delayed Preliminary Meeting
Comment on the proposed timetable to consult further on amendments intended to form the formal Change Request to be made to the Examining Authority	The proposed timetable must not be accepted unless the Examining Authority is satisfied that adequate time is provided for the finalisation of the required change to the application. Even if the time provided is sufficient, the Examining Authority must be satisfied that adequate time is available for consultation on and consideration of the amendments such that no material prejudice is occasioned on parties registered in the examination, including SNTS

4. We object to the proposed changes due to the prejudice which would be caused. This prejudice arises from the following:

- The starting of Examination at the start of the summer holiday season when many local people will have already arranged summer holidays which will involve cost and disruption to change and may prevent or compromise the submission of written representations at the start of Examination. The pandemic forced the cancellation of holidays in 2020 and 2021 which have been rebooked in 2022, many without options over dates. Attendance at the Preliminary Meeting would also be compromised due to childcare issues, etc during the school holidays.
- The impact on the submission of written representations, which normally occurs close to the start of Examination, due to the lack of knowledge of changes in the application. These changes would not become clear until just before the proposed Preliminary Meeting date.
- The shortness of time between when details of the revised DCO application becoming available (i.e. shortly before the proposed Preliminary Meeting) and the likely deadline for submission of written representations.

- The delay being due to a failure by Sunnica Ltd to secure a firm agreement with National Grid and/or landowners before making an application that is based on such agreements.
 - The dates and schedule have at all times been proposed for the convenience of Sunnica, ignoring local residents and others affected by the development. As stated by the latest planning policy statement (Further Information) accompanying the proposed Levelling Up and Regeneration Bill, it is clearly now government policy to bring forward reforms to enhance local democracy and engagement when making planning decisions, so that it gives local communities control over what is being built, where it is built, and what it looks like, so as to create an incentive to welcome development provided it meets the standards which are set.
5. We provide further information in support of these objections below and additional responses to the applicant's letter of 28 April 2022 are tabled in an Appendix.

Prejudice to Written Representations

6. The proposed delay would cause prejudice to Interested Parties preparing written representations because the start of Examination would fall within the mid-July to early September holiday period. Over this period schools and universities are on vacation and Interested Parties will be put in the difficult position of being unable to devote sufficient time to the early part of Examination which is arguably more critical due to key submissions. Many affected residents have pre-booked holidays in this period. It is also one of if not the major flat horseracing periods of the year, affecting many employed persons involved in horserace training in and around the Newmarket area.
7. SNTS, like other Interested Parties, has instructed counsel and experts for the examination. The delay places such instruction in jeopardy, as those counsel and experts have relied on the Planning Inspectorate's clear guidance in diarising work on the Sunnica examination. The delay would also be prejudicial in causing significant further expense.

Impact on Written Representations

8. With the compressed timetable proposed by Sunnica Ltd, Interested Parties and their experts will be deprived of the opportunity to properly consider and include in written representations any changes as finalised. The proposed timetable by Sunnica Ltd envisages that the changes, including any changes as the result of meaningful consultation, will only become available in mid-July, just before the proposed date of 18 July 2022 for the Preliminary Meeting. It cannot be assumed that any changes will be the same as those included in the consultation as the making of further changes because of consultation is an implicit risk in such consultation being meaningful.

9. Indeed, if experts are unavailable because of the delay, Interested Parties may be deprived of expert advice in its entirety. It was incumbent on Sunnica Ltd to make the application when it was finalised. It was not compelled to bring the application forwards in an incomplete form, which places those Interested Parties in the invidious position of having to modify their responses as they go.

The Shortness of Time

10. The timetabling of the DCO process has always been at the behest of Sunnica and this request for delay comes in a long line of delays in the overall process. In the statutory consultation on Sunnica residents were told that the application was expected to be submitted in spring 2021. For its part, the Planning Inspectorate appears to have expected the application to be made on or shortly after 15 July 2021. Instead, the application was submitted on 18 November 2021. Further delay arose in March 2022 as a result of Sunnica Ltd requiring to serve notices on various organisations. The process of considering whether to approve the applied for delay has, in itself, already delayed matters further. The requirement for a delay was first notified to the Examining Authority on 30 March 2022 while the Application Letter did not come until 28 April 2022.
11. In contrast to the ample time that Sunnica Ltd has had to negotiate agreements with National Grid and other parties, and to relieve consequent uncertainties in the application, Interested Parties will have only a short period within which time to get to grips with the changes. This is unfair and prejudicial.

The Reasons for the Delay

12. In respect of prejudice, Sunnica says that it would be “*procedurally unfair*” not to allow the delay because of when National Grid informed it that Option 1 was no longer feasible. Sunnica has been aware that Option 1 was not feasible since 10 March 2022. It is unclear why steps were only taken after the publication of relevant representations. Going further, however, Sunnica Ltd alone has the terms of the connection agreement with National Grid and must have been aware that it was not confirmed. Sunnica should have managed this risk as part of the DCO application, not least as securing the connection to the National Grid is an essential part of this scheme. It cannot now rely on the prejudice it faces due to its own omissions to justify placing real and unavoidable prejudice on Interested Parties that have had no hand in the timetable and progressing of the application.
13. The application is dependent on, among other things: (1) National Grid cooperating with the process; (2) the feasibility of Option 3 being established; (3) that there are no adverse (environmental or other) impacts caused by the change; (4) that no prejudice is caused to

Interested Parties (or other third parties); (5) a significant period of consultation is required because of this clearly material change to the application. The Application Letter can provide the Examining Authority no confidence that all of these issues will be resolved in Sunnica Ltd's favour. The Examining Authority must not proceed based on supposition that deadlines will be met when clear and palpable prejudice will be caused to Interested Parties.

Conclusion

14. This request for delay is indicative of the problematic approach that Sunnica Ltd has adopted throughout the consultations and pre-examination process. In the first instance, to avoid the material prejudice likely to be caused to Interested Parties, Sunnica Ltd should withdraw its application and bring forward a properly finalised application in the future. Failing this, any timetable that the Examining Authority imposes must avoid material prejudice to Interested Parties, including SNTS.
15. In respect of prejudice, our community action group members, and the professionals assisting us, already have pre-booked family and professional obligations. To minimise the prejudice posed if the delay is permitted, **we would respectfully ask that the SNTS Group is consulted before any hearing dates are imposed upon it.**
16. In any event, the Examining Authority must ensure any consultation on, and subsequent consideration of, Option 3 is not rushed through to avoid scrutiny by Interested Parties. The timetable implemented must reflect this.
17. We are happy to provide any further information that would assist the Examining Authority in considering this issue.

Yours Sincerely

For and on behalf of Say No To Sunnica Action Group

Catherine Judkins (Director and Chair)

(Electronically Signed)

APPENDIX

References to Application Letter mean the letter from Sunnica Ltd dated 28 April 2022

Issue	Response
<p>The Application Letter provides insufficient justification for the delay requested. The reason why the delay is sought is set out at para 3.17. Mid-July 2022 is chosen based on poorly made assumptions without sufficient backing. It is incumbent on Sunnica Ltd to provide sufficient grounding for the delay sought.</p>	<p>As is noted in paragraph 1.2 of the Application Letter, a new substation is essential infrastructure for the scheme. Without it, a connection to the national grid at Burwell at 400kV is impossible, and Sunnica Energy Farm would be unable to transmit energy into the National Grid. In paragraph 1.2, it is explained that Sunnica had confidence in Option 1, albeit clearly that option was not actually secure and has now been lost. As is then noted in para. 1.6, Option 3 is an option that was considered prior to the application for DCO was submitted and was rejected as a suboptimal design. It was thought that a single 400kV circuit connecting to Burwell was too risky from the perspective of failure risk when compared to the preferred option of two 132kV circuits. It is unclear what has changed about the risk profile of Option 3, and without further information the Examining Authority must assume that it represents a suboptimal design.</p> <p>Further, there was an ‘Option 3’ consulted upon in the Statutory Consultation, but this was close to the Burwell Substation, not the apparent new proposal being made. The naming and presentation of the option is also prejudicial to Interested Parties, as it may confuse or mislead them into thinking the new Option 3 is the same as that consulted on in the statutory consultation. It is a significant risk that Interested Parties will disregard or not properly understand the change, considering it to be another option at Burwell. That would be a significant problem for the quality of any responses to the consultation and disadvantage Interested Parties.</p>
<p>The timetable is dependent on cooperation with National Grid</p>	<p>The newly proposed Option 3 is an incomplete design; the option is still subject to <i>“additional feasibility works by Sunnica and the National Grid”</i>. It is unclear how Sunnica Ltd (and by extension the Examining Authority) can be satisfied to any level of certainty that the proposal will be ready by mid-July. This is particularly so considering that Sunnica accept that National Grid need to work with it on the proposal. In para 2.3 it is recorded that <i>“Sunnica considers that it can finalise the works by the end of May 2022 provided National Grid works with Sunnica. There is every indication that it will do this”</i>. We note that this is not a confirmation that National Grid will do this, nor indeed is there any document or communication from National Grid itself indicating that it agrees with the timescales involved. The date of mid-July 2022 is not certain and is at risk.</p> <p>It should be noted that one of the two reasons for delay in para 3.17.1 is to <i>“enable National Grid to confirm in writing the reasons why Option 1 is no longer available to Sunnica”</i>. Sunnica say in para 1.3 that it was first told</p>

	<p>Option 1 was no longer available on 10 March 2022. This was then confirmed in the relevant representations of National Grid published on 6 April 2022 (para 3.15.3). That Sunnica Ltd needed information from the relevant representations, rather than being able to progress the issue from 10 March 2022, is not indicative of expedition on its part, nor that of National Grid. Why such formal writing has taken more than 2 months (from 10 March 2022) is unclear.</p>
<p>Lack of Detail of Proposed Option 3</p>	<p>The Application Letter is lacking in detail about the proposed Option 3. Tables of information are provided with the letter but much of the “change” column includes questions and options rather than facts upon which Interested Parties can rely. To take two examples: it is unclear what type and number of transformers will be used on Sunnica West Site A, and the extent of the land that will be needed for the laying of the 400 kV cable (a working area of up to 30 meters by 30 meters being suggested). This is a striking lack of information which indicates the option is far from a substantiated proposal and prejudices any attempt that interested parties can make to interrogate the proposal.</p> <p>This lack of information is also apparent from the number of DCO documents which require to be updated (set out in para 3.19). This is a considerable number of documents, many of which SNTS (and other Interested Parties) have referred to those advising them, and which will be changed at a very late stage in the examination process. There is insufficient information in the Application Letter to safely conclude that that these extensive changes will mean the examination can commence in a way “<i>more efficient and easier for the local community</i>”. Indeed, this rather indicates that Sunnica Ltd do not understand (or is dismissive of) the level of time and investigation that is being undertaken by Interested Parties.</p> <p>A key part of the Application Letter is various suggestions that environmental and community impact will not be negatively altered. This is most prominently suggested in para 3.7 where it is suggested that Sunnica “<i>do not expect there to be any adverse effects on the environment beyond those identified in the Application already. This is subject to confirmation...</i>”. The basis upon which this suggestion is made is unclear, not least as crucial information on the detail of Option 3 is not present in the Application Letter. It is unclear to us how this conclusion has been reached in circumstances where the most substantial substation on the site is proposed to be moved to Sunnica West A, yet its location is still not determined. To proceed with an amendment without properly assessing whether there will be such adverse effects on the environment and community leaves the application a hostage to fortune and puts interested parties in the invidious position of not being able to consider and respond to the proposed amendment until the last moment.</p>

	<p>SNTS notes, for example, that the method by which this amendment is proposed to be introduced means that some analyses simply cannot be done: no winter views can be taken, nor can surveys be undertaken across the ecological seasons. Other analyses of impact can only be undertaken with difficulty due to the current state of information on the option; it may be that Sunnica Ltd do not yet itself have sufficient detail to undertake such review as Option 3, but this further emphasises that “<i>does not expect there to be any adverse effects</i>” has no real grounding. The approach adopted for such a major infrastructure project is inappropriate.</p> <p>On the available evidence, it seems unlikely that this application is anything other than a material change to the DCO application. Sunnica provide some time in its timetable for consultation, but it is unclear whether such time is sufficient. Indeed, how meaningful responses can be obtained from Interested Parties (and particularly the experts advising them) in the 30 days proposed in the letter of 19 April 2022 is unclear. The suggestion that considering the consultation responses will take two weeks total similarly suggests that no meaningful consideration of the consultation responses can be taken. This is an inappropriate approach to adopt in respect of a DCO application where extensive pre-examination time was available for proper consultation. Indeed, Sunnica says in answer to the Examining Authority’s question of whether the consultation can be meaningful “<i>provided time permits, Sunnica would like to discuss the consultation requirements with the Ex A before carrying out the consultation</i>” (para 3.23). This rather suggests that consultation is an afterthought in securing a timetable that will allow the application to progress.</p>
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