



The Planning Inspectorate

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To: All Interested Parties, Statutory
Parties and any Other Person invited
to the Preliminary Meeting

Your Ref:

Our Ref: EN010106

Date: 22 July 2022

Dear Sir / Madam

**Planning Act 2008 (as amended) – Section 89
The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9**

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

**Procedural decision regarding the postponement of Issue Specific Hearing (ISH1)
and Open Floor Hearings (OFH1 and OFH2) on 27 and 28 July 2022**

I write to inform you that the Examining Authority (ExA) has made a Procedural Decision to postpone the Issue Specific Hearing (ISH1) and Open Floor Hearings (OFH1 and 2) scheduled for next week, as a result of the need to consider whether a further Procedural Decision should be taken by the ExA to delay the start of the Examination. **The Preliminary meeting scheduled for 26 July 2022 will still commence on that date.**

This is for reasons which I will explain further below, but in summary concern the consequences of the Applicant not submitting the anticipated Change Request in advance of the Examination. It appears likely to the ExA that it would need to consider the implications for an effective Examination. It may not provide sufficient time for local communities and registered Interested Parties (IPs) to fully evaluate the intended changes to the Application, including the fundamental issue of the optionality for the substation. The ExA will need to be satisfied that the first weeks of the Examination could be effective to assess the impacts properly and efficiently.

The Applicant first raised the prospect of a change to the DCO Application with the ExA in its [letter of 30 March 2022](#) [AS-018] due to the need further to discuss with National Grid options for connecting to the existing Burwell 400kV substation. It requested a start date of

the Preliminary Meeting no earlier than the week commencing 6 June 2022 to provide it and National Grid time to understand and progress matters.

In its [letter of 19 April 2022](#) [AS-017] the Applicant requested a delay to the start date of the Preliminary Meeting to no earlier than the week commencing 18 July 2022. This was followed by a [letter dated 28 April 2022](#) [AS-020] describing the intended changes. On 20 May 2022 the Applicant provided the Examining Authority with a [method statement](#) as to the proposed consultation procedure regarding the intended changes [AS-233].

When the ExA issued its [Rule 6 letter](#) announcing that the Preliminary Meeting was to be held on 26 July 2022, it anticipated that the Applicant would have carried out its non-statutory consultation, marshalled and considered the responses and then lodged its Change Request in mid-July in line with its letter dated 19 April 2022. This could have enabled the Examination to commence such that all IPs would have an opportunity to make representations on the application, including the known changes formally proposed to the ExA, from the start of the Examination.

In its [response of 26 May 2022](#) [PD-008] the ExA noted that the Applicant was to carry out the proposed non-statutory consultation prior to making the formal Change Request. The Applicant was aware of, and referred in terms to, the Planning Inspectorate's advice that indicates a preference for a request to amend an application to be made before the Rule 6 letter being issued as it "*would enable all Interested Parties to be fully informed before the Preliminary Meeting and to facilitate a focussed discussion about how a changed application might be examined.*"

The Applicant stated that making any amendments to the application in advance of the Examination would avoid consultation running in parallel with the first month of Examination, which could cause confusion amongst consultees and IPs, and risk duplication of work. It was on that basis that the Applicant requested the ExA to consider this request and confirm whether it agreed to the proposed approach. The ExA consulted IPs on the proposed approach and after carefully considering the responses, concluded, as stated in its letter to the Applicant of 26 May 2022 [PD-008], that:

"The ExA agrees with the Applicant's view that making any amendments to the application in advance of the Examination is preferable, as it will avoid having consultation running in parallel in the incipient weeks of the Examination, which could cause confusion amongst consultees and Interested Parties, and risk duplication of work."

The ExA requested the Applicant to ensure that the Change Request that was intended to be submitted by mid-July 2022 responded fully to the advice set out in its letter of 26 May 2022, taking account of the Guidance and Advice Note 16 (AN16).

We noted that the intended changes related to the optionality included in the DCO Application for connection to the Burwell substation, the connection corridors for the proposed development, and a reduction in land take (or a reduction in the powers sought over land), together with other changes or updates to the proposed development. The Applicant considered (without having undertaken the non-statutory consultation and considered and reacted to those eventual responses) that the proposed changes were non-material.

The ExA responded in its letter of 26 May 2022 [PD-008] that it was for the ExA to decide whether a proposed change was material and furthermore that the ExA did not have at this stage sufficient information to conclude as to materiality, not least as it had not been possible to determine whether the proposed changes would generate new or materially different environmental effects. We noted that the Applicant intended to submit an “environmental confirmatory statement” with the Change Request. We noted that the title of this statement suggested that it would proceed from an assumption that there would be no materially different environmental effects. Advice was given as to how to explain the changes to the Project description and the justification for whether there would or would not be new or different environmental effects.

That remains the current position. However, earlier this week the Planning Inspectorate was informed in a telephone conversation with the Applicant’s solicitors about failures in the notification process for the Issue Specific Hearing (ISH1) and Open Floor Hearings (OFH1 and 2), specifically a failure to post site notices of the hearings and to place advertisements in the local press as required by Rule 13(6) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended). The Applicant noted that it would now place advertisements and post site notices. The Applicant requested that the ExA should exercise its discretion to allow a reduced notification period, and subsequently confirmed the situation in its [letter dated 19 July 2022](#) [AS-237].

Furthermore, it became apparent during the same call that the Applicant would be delaying the submission of the change request, ostensibly due to identification of a further plot of land outside the red line boundary that needed to be included within the Order limits. Moreover, it appeared that the submission of the proposed changes would not now take place until at least 30 August 2022, which up until now has been the projected Deadline 2 (D2) based on the indicative timetable set out in the Rule 6 letter. The Applicant was urged to confirm its position in writing.

Yesterday at 16:40 the Applicant confirmed its position in writing. It has provided two letters dated 21 July 2022. The [first letter \[AS-238\]](#) explains various matters whereby the Applicant wishes to make further changes to the Proposed Development as set out in the Application. The [second letter \[AS-239\]](#) puts forward its proposed revised timetable for the Examination. It proposes that the deadline for written representations from IPs be put back to later in the Examination.

Firstly, it appears to the ExA that to delay submission of the proposed changes to the current projected D2 would not be satisfactory. It would be likely to prejudice the ability of the stakeholders in the Examination to make an effective and informed contribution in accordance with the timetable as set out in the Rule 6 letter, whereby the Written Representations of parties’ cases are expected by D2, ie 30 August 2022. To allow a significant part of the Examination period to run with a known but as yet undefined change request that would not materialise until at least on or after D2, would not be likely to be acceptable to the ExA. Furthermore, parties’ written representations cover a wider range of issues than the intended changes to the application. The ExA considers it would be unlikely to be expedient to adjust the Written Representations date for that reason alone.

The ExA notes that the Applicant did not flag up a potential delay in submitting the formal Change Request until this week. However, the ExA welcomes the Applicant’s suggestion in its letters of 21 July 2022, that it should speak to these matters at the Preliminary Meeting. We look forward to hearing the Applicant on this, as well as other IPs.

It remains the case however, that the ExA may have to postpone commencement of the Examination until a date when the ExA can be confident that the change request has in fact been submitted. The consequences of this are that, in the first place, as we have already stated, the hearings scheduled for next week will have to be postponed. Secondly, it is unlikely that the Preliminary Meeting scheduled for 26 July 2022 will be concluded on that day. The ExA will wish to hear from the Applicant and IPs on the prospects of progress on the submission of the Change Request being sufficient to support an effective Examination commencing in September 2022.

The application, if not withdrawn, must in any case be examined, a recommendation submitted, and a decision made. Therefore, the ExA will consider and respond to the representations made at the Preliminary Meeting in due course.

Yours faithfully

Grahame Kean

Grahame Kean
Lead Panel Member for the Examining Authority

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