

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

Notification of the date, time, and venue for Compulsory Acquisition Hearing (CAH) 1 on 6 December 2022 was provided in the [Examining Authority's letter dated 8 November 2022 \[PD-018\]](#).

**Date:** Tuesday 6 December 2022

**Time:** 2pm

**Venue:** King Edward VII Memorial Hall, High Street, Newmarket, Suffolk CB8 8JP and by virtual means using Microsoft Teams.

Seating at the venue will be available from 1pm.

Full instructions on how to join online or by phone will be provided in advance to those who have pre-registered.

An **Arrangements Conference** will be held at **1pm** for those participating online or by phone.

**Purpose:** To enable the ExA to examine the Applicant's strategic case for Compulsory Acquisition (CA) and Temporary Possession (TP).

Affected Persons may however request to speak at CAH1 if they think that the Applicant has not complied with general legal tests, policy or guidance.

A second Hearing (CAH2) will be held in February 2023 to hear individual Affected Persons.

### Detailed Agenda for Compulsory Acquisition Hearing (CAH) 1 on 6 December 2022

#### 1. Welcome, introductions and arrangements for the Hearing

#### 2. Purpose of the Hearing

To enable the ExA to examine the Applicant's strategic case, and whether the relevant legal tests, policy and guidance have been addressed.

In particular, the ExA will inquire into, consider and establish clarity in respect of the following:

- a) The Applicant's strategic case for both Compulsory Acquisition (CA) and Temporary Possession (TP) of land and/or rights;

- b) The CA and related provisions as presented within the draft Development Consent Order (DCO);
- c) Whether the conditions relating to the land being required for the proposed development, or required to facilitate or be incidental to the proposed development, are met; and
- d) Whether there is a compelling case in the public interest for the CA provisions proposed.

**3. The Applicant's strategic case**

- a) For CA of land and/or rights; and
- b) For TP of land and/or rights.

**4. Alternatives and design flexibility**

The Applicant to present the approach taken to the project's components and explain the need to acquire the land and rights sought for:

- a) Solar panels and battery storage;
- b) Cable alignments, including the use of TP;
- c) Each substation, including landscaping; and
- d) The National Grid connection substation, including the need for land and rights in respect of both options 2 and 3, and in respect of other projects with agreements to connect at Burwell,

and the associated landscaping in each case.

**5. The compulsory acquisition and related provisions as presented within the draft DCO and the Land Plan**

Reference will be made to the draft DCO [REP2-012] and the Land and Crown Land Plan [REP2-003]:

- a) which articles engage CA and TP powers;
- b) the need for the cable corridor width generally, and the particular need for a cable corridor width of up to 100m; and any transfer to National Grid;
- c) How the DCO will operate in the context of other nearby projects, including any other projects with agreements to connect at Burwell, and the A11 improvement project, in the various possible consent, construction and operational programme situations;
- d) Whether the DCO excludes the application of a compensation provision or modifies it beyond what is necessary to enable that provision to be applied;
- e) Whether protective provisions are in a satisfactory form and one that is agreed with the relevant parties;
- f) Article 6 (application of legislative provisions); whether to include elements of the approach to TP set out in the Neighbourhood Planning Act 2017;
- g) Articles 27 and 28 (temporary use of land); whether the draft DCO provides clarity for landowners in the preliminary works, construction, maintenance and decommissioning scenarios, and where the project is delivered in phases and/or to different programmes; and
- h) Any other relevant matters relating to the Articles.

**6. Statutory conditions and general principles**

- a) The Applicant to confirm that the application includes a request for CA in accordance with section 123(2) of the Planning Act 2008 (PA2008);
- b) The Applicant to set out briefly whether the purposes for which the CA powers are sought comply with s122(2) of PA2008;
- c) Whether consideration has been given to all reasonable alternatives to CA and TP;
- d) Whether the rights to be acquired, including those for temporary possession, are necessary and proportionate; and
- e) Whether, in accordance with s122(3) of PA2008, there is a compelling case in the public interest for the CA proposed, both in relation to the need in the public interest for the project to be carried out and in respect of the private loss to those affected.

**7. Review of the Objections Schedule and related matters**

Reference will be made to the Objections Schedule [REP2-038] and the Land and Crown Land Plan [REP2-003]:

- a) The Applicant to summarise outstanding objections and progress on negotiations on alternatives to CA;
- b) The Applicant to advise, at locations where there is currently a choice of cable route, which option is preferred and will be taken forward;
- c) The Applicant to advise, where there is currently a choice of connection to the National Grid, which option (2 or 3) is preferred and will be taken forward; and.
- d) The Applicant to advise whether any further changes to the Order land are required or envisaged.

**8. Funding**

Reference will be made to the Funding Statement [APP-023]

- a) The Applicant to present briefly the current situation in respect of options currently available including power purchase agreements, Contracts for Difference (CfD), CfD caps and the expected pipeline bidding for CfD in 2023 and subsequently;
- b) any updates to the Funding Statement, including parent company guarantees and the costs of acquisition of land and rights; and
- c) Guarantee or alternative form of security.

**9. Statutory undertakers**

Reference will be made to the Applicant's response to ExQ1.3.8 [REP2-037, REP2-038] and to ExQ1.3.9 [REP2-037, REP2-038]

- a) The current position in respect of s127 and s138 PA2008 including representations made and whether there are any remaining which have not been withdrawn; and
- b) Any other relevant outstanding matters.

#### **10. Crown land**

Reference will be made to the update given by the Applicant in response to ExQ1.3.6 [REP2-037]

- The Applicant to advise whether or not there is any Crown land affected by the application.

#### **11. Public open space**

Reference will be made to the Applicant's response to ExQ1.3.7 [REP2-037]

- The Applicant to confirm that there is no special category land affected by the application.

#### **12. Human rights and the Public Sector Equality Duty (PSED)**

Reference will be made to the Applicant's response to ExQ1.0.13 [REP2-037]

- a) Article 1 of the First Protocol to the European Convention on Human Rights (ECHR);
- b) Article 6 of the ECHR;
- c) Article 8 of the ECHR;
- d) The degree of importance to be attributed to the existing uses of the land which is to be acquired;
- e) The weighing of any potential loss of ECHR rights against the public benefit if the DCO is made; and
- f) The PSED.

#### **13. Next steps**

Review of issues and actions arising: to the extent that matters arise which are not addressed in any procedural decisions, the ExA will address how any actions placed on the Applicant or other participants are to be met and consider the approach to be taken in further Hearings, in the light of issues raised in this Hearing. A written action list will be published if required.

#### **14. Close of the Hearing**

### **Participation, conduct and management of the Hearing**

The Examining Authority (ExA) has considered carefully all representations made by Affected Persons and has decided to hold two Compulsory Acquisition Hearings.

This is the first CAH to be held in this Examination. It is being held because the ExA wishes to question the Applicant about the strategic case for compulsory acquisition and temporary possession in respect of the application. This CAH1 is not the place for individual objections to be heard.

There will be a second Hearing (CAH2) in February 2023 which will be held to allow individual objections by Affected Persons relating to individual parcels of land and/or interests in land to be heard. The deadline for requests to be heard will be included in the Hearing Notification issued for the February 2023 Hearings. The ExA will ensure that there is enough time set aside at the second Hearing for all Affected Persons who notify us that they wish to speak to be heard.

Affected Persons may request to be heard at this first, strategic, Hearing (CAH1), but only on the basis that the Applicant has not complied with the relevant legal tests, policy and guidance in respect of the Application in general.

Please remember that compulsory acquisition hearings are only for those whose land and/ or rights are directly affected. This may include persons not listed in the Book of Reference but who have applied for and been granted Interested Party status under section 102 of the Planning Act 2008.

However, if you are not presently listed in the Book of Reference and have not been granted Interested Party status under section 102A of PA2008 but think that your land or rights may be directly affected, you may [make a request to the Examining Authority to become an Interested Party](#) and to speak at a Compulsory Acquisition Hearing.

If you are not an Affected Person but want to object to the Applications more broadly, then you should request to be heard at an Open Floor Hearing.

Participation is subject to the ExA's power to control the hearing. Hearings will be run so as to ensure that all submissions from those participating are fully heard within the allotted time.

Participants may be legally represented if they wish, but the hearing will be conducted so as to ensure that legal representation is not required. The Applicant and others permitted to speak may attend with relevant expert advisers, but others permitted to speak may participate on an equal basis without expert advice if they so wish.

Guidance under PA2008<sup>1</sup> and the Infrastructure Planning (Examination Procedure) Rules 2010 provides that the ExA will probe, test and assess the evidence through direct questioning of persons making oral representations at Hearings. Questioning at the Hearings will be led by the ExA.

Cross-questioning is regulated by the ExA and is only seldom employed at Hearings. Cross questioning of a person giving evidence by another person will only be permitted if the ExA decides that it is necessary to ensure that representations are adequately tested or to ensure that all persons have had a fair chance to put their case.

This Agenda may be amended by the ExA at the start of the Hearing. The ExA may also wish to raise matters arising from oral submissions and written representations and to pursue lines of inquiry in the course of the discussions which are not listed on the Agenda.

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<sup>1</sup> 'Planning Act 2008: Guidance for the examination of applications for development consent', (DCLG March 2015).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418015/examinations\\_guidance-final\\_for\\_publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-final_for_publication.pdf)

The Hearing will run until the ExA is content that all matters on the Agenda have been addressed. To avoid virtual event fatigue, session breaks will be provided after approximately 90 minutes of business, subject to ExA discretion. Additional breaks may be taken during proceedings if required to enable the ExA to deliberate on any matters arising. We anticipate closing CAH1 by 5pm.

All participants are advised that written summaries of their oral submissions at this Hearing should be submitted at **Deadline 4**, Friday 16 December 2022.

### **Arrangements Conference**

Those participating in the Hearing virtually will receive an email shortly before the event containing a joining link and telephone number. Please join the Arrangements Conference at the appointed time for the Hearing. The Case Team will admit you from the Lobby and register your attendance. The Arrangements Conference allows procedures to be explained and will enable the Hearing to start promptly.

### **Livestream/Recording**

For those who wish to observe the Hearing, a link to a livestream of the event will be published on the [project webpage](#) shortly before the Hearing is scheduled to begin. If you are unable to watch the livestream, a recording of the Hearing will be published on the [project webpage](#) shortly after the event has finished.