



# SUNNICA ENERGY FARM

EN010106

8.101 Written Summary of Applicant's Oral Submissions at the  
Compulsory Acquisition Hearing (CAH) 2 on 14 February 2023

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010



3 March 2023  
Version number: 00

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# 1. Introductory remarks

## 1.1 Introduction

- 1.1.1 The Compulsory Acquisition Hearing (**CAH**) 2 was held at 14:00 on 14 February 2023 as a blended event at Bedford Lodge Hotel, 11 Bury Road, Newmarket, Suffolk, CB8 7BX and by virtual means using Microsoft Teams.
- 1.1.2 The CAH took the form of running through the items listed in the agenda published by the Examining Authority (**ExA**) on 7 February 2023 (**Agenda**). The discussion predominantly focused on hearing:
- a) objections from individual Affected Persons in respect of the original application and the Second Change Application [**REP5-059**]; and
  - b) individual submissions on human rights and the Public Sector Equality Duty (PSED).
- 1.1.3 The ExA made some introductory remarks in relation to recent submissions made by the Applicant. The ExA noted that it was not necessary to consider the recent history of documentation submitted. This is with the exception of pointing out that the Applicant has submitted documentation at Deadline 5 and Deadline 6, as well as some additional submissions shortly after Deadline 6. The ExA stated that the latest position on outstanding documentation can be seen in the recent exchange of correspondence between the ExA and the Applicant. As explained in CAH1 (resumed), the ExA stated their understanding that the Applicant's letter of 7 February 2023 [**PD-026**] remains an accurate summary of its latest position.

# 2. Agenda Item 1 – Welcome, Introductions and arrangements for the Hearing

## 2.1 The Examining Authority

- 2.1.1 Grahame Kean, Guy Rigby and Karin Taylor.

## 2.2 The Applicant

- 2.2.1 **SPEAKING ON BEHALF OF THE APPLICANT:** Richard Turney (Barrister at Landmark Chambers) and Max Flowerdew (Land Consultant at WSP UK Limited).
- 2.2.2 Present from the Applicant: Luke Murray (Director at Sunnica Limited) and Lynn McHale (Associate Land and Property Surveyor at WSP UK Limited).
- 2.2.3 The Applicant's legal advisors: Nicholas Grant (Barrister at Landmark Chambers), Richard Griffiths and Tom Edwards (Solicitors at Pinsent Masons LLP).

## 2.3 Interested parties

- 2.3.1 Mr Graham Reeve.

- 2.3.2 Mr Nick Wright.
- 2.3.3 Mrs Elizabeth Garget (represented by Ian Garget).
- 2.3.4 Say No To Sunnica Action Group ('**SNTS**') and Newmarket Horseman's Group ('**NHG**): Daniel Kozelko (Barrister at 39 Essex Chambers)
- 2.3.5 The Mitcham Family (represented by Samuel Nobbs from Bidwells).
- 2.3.6 The Trustees of the Charity of Katharine Shore (represented by Mr John Leitch).
- 2.3.7 Ms Joanna Reeks.

### 3. Agenda Item 2 – Purpose of the Hearing

- 3.1 The ExA explained the purpose of the CAH is to enable the ExA to hear individuals' objections to the compulsory acquisition or temporary possession aspects of the proposed draft DCO. This includes hearing submissions from Affected Parties, including submissions as to whether the Applicant has complied with the legal tests, policy or guidance in respect of the relevant plots of land and the application itself (to include the Second Change Application).

### 4. Agenda Item 3 – To hear objections from Individual Affected Persons in respect of both the original application and the changes

#### *Oral representation from Mr Reeve*

- 4.1 Mr Reeve gave submissions detailing his objection to the Scheme. Some of his farming land to the west of Burwell is near the sub-station and Sunnica is seeking to bring its cables across that land. Mr Reeve indicated that his family has wanted nothing to do with Sunnica and does not agree with the waste of food producing arable land for the purpose of solar panels. His issues with the Scheme and the Applicant go beyond the lack of interest in using good agricultural land for a solar farm.
- 4.2 Mr Reeve indicated that he was not impressed by the Applicant's behaviour. Mr Reeve proceeded to describe a chronology of interaction with Sunnica, including receipt of brochures and the erection of notices by Sunnica seeking information on land ownership.
- 4.3 Mr Reeve stated that he is not against green energy in general. Before the Sunnica proposal, there were proposals for battery storage facilities close to the sub-station. Mr Reeve said that he had agreed to a small local company take a small corner of their field for batteries. The contract for this was being finalised when the company pulled out due to an intervention by the Applicant, with reference to its proposals. Mr Reeve stated that this scared the company and they pulled out.
- 4.4 Mr Reeve stated that further documents were received from the Applicant and it was said that if his family did not agree to allow access to his land then the Applicant would obtain an order under s.172 of the Housing and Planning Act 2016 from the courts. Mr Reeve added

that on 16 December 2020, Luke Murray plus others from the Applicant were on Mr Reeve's family land. Mr Reeve suggested that he informed them they were not welcome, and the Applicant responded that it is a criminal offence obstruct someone from exercising a power under s.172. According to Mr Reeve, the Applicant also stated on that day that Mr Reeve had received all the relevant information by recorded delivery. Mr Reeve then stated that it was deliberately misleading of the Applicant to say that the Applicant had powers under s.172 at that time.

- 4.5 Soon after, Mr Reeve said that two individuals were found on their field with scanning equipment working for Sunnica. They had been told they had permission to be on the land. Mr Reeve recounted that he explained they did not, and they moved on.
- 4.6 Mr Reeve also suggested that the Applicant is misleading with its words and presentation of information e.g. with reference to 'continuing negotiations'. Mr Reeve stated there are no negotiations taking place to be continued. Mr Reeve confirmed that his family is not interested in dealing with the Applicant at any price. Mr Reeve added that the 'Soham Solar Farm' has agreed a route for its cable which does not cross his land.
- 4.7 Mr Reeve noted that compulsory acquisition powers should not be granted if alternatives are available. Mr Reeve proceeded to state that his family will challenge any compulsory acquisition.
- 4.8 Finally, Mr Reeve is concerned by how the Applicant would act if their proposals were authorised in light of actions to date.
- 4.9 Mr Richard Turney, on behalf of the Applicant, referred to the Schedule of Negotiations [REP6-021] which states the relevant documentation which have been sent to and from Mr Reeve. Mr Turney indicated that it is clear Mr Reeve has never wished to engage or co-operate with the Applicant in terms of allowing access for site surveys or negotiate any agreement. Mr Turney stated compulsory acquisition powers are required in respect of this land as there is no prospect of reaching an agreement.
- 4.10 Mr Turney responded to Mr Reeve's point about alternatives by reference to the documents relevant to site selection as considered in CAH1. Mr Turney stated that Mr Reeve's land is required to place the cable from the solar farm sites to the grid connection at Burwell, providing a direct connection. Mr Turney added that generally it is not appropriate to route around individual parcels to provide a connection, albeit noting the preference for providing as direct a route as possible having regard to physical impediments (rather than unwillingness of landowners). The direct route is shown on sheet 20 of 24 of the Land Plans [REP6-004].
- 4.11 Mr Turney also reiterated that the interference with Mr Reeve's land has been reduced by engineering such that it is limited to the cable easement. Mr Turney added that as explained in the Environmental Statement and the Statement of Reasons [REP2-018], the interference with his land is limited to the construction period of cable laying and thereafter the cable laying in situ. Mr Turney submitted that Mr Reeve will be able to use his land as before. Mr



Turney concluded on this point by stating that there is a clear case for compulsory acquisition and there is no prospect of reaching a voluntary agreement with Mr Reeve.

- 4.12 Mr Reeve responded by adding that the Applicant's cables would run from the same general direction as the 'Soham Solar Farm'. Mr Reeve stated they did not seem to have any issues reaching an agreement with an adjacent landowner. Mr Reeve suggested that the Applicant could do a deal with Cambridgeshire County Council (CCC), promoter of that project, to share the route. Mr Reeve indicated that by cooperating with CCC, the Applicant could avoid his land. Mr Reeve indicated that he would make a written representation for Deadline 7 as a record of his oral submissions.
- 4.13 The ExA requested information on the relevance of the 'Soham Solar Farm'. In addition, the ExA noted the reference to a section 172 order and requested information on whether a section 172 order was in place or not.
- 4.14 Mr Turney confirmed that the Applicant would come back in writing in relation to the 'Soham Solar Farm'.
- 4.15 Mr Turney then added that on access, the Applicant gave notice under section 172 of the intention to come onto the land. This followed circumstances where an application was made to the Planning Inspectorate under section 53 of the Planning Act 2008 for an order authorising access. Mr Turney indicated that the section 53 application still has not been determined so the section 172 notice allows the Applicant to go onto the land. Mr Turney indicated that he considered Mr Reeve was referring to an application for a warrant, but that is only relevant when force is required to enter onto land and the Applicant has not gone down that route. Mr Turney also stated that the Applicant would check and confirm on the chronology of events relating to section 172.

### **Post-hearing submissions**

- 4.16 The Applicant has considered the position in relation to the solar project referred to in that hearing as 'Soham Solar Farm'. The Applicant's understanding is that this relates to a project known formally as the 'North Angle Solar Park' project which was promoted by CCC. The planning application, with reference CCC/20/051/FUL, was submitted to CCC (as local planning authority) on 9 July 2020 and was granted planning permission on 19 November 2020. From a review of the Environmental Statement for that project (REF:CCC-NASF-PROS-RP-Y-1072; paragraph 9.2.1), it appears as though the original intention was for the cable route to be constructed using permitted development rights. However, a planning

application (CCC/22/083/FUL) for the cable route was submitted to CCC on 15 July 2022 and no decision has yet been made.

- 4.17 The plans for this scheme indicate that it will be located to the south-west of Soham, whereas the Applicant's proposals are located to the east and south-east of Soham. Consequently, the cable routes are, in the large part, in distinct geographical locations.
- 4.18 It should be noted that the North Angle Solar Park is referred to in the DCO application documents as a cumulative scheme – see Appendix 5A: Cumulative Schemes [**APP-055**]
- 4.19 In addition, the Applicant has checked its records in relation to the chronology of events in relation to the exercise of powers under section 172 of the Housing and Planning Act 2016.
- 4.20 On the 11 November 2020 Sunnica Limited was granted an Electricity Generation Licence under the Electricity Act 1989.
- 4.21 Subsequent to a number of voluntary access requests letters, the Applicant notified Mr Reeve of its intention to use powers under section 172 on 20 November 2020. On 27 November 2020, a section 172 notice was served. The Applicant complied with the statutory notice period under section 174(1) which requires at least 14 days' notice before entering onto the land. The Applicant entered onto Mr Reeve's land on 16 December 2020 using its powers under section 172, where a walkover site visit was conducted. The Applicant departed the site earlier than it had hoped as Mr Reeve had made clear that they were not welcome, as stated in his oral submissions.
- 4.22 The Applicant needed to carry out further critical surveys on the land but the Applicant noted that in early March 2021 its powers under section 172, as provided for in the notice served on 27 November 2020, had expired. On that basis, the Applicant notified Mr Reeve on 5 March 2021 of its intention to serve formally another section 172 notice. That notice was served formally on 6 March 2021. In compliance with the requirement under section 174(1), the Applicant then sought to enter onto the relevant land on 25 March 2021 but was prevented from doing so by Mr Reeve.
- 4.23 The Applicant reiterates that on no occasion have the provisions under section 173 (Warrant authorising use of force to enter and survey the land) been used, or sought to be used, in respect of land access for Mr Reeve's land or indeed any other land.
- 4.24 Finally, the Applicant noted the ExA's comments in the hearing in relation to the outstanding section 53 applications. To provide more detail on this, the Applicant submitted 16 applications to the Secretary of State under section 53 of the Planning Act 2008 in December 2019. Since then, the Applicant has received various requests for additional information (August 2020), which the Applicant responded to promptly. Nonetheless, the applications are yet to be determined.

*Oral representation from Mr Wright*

- 4.25 Mr Wright stated that he has considered the Schedule of Negotiations and Powers Sought [**REP6-021**] and this does not accurately reflect the discussions with A.G. Wright & Son (Farms) Limited (**AGW**). For instance, a completed version of the Land Interest Questionnaire was said to have been returned to the Applicant on 1 April 2019, but the same



forms were received later that year (3 July 2020 and 20 July 2020) suggesting the Applicant had not logged the completed form. Mr Wright stated that this is not noted in the documentation. Mr Wright also stated that Mr Wright's wife has no recollection of the meeting which is said to have taken place with the Applicant's representatives on 27 August 2020.

- 4.26 Mr Wright then made submissions around land access. A notice under section 53 of the Planning Act 2008 had already been served on AGW by the time of providing an explanation of the Scheme to Mr Wright's wife. He submitted that access was not granted to survey the farm because the Applicant wanted access to large areas of the farm, and not just land close to the proposed cable route. In addition, Mr Wright stated that correct plans of the farm were not provided for many months.
- 4.27 Mr Wright proceeded to say that the Applicant informed him that it had applied to the Secretary of State (via the Planning Inspectorate) for authorisation to access the farm in a letter of 13 December 2019 under section 53 of the Planning Act 2008. The Planning Inspectorate sought details from AGW requesting details, which were provided in a letter dated 20 January 2020. The Planning Inspectorate wrote to them again on 19 August stating they had sent a section 53 notice to the Applicant, requesting further information from them. Mr Wright stated that nothing further was heard in relation to section 53 so assumed that the Applicant could not provide the requested information.
- 4.28 Mr Wright added that the Applicant then served a s.172 notice under the Housing and Planning Act 2016 on 27 November 2020, stating it would enter the land on 14 December 2020. The Applicant did not come, or at least was not seen. Mr Wright said that the notice made reference to e.g. intrusive ground investigation across multiple visits. Another section 172 notice was served on 12 March 2021 but, again, the Applicant did not appear.
- 4.29 Mr Wright followed this up by stating that across the two section 172 notices, the proposed surveys are listed. As indicated by Natural England elsewhere in the examination, Agricultural Land Classification surveys should be done along the cable route but this was not noted in the notices. Mr Wright suggested that a large proportion of the cable route will be Best and Most Versatile (BMV) land, which may be why the Applicant avoids doing the survey.
- 4.30 In addition, Mr Wright stated that it is unclear why none of this is referred to in the Schedule of Negotiations and Powers Sought [**REP6-021**]. Mr Wright added that the Applicant has refused to pay their land agent's fees for the land access licence negotiations because the licence was not signed. In addition, heads of terms for an option for a permanent easement were received by the Applicant on 29 June 2021. Mr Wright explained why the terms proposed were unreasonable, including inadequacy provision of fees and compensation. Mr Wright stated that AGW was advised not to enter negotiations at their own cost. A revised option agreement was sent on 6 December 2021 and no further correspondence has been exchanged since.
- 4.31 Mr Wright added that the Applicant refused to pay their solicitor's fees for several months because AGW had not signed the access licence agreement. The relevant invoice has only been part-settled and an amount remains outstanding. Mr Wright stated that the threat of compulsory acquisition should not be used to force people to sign unreasonable agreements. Meanwhile the Schedule of Negotiations and Powers Sought [**REP6-021**] is

incomplete and misleading, the Applicant has not behaved in a reasonable manner, and there have been issues over professional fees.

- 4.32 Mr Wright concluded by stating that two section 172 notices were served on AGW but were left in abeyance.
- 4.33 Mr Turney, on behalf of the Applicant, responded firstly in relation to the section 172 point. The grounds for seeking a warrant are where a person has obstructed access, not that someone says they do not *want* another person to enter onto the land, and this is how sections 172 and 173 work together. Mr Turney outlined that the Applicant has sought to agree rights of entry for surveys.
- 4.34 Mr Turney responded on the negotiation process with reference to the Schedule of Negotiations and Powers Sought [REP6-021]. In terms of payment of fees, the Applicant's view is that invoices were not, and have not been, provided. The Applicant has tried to agree fees as part of the negotiation of options, but not all have been content with the proposals which is part of the nature of commercial negotiations. Mr Flowerdew, on behalf of the Applicant, referred to correspondence to AGW's solicitor on 10 November 2020 indicating that fees would be paid on agreement of the licence.
- 4.35 Mr Turney added that the position is that Mr Wright is not willing to agree the easement and is opposed to the Scheme. The Applicant has issued heads of terms, made contact with both Mr Wright's land agent (March 2022 – no response) and solicitor (response was confirmation that they were acting). In October 2022, confirmation was received that landowner's solicitor had considered the heads of terms but had not responded in substance. Further contact was made in November 2022, December 2022 and January 2023. Mr Turney added that to date, the Applicant is aware that Mr Wright has instructed a solicitor to review the heads of terms but a response has not been received in substance on those heads of terms.
- 4.36 Mr Wright responded by stating that the land agent was unpaid because AGW did not sign up to the licence agreement and that time has had to be written off. Meanwhile, Mr Wright said that on the heads of terms, they were sent twice by the Applicant but they were in the same form. Mr Wright concluded by stating that the Applicant has been difficult throughout in respect of its proposals and confirmed that he would provide written submissions at Deadline 7.

*Oral representation from Ian Garget (on behalf of Mrs Elizabeth Garget)*

- 4.37 Mr Garget indicated that the Applicant has consistently shown the farm boundaries incorrectly on plans it has been provided, despite Mrs Garget providing corrections. The Applicant has been aggressive through the threats of using section 172 powers.
- 4.38 In addition, in respect of surveys, Mr Garget indicated that the Applicant made a request to undertake a survey of the cable route. However, the licence agreement placed the whole farm within the survey area which was unnecessary and unacceptable. Mr Garget noted that after negotiation, the agreed version had a much smaller area. Mr Garget added that a survey company was seen undertaking surveys on the land whilst negotiations were

ongoing. Permission had not been granted and notification had not been given to Mrs Garget.

- 4.39 Mr Garget then stated that Mrs Andreason, a member of Mrs Garget's family has received many letters and calls from the Applicant's agent, WSP. Mrs Andreason has informed WSP on many occasions that she is not the landowner and so could not and would not grant access to someone else's property.
- 4.40 In addition, Mr Garget explained that in respect of the heads of terms for an easement, the conditions set out are unacceptable to Mrs Garget and the fees offered were very low. The conditions are heavily in favour of the Applicant with an unfettered rights to carry out surveys and prevention of making comments about the DCO application. Mr Garget also noted bullying tactics.
- 4.41 Mr Turney responded by explaining that where the Applicant gives notice that it wants to go onto land under section 172 and are then prevented from carrying out the survey, then to continue the surveying requires a warrant from the court. Mr Turney then referred to the summaries for each objecting landowner in the Schedule of Negotiations and Powers Sought [REP6-021]. Mr Turney acknowledged there will be some disagreements over what has been recorded but generally the Applicant has sought to engage with landowners both through access and negotiating easements. Sometimes the terms were not accepted, and that is the people who are making submissions at the hearing today as those who have agreed terms will not be present.
- 4.42 Mr Turney then explained that the Applicant understood Mrs Andreason, to be occupier of the land and the daughter of the landowner. This explains why she was approached for access purposes.
- 4.43 Meanwhile, in respect of the heads of terms, Mr Turney notes that the correspondence recorded in the Schedule of Negotiations and Powers Sought [REP6-021] indicates that they have been issued and re-issued to the landowner's solicitor and agent. Mr Turney added that Mr Garget explains why they were rejected, but it does not appear as though there has been any progress over what would be acceptable terms. This is reflected in Schedule of Negotiations and Powers Sought [REP6-021], which describes the multiple attempts to meet and discuss the terms of the proposed easement.
- 4.44 Mr Turney concluded by stating that this is a case where the Applicant has sought to propose terms for access and an easement but those terms have been rejected either implicitly or explicitly so far (with no further proposals made or discussed). In the Applicant's view, these circumstances are a good reason for the inclusion of the land in the compulsory acquisition powers sought, and why statutory authority is required.
- 4.45 Mr Garget suggested that Applicant's approach and behaviour has irritated locals. Mr Garget will provide more details in a written submission at Deadline 7.

*Oral representation by Daniel Kozelko (Barrister at 39 Essex Chambers) on behalf of SNTS and NHG*

- 4.46 Mr Kozelko confirmed that he does not have instructions in relation to affected persons specifically so made no submissions.

*Oral representation by Mr Samuel Nobbs (on behalf of the Mitcham Family)*

- 4.47 Mr Nobbs stated that he was representing the Mitcham Family which undertakes, amongst other things, a large farming operation between Burwell and Fordham. Mr Nobbs added that rights are being requested over a minimum of 10m but in some areas it is excessively wide. The Bidwell mapping team think the proposals are wider than what is shown in the DCO application. Mr Nobbs added that this is restrictive on his client's planning and development of the farming business, and any future options for the farm. Mr Nobbs sought clarity from the Applicant regarding any narrowing of rights being requested, or an open discussion about the cable route.
- 4.48 Mr Nobbs stated that because the farm is crossed in four distinct locations, his client will be impacted by construction of the cable route for a number of years. Mr Nobbs said there is no clarity from the Applicant as to when his client can expect to see the Applicant on site. Mr Nobbs noted therefore that his client cannot plan their farming business – for instance, they do not know whether the current cropping rotation can be enacted for harvest in 2023 and thereafter.
- 4.49 Although an Agricultural Liaison Officer will be appointed as part of the CEMP, Mr Nobbs queried why this could not be done now. Mr Nobbs indicated that there is a misunderstanding by the Applicant as to how farming businesses function and an earlier appointment of an officer could help with this.
- 4.50 Mr Nobbs added that the Applicant's documentation indicates the land in this area is not particularly high quality. Mr Nobbs queried why farmers in the area would be cropping high-value route crops if the land was of poor quality – this is not what is seen on the ground. If the Applicant stands by its position on ALC and BMV, Mr Nobbs does not understand why they would not be willing to undertake further surveys / soil sampling tests, particularly along the cable route.
- 4.51 Mr Nobbs proceeded to add that the construction of cables does have long-term impacts on agricultural land and soil structures, which are damaged by movement of topsoil. Those fields will be significantly impacted moving forward.
- 4.52 On negotiations, Mr Nobbs said there was a meeting with the Applicant's representatives about two weeks ago, aiming to negotiate the heads of terms. However, there is no movement on the heads of terms from the Applicant so this is not a 'commercial negotiation' currently. Mr Nobbs added that this exasperates landowners, agents and solicitors.
- 4.53 Finally, Mr Nobbs stated that generally it is difficult to advise in a professional capacity on the exact impacts of the Applicant's proposals given the number of changes to the application. Mr Nobbs added that it reminds him of other DCO schemes which are still having significant landowner issues years down the line. Mr Nobbs stated that positive engagement could have solved many of the current issues.
- 4.54 Mr Turney responded by clarifying that in respect of compulsory acquisition proposals, the Applicant's proposals have not changed in respect of Mr Nobbs' client's land. The proposals

are the same as those that have been the subject of correspondence as set out in the Schedule of Negotiations and Powers Sought [REP6-021] i.e. since the heads of terms were issued in July 2021. Mr Turney confirmed that none of the changes concern Mr Nobbs and his client's interests.

- 4.55 On the width of the cable route point, Mr Turney stated that on this land a series of parallel Horizontal Directional Drilling (**HDD**) is required to cross a railway. The width of the cable corridor extends to 100m to allow the HDD to take place. Mr Turney added that the permanent easement relates solely to the cable as laid.
- 4.56 My Turney moved on to consider the detail of the crossing points in front of the farm-yard. He stated that under the dDCO there is the ability within the cable corridor to lay the cable and the permanent easement crystallises on top of that cable. If the cable needs to cross the farm access at a certain location, then that may not be an avoidable impact.
- 4.57 Mr Turney responded on the farm business point. There is no prospect of the proposals being constructed in this harvest because the DCO decision will not be until the autumn of this year. He reiterated that the Agricultural Liaison Officer is provided for in the revised CEMP and notes that Mr Nobbs welcomes this. Mr Turney added that it would be premature to start to negotiate the timing of works etc. as it is not yet known precisely when powers will be granted, when they will be exercised etc. Mr Turney concluded on this point that this measure manages the impacts on farmers when construction takes place.
- 4.58 Finally, on the BMV point, Mr Turney added that this was considered during the ISH last year and the ALC process has taken place for the main sites which accords with national policy. He expanded by stating that when seeking to locate the panels for a solar farm, you must seek to avoid BMV land, so far as possible, and minimise the interference. Mr Turney added that the same consideration does not apply to cable routes because of the scope for reinstatement of land over those routes. Mr Turney also stated that Mr Nobbs concerns in relation to soil are firmly recognised by the Applicant, and soils management of this is provided for under the CEMP. The management of soil in the trenching along the cable route will be an important consideration in terms of reinstatement. Mr Turney said that the assessed intended objective, and contractual objective under the proposed terms of the easement, will be to reinstate the land to its current condition with the cable laid within it. Mr Turney concluded that this is the process for soils management process once the Applicant reaches detailed design and project execution.
- 4.59 Mr Nobbs responded with reference to agricultural land drainage and indicated that there a caveat in the CEMP with concerns his client. Mr Nobbs is concerned that such a caveat could lead his client having to deal with these matters themselves. Then Mr Nobbs requested confirmation from the Applicant that any heads of terms will only be for a 10m easement width.
- 4.60 Mr Turney replied by confirming that this is correct in general terms, but not in respect of HDD, as per previous comments. At the railway, the cable will splay across four separate bores. Mr Turney clarified that the area that will be temporarily and permanently affected in the approach to the railway will be larger than the rest of the route.

*The Trustees of the Charity of Katharine Shore (represented by Mr John Leitch).*



- 4.61 Mr Leitch introduced background to the charity. He proceeded to add that the Charity responded on 22 August 2022 to a letter from the Applicant. Mr Leitch added that no terms have been proposed for a licence agreement in relation to the temporary use of land in connection with the transformer delivery. He stated that insufficient information has been provided to understand how much land will be affected so the Trustees of the Charity have resolved to reserve their position. Mr Leitch indicated that the Trustees were unable to reply by the deadline in August 2022. The Applicant's acknowledgement of the letter of 22 August 2022 confirmed they would be happy to cover reasonable professional fees. However, since this time, a previously appointed land agent has withdrawn their support to the Charity. Mr Leitch confirmed that other land agents are engaged.
- 4.62 Mr Leitch added that the affected land is a long-term tenancy committed to an asparagus crop which, if disturbed, will take four years to re-establish.
- 4.63 Mr Leith then said that the Charity is listed as Category 1 in the Book of Reference [REP6-017], but the Charity's address is incorrect and this has previously been flagged to the Applicant.
- 4.64 With reference to Schedule of Negotiations and Powers Sought [REP1-006], Mr Leitch stated that no voluntary terms were offered to the Charity in the Applicant's letter of 16 November 2021.
- 4.65 In conclusion, Mr Leitch said that whilst the Applicant has acknowledged the need for a licence agreement, the Charity is unable to agree something which is unseen.
- 4.66 Mr Turney responded that the Charity's interest relates to an oversail of a singular AIL (transformer) movement on one day during the construction phase over a small portion of agricultural land owned by the Charity (see sheet 21 of the Land Plans – junction of Mildenhall Road and Ferry Lane). The turning at the junction is too tight for the AIL to stay entirely within the highway boundary.
- 4.67 Mr Turney emphasised that the interference is extremely limited. Nonetheless, Mr Turney confirmed that the Applicant would seek to agree a licence, insofar as it is possible. If that is not possible, the powers in the DCO would authorise this temporary interference. Mr Turney added that hopefully the clarification on the extent of the interference will provide some reassurance to the Charity and the Applicant is willing to continue discussions over a licence. However if that is not possible for the Charity's due to administrative reasons, then it may be better to rely on the powers under the DCO. Mr Turney stated that to the extent that any damage is caused by the exercise of those powers, that will be a compensatable interest in accordance with the compensation code.
- 4.68 Mr Leitch responded by noting he will have to see what the land agent now employed comes back with in terms of this impact on the field.

*Oral representation by Joanna Reeks*

- 4.69 Ms Reeks confirmed that she lives at [REDACTED] which is affected by the cable route and jointly owns [REDACTED] where the Applicant is seeking to lease c.100 acres to include in their solar area. Ms Reeks indicated that she considered the merits of the



proposed scheme in 2019 but thought it was too large and the impact on the local community too great.

- 4.70 Ms Reeks confirmed that in 2020 she indicated to the Applicant that she did not want to participate and would like to withdraw the land from the scheme. Ms Reeks added that the response from the Applicant was that she had two options: 1) sign-up to a lease for 35-40 years; or 2) have the land acquired compulsorily. The threat of compulsory acquisition means that she is having to negotiate with the Applicant – this cannot be the correct use of those powers. Two outstanding points remain on the lease so it has not yet been signed and, without the threat of compulsory acquisition, it would not be signed.
- 4.71 Ms Reeks then said that she understands that of the 2,500 acres within the Order limits (and setting aside the owners of land affected by the cable route), she is the only unwilling landowner. If that is correct, then the land only forms a tiny percentage of the proposal as a whole and Ms Reeks does not understand why specifically this 100 acres of land is required. Indeed it is not contiguous; it is separated by a major highway, the A11.
- 4.72 Ms Reeks stated that her family does not want to lose [REDACTED] which forms part of the arable farming business. The family does not want to lose it to solar panels. Ms Reeks added that she understood that, for compulsory acquisition powers to be granted, there must be compelling evidence that the public benefits of the project outweigh the private loss. Ms Reeks considers strongly that this test has not been met for the land at [REDACTED] and urges the refusal of compulsory acquisition of this land. The Applicant is a private company established to make profit and it is not fair that they could do this having acquired our land cheaply. Ms Reeks added that the Applicant should not be using the threat of compulsory acquisition powers as a lever during lease negotiations. Ms Reeks also noted an imbalance in power between the Applicant and her and asked that there is very careful oversight of the Applicant's behaviour towards her.
- 4.73 In addition, Ms Reeks confirmed that she would strongly prefer for the cable not to pass through [REDACTED]. If forced to accept this, she requested that the Applicant treats her fairly, particularly with the reinstatement of trees and hedges.
- 4.74 Mr Turney responded by stating that the relevant entry for [REDACTED] in the Schedule of Negotiations and Powers Sought [REP6-021] is recorded under the name Richard Tillbrook. Mr Turney stated that heads of terms were signed in August 2019 which is important context. He added that Ms Reeks has made known her opposition to the scheme, but Mr Turney also understands that there is now an advanced stage of negotiations for a lease following the heads of terms. The option documentation is with the solicitors on behalf of the Tillbrook family. Mr Turney added that the Applicant expects the agreement to complete, such that compulsory acquisition powers will not need to be relied upon. Mr Turney indicated that the advanced stage of negotiations with the Tillbrook family indicates that the submissions made today by Ms Reeks is only part of the picture. There has been a willingness by her family to deal with the proposals over a period over many years.
- 4.75 Mr Turney stated that position in terms of the inclusion of the land at [REDACTED] for compulsory acquisition purposes is in common with all other landowners within the main sites. The Applicant has proceeded with the strategy of seeking to negotiate for the leasehold interest, but seek powers to acquire outright in the event that an agreement does

not materialise or is breached. Mr Turney added that this ensures the benefits of the scheme are not held up by a landowner withdrawing from a position they have agreed.

4.76 Mr Turney then considered [REDACTED]. The cable routes passes through the farm to connect various parts of the scheme. Mr Turney referred to previous explanations in terms of seeking to identify the most direct routes, subject to physical impediments, between the development parcels and on to the sub-station. Mr Turney indicated that the Applicant considers it appropriate to cross [REDACTED] with the cable route, and remains willing to negotiate terms for an easement over that land. The Applicant is seeking to conclude this once the main interest at [REDACTED] has been resolved. Mr Turney concluded by saying that the Applicant hopes to be able to update the ExA on the position by the end of the examination.

#### *HPUT*

4.77 The ExA asked the Applicant to provide an update on the discussions with HPUT, noting that they determined that it was not necessary for them to attend the hearing.

4.78 Mr Turney stated that the letter that the ExA had received from Mr Treger (Bryan Cave Leighton Paisner LLP), solicitor for HPUT, is an accurate reflection of the current position. There is an agreed form of protective provisions which ensures that the necessary controls are or will be in place for the relevant work i.e. the laying of the cable through their land (including HDD). Mr Turney confirmed that the cable laying works will be carried out in a way which HPUT is satisfied will not interfere with the activities at the campus. Mr Turney added that negotiations are also ongoing to conclude a full option agreement rather than relying on the provisions in the DCO. These negotiations are at an advanced stage.

4.79 Mr Turney added that HPUT are not formally withdrawing their objection as they have not yet agreed those commercial terms, but because the protective provisions are satisfactory to them, HPUT are not proposing to appear at the hearing. Their objection is now essentially a holding objection.

4.80 Mr Turney then noted that the Applicant acknowledges the Fordham campus is a sensitive location, potentially vulnerable to noise and vibration impacts in principle. The Applicant has sought to agree certain accommodations e.g. not using their access, using alternative land and carrying out the work under the terms of the protective provisions. Overall there is a position of agreement meaning the relevant part of the DCO can be retained, and they are content that it will not materially impact their operation. The Applicant's assumption is that

any objection from the tenants (DDS and LGC, represented by Jonathan Bower) will be withdrawn in light of the protective provisions.

## 5. Agenda Item 4 – To hear individual submissions on human rights and the Public Sector Equality Duty (PSED)

5.1 The ExA asked whether any Affected Person wished to make submissions under this agenda item. No submissions were made.

5.2 Mr Turney stated that its position on human rights is in the Statement of Reasons [REP2-018] and there is an Equality Impact Assessment [REP3-020]. Those documents provide the Applicant's assessment as to how the relevant statutory requirements are met.

## 6. Agenda Item 5 – Next Steps

### 6.1 Actions for parties arising out of the Hearing

6.1.1 The ExA read out its list of actions from the CAH which were published on the PINS website following the hearing:

6.1.2 **The Applicant can confirm the position in respect of the Deadline 7 actions (i.e. where they can be found within the Applicant's Deadline 7 submissions) in the table below:**

ExA Action	Response in Deadline 7 submissions
<b>Applicant</b> to submit updated parameter plans	This updated document (reference: EN010106/APP/6.3) has been submitted at Deadline 7.
<b>Applicant</b> to submit updated cable corridor plans	This updated document (reference: EN010106/APP/6.3) has been submitted at Deadline 7.
<b>Applicant</b> to submit an overlay of the land plan on to the updated parameter plans	This document has been submitted at Deadline 7 under Application document reference: EN010106/APP/8.99

## 7. Agenda Item 6 – Close of the Hearing

The hearing closed at 16:20.