



SUNNICA ENERGY FARM

EN010106

8.126 Response to Rule 17 Letter (22nd March)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Regulations 2010



Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

Sunnica Energy Farm

8.126 Response to Rule 17 Letter (22nd March)

Planning Inspectorate Scheme	EN010106
Application Document Reference	EN010106/APP/8.126
Author	Sunnica Energy Farm Project Team

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Sunnica Energy Farm project
Freepost SEC Newgate UK Local
info@sunnica.co.uk
Telephone: 0808 168 7925

28 March 2023

Dear Mr Kean

Application by Sunnica Ltd for an Order granting development consent for the Sunnica Energy Farm

Request for further information – Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010

This letter is in response to the Examining Authority's ("ExA") letter dated 22 March 2023 requesting additional information in respect of Crown land and hazardous substances consent.

Crown land

The Applicant submitted an End of Examination Position Paper at Deadline 10. At paragraph 1.12 it provided an initial response to the request from the ExA.

The Applicant can now confirm that it has received consent pursuant to section 135 of the Planning Act 2008 from the Secretary of Transport and a copy of that letter is attached for your information.

The letter from the Government Legal Department confirms that the Secretary of State for Transport consents to:

- (1) The inclusion of Crown land within the DCO for the purposes of development consent; and
- (2) That the undertaker, for the purposes of the DCO, may compulsorily acquire those third party interests listed in the Book of Reference for plot 04/03.

Obtaining this consent means that the undertaker has consent from the Crown for the DCO to include the necessary development consent for the undertaker to install the grid connection within plot 04/03 as well as to compulsorily acquire interests from non-Crown parties. As is the case for all Crown land it does not allow the Applicant to compulsorily acquire an easement from the Crown for the grid connection in that land. The Applicant is therefore required to negotiate an option for an easement with the Secretary of State for Transport. The Schedule of Negotiations submitted at Deadline 10 summarises the current position in respect of those negotiations.

The Applicant fully expects to reach agreement with the Secretary of State for Transport and for an option for an easement to be granted. However, if for whatever reason that does not prove possible, there is an alternative route avoiding the Crown land. The Applicant includes a plan within this submission showing

the alternative cable route. The existing proposal is to route the cable underneath Freckenham Road through an existing tunnel as shown in yellow on the plan. As an alternative to this the Applicant proposes to place the cable in the existing highway as shown in green, crossing Freckenham Road into Beck Road and into plot 4/01.

The Land and Crown Plans show the whole of plot 4/03 as Crown land. This is because the precise extent of the Crown interest is not known and therefore a precautionary approach has been taken. The plans showing the demise of the Crown interest have been obtained from the National Highways Historic Railway Estate archives and are of some age meaning it is difficult to interpret them precisely. However, the Applicant is confident through diligent inquiry that the demise does not include the green land and therefore if a voluntary easement is not secured (which the Applicant considers is unlikely given the granting of the section 135 Consent) there is a viable alternative within the current Order limits.

Hazardous Substances Consent (“HSC”)

The Applicant submitted an End of Examination Position Paper at Deadline 10. At paragraph 1.17.3 - 4 it provided an initial response to the request from the ExA as follows:

The Applicant notes the ExA’s request under Rule 17 dated 22 March 2023. The ExA notes that NPS EN-1 at paragraph 4.12.1 states that Hazardous Substances Consent can be left until post consent: however, pre-application consultation with HSE is nevertheless required and details must be included in the DCO (NPS EN-1, footnote 94). The footnote states: ‘However, the guidance in 4.12.1 still applies i.e. the application should consult with HSE at the pre-application stage and include details in their DCO’. The ExA comments that the implication of the guidance might appear to suggest that full details of hazardous materials and the hazard assessment must be considered in the Examination. The Applicant does not accept that NPS EN-1 can be read in that way. All that it requires is that the HSE was consulted pre-application, which it was. The Applicant was compliant with this requirement as evidenced in the Consultation Report and confirmed by the HSE at Deadline 7 [REP7-112].

The Applicant expands on the above as follows:

Paragraph 4.12.1 of NPS EN-1 states:

All establishments wishing to hold stocks of certain hazardous substances above a threshold need Hazardous Substances consent. Applicants should consult the HSE at pre-application stage if the project is likely to need hazardous substances consent. Where hazardous substances consent is applied for, the IPC will consider whether to make an order directing that hazardous substances consent shall be deemed to be granted alongside making an order granting development consent. The IPC should consult HSE about this. (our emphasis)

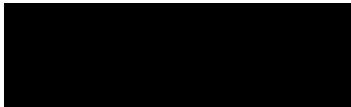
Footnote 94 states:

Hazardous substances consent can also be applied for subsequent to a DCO application. However, the guidance in 4.12.1 still applies i.e. the application should consult with HSE at the pre-application stage and include details in their DCO.

The Applicant’s interpretation of 4.12.1 is that all it is required to do by that paragraph is consult the HSE as part of its pre-application consultation. As referred to in our response at Deadline 10 this was done at the appropriate time. A copy of the HSE response to the pre-application consultation was included at Appendix B to the Applicant’s response to other parties deadline 6 submissions [REP7-56]. That response does have a section on HSC and it is notable that there is no comment from HSE that any additional information was required from the Applicant at that stage. The only reasonable inference to draw from that is that there was no more additional information required by HSE.

The Applicant fails to see how footnote 94 could be interpreted to require full details of hazardous materials or hazard assessment to be considered as part of the Examination. So far as it is aware no similar consideration was given during the Cleve Hill or Little Crow examinations, or indeed in the raft of battery storage applications being considered under the Town and Country Planning Act 1990 and so requiring this to have happened would be a departure from previous precedent and, importantly, not required under law. Furthermore, unless detailed design is available at the point of submission of the development consent order application, a HSC cannot be applied for as the necessary information simply won't be available, hence the acceptance in Footnote 94 that states that a consent can also be applied for subsequent to a DCO application. It would be nonsensical for this to be interpreted any other way. The Applicant has complied fully with section 4.12 and Footnote 94 in NPS EN-1.

Kind regards,



Luke Murray
Sunnica Ltd

Appendix A



Government
Legal Department

102 Petty France
London
SW1H 9AJ

Sunnica Limited
2 Crossways Business Centre
Bicester Road
Kingswood
Aylesbury
HP18 0RA

27 March 2023

Our ref: EM/DFT/Sunnica

Dear Sirs

**SUNNICA ENERGY FARM
APPLICATION FOR A DEVELOPMENT CONSENT ORDER (“DCO”)
CONSENT TO INCLUDE CROWN LAND IN THE DCO**

You have applied, under the Planning Act 2008 (“**PA 2008**”), for a DCO for the Sunnica Energy Farm (the “**Scheme**”).

We act for the Secretary of State for Transport in relation to the DCO.

The land required for the Scheme includes land which is owned by the Secretary of State for Transport and which therefore comes within the definition, in the PA 2008, of Crown land.

The Crown land in question is identified as plot 4-03 in the Book of Reference and the Land and Crown Land Plans which formed part of the DCO application documentation (the “**Crown land**”). Pursuant to section 135(1) of the PA 2008, you have sought the consent of the Department for Transport, as the appropriate Crown authority (the “**Crown authority consent**”) for:

- a) the inclusion of the Crown land in the DCO; and
- b) the compulsory acquisition of non-Crown interests in the Crown land.

We confirm that the appropriate Crown authority to give Crown authority consent is the Secretary of State for Transport and that the Department for Transport is empowered to give such consent on behalf of the Secretary of State but only to the extent that the Secretary of State owns or holds land within plot 4-03.

We note that you do not intend to acquire compulsorily any interests in the Crown land which are held by the Secretary of State for Transport, but only the interests which others may have in the Crown land.

Accordingly, please accept this letter as Crown authority consent under section 135(1) of the PA 2008 for: (a) the inclusion of the Crown land in the DCO; and (b) the compulsory acquisition of non-Crown interests in the Crown land.

For the avoidance of doubt, any rights required by you (or any statutory undertaker) over the Secretary of State’s interest in the Crown Land (if any) would need to be separately negotiated and documented by way of a formal written agreement. Any such agreement would need to be in a form and on terms satisfactory to Secretary of State for Transport including in relation to the location, height, depth and size of the equipment to be installed and provide for payment of reasonable compensation in accordance with the Compensation Code or its equivalent which recompenses the Secretary of State for Transport in full for any loss.

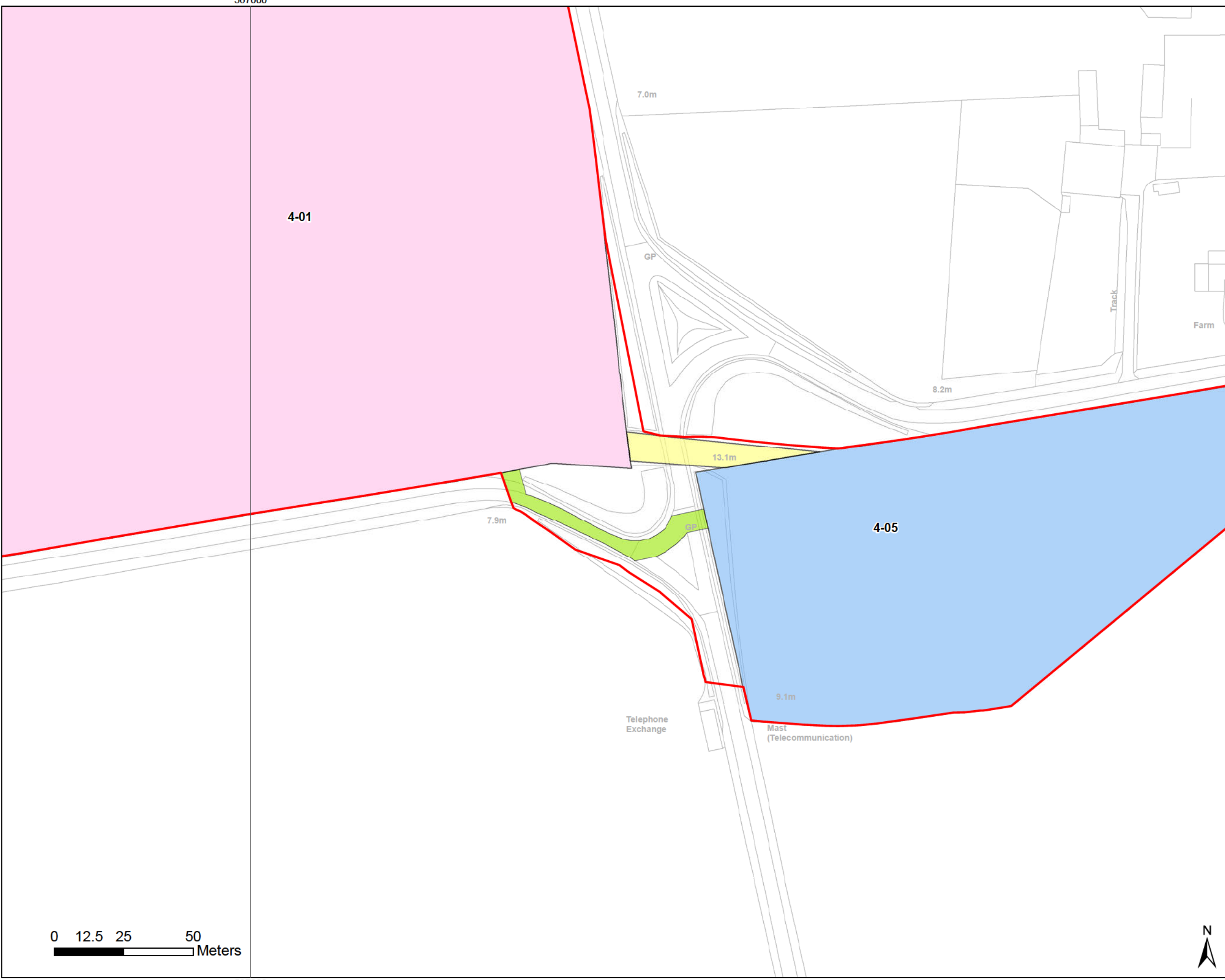
The Department for Transport's Estate Management team would expect to be kept informed of the progress of the Scheme, in relation to the implementation of the DCO, should development consent for the Scheme be granted by the Secretary of State in due course.

Yours faithfully

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

Government Legal Department

Appendix B





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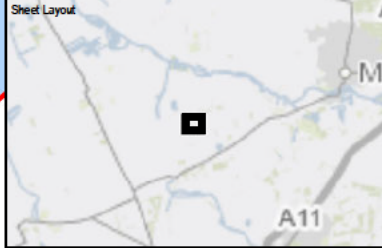
LEGEND

-  Red Line Boundary
-  Cable Route Affecting Crown Interest (Indicative)
-  Alternative Cable Route Avoiding Crown Interest (Indicative)

Plots

-  4-01
-  4-05

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Purpose of Issue
ALTERNATIVE PLAN

Client
SUNNICA LTD

Project Title
SUNNICA ENERGY FARM

Drawing Title
CROWN LAND ALTERNATIVES

Drawn AS	Checked MF	Approved SA	Date 28/03/2023
AECOM Internal Project No. 70050915		Scale @ A3 1:1,250	

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WSP
WSP House
70 Chenery Lane
London WC2E 8AF
United Kingdom
Telephone (020) 7314 5000
wsp.com

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