



Pinsent Masons

BY E-MAIL

sunnica@planninginspectorate.gov.uk

Your Ref: EN010106  
Our Ref: .661999\07003 .

DDI [REDACTED]

E [REDACTED]@pinsentmasons.com

10 August 2023

Dear Mr Wheadon

**PLANNING ACT 2008 AND THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**APPLICATION BY SUNNICA LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE PROPOSED SUNNICA ENERGY FARM**

**RESPONSE TO REQUEST FOR INFORMATION**

Pinsent Masons LLP is instructed by Sunnica Limited (“**Sunnica**”) in respect of its application for an order granting development consent for the Sunnica Energy Farm (“**SEF**”). The purpose of this letter is to respond to your letter dated 27 July 2023 requesting further information on various matters. We have adopted the headings as set out in your letter with the exception of paragraph 7, which considers the recent letter the Secretary of State received from the Rt Hon Lucy Frazer KC MP and Matt Hancock MP which in turn sent to the Secretary of State a letter from the Say No to Sunnica Action Group (“**SNTS**”) and which were both published on the Planning Inspectorate’s website on 28 July 2023.

**1. DEED OF OBLIGATION**

1.1 The Deed of Obligation was completed on 28 March 2023. A completed version of the Deed of Obligation was submitted to the examination at Deadline 11 and accepted by the Examining Authority. It is published on the Planning Inspectorate’s website and provided examination reference REP11-011.

1.2 We attach a further copy for your information in tripartite.

**2. BATTERY ENERGY STORAGE SYSTEM DESIGN AND HAZARDOUS SUBSTANCE CONSENT**

2.1 The requirement for Hazardous Substances Consent was a live issue throughout the examination. Sunnica responded to many of the submissions made although as some of the submissions became repetitive as the examination progressed it made the

Pinsent Masons LLP

30 Crown Place Earl Street London EC2A 4ES

T +44 (0) 20 7418 7000 F +44 (0) 20 7418 7050 DX 157620 Broadgate

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decision that it was not proportionate to keep responding to repeated submissions. Sunnica's key submissions are contained in:

- 2.1.1 Consents and Agreements Positions Statement [REP2-016];
  - 2.1.2 Response to questions 2.1.2 and 2.1.18 from the Examining Authority [REP5-056] which cross refers to Paragraph 8.2 of Sunnica's Written Summary of Oral Submissions at the Development Consent Order Issue Specific Hearing on 1 November 2022 and submitted at Deadline 2 [REP2-036]; and the Applicant's Response to Dr Fordham's Deadline 3A Submissions submitted at Deadline 4 [REP4-034];
  - 2.1.3 Pages 66-73 of the Applicant's Response to other Parties Deadline 5 Submissions [REP6-036];
  - 2.1.4 Applicant's Response to Third Written Questions (see response to question 3.1.3) [REP7-055];
  - 2.1.5 Response to comments from SNTS on the HSE's involvement in the examination (see page 12 of REP7-56) and Appendix B to REP7-56 which attaches the HSE's pre application consultation response;
  - 2.1.6 Paragraphs 1.16.1 – 5 of the End of Examination Summary Position Paper [REP10-032];
  - 2.1.7 Pages 27-28 of the Applicant's Response to other parties Deadline 8 Submissions [REP10-030]; and
  - 2.1.8 The Applicant's response to a request for further information from the Examining Authority dated 22 March 2023. [REP11-012].
- 2.2 Sunnica's position through-out the examination was as follows:
- 2.2.1 it is not known at this stage (i.e. prior to detailed design taking place) whether hazardous substances consent is required for the Battery Energy Storage System ("**BESS**") element of the SEF; and
  - 2.2.2 in any event, if hazardous substances consent is required then there is no necessity for that to be obtained alongside the application for the development consent.
- 2.3 The Examining Authority, and ultimately the Secretary of State, should be satisfied that the relevant legislative provisions would operate properly at the relevant time. Sunnica is of the view that it will only be able to determine whether hazardous substances consent will be required once it undertakes detailed design which will not occur until post granting of the development consent order ("**DCO**"). Therefore, in response to the question in your letter dated 27 July 2023, Sunnica is in the same position now as it was during the examination – it has not determined whether hazardous substances consent is required and cannot do so definitively until detailed design has taken place. This position is made clear in the Consents and Agreements Positions Statement [REP2-016].
- 2.4 The details of the BESS design will also be subject to the approval of the relevant planning authorities pursuant to the requirements of the draft DCO (specifically requirement 6 (detailed design approval) and requirement 7 (fire safety management).



If Sunnica determines that hazardous substances consent is required at that stage it will make an application in the normal way.

2.5 It is relevant that the Health and Safety Executive were consulted on the DCO application as recorded in the Consultation Report. They further participated in the examination and responded to questions from the Examining Authority [REP7-112] and [REP9-008]. The HSE's response to the Examining Authority's question 3.1.10 in their letter dated 1 March 2023 [REP7-112], whilst concerning the application of Health and Safety law generally, appears to concur with Sunnica's position that the necessity for hazardous substances consent will not be known until detailed design stage.

2.6 Finally, it is noted that the Secretary of State recently granted development consent for the Longfield Solar Farm Order 2023. That application included provision for BESS and no hazardous substances consent was sought either through the DCO or in parallel with it. This is the same position that was taken for the Cleve Hill Solar Park Order 2020. The approach taken by Sunnica is therefore consistent with the applicants for these applications.

### 3. **ISLEHAM BOMBER PLANE CRASH**

3.1 A licence was granted on 17 May 2023. A copy of this licence was appended to the letter sent to the Secretary of State on 26 June 2023. This letter was sent care of the case officer at the Planning Inspectorate. We had understood that this letter was going to be passed to you with the Examining Authority's recommendation report. It is not clear whether this has happened so we enclose a copy of this letter and enclosures for your benefit.

3.2 In that letter Sunnica stated that despite the granting of the licence that the drafting of Requirement 23 of Schedule 2 of the draft DCO [REP10-005] does not need to change. In addition to the points made in the previous letter we note that the licence is time limited and will expire on 16 May 2024. Should development consent be granted, it is possible that works within the Area as defined in the licence will not have commenced by the time the licence expires. On this basis Sunnica will need to apply for a new licence which it is fully expected would be granted. Sunnica did ask the Ministry of Defence if an extended licence could be granted at this stage but we understand that this is not normal practice. Given the granting of the current licence on 17 May 2023, there is no reason to believe that a new licence would not be granted, should one be required.

3.3 On the basis of the above Sunnica considers that Requirement 23 should not be changed so it remains the case that there is an obligation on Sunnica to obtain a licence before it commences Work No.1A.

### 4. **SIDE AGREEMENT WITH LOCAL HIGHWAY AUTHORITIES**

4.1 Sunnica's letter of 26 June 2023 referred to above also contained an update in relation to the position with the side agreements being progressed with Cambridgeshire County Council and Suffolk County Council regarding highways matters. In that letter Sunnica reported that negotiations are at an advanced stage and that agreements were expected to be concluded in the coming weeks.

4.2 By way of further update, Sunnica understands the terms of the side agreement are now agreed with Cambridgeshire County Council and the parties' solicitors are in the process of preparing engrossed documents for execution. In relation to Suffolk County Council negotiations are continuing to progress positively but there remains a small



number of outstanding matters that require resolution before the agreement can be finalised for execution.

- 4.3 Sunnica will continue to progress the side agreements with the local highway authorities and intends to report to you when the agreements are concluded.
- 4.4 Notwithstanding the progress with the side agreements, it remains Sunnica's position that the protective provisions included in Part 13 of Schedule 12 to its final draft DCO [REP10-005] together with the other controls included in that draft DCO such as the requirements in Schedule 2, appropriately protect the functions of the local highway authorities. In this regard Sunnica notes that the Examining Authority included a form of those protective provisions in its Schedule of Changes to the Applicant's draft DCO [PD-029] and which the local highway authorities commented on jointly at Deadline 8. Sunnica confirms that the proposed protective provisions in Part 13 of Schedule 12 to its final draft DCO [REP10-005] has taken into account those comments. In addition, Sunnica's detailed responses to the local highway authorities' comments can be found at pages 91 to 98 of its responses to the LPA's Deadline 8 submissions [REP10-031].

## 5. **GLINT AND GLARE**

- 5.1 The Glint and Glare Assessment presented in Appendix 16A of the Environmental Statement [APP-121] assessed the potential effects on aviation receptors, railway receptors, road receptors, residential dwellings, PRow and bridleways (including horses and riders), permissive paths and horse facilities. The effects are also summarised in the Applicant's Responses to Relevant Representations [REP1-016], the Applicant's Response to the First Written Questions [REP2-037] and the Applicant's Response to Written Representations [REP3A-035].
- 5.2 The Glint and Glare Assessment [APP-121] concluded that reflections from the PV panels to the receptors during operation of the SEF will either not be geometrically possible or will be sufficiently screened by the existing vegetation and landform, as well as the proposed planting for the SEF illustrated on Figures 3-1 and 3-2 of the Environmental Statement [REP10-018] [REP10-019] and described in Appendix 10I: Outline Landscape and Ecology Management Plan of the Environmental Statement [REP10-012]. Appendix J of the Glint and Glare Assessment [APP-121] also shows that the potential 10-minute-duration where glint and glare effects are geometrically possible (but where proposed screening will mitigate the effects) would occur between March and October (maximum) and would only occur at either approx. 6am, approx. 6pm or both during those months. However, at these locations and as referred to above, appropriate screening mitigation has been proposed and secured via Requirement 8 of Schedule 2 of the draft DCO [REP10-005] (being the Landscape and Ecology Management Plan requirement) and, in any event, regardless of the PV panels, observers currently experience a similar and more intense impact in those locations by virtue of direct sunlight.
- 5.3 The impact of glint and glare on the users of PRow footpaths and bridleways is summarised in the Applicant's Response to the Second Written Questions [REP5-056, pages 59 to 62]. These responses also outline the opinion of horse behavioural specialists (Professor Meriel Moore-Colyer, Professor of Equine Science at Royal Agricultural University, and Ashley Ede, a Bloodstock & Horseracing specialist at Blue Furlong Consultancy) who the Applicant engaged with regarding glint and glare (as confirmed on page 61 of [REP5-056]). The proximity of reflectors, the short duration of 'exposure' time, the time of year and day and the more common use of bridlepaths (hacking/exercise rather than 'fast-work') are all mitigating factors in addition to the prescribed mitigations already outlined e.g. shrub and tree planting where appropriate.



The response concludes that glint and glare would: have a small impact on PRoW footpath and bridleway receptors; could only possibly occur for very short durations for part of the year; would not introduce a hazard for equestrian users; and is sufficiently mitigated. Therefore, based on the conclusions of the horse behavioural experts and the Glint and Glare Assessment [APP-121] it is not anticipated that there will be any adverse effects on horses and riders using bridleways as a result of glint and glare.

- 5.4 The Applicant has also considered the effects of glint and glare on the horse racing industry in the Horse Racing Industry Impact Assessment [REP2-039] and the Applicant's response to comments on its Horse Racing Industry Impact Assessment [REP4-039]. These conclude that reflections from the PV panels to the horseracing industry receptor locations during operation will either not be geometrically possible or will be sufficiently screened.

6. **BRECKLAND SPA**

- 6.1 This question was directed to Natural England.

7. **OTHER MATTERS**

- 7.1 Sunnica notes that the Planning Inspectorate has published a letter on its website from the Rt Hon Lucy Frazer KC MP and Matt Hancock MP which in turn sent to the Secretary of State a letter from the Say No to Sunnica Action Group ("**SNTS**"). Sunnica has not been asked to comment on this document but provides the following observations.

- 7.2 The SNTS letter dated 25 July 2023 to the Secretary of State claims that SNTS calculates that at least 50% of the Sunnica site is Best and Most Versatile ("**BMV**") agricultural land. However, no calculation or methodology for this claim is presented.

- 7.3 Natural England guidance in TIN049 (submitted into the examination at Chapter 3 of REP5-067 together with the current ALC methodology of 1988 at Chapter 1) notes that the current Agricultural Land Classification ("**ALC**") guidelines were published in 1988 and recommends that new field survey to inform planning decisions on agricultural land entails examining the soil profile to a depth of up to 1.2m at sample points across the agricultural land with a sample point density of approximately one per hectare. SNTS has not presented any such site assessment to support their claim. During the examination, SNTS retained the services of Reading Agricultural Consultants ("**RAC**"). This consultancy had previously undertaken ALC survey work overlapping the Sunnica site for a now consented minerals site. This assessment found agricultural land in ALC Grade 4 limited by drought – concurring with the ALC site assessment work undertaken on behalf of Sunnica. The RAC assessment of the minerals application site is presented as Annex A to Appendix 12B of the Environmental Statement [APP-115].

- 7.4 SNTS also refer to the Natural England Predictive BMV map. This map series is accompanied by an explanatory note (enclosed), the first paragraph of which states "*The map is intended for strategic planning purposes only and is **not** suitable for use below scale 1:250 000 or for the definitive classification of any local area or site.*" (Natural England's emphasis). SNTS' Plan 3 that accompanies its letter is an enlargement to approximately 1:60,000 at A4. Enlarging the Predictive BMV map and imposing a site boundary on it is clearly contrary to Natural England's Guidance – indeed Plan 2 of SNTS' submitted plans from which Plan 3 has been enlarged states clearly in bold "*The data should not be enlarged*" (in capitals and bold).

- 7.5 With regard to soil series, SNTS is incorrect to claim that Sunnica identifies three soil series. Sunnica does not identify any soil series as such a soil classification exercise



would not assist in the determination of ALC Grade or a decision on granting development consent. The applicant has assessed ALC grade according to the 1988 ALC guidance and TIN049.

- 7.6 SNTS also criticises a reply from Natural England to Lucy Frazer MP and Matt Hancock MP dated 28 March 2023 raising three points. First, SNTS criticises NE for not providing an explanation for the difference between Sunnica’s submitted detailed ALC survey results and the Provisional ALC map series. However, referring to TIN049, SNTS can see that this series of Provisional ALC maps are at too small a scale (low detail) for site specific use. In addition, TIN049 notes that the Provisional ALC maps were produced between 1967 and 1974, predating the current 1988 ALC methodology and the preceding 1976 ALC methodology. Attempting to gainsay a site assessment of ALC Grade with the use of a small scale and out of date map is not reasonable. In their 28 March 2023 letter, NE state that *“SNTS have used the strategic guide whereas DBSC have done a detailed survey which is in line with best practice, as using more detailed surveys gives more accurate results.”*
- 7.7 Second, SNTS claims that Sunnica has ignored the economic benefits of irrigation. This is not the case as the access to irrigation is noted in Appendix 12B – Soils and Agricultural Baseline Report to the Environmental Statement (see APP-115). However, current guidance for ALC assessment is that irrigation should not be factored into an assessment of ALC grade.
- 7.8 Third, SNTS refers to a British Society of Soil Science (**“BSSS”**) guidance note written for development planning and control professionals. A copy of this document is enclosed with this letter. This guidance note states *“The following guidance is offered to help you assess the likely quality, accuracy and reliability of the ALC information and survey reports that cross your desk.”* It provides a checklist of questions that a planner unfamiliar with ALC assessment may use to help assess if there is cause for concern over the competence of the ALC assessment.
- 7.9 During the examination, SNTS repeatedly claimed that Sunnica’s ALC assessment, which was carried out by an independent consultancy (Daniel Baird Soil Consultancy Ltd (**“DBSC”**)), failed to meet the standard specified by this BSSS guidance note. The basis of this claim was the question on the bottom of page 4 – *“Has a map of auger boring & soil pit locations been included?”* DBSC did produce plans of auger boring locations and provided grid references for all auger borings and soil pit locations, see Appendix 12B Annex F for survey data including soil pits and plans of sample point locations [APP-115]. These grid references were recorded by GPS during surveys giving locations to a metre. The grid reference enables easy return to any sample point or pit location within a couple of metres, significantly greater accuracy than provided by a plan of locations. The objective of the BSSS guidance note is therefore satisfied by providing inspection pit grid references. Regardless, the BSSS guidance note recommends that the planner refer to the ALC specialists employed by Natural England/Welsh Government if the validation process leaves them concerned that the ALC assessment is deficient.
- 7.10 Natural England have engaged with the Soils and Agriculture topic including ALC assessment, as can be seen from the signed Statement of Common Ground with Sunnica [REP10-027]. It is clear from that Statement of Common Ground that Natural England actively engaged with the application and the topics relevant to its remit, and as such they were able to conclude in their response to Lucy Frazer MP and Matt Hancock MP that *“Natural England have reviewed the Soils and Agriculture Baseline report and are satisfied with the approach and methodology employed by Daniel Baird Soil Consultancy”*.



Yours sincerely,

Pinsent Masons LLP  
This letter is sent electronically and so is unsigned

Enclosures:

- 1) Deed of Obligation dated 28 March 2023.
- 2) Letter from Sunnica to the Secretary of State dated 26 June 2023.
- 3) Natural England Predictive BMV map explanatory note.
- 4) British Society of Soil Science guidance note.