Say No To Sunnica Action Group Ltd

Badlingham Farm, Chippenham, Ely, Cambridgeshire, CB7 5QQ

11 September 2023

Dear Mr Wheadon

Planning Act 2008 (as amended)

Application by Sunnica Ltd for an Order Granting Development Consent for the Sunnica Energy Farm (the DCO Application)

We refer to your invitations of 14 August 2023 and 1 September 2023 to comment on responses received to your letters of 27 July 2023 and 23 August 2023. Due to the closeness of the deadlines of 11 and 13 September 2023 we are making a combined response by the Say No To Sunnica Action Group Ltd (SNTS) Interested Party ID 20031080.

The topics covered in the consultation responses to which we respond are as follows:

Agricultural Land Classification

We responded previously on this point in our letter of 16 August 2023 in the form of a letter from our Agricultural Experts which is attached for completeness. We summarise the position below.

We have maintained a strong disagreement with the assessment of agricultural land classification by the Applicant that across 924 hectares less than 1% of the land is Best and Most Versatile.

Throughout the course of Examination and pre-Application, the issue of ALC has been generalised and obfuscated by the Applicant, to the extent that it is hard to assess effectively the evidence presented.

The findings of the Applicant have been assessed by Reading Agricultural Consultants (RAC) and three other independent soil scientists. These have been assessed against field observations and highly detailed soil mapping of the area carried out by SSEW and MAFF. The findings of the Sunnica soil survey are significantly at odds with the mapped soils of the area and they do not correlate at all with the types of food crops that are routinely grown to high yield in this area. Because of this anomaly SNTS requested three times that the land be surveyed independently to verify the Applicant's findings and were refused access to do so on each occasion (see e.g. [**REP6-051**]). One can only conjecture at the reasons for refusing access if, as claimed, the Applicant is confident of their assessment.

Natural England meanwhile has refused to engage with anyone but the Applicant. This approach is disappointing given the detailed work that SNTS has done and the experts that it has instructed.

SNTS experts' opinion regarding ALC in this area is based on highly detailed mapping carried out by SSEW and MAFF. The detailed physical characteristics of the soils of the area to a depth of 1.2m, seldom achieved by the Applicant's survey, will not have changed since those original surveys. The position of Natural England at best gives undue deference to, and is entirely based on, the opinions of the Applicant and not its own assessment or other independent expert assessment.

The soil survey carried out by the Applicant, upon which Natural England relies, fails as a matter of evidence (submitted by SNTS to you on 16 August 2023 and during the Examination) to meet the standard set by the British Society of Soil Science. There has been no real attempt by Applicant nor Natural England to address the weight of the evidence put forward in Examination that the Applicant's assessment is wrong. We attach a note from our soils expert providing additional evidence (**Appendix A**).

It is clear from the evidence before the Secretary of State that the conclusions regarding soils and agriculture reached by the Applicant contradict authoritative information produced by SSEW and MAFF, are in contrast to the range of food crops that are routinely grown in this area, and thus that those conclusions cannot be relied upon in the decision-making process. We remind the Secretary of State that they must exercise their own judgment in ascribing any weight to the opinion of a statutory body. The Secretary of State must draw their own conclusions in this matter and in view of the flaws give the opinion appropriate weight in their considerations.

To assist the Secretary of State we attach a legal opinion on the matter from Counsel retained by SNTS at **Appendix B**.

The loss of Best and Most Versatile land is a key consideration in this case. As recently as 6 September 2023 the Prime Minister recognised at Prime Minister's Questions a preference for the preservation of good agricultural land in favour of installing solar on brownfield sites and on buildings. We encourage the Secretary of State to consider the flaws in the Applicant's approach to be of significant concern.

We also attach a letter from Mr Nicholas Timothy, prospective Conservative Parliamentary candidate for West Suffolk in support of SNTS arguments on ALC (**Appendix C**).

<u>Stone Curlew</u>

We attach a note (**Appendix D**) from our Ecology Expert, Bioscan, on this matter. The position is summarised below:

The letter from Natural England states that it maintains its advice that there is no functional linkage between the population of stone curlew using the land affected by the Sunnica proposal, and that of the Breckland SPA, but has declined to provide the evidence it relies upon for this conclusion. It is a simple fact that assertions made without evidence cannot be relied upon in decision making.

The Secretary of State is therefore being asked to proceed to a decision based on an absence of certainty or scientific evidence on this issue; this is the very lacunae that established case law requires be eliminated in order to achieve the high bar of beyond reasonable scientific doubt when dealing with impacts on such sites.

It is simply not good enough for Natural England to merely proclaim, without providing evidence, that it is satisfied that there is no functional linkage (and by extension no potential impact) in the relationship between stone curlews affected by the proposed Sunnica project and those underpinning the SPA. There is a clear basis for a precautionary approach to conclude otherwise, not least the relatively proximity of the two sites and the limited population of stone curlew that is concerned. It is far more likely that there is functional interchange between these populations than not.

Binding case law (the Dutch Nitrogen case and others) has firmly established that the Secretary of State cannot consent to development if there remains reasonable scientific doubt over whether it could adversely affect the integrity of a European (Habitats) Site.

Where the opinion of the Statutory Authority is absent of supporting scientific evidence, and/or there is otherwise cause for reasonable scientific doubt as to its veracity, there is a requirement to exercise precaution. We contend that this is the position the Secretary of State finds themself in here.

Isleham Bomber Plane Crash Site

Regarding the Isleham crash site, a time limited licence to develop within the Applicant's proposed potential expanded site exclusion area has been granted by the Joint Casualty and Compassionate Centre (JCCC) but it must be noted that the responsibilities of the JCCC are only in respect of the possibility of human remains. Such a licence is therefore restricted to this narrow remit and the history of the site indicates that encountering human remains is still likely. The presence of aircraft remains, and the wide scatter is also evidenced by the large magnetic anomaly identified in the Applicant's assessments, as we have submitted during the Examination.

The remit of the JCCC does not extend to the wider archaeological and indeed personal interest.

The licencing issue is only a part of the wider heritage impact argument surrounding the crash site, which is judged to be of heritage significance as the site of an important and tragic historical event that preserved Isleham village, rather than simply a collection of aircraft debris. Local people consider the site a war grave that should be maintained in its existing state in memory of those who sacrificed their lives to save others. Certainly, there is a suite of strong reasons why E05 should be removed from the scheme, of which heritage was only one part. Amongst these are harm to the landscape, ecological considerations, and the known high quality of the soil, which all weigh against development of this parcel.

We reiterate that the heritage impact arguments put forward by SNTS and the local Councils regarding the crash site are about much more than simply the granting or otherwise of a time limited licence, and that the SoS's decision should not be swayed by such a licence having been granted given the narrow remit of the JCCC in this matter.

Battery Energy Storage System Design and Hazardous Substance Consent

We remain of the opinion expressed amply in submissions before and during the Examination and in submissions by Dr Edmund Fordham that there is a critical absence of detail in respect of the design of the Battery Energy Storage System (BESS) and that the safety of these, after multiple incidents around the world, is not assured. Concern over Lithium-Ion battery safety, potential thermal runaway events and resultant toxic emissions and explosion potential is significant and has been expressed by multiple Interested Parties. The Applicant's emission modelling was shown during Examination to be incomplete; their outline battery fire safety management plan was indicated by experts to be unfit for purpose, and with little regard to explosion potential and accident *prevention*.

Throughout the Examination, the proposed BESS capacity of 2400 MWh (disclosed during Examination) was unprecedented anywhere in the world, exceeding by 50% the 1600 MWh capacity of the facility at Moss Landing, California, then the largest. Moss Landing has since been upgraded in June 2023 to 3000 MWh but the Sunnica proposal remains unprecedented in terms of its proximity to habitation, workplaces, schools, recreation and protected wetlands

We would ask the Secretary of State to note that to date installations of this magnitude have been in remote, often desert, areas. Moss Landing is in a marine reserve on the Californian coast for example. We note that Moss Landing, which first became operational in 2020, was taken offline in September

2021 and again in June 2022 after overheating of the lithium ion battery cells (BESS Failure Event Database - EPRI Storage Wiki)

In this regard we would also note the recent third reading of the Energy Bill where the importance of regulation of BESS was recognised alongside the key recognition that such installations must be in '*more suitable locations, which are at less risk of adversely impacting the local community and the local environment*'[1].

That previous installations have been consented in the UK is of no relevance. A decision to consent should be based on the facts, the location and the information put before the Secretary of State specific to the Sunnica NSIP proposal. We argue that the Secretary of State simply does not have enough information to consent a BESS installation of this size, in this location. Hazardous Substances Consent is required and there has been an abject failure by the Health and Safety Executive to engage with the risks that such installations present before they are consented. Indeed, the likely capacity of the Applicant's BESS proposal was only disclosed during the course of the Examination, meaning that any dialogue with any statutory consultees, members of the public, fire and rescue services, interested parties, etc., prior to this was on the basis of an unknown BESS capacity, so did not allow fair and proper scrutiny.

It is not acceptable for the Applicant to simply defer this matter to a later stage. Your letter of 27 July asks the Applicant to indicate which category/ categories of the Planning (Hazardous Substances) Regulations 2015 it falls in and we support this. Indeed, we say this is necessary in law. We suggest that if the Applicant was able to say now that HSC was not required it would do so, which implies, as was imbued in Examination, that HSC is required. A failure to ensure that the relevant law under the Regulations is applied would be an error of law.

We and local people have been asking the Applicant for details of the BESS for 3 years and the Applicant has been unwilling to provide the most basic of information. As an example, indicative plans were referred to by Sunnica in a public meeting in March 2022, six months before Examination commenced, but the Applicant would not provide copies of these plans despite repeated requests. Only once Examination had started was the planned size of the BESS admitted.

We wrote to the Examining Authority in January this year concerning "case creep" and the drip feed of information during the Examination and the disadvantage this created for Interest Parties. A copy of this letter is attached (**Appendix E**).

Yours Sincerely

Dr C Judkins (Director)

Electronically Signed

[1] Energy Bill [Lords], Commons Report Stage, 5 September 2023 (Commons Hansard Vol 737). See discussion of new clause 37 (column 258; column 291; column 322). Quote taken from Maria Miller MP who advanced new clause 37 in the Energy Bill, referred to here.

APPENDIX A

September 2023

Sunnica Energy Farm

For

Say No To Sunnica Action Group

Beechwood Court
Long Toll
Woodcote
RG8 0RR

01491 684 233
reading-ag.com

Introduction

1. This document has been prepared on behalf of Say No To Sunnica Action Group (SNTS) in response to Pinsent Masons' submission dated 10th August 2023 on behalf of Sunnica Ltd to the Secretary of State's letter of 27th July 2023 requesting further information of the Applicant.

2. This document comprises additional evidence to support Reading Agricultural Consultants' (RAC) letter of 14th August, which is attached at Appendix 1.

Independent reviews of Sunnica soils report

3. As already stated, it is accepted that Sunnica commissioned a soil survey to be carried out on 924 hectares of the total Sunnica application site of 981 hectares. The findings of the Sunnica survey have been assessed by RAC and three other, independent soil scientists against field observations and highly detailed soil mapping of the area carried out by the Soil Survey of England and Wales and the Ministry of Agriculture Fisheries and Food (MAFF). All the mapping used is publicly available.

4. The findings of the Sunnica survey are at odds with the mapped soils of the area and independent observations made on adjoining, similar land. Because of these anomalies SNTS requested three times that the land be surveyed independently to verify those findings and were refused access on each occasion.

5. RAC and other soils professionals have reviewed the Sunnica survey, using the *pro forma* published by the British Society of Soil Science (BSSS) as part of its Guidance Document 1 **[REP4-407p3]**, which was written for development planning and control professionals to help them evaluate Agricultural Land Classification (ALC) reports submitted in support of a planning applications or spatial plan submissions in England and Wales.

6. Three *pro formas* were completed by independent soil experts who had read the Sunnica report and were familiar with the 924 hectare site: Sophie Webb BSc, MSc, Member of the British Land Reclamation Society (MBLRS), Member of the British Society of Soil Science (MISoilSci); Sam Franklin BSc, MSc, MRICS, FAAV, FBIAC, PIEMA, MISoilSci; and Paul Wright BA, MSc, FISoilSci. The completed *pro forma* are attached at Appendix 2 to this report.

7. Whilst each assessment varies in detail, all find that the report fails on at least three counts and finds justification for concern on five other counts. Matters of concern do not mean that a report should automatically be referred to specialists but multiple concerns could justify referral.

A ‘Fail’ indicates a significant issue or omission that means that the report should not be accepted without referral to specialists.

8. The failure of the report to deal with significant issues properly and the presence of multiple matters for concern, expressed by three independent soil scientists, confirm that the Sunnica soils report, on which all decisions regarding the quality of land are to be based, is not fit for purpose. No reliable decisions can be made based on the conclusions of this report.

9. Finally, SNTS is strongly criticised for basing its conclusions on out-of-date and inappropriately scaled mapping. This is wrong. To verify the findings of the survey, SNTS has used base mapping used by others, including Natural England and the Soil Survey, to show land classification and the distribution of soil types. SNTS’s conclusions regarding the percentage of Best and Most Versatile land within the proposed development area and the accuracy of the Sunnica soil survey are therefore based on highly accurate mapping produced by the Soil Survey and informed by survey observations which were made at a greater density than Sunnica’s own survey. The conclusions SNTS has reached using this detailed mapping are in line with the Natural England Predictive mapping and the Agricultural land Classification mapping, as would be expected.

10. Appendix 3 sets out a series of extracts for the ranges of mapping referred to by Sunnica and SNTS in their reports, Sunnica only refers to a single source of mapping at a scale of 1:250,000. The text below the mapping explains the relationship between the maps, the level of detail and accuracy of each map and the source information on which the mapping relies.

11. Mapping relied upon by Sunnica is limited to Map 4, the Soil Survey’s 1:250,000 map of soil associations.

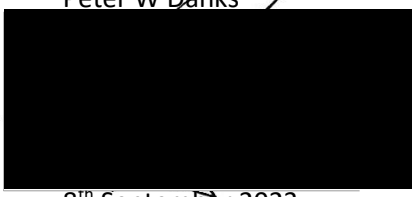
12. Mapping relied upon by SNTS extends beyond published 1:250,000 scale mapping to the more detailed mapping upon which the larger scale maps rely. Map5 shows the distribution of soil series’ at 1:63,360, one inch to one mile. This map scale shows a more accurate distribution of soil and greater detail on the characteristics of soils, than is shown on the less detailed 1:250,000 scale mapping of soil associations used by Sunnica and agricultural land classification.

13. Still greater detail is seen in Map 6, which shows soil series’ mapped at 1:10,560, six inches to one mile, scale. This map again reflects the patterns seen in larger scale mapping but can be used to identify changes in soil types within an individual field. This mapping, informed by soil survey data for the area confirms that the findings of the survey supporting the Sunnica application are inaccurate and therefore misleading. They do not represent the distribution of soil types, so the ALC distribution identified is incorrect.

14. The combination of detailed mapping supported by authoritative data, and independent assessments of the reports strongly supports SNTS' conclusion that the site comprises at least 50% BMV land, confirming that. Sunnica's position that the proposed development area comprises about 1% BMV land cannot be relied upon without an independent review and survey.

15. In the absence of a rigorous review of the soils and ALC of the proposed development area, it is not possible to make a robust decision on the quality of the land within the Sunnica application site.

Peter W Danks



8th September 2023

READING AGRICULTURAL CONSULTANTS
Gate House
Beechwood Court
Long Toll
Woodcote
Reading RG8 0RR
Tel: [redacted]
rac@reading-ag.com
www.reading-ag.com

Your Ref:
Our Ref: 9642

14th August 2023

Dear Mr Wheadon,

Sunnica Energy Farm – Responses to the Secretary of State

I have reviewed Pinsent Masons' response on behalf of Sunnica Ltd to the Secretary of State's letter of 27th July 2023 requesting further information of the Applicant. My comments relate solely to Section 7 of the letter, headed 'Other Matters' and the issue of Agricultural Land Classification (ALC) and the taking of 981 hectares of highly productive agricultural land for the project, of which more than 490ha should be classified as Best and Most Versatile (BMV) land.

Throughout the course of the dealings with this matter, the issue of ALC has been generalised and obfuscated by the Applicant, to the extent that it is hard to assess effectively the evidence presented.

The Say No to Sunnica Action Group (**SNTS**) is criticised for failing to provide a methodology for its calculation of the area of Best and Most Versatile (**BMV**) agricultural land taken by Sunnica. SNTS's calculation was made using GIS (digital) techniques applied to digital mapping produced by the Ministry of Agriculture, Fisheries and Food (**MAFF**) and the Soil Survey of England and Wales **[SSEW]** and accurately scanned soil survey maps, **[REP4-121 pp137-141, Rep10-057 pp8-13]** which are described below.

It is accepted that Sunnica commissioned a soil survey to be carried out in accordance with Natural England guidance set out in Natural England's TIN049 **[REP2-240o]**. The findings of the Sunnica survey have been assessed by RAC and three other, independent soil scientists against field observations and highly detailed soil mapping of the area carried out by SSEW and MAFF. The findings of the Sunnica survey are at odds with the mapped soils of the area. Because of this anomaly SNTS requested three times that the land be surveyed independently to verify those findings and were refused access on each occasion.

The Reading Agricultural Consultants (**RAC**) survey of a proposed mineral site described by Pinsent Mason is consistent with the mapped soils of the area as described by the Soil Survey and MAFF and is consistent with the findings of the Sunnica Survey. The area of overlap between the RAC and Sunnica survey areas is less than five hectares, 0.5% of the whole site.

The Natural England predictive map referred to by SNTS is based on the findings of SSEW and MAFF from detailed mapping and identifies, in detail (1:10,560), BMV soils. It is accepted that the 1:250,000 mapping should not be enlarged for definitive classification and it has not been relied upon in such a way.

The predictive map is used as a base to show at strategic scale the detail of the mapped land quality it reflects. The resulting calculations rely on detailed mapping at 1:10,560 and 1:63,360 scales based on observations at better than one per hectare, compared to 1:20,000 used by Sunnica.

Sunnica only identifies in its Soils and Agriculture Baseline report three soil associations, mapped at 1:250,000 scale. It does not refer to freely available detailed authoritative mapping that goes against the findings of its own soil survey, and the soil profile descriptions produced as part of its own extensive archaeological survey **[REP10-058]**.

Regarding Natural England's statement 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.*" This is wrong. SNTS may refer to strategic scale mapping, but its opinion regarding ALC in the area is based on highly detailed mapping carried out by SSEW and MAFF. The detailed physical characteristics of the soils of the area, to a depth of 1.2m seldom achieved by the Sunnica survey, will not have changed since those original surveys; the mapping relied upon by SNTS is not out-of-date as implied in Pinsent Masons' letter.

Second, the assessment of the economic benefits of irrigation to agricultural production generally and the local economy in particular should be part of an overall assessment of the proposal. This assessment is missing from both the Soils and Agriculture Baseline Report to the Environmental Assessment, which deals with impacts on farm businesses in a superficial way, and from the Socio-Economic Assessment, which fails to identify any impacts, adverse, neutral or beneficial, on agriculture and food production due to the loss of nearly 1,000ha of highly productive land for 40 years.

Third, it is a matter of evidence that the independent survey carried out for Sunnica failed to meet the standard set by the British Society of Soil Science (**BSSS**). The checklist provided by the BSSS guidance has been completed by independent soil scientists without consultation and each finds matters of concern that justify referral to independent third parties.

Whilst Natural England claims to be "*satisfied with the approach and methodology employed*" in report, it has not addressed the inconsistences between the survey findings and those of its predecessor bodies. Historically, in cases such as this, Defra or a second independent soil surveyor has been instructed to carry out a second, in this case a third, detailed survey to examine the soils of the area. Sunnica has repeatedly obstructed SNTS attempts to commission an independent survey and landowners associated with the scheme have refused access. This refusal clearly demonstrates the low level of confidence Sunnica and the landowners have in their own soil survey and confirms SNTS' assertion that independent surveys carried out on neighbouring land with similar soils, which reflect the findings of SSEW and MAFF, are most likely to provide an accurate picture of land quality in the area.

It is clear from the evidence before the Secretary of State that the conclusions regarding soils and agriculture reached by Sunnica's Environmental Assessment contradict authoritative information produced by SSEW and MAFF, and thus that those conclusions should not be relied upon in the decision making process without independent confirmation.

Yours faithfully

[redacted]

Peter W Banks

Agricultural Land Classification Checklist from British Society of Soil Science Guidance Document: Sunnica Site Assessment (by SJ Franklin BSc MSc MISoilSci)

Background			
			Commentary
	Is the company / author a specialist in ALC?	PASS	
	Have published soil maps been mentioned[5]?	PASS	
Climate data			
	Is *interpolated*[6] climate data included for the site (esp. Field Capacity Days (FCD), Moisture Deficits (MD) and Maximum grade on climate)?	PASS	
	Is the data consistent with that expected for the area?	PASS	
Site and standalone limitations			
	Have gradients, micro-relief and flooding been considered / acknowledged?	PASS	
Soils and interactive limitations			
	Have topsoils and subsoils been field surveyed? References to soil pits, auger samples & lab samples should be included.	PASS	
	Are the soil types clearly described, including reference to gleying, slowly permeable layers (SPL), soil wetness class (SWC) and drought?	CONCERN	Description is inadequate
	Have the reasons for ALC grading been clearly described?	CONCERN	Descrepancies are apparent
	Have soil structure and porosity been described?	PASS	
	Have soils been described using Soil Survey Field Handbook (Hodgson 1997[7])?	CONCERN	Assumed to be but not clarified
	Have soils been described using Munsell[8] soil colour notations?	PASS	
Conclusions and references			
	Is there a table clearly showing areas of ALC grades?	PASS	
	Is there a list of references (normally including Soil Survey of England and Wales mapping, the MAFF 1988 ALC guidelines, Munsell soil colour charts and the Soil Survey Field Handbook – Hodgson 1997)?	PASS	
	Have the limitations been justified when concluding the ALC grade(s) on the site?	FAIL	There are discrepancies and missing data
Schedule of auger borings and soil pits			
	Has a map of auger boring & soil pit locations been included?	CONCERN	The location of soil pits is not clearly shown
	Have laboratory analyses been included to confirm topsoil particle size distribution?	PASS	
	Has a schedule of auger boring information been provided?	PASS	
	Do the auger borings show horizon depths, colours and textures?	PASS	
	Do the auger boring records clearly show soil wetness class?	PASS	
	Do the auger boring records clearly show topsoil stone content?	PASS	
	Do the auger boring records clearly show depth to gleying and depth to slowly permeable layer (SPL)?	PASS	
	Do the auger boring records clearly show moisture balance (MB) values for drought (Wheat & Potatoes)?	FAIL	Figures are provided but other information available conflicts with the data
	Has detailed soil pit information been provided in the report and do the pit descriptions show horizon depths, colours and textures?	PASS	
	Do the soil pits / pit clearly show soil wetness class (WC)?	FAIL	Inadequate data is provided
	Do the soil pits / pit clearly show moisture balance (MB) values for drought?	CONCERN	For the pits provided the data is mostly missing
	Do the soil pit / pits clearly show soil structure and porosity in the subsoil?	PASS	

Assessment of Sunnica soils report by Sam Franklin BSc, MSc, MRICS, FAAV, FBIAC, PIEMA, MISoilSci, of Landscope, Land and Property.

Appendix 2
Completed BSSS *pro forma* assessing Sunnica soils report

Background			
	Is the company / author a specialist in ALC?	Pass	
	Have published soil maps been mentioned[5]?	Pass	
Climate data			
	Is *interpolated*[6] climate data included for the site (esp. Field Capacity Days (FCD), Moisture Deficits (MD) and Maximum grade on climate)?	Pass	
	Is the data consistent with that expected for the area?	Pass	
Site and standalone limitations			
	Have gradients, micro-relief and flooding been considered / acknowledged?	Pass	
Soils and interactive limitations			
	Have topsoils and subsoils been field surveyed? References to soil pits, auger samples & lab samples should be included.	Pass	
	Are the soil types clearly described, including reference to gleying, slowly permeable layers (SPL), soil wetness class (SWC) and drought?	Concern	Very brief description
	Have the reasons for ALC grading been clearly described?	Concern	
	Have soil structure and porosity been described?	Pass	In pit descriptions only
	Have soils been described using Soil Survey Field Handbook (Hodgson 1997[7])?	Concern	Not stated
	Have soils been described using Munsell[8] soil colour notations?	Pass	
Conclusions and references			
	Is there a table clearly showing areas of ALC grades?	Pass	
	Is there a list of references (normally including Soil Survey of England and Wales mapping, the MAFF 1988 ALC guidelines, Munsell soil colour charts and the Soil Survey Field Handbook – Hodgson 1997)?	Pass	
	Have the limitations been justified when concluding the ALC grade(s) on the site?	Fail	
Schedule of auger borings and soil pits			
	Has a map of auger boring & soil pit locations been included?	Concern	Pit locations not shown
	Have laboratory analyses been included to confirm topsoil particle size distribution?	Pass	But only six total
	Has a schedule of auger boring information been provided?	Pass	
	Do the auger borings show horizon depths, colours and textures?	Pass	
	Do the auger boring records clearly show soil wetness class?	Pass	
	Do the auger boring records clearly show topsoil stone content?	Pass	
	Do the auger boring records clearly show depth to gleying and depth to slowly permeable layer (SPL)?	Pass	
	Do the auger boring records clearly show moisture balance (MB) values for drought (Wheat & Potatoes)?	Fail	Values are given but are shown to be unreliable
	Has detailed soil pit information been provided in the report and do the pit descriptions show horizon depths, colours and textures?	Pass	
	Do the soil pits / pit clearly show soil wetness class (WC)?	Fail	
	Do the soil pits / pit clearly show moisture balance (MB) values for drought?	Concern	Only in one of six pits
	Do the soil pit / pits clearly show soil structure and porosity in the subsoil?	Pass	

Assessment of Sunnica soils report by Sophie Webb BSc, MSc, MBLRS, MISoilSci, of Reading Agricultural Consultants.

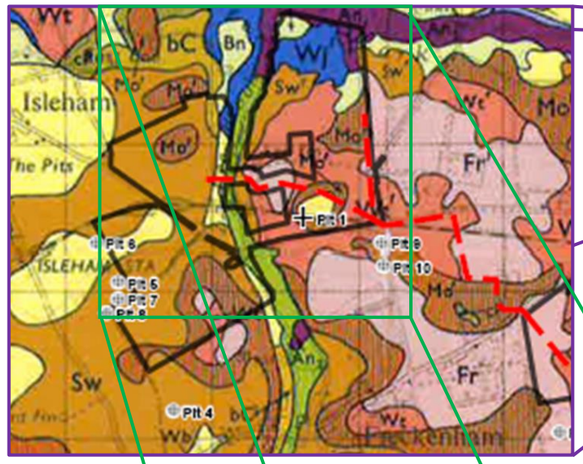
Appendix 2
Completed BSSS *pro forma* assessing Sunnica soils report

Background			
	Is the company / author a specialist in ALC?	PASS	
	Have published soil maps been mentioned?	Concern	No reference to detailed mapping
Climate data			
	Is interpolated climate data included for the site (esp. Field Capacity Days (FCD), Moisture Deficits (MD) and Maximum grade on climate)?	PASS	
	Is the data consistent with that expected for the area?	PASS	
Site and standalone limitations			
	Have gradients, micro-relief and flooding been considered / acknowledged?	PASS	
Soils and interactive limitations			
	Have topsoils and subsoils been field surveyed? References to soil pits, auger samples & lab samples should be included.	Fail	There is a lack of subsoil information and too few observation pits
	Are the soil types clearly described, including reference to gleying, slowly permeable layers (SPL), soil wetness class (SWC) and drought?	Concern	Inconsistent
	Have the reasons for ALC grading been clearly described?	Concern	Pits only
	Have soil structure and porosity been described?	PASS	
	Have soils been described using Soil Survey Field Handbook (Hodgson 19977)?	Concern	Not stated
	Have soils been described using Munsell soil colour notations?	PASS	
Conclusions and references			
	Is there a table clearly showing areas of ALC grades?	PASS	
	Is there a list of references (normally including Soil Survey of England and Wales mapping, the MAFF 1988 ALC guidelines, Munsell soil colour charts and the Soil Survey Field Handbook – Hodgson 1997)?	PASS	
	Have the limitations been justified when concluding the ALC grade(s) on the site?	Fail	
Schedule of auger borings and soil pits			
	Has a map of auger boring & soil pit locations been included?	Concern	Mapping at 1:20,000 scale
	Have laboratory analyses been included to confirm topsoil particle size distribution?	PASS	
	Has a schedule of auger boring information been provided?	PASS	
	Do the auger borings show horizon depths, colours and textures?	PASS	
	Do the auger boring records clearly show soil wetness class?	PASS	
	Do the auger boring records clearly show topsoil stone content?	PASS	
	Do the auger boring records clearly show depth to gleying and depth to slowly permeable layer (SPL)?	PASS	
	Do the auger boring records clearly show moisture balance (MB) values for drought (Wheat & Potatoes)?	Fail	Values conflict with other data
	Has detailed soil pit information been provided in the report and do the pit descriptions show horizon depths, colours and textures?	PASS	
	Do the soil pits / pit clearly show soil wetness class (WC)?	Fail	Poor data
	Do the soil pits / pit clearly show moisture balance (MB) values for drought?	Concern	Data missing and for topsoil only
	Do the soil pit / pits clearly show soil structure and porosity in the subsoil?	PASS	

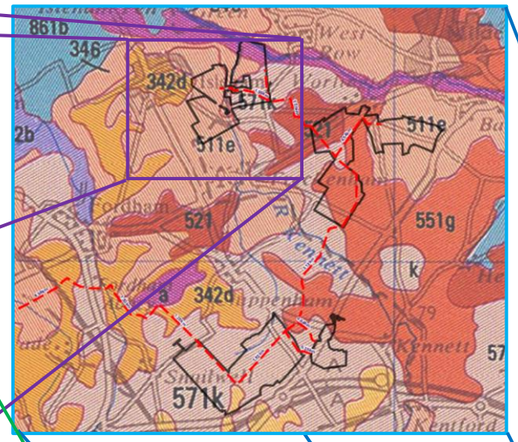
Assessment of Sunnica soils report by Paul Wright BA, MSc, FISoilSci, Soil Survey of England and Wales 1973-1990, Independent soil consultant, Atkins 1990-date.

Appendix 3
Comparison of mapping used in Sunnica and SNTS reports

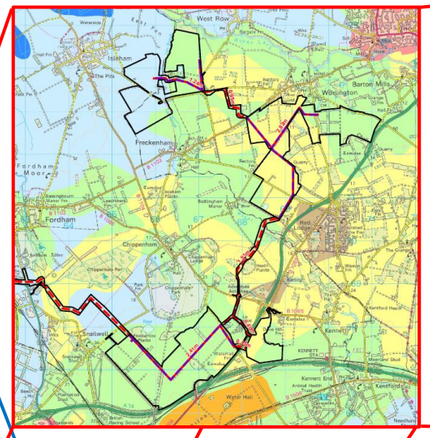
1:63,360 Soil Survey soil association map
Map 5



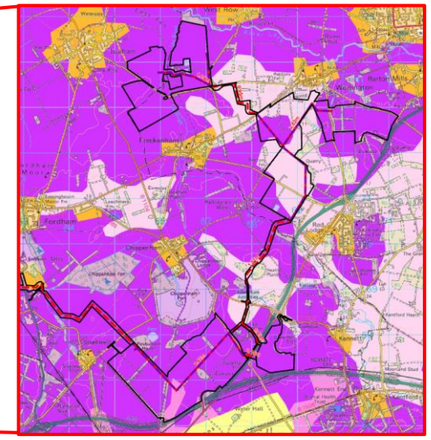
1:250,000 Soil Survey soil association map
Map 4



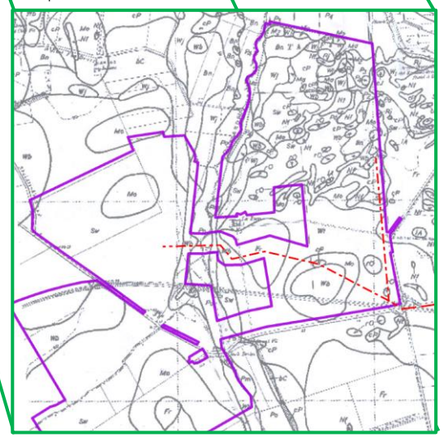
1:250,000 Soil Survey ALC map
Map 2



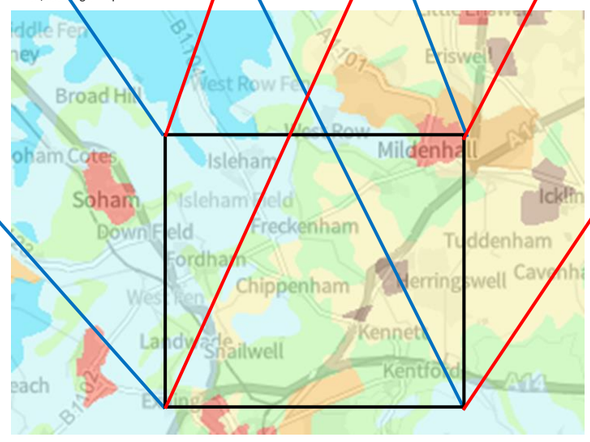
1:250,000 Natural England predictive BMV map
Map 3



1:10,560 Soil Survey soil series map
Map 6



Map1
1:250,000 Magic Map



This series of extracts from available mapping of soils and Agricultural Land Classification (ALC) demonstrates, in this case, the close relationship between mapping at strategic, large scale (1:250,000) and detailed, smaller scale (1:63,360).

Map 1 is taken from the Magic website and shows the distribution of ALC grades on a 1:250,000 map base. It is possible to see the distribution of land relative to villages and roads and in this case, because of the large area covered, it is appropriate to infer the distribution of land quality across the development area.

Map 2 is the same map at printed at 1:250,000, setting the provisional ALC grades in better context of villages and tracks. It shows the distribution of ALC grades in the area, with relatively low grade soils in the south east, not included in the Sunnica site, and Best and Most Versatile (BMV) land in the south west and north, all within the site boundary.

Map 3 is an extract from Natural England's predictive ALC map, with darker and purple colours showing higher likelihood of occurrence of BMV soils. There is a high likelihood of more than 60% of land coloured dark purple being BMV, that is more than 83% of the proposed development site.

Map 4 shows the distribution of soil associations in the area at 1:250,000 scale. Comparison of the distribution of soil associations with the distribution of the likelihood of BMV land seen in **Map 4** that soil type has a strong association with land quality in the area. In the absence of any climatic difference across the area, it is reasonable to conclude that soil type is a primary driver of land quality and thus ALC in the area. Broadly similar patterns are visible by comparing **Map 4** and **Map 2**, with soil associations 551g and 521 being associated with lower quality land and 511e and 342d associated with BMV land, and therefore a higher probability of the occurrence of BMV land. It is also evident from **Map 4** that seven soil associations can be found on the site, not three as reported in the Sunnica report.

Map 5 is a 1:63,360 (1 inch to 1 mile) map of soil series'. Soil series' are more accurately described than soil associations and are generally mapped in better detail. Comparison of the extract shown in **Map 5** with **Map 4** clearly shows the relationship between accurately mapped soil series and thus with ALC and the distribution of BMV land. It is reasonable to assume greater accuracy in the distribution of soil types shown at this scale than in the larger scale maps.

Map 6 is a 1:10,560 (6 inches to 1 mile) map of soil series, mapped using a survey density of better than 1 observation to the hectare, which is greater than that used by the Applicant. The level of accuracy is immediately evident from the mapped of soil types in the north-east part of the map, where there is a complex distribution of soils, undifferentiated in the Applicant's soil survey observations.

Generally, the land in the east of the area is Grade 3a BMV and different soils in the west which are Grade 2 BMV. This land is not differentiated in **Map 3**, but it is shown as Grade 3 (green) and Grade 2 (pale blue) in **Map 4.** Land shown as Grade 3 on the provisional map is sub-divided into Grades 3a and 3b, the former being BMV, the latter not.

Map 6 clearly shows that, based on highly accurate mapping based on intensive soil survey work, it is reasonable to conclude that the western section of that part of the proposed development site is extremely likely to be BMV land and there is a strong likelihood that all of the eastern section is also BMV.

The observations made in the course of the soil survey used to inform assessment of BMV land relied upon by the Applicant fail to differentiate between soils across the proposed development, resulting in land being mapped as low quality. The evident conflict between observations and mapping makes the Applicant's conclusions on the distribution and proportion of BMV land across the proposed development area, unreliable.

APPENDIX B

Re: Application by Sunnica Ltd Development Consent Order

&

Response to Request for Information by Pinsent Masons LLP dated 10 August 2023

Opinion

Introduction

1. We are asked to advise Say No to Sunnica (SNTS) on the applicant's 10 August 2023 response to a request for information and in particular in relation to matters concerning Agricultural Land Classification (ALC) found under section 7 of the letter entitled "Other Matters". This section of the letter seeks to rebut the allegations made by SNTS in correspondence to the Secretary of State from Lucy Frazer KC MP and Matt Hancock MP concerning ALC.

2. SNTS are Interested Parties in the Sunnica Solar Farm application and have made representations throughout the Development Consent Order process. The Examining Authority (ExA) has closed the examination and its report is understood to be before the Secretary of State. The Secretary of State has invited further representations on matters raised after the examination closed. That includes the above matters raised in correspondence.

3. This Opinion considers matters concerning the dispute relating to ALC which has been a material consideration in the examination and which the Secretary of State must determine.

Why is determination of ALC important?

4. The dispute concerning ALC is fundamental. If SNTS and its consultant experts are correct, which they are confident that they are, the Secretary of State cannot lawfully conclude that the application is in accordance with national policy. To do so would be an error of law, as to conclude that the applicant's evidence is compliant with the guidelines on assessing ALC would be to incorrectly interpret those guidelines[1]. Even if there is reasonable doubt as to the reliability of the ALC evidence put forward by the applicant, the Secretary of State cannot conclude that national policy has been met and should refuse the application as there would not be evidence before them to enable them properly to consider the questions raised in national policy and apply the planning balance. Again, it would be an error of law to incorrectly interpret and apply that national policy in this way.

5. National Policy Statement for Energy (EN-1)[2] requires minimisation of impacts on Best and Most Versatile (BMV) agricultural land (defined as grades 1, 2 and 3a of the Agricultural Land Classification) and preferably to use land in areas of poorer quality (grade 3b, 4 and 5). To consider this matter and conclude whether the scheme would be in accordance with NPS policy, as a matter of law the decision-maker, here the

[1] That the proper interpretation of such guidelines, and planning policy, is a matter of law rather than subject to rationality review is well-recognised. In the planning context see *Tesco Stores v Dundee CC* [2012] UKSC 13, *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, and cases following. In addition, a failure to properly engage with the flaws in evidence when measured against the guidelines for the collection of that evidence would be a failure to take into account mandatory relevant considerations (as the decision-maker cannot otherwise properly and lawfully assess the weight of the evidence).

[2] NPS EN-1 §5.10.8; the draft NPS EN-3 at §2.48.13 repeats this and says that land type should not be a predominating factor in determining suitability of the site location. However, this is a draft and cannot be given more than limited weight until it is adopted.

Secretary of State, must have sufficiently reliable evidence available for them properly to determine this policy requirement. Such evidence must be obtained in accordance with relevant published guidance which underpins the relevant policy.

6. The relevant guidance here is that contained within the Agricultural Land Classification of England and Wales revised guidelines and criteria for grading the quality of agricultural land, dated October 1988. That document is referred to on the Natural England website as "current ALC criteria to be used in ALC surveys" and has not been further revised. It is also referred to in published extant guidance as the appropriate guidance to determine the grade of ALC[3]. It is clear from the matters which are before us that the evidence put forward by the applicant, Sunnica, has not been obtained in accordance with relevant published guidance and standard methodology and is flawed[4]. In such circumstances, this weighs heavily against the grant of development consent and approval of the draft Order by the Secretary of State.

<u>The stark contrast requiring further confirmatory sampling and testing</u>

7. Based on the evidence of 3 independent and experienced soil scientists,[5] (3 in number as Sunnica's consultants refused to accept any error by them identified by one or even 2 consultants), and a highly reputable agricultural consultancy[6] engaged by SNTS, there is a real likelihood that that at least 50% (based on Natural England predictive mapping alone) of the application site is grade 2 or 3a BMV agricultural land, which in

[3] Guidelines for Agricultural Land Classification of England and Wales (revised guidelines and criteria for grading the quality of agricultural land – October 1988) – as applied by DEFRA in July 2003 policy note. See too Natural England website and Technical Information Note TIN049, which in 'further information' states that details of this system of grading can be found in the 1988 guidelines. It is also referred to in n44 in the draft NPS EN-3, although the contents of draft EN-3 can be given limited weight unless in accordance with EN-1. While it is draft policy, the policy confirms the application of ALC 1988 guidance being required to determine ALC – see paras 2.48.13 and 2.48.14.

[4] See e.g. the following (1) representations on ALC dated September 2023 in answer to Pinsent Masons letter of 10th August; (2) reps of Nick Wright/SNTS to the ExA [REP6-051] and [REP8-053]; and see generally (3) SNTS Reps including 11 Nov 2022: Annex D ALC [REP2-240d], RAC submission to the Secretary of State 10 August 2023, and others.

[5] Patrick Stevenson, Sam Franklin and Paul Wright – engaged by SNTS independently of each other.

[6] Reading Agricultural Services – Peter Danks, senior consultant.

accordance with national policy should be excluded from being used for a solar farm development scheme where possible.

8. The applicant's ALC consultants' findings are that the land which is BMV is no more than 1% of the 924 ha surveyed by them ([APP-115], page 12 table 5-3)[7]. This stark contrast by itself calls into question the reliability of the applicant's consultants' findings and conclusions and should put any reasonable person on notice that further confirmatory sampling and testing is required to be obtained if the applicant's consultants' conclusions are to be regarded as reliable. It is important, therefore, for the Secretary of State to consider its implications and the evidence in more detail.

9. This fundamental dispute has not been able to be resolved through cross-examination or by testing of the evidence as this is excluded from the DCO process. In the absence of this, the reasonable way forward was to permit access by SNTS's soil scientists to the application site to conduct confirmatory auger borings and trial pits or, alternatively, to engage in a joint approach to resolve the issue. This was proposed by SNTS more than once[8] and also in the hearing before the ExA. As stated by SNTS in correspondence[9], it is open to the decision-maker to draw adverse inferences if these proposals are rejected without good reason. Alternatively, in the absence of resolution of such matters, the application of the Rochdale Principle should be to conclude that the worst case scenario is that the land is Best and Most Versatile land[10].

10. The applicant, Sunnica, has despite numerous requests by SNTS, refused SNTS's highly reputable soil scientists access to the application site, or any of it, to carry out

[7] This is less than 1% of the 924.2ha surveyed by DBSC. In addition MAFF surveyed 51.6ha of land and found 55.2% (28.5ha) was grade 3a. The RAC 3.3ha was grade 4 and predicted to be so as it was in or adjacent to quarry land and thus the worst land on the site. Taken all together DSBC concluded 3.8% was BMV. See [APP-115] page 12 table 5-3.
[8] See e.g. [REP6-051] and attached correspondence including appendix 4.
[9] E.g. [REP7-109].
[10] Which was the approach supported by the Councils to resolve this issue: [REP7-095].

sampling and test borings in order to resolve the fundamental dispute. The quality of the testing was first raised in 2020 in consultation responses[11]. This raises considerable doubt as to the reliability of the ALC evidence put forward by Sunnica. No good reason has been given at any time for access being denied. The obvious inference to be drawn in such circumstances is that the applicants are not confident with their agricultural consultant's conclusions and their continued refusal to permit access is because of the fear that they will be proved wrong, thereby undermining the application for consent of the scheme.

11. This is to be combined with the clear evidence of failure of the Sunnica consultants to follow best practice and guidance, the very significant discrepancies between the results obtained and Natural England Predictive mapping, which individually and combined should have resulted in at least acknowledgement of such matters in the Sunnica consultants' ALC report and a warning as to its reliability accordingly. If the clear discrepancy had been realised by the Sunnica consultants, there is no evidence of any attempt by them to carry out additional tests and borings once the information obtained from them had been analysed. If it had not been realised, this shows a patented flaw in the report.

12. The response of the applicant's Solicitors has continuously been that there has not been any evidence put forward by SNTS to rebut the conclusions of their consultants. This is disingenuous in the light of the denial by Sunnica and the landowners for SNTS and its consultants to gain access to the land to obtain confirm a tree soil sampling and analysis, even if the exercise were to be overseen and agreed by Sunnica's consultants.

<u>Detailed consideration of the applicant's consultants' findings and conclusions</u>

[11] See, for example, the comments of Chippenham Parish Council [APP-030] page 45.

13. The relevant current guidance for the assessment of ALC is as stated by Natural England to be the 1988 MAFF Guidance (revised). As stated above, it has not been further revised. This guidance has not been followed by the applicant's consultants DBSC in a number of ways as follows, nor was the best practice followed[12], which calls into question their results and conclusions. The following is taken from evidence submitted to the ExA by SNTS.

i. <u>Inspection pits</u>

a. Inspection pits should be representative of the site as a whole, in terms of number, distribution and location as well and carried out at the same time as the auger borings. Their purpose is to ascertain the seam structure horizontally as well as to the depth of the auger borings. They should be dug in particular where there is a change in ALC grade or to confirm such change. It is normal to carry out a representative number distributed across the site in representative locations, especially where there is variation in soil types, or if there is a variation from the predictive mapping (both of which apply here – see Reading Agricultural Consultants submission 11 September 2023).

1) Number: the number of trial pits dug by Sunnica was limited to merely 6 – this was on 924 ha of agricultural land (pits 1-6). This was totally inadequate. By way of comparison, 8 were carried out by ADAS /MAFF consultants on 189 ha on grades 2 and 3 land for the A11 road proposals[13].

2) Distribution: None were selected on land which was shown on the Natural England 2017 strategic Predictive ALC maps to be ALC grade 2 land. Of the 6 trial pits, 4 of them (pits 2, 3, 4 and 6) were selected on land already known to be ALC grade 4 (i.e. not BMV and the worst grade on the site) – see Timing below. This was therefore predictable and also unrepresentative of the site as a whole. Only one trial pit (pit 5 – on a headland) was dug within the whole of Sunnica West A, and one within

[12] Best Practice Guidance in Soil Survey Field handbook and of British Society of Soil Science (BSSS); and BSSS Guide to Assessing Development Proposals on Agricultural Land (5 Feb 2021).
[13] See [APP 115-6.2-P45]

Sunnica East B. The distribution was totally inadequate and the outcome of 4 of the 6 chosen were able to be predicted in advance to be the poorest soils on the site. The other two (trial pits 1 and 5) were on unrepresentative headlands – see below.

3) Location: Trial Pits should be dug within the fields on representative areas where cropping would take place. Trial pits (trial pits 1 and 5) were dug on the headlands of fields where agricultural machinery would have compacted the soil. The location of trial pits is wholly unrepresentative of the soils on the site or where a change in soil types was expected.
4) Timing: These should be dug at the same time as the auger borings to ensure comparability. They were dug some 1-2 years after the auger borings[14] 6 weeks before the submission of the Environmental Impact Assessment.
5) Variation to predictive mapping: this is an important predictor of potential inadequate sampling. The variation of the conclusions of Sunnica's consultants DBSC to that on Natural England Predictive Mapping was stark[15]. This should have been noted as a significant discrepancy in the report, should have caused further sampling to be carried out and at the very least should have caused doubt as to the reliability of the conclusions drawn by Sunnica's consultant, as advised by the British Society of Soil Science (BSSS) Guidance Document 1[16]. Indeed, 3 independent soil scientists, all members of the BSSS, have identified 3 failures where the DBSC report fails to comply with the BSSS guidelines.
6) Reporting: the report is not transparent and fails to point out the points including discrepancies and variations referred to above. It does not include any plan or photographs showing the location of the trial pits and

[14] Lee Farm auger borings were done October 2019 and June 2020. [APP115 Page 91]. Inspection Pits were dug 23rd and 24th September 2021. [APP115-pages 84-86].
[15] DBSC ALC land maps using auger boring results at a large scale [APP238 and 239]. See Anne Noble submission [REP11-023]. DBSC Maps do not reflect findings.
[16] BSSS Guidance Document 1: Working with Soil Guidance Note on Assessing Agricultural Land Codification Surveys in England and Wales. This is explored in the submission of RAC provided to the Secretary of State with SNTS's submissions.

the subsoils within them, which is normal best practice in every such report and which would have revealed their inadequacies in terms of number, distribution and location. Only grid references are given, which need to be reinterpreted with substantial extra work. It is not acceptable to produce a report in this way as it is patently not transparent.

ii. Auger borings

a. These are consistently shallower than would be expected given the mapped soils of the area and the crops which are able to be grown which have roots to depths below those sampled[17]. In respect of auger borings for much of the site (at Lee Farm, Elms Road, Manor Farm, Chippenham Park and Bay Farm), the note against the soil data states “stop for chalk” and “stop for stone”.

b. As SNTS had been refused access to any part of the application site, despite requests, Sam Franklin carried out an auger borings on land immediately adjacent to the site to test the stated inability to bore to a lower depth than 30cm as recorded by DBSC at LF164[18]. He found that there was no good reason for the auger to “stop for stone” and bored to the depth of 90cm. This was recorded in a video[19]. Sam Franklin concluded that the land was ALC grade 2 and not ALC grade 4 as claimed in the DBSC/Sunnica report due to its wholly inadequate depth.

c. Furthermore, as stated in MAFF/DEFRA 1988 Guidance, fissures or shattered rock material can occur within routing depths with available water[20]. As pointed out in evidence by SNTS soil scientists, the failure to bore to sufficient depth of 120 cm[21] artificially restricts the grade of soil. This was the consequence of the sampling techniques employed by DBSC, Sunnica’s consultants.

d. The failure of the soil sampling to be carried out in accordance with guidance

[17] See Generally SNTS Reps 11 Nov 2022: Annex D ALC [REP2-240d]
[18] See[APP-115] page 101; 30 cm is the stated lower depth in the report able to be obtained before "stop for chalk"
[19] [REP7-109c].
[20] see Table 15 1988 MAFF guidance
[21] See 1988 ALC Guidance Appx 4 pp40-42 and Tables 14+15

and to a sufficient depth has meant that a significant benefit of chalk or chalk stones at depth[22] (water retention for rooting crops) and layers of gravel, fissured or shattered rock material within 120 cm depth able to be exploited by roots[23] has effectively been ignored by DBSC/Sunnica and a downgrading of the ALC for the soil has artificially been made by DBSC as a result the auger sample not being taken at sufficient depth.

iii. Soil analysis

a. The soil analysis should be representative of the trial pits throughout their depth so as to ascertain soil types. Only the topsoil from the pits were sent for laboratory analysis[24].

b. The soil pits should have photographs taken of them when dug so that the soils can be seen in situ, including their homogeneity, colour and other relevant factors. As raised in the submissions of SNTS, photographs in the report do not coincide with soil pits, but of archaeological trenches[25].

c. The report does not refer to the requirement in Natural England Technical Information Note TIN037 where it states: "If laboratory assessment is required then Particle Size Distribution sample should be requested." This was not done.

d. No details have been published to support the Moisture Balance calculations that were used by DBSC to establish the ALC grading of the site.

iv. Irrigation

a. MAFF/DEFRA guidance[26] recognises that "Irrigation can significantly enhance the potential of agricultural land, especially in drier areas and should therefore be taken into account in ALC grading where it is current or recent

[22] 1988 Guidance Appx 4 Table 15
[23] 1988 Guidance p41 last paragraph – ref Appx 4 Table 15
[24] [APP-115] page 86.
[25] Photos of the Archaeology trenches are [APP-115 p82-83]. They are not numbered. Only reference to location is South West of Lee Farm. They appear to have been taken as part of the Oxford Archaeology [APP-075] and [APP-076]. Both REPS contain pictures of trenches neither of which are the ones used by Sunnica (DBSC). These archaeology trench pictures could be anywhere. It should also be noted that the soils indicated by the trenches do not coincide with the DBSC auger borings.
[26] 1988 Guidance p 27

practice". It states that it will usually upgrade (i.e. not downgrade) land by no more than one grade or subgrade.

b. DBSC/Sunnica claim that current guidance for ALC assessment is that irrigation should not be factored into an assessment of ALC grade. This is patently not the case and the 1988 Guidance has not been further revised, is current guidance on the Natural England website without revision and is referred to in TIN049 without revision.

c. The DBSC report discounts all benefits of irrigation which includes adequacy of irrigation from a system of irrigation throughout much of the application site (which would not only be made redundant and deteriorate over the 40 year period of the proposals, but also cause the loss of a valuable resource), the fact that the area grows high value crops including potatoes and onions with high yields, as evidenced by SNTS, and that the climate and soils benefit from such irrigation. As demonstrated in SNTS evidence, the alleged constraint of doughtiness has been exaggerated.

v. <u>Contrast to MAFF assessment (as per current DEFRA MAGIC Map – ALC post 1988)</u>

a. These flaws are brought into sharp relief when one example of a conflict of evidence is considered. In the MAFF graphing of land at Kennett (part of Sunnica West A), land the A16 and A11 was assessed as grade 2[27]. Immediately to the west of this across the A11 were points CPa 8-11 (also part of Sunnica West A) assessed by DBSC. These points were all graded by DBSC as grade 3b/4[28]. Given these points are immediately adjoining this difference is stark and telling.

b. A significant part of this difference is the lowest depth bored to: CPa8 was 50cm, CPa9 was 70cm, CPa10 was 50cm, and CPa11 was 50cm[29]. All stopped for stone. This is precisely one of the flaw identified by SNTS's own experts; flaws that DBSC have not properly addressed. On this point see also the issue of stopping for chalk discussed under auger borings above.

[27] [APP-115] pdf page 53.
[28] [APP-115] pdf page 132; map of points at [APP-115] pdf page 148.
[29] [APP-115] pdf page 132.

c. This example is one of many which have been explored through the Examination and for which the applicant had no proper reply. The Secretary of State must engage with these difficulties to properly evaluate the evidence and apply the relevant policy.

Overall Conclusions

14. The Sunnica/DBSC ALC report reveals that the applicant has not assessed ALC grade according to the 1988 ALC guidance[30]. There are numerous failures to do so, as set out above. There is a fundamental dispute requiring to be resolved by the Secretary of State in relation to this matter. In the absence of resolution of such matters, the application of the Rochdale Principle should be to conclude that the worst case scenario is that the land is Best and Most Versatile land[31].

15. The applicant's ALC report is opaque at best and, to use the words of the inspector at the Ripon Motorway Service Area inquiry[32], the overall conclusion is that the Sunnica/DBSC report cannot be treated with any degree of confidence and largely unconvincing. It is unreliable and flawed. In such circumstances, this weighs heavily against the grant of development consent and approval of the draft Order by the Secretary of State.

16. Looking at the applicant consultants' report in the light of all the facts and matters now available at the end of the DCO process into the Sunnica scheme, the inevitable conclusion to be drawn is that the methods adopted by the applicants and their consultants were clearly deficient:

The fact that Best and Most Versatile agricultural land grades 2 and 3a was clearly predicted in the predictive mapping to be high, and probably more than 50%

[30] Nor the BSSS Guide to Assessing Development Proposals on Agricultural Land (5 Feb 2021).
[31] See the letter of the Councils on this matter – [REP7-095].
[32] SNTS Reps 11 Nov 2022: Annex D ALC [REP2-240d p97/298 paras 159-171] - referring to DBSC evidence in that case.

of the site's area, could not have escaped the applicants and their consultants at a formative stage.

Furthermore, confirmatory soil testing by SNTS consultants confirmed the predictive mapping and the applicant's testing to be flawed. Yet no attempt has been made by the applicants or their consultants to carry out any confirmatory sampling and testing, unlike in the case of ecology[33], and all requests by SNTS to do so either on their own or jointly have been firmly resisted by the applicant and landowners at every opportunity.

This is surprising, and it is as if the outcome was predicted to be likely to result in a significant reversal of the findings and conclusions in the DBSC ALC report had confirmatory testing been carried out, thereby putting the whole Sunnica scheme in jeopardy.

The Secretary of State may wish to consider why these confirmatory steps were not undertaken, given the time available since at the latest 2020 to do so, and there being no reason put forward why this was not possible.

John Steel KC

Daniel Kozelko

39 Essex Chambers
London WC2A 1DD.

11 September 2023

[33] Where much additional and updating work was undertaken over the course of the examination.

APPENDIX C

Nick Timothy CBE
West Suffolk Conservative Association
5 The Court
Lanwades Business Park
Kentford
CB8 7PN

Mr John Wheadon
Head of Energy Infrastructure Planning Delivery
Department for Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

Monday 11 September 2023

Dear Mr Wheadon

I am writing regarding the responses to the information requests of 27 July and 23 August relating to the Sunnica solar and battery farm proposal (EN010106). I am the Conservative prospective parliamentary candidate for West Suffolk, and like the local MPs, Matt Hancock and Lucy Frazer, I oppose the project.

You will be aware that the Sunnica proposal would construct the largest solar and battery farm in the country. You will also be aware that in West Suffolk we are not opposed to solar power. We already have a modestly sized solar farm near Wickhambrook. But the Sunnica proposal is different. Many of the arguments relating to the Sunnica proposal are well rehearsed:

- The size and scale of the plans are inappropriate
- It is inappropriate to construct a solar and battery farm on high-quality agricultural land
- There are legitimate concerns about the safety of the lithium-ion battery energy storage compounds
- The project would be too close to settlements, endangering property and lives in the event of an accident
- It would cut villages off from one another, and transform rural communities into semi-industrial districts
- The project would undermine farming businesses and the horse-racing industry, which makes Newmarket unique
- Sunnica has refused to engage properly with the affected communities, and produced misleading research about the quality of agricultural land
- The proposal may breach the Infrastructure Planning (Electricity Storage Facilities) Order 2020, which says battery storage may only be included in a Development Consent Order as an associated development – because battery storage in the Sunnica proposal is arguably the host project
- Estimates anyway suggest that the proposal will in fact generate more carbon emissions than those it saves

I want to focus on the dispute about the quality of the agricultural land, which is the subject of the letter from Pinsent Masons to you on 10 August. In short, it would be unreasonable, on the basis of the limited and partial evidence presented, the refusal by Sunnica to allow access to the site to conduct soil surveys, and the evidence available that contradicts Sunnica's claims, for the Secretary of State to conclude that a significant part of the site in question is not Best and Most Versatile land (BMV). Neither would such a decision be based on a procedurally sound process.

Throughout the application Sunnica has refused outright to behave in a transparent and collaborative manner. The company has refused to attend public meetings. It has refused to meet the local Members of Parliament. It has refused access to the site for independent experts to assess the quality of the land. The application may be a Nationally Significant Infrastructure Project, but it is still incumbent on the applicants to engage openly with the affected communities. Sunnica has failed to do so throughout.

Sunnica's claims about the quality of the land are based on a soil survey completed for them by a consultancy business, Daniel Baird Soil Consultants Ltd (DBSC). Using the DBSC survey Sunnica claims that less than one per cent of the 924 hectares surveyed is BMV. As farmers and landowners attest, and other surveys confirm, this estimate is clearly wrong, and by some margin. A Natural England (NE) predictive plan previously showed that more than fifty per cent of the site is BMV.

The Say No To Sunnica campaign (SNTS) has sought, on three occasions, access to the site to conduct its own soil surveys. On each occasion, Sunnica refused to grant access, which itself raises questions about Sunnica's confidence in its claims about the quality of the land, and its commitment to independent and transparent analysis.

SNTS has therefore had to make calculations and rely on methodology that is offsite. But its calculations are nevertheless sound, since they are grounded in past analysis of the agricultural land on the Sunnica site, and recent analysis of neighbouring land. SNTS asked Bidwells, the chartered surveyors, to use the NE predictive plan to map the boundaries of the Sunnica site and calculate the likelihood of the land being BMV. The Bidwells work showed that 83 per cent of the site is sixty per cent or more likely to be BMV.

SNTS also asked Bidwells to map the site onto the Agricultural Land Classification plan. This showed that the site is 53 per cent BMV.

A report by agricultural consultants Patrick Stephenson Ltd surveyed land that neighbours the Sunnica site. In a sample survey of eighty hectares the company found 78 per cent BMV. Ten inspection pits in areas neighbouring the Sunnica site all showed that the land is BMV.

A member of the British Society of Soil Science (BSSS), Sam Franklin, has recorded video footage of a single auger boring on the boundary of Sunnica East A, which also confirms BMV land. The auger boring was taken four metres from the boundary of Sunnica East A and opposite the auger boring by DBSC. DBSC, contracted by Sunnica, records the land as Grade Four, while Sam Franklin records the land as Grade Two. Sam Franklin's grading matches NE and Agricultural Land Classification (ALC) mapping. DBSC claims the land is

two grades below. It is very unusual for professional soil surveyors to be two grades apart when assessing samples that are so close together.

SNTS has provided the professional and expert opinions of Patrick Stephenson, Sam Franklin, Peter Danks and Paul Wright, who all conclude that the DBSC report is deficient. They all agree that the Sunnica site is more than one per cent BMV.

These studies confirm what local farmers already know. A crop rotation includes potatoes, onions, sugar beet, malting barley, rye, maize, and milling wheat. All these crops have been seen growing on land within the Sunnica site. This crop rotation is consistent with BMV soils, as are the yields achieved on neighbouring land which are above national averages. Local farmers estimate that a 924 hectare farm with this soil type in the rotation described would produce more than 32,000 tonnes of produce per year at a value of £6.3 million. A farm that opts for a purely cereal rotation would produce around 6,000 tonnes per year at a value of £1.9 million.

There are significant problems with the arguments set out on Sunnica's behalf in the Pinsent Mason letter. For example the letter cites a past study by Reading Agricultural Consultants (RAC). The RAC work relates to 3.3 hectares, or 0.3 per cent, of the Sunnica site, and its conclusions are consistent with the NE predictive map and the ALC map for this part of the Sunnica site. The Pinsent Masons letter seeks to suggest that what RAC says about this part of the site is what RAC says about the remaining 978 hectares. But this is incorrect. The RAC conclusions contradict the DBSC report, and the professional opinion provided by RAC is that over fifty per cent of the site is BMV.

The Pinsent Masons letter fails to mention another third-party survey which relates to part of the Sunnica site. This is a MAFF survey of 188.9 hectares, 51.6 hectares of which are included in the site. 28.5 hectares of the 51.6 hectares, or 55 per cent, are graded BMV. The survey dug eight inspection pits over 188.9 hectares, compared to the DBSC which dug only six inspection pits over 924 hectares. This study may not be recent, but soil does not change over time.

Comparison between different surveys of the Sunnica site	
Study	**Finding**
ALC plan with Sunnica site marked on	53 per cent of site BMV
Natural England predictive plan with Sunnica site marked on	50+ per cent of site BMV
Reading Agricultural Consultants	50+ per cent of site BMV
Patrick Stephenson	80 hectares 78 per cent BMV
MAFF	51.6 hectares 55 per cent BMV
DBSC for Sunnica	1 per cent of site BMV

There are further reasons to be concerned about the DBSC study. Of its six inspection pits, four were in land already shown to be Grade Four and two were placed on the edges of fields. The areas predicted by previous studies to be BMV appear to have been avoided. And the study does not correspond with the archaeology report provided by Sunnica. Auger borings in areas shown to be peaty by the archaeology report are not included in the DBSC report.

According to Paul Wright, a fellow of the BSSS, the DBSC study is deficient. We believe it fails to comply with either the BSSS or GGAL guidelines.

We are aware that DBSC produced a similar, deficient report for an inquiry into the Ripon Motorway Service Area, known as the Savills report. There, the Planning Inspector found the DBSC attempt to reduce land classification from BMV to Grades 3b and 4 "largely unconvincing". In the Savills report auger borings were not supported by laboratory analysis, auger borings were shallower than expected, the application of a drought calculation was not transparent, stoniness was overstated, and trail pits were mentioned without corresponding records. Similar shortcomings are apparent in the DBSC Sunnica analysis.

Pinsent Masons argue that the NE study is only a predictive map, but this is not disputed. Refuting this straw man argument does nothing to repudiate the central point made by SNTS and others, which is that the DBSC report stands alone in its claims that contradict all local knowledge, mapping evidence and alternative studies. It can only reach its conclusion by ignoring all the available evidence: about the productivity of the land, the yields achieved, irrigation, crop rotation and so on. Given that the land cannot feasibly be one per cent BMV, it is impossible – even if one ignores all the other studies and evidence – to assert with confidence what percentage of the land is BMV. A decision in favour of the application therefore cannot be reasonable.

Given the differences between the DBSC findings and those of all studies and surveys conducted before, soil series mapping – more detailed than the soil associations mentioned by DBSC – should have been used to back up the findings. DBSC did not do so, presumably because the soil series mapping confirms the presence of soil types consistent with BMV land.

Despite Natural England's own study showing that more than fifty per cent of the site is BMV, NE has accepted the DBSC report, which claims the true figure is only one per cent. We accept that the NE predictive map is not definitive, but it is based on the best available information. NE has not provided any explanation for its acceptance of the deficient DBSC report, nor engaged with SNTS regarding the evidence that shows that Sunnica's claims about the land are untrue.

NE should not accept a report that breaches BSSS and GGAL guidelines. Natural England Technical Information Note TIN049 states: "Detailed guidance for classifying land can be found in: 'Agricultural land classification of England and Wales: revised guidelines and criteria for grading the quality of agricultural land (MAFF 1988)". These guidelines clearly state irrigation should be a factor in deciding a land grade. But NE appears to have ignored this point. There is no guidance of which anybody is aware that says irrigation might be excluded from the assessment of land.

For all the reasons listed above, a decision to approve the Sunnica solar and battery farm cannot be reasonable, and because of the conduct of Sunnica and the opaque and unreasonable decisions of Natural England, the process to-date cannot be deemed procedurally sound.

As the Prime Minister said to Parliament on 6 September, we need to recognise the importance of solar and other forms of renewable energy, but it must be developed in a way that "protect[s] our most valuable agricultural land so that it can produce food for the nation and increase our food security. That is why, thanks to our changes, the planning system now sets this out explicitly with a clear preference for brownfield sites."

Yours sincerely

Nick Timothy CBE
Conservative prospective parliamentary candidate
West Suffolk

APPENDIX D

Date: 1st September 2023
Our Ref: DW/E2132/SNTS/CJ-010923

BY E-MAIL ONLY

Bioscan (UK) Ltd
The Old Parlour
Little Baldon Farm
Little Baldon
Oxford
OX44 9PU

Tel: +44 (0) 1865 341321
bioscan@bioscanuk.com
www.bioscanuk.com

Dear Catherine

Proposed Sunnica Energy Farm, EN010106

Natural England letter dated 04 August 2023 responding to request for information from the Secretary of State, dated 27th July 2023 ("*Natural England is invited to confirm whether the draft evidence document regarding its research into the functional linkage of stone curlew populations of the Breckland SPA, as summarised in [REP5-096] and [REP7-104], has now been made publicly available and if not, when it intends to publish it*.")

On behalf of Say No to Sunnica (SNTS), you have invited us to comment on Natural England's letter dated 04 August 2023 as referenced above. This sets out their response to the above question posed by the Secretary of State inquiring after the evidence base for NE's assessment that there is no functional linkage between the individuals/populations of stone curlew using the land affected by the proposed Sunnica project, and the individuals/populations underpinning the nearby Breckland SPA.

The letter states that NE maintains its advice that there is no functional linkage between the population of stone curlew using the land affected by the Sunnica proposal, and that of the Breckland SPA, but once again has declined to provide the evidence it relies upon for this conclusion. The SoS is therefore being asked to proceed to a decision on the basis of an absence of certainty or scientific evidence on this issue - the very lacunae that established case law requires be eliminated in order to achieve the high bar of beyond reasonable scientific doubt when dealing with impacts on such sites.

In light of this, it is simply not good enough for the statutory authority to again merely proclaim, without providing evidence, that it is satisfied that there is no functional linkage (and by extension no potential indirect impact vector) in the relationship between stone curlews affected by the proposed Sunnica project and those underpinning the SPA. There are clear scientific reasons for a precautionary approach to conclude otherwise, not least the relatively proximity of the two sites. If the nightly foraging range of stone curlew is taken to be around 3km (e.g. after Green *et al*. 2006[1]) and this is compared with the closest distance between the nearest stone curlew pair documented in the applicant's surveys (Appendix 8H of the Sunnica ES) and the SPA boundary (a mere 3.2km), the scope for overlap and interaction is clear. The latitude in site fidelity (males are documented as usually returning to within 15km of their hatching site)

[1] R. E. Green, G. A. Tyler, C. G. R. Bowden (2006) *Habitat selection, ranging behaviour and diet of the stone curlew (Burhinus oedicnemus) in southern England.* Journal of Zoology 250 (2) pp161-183.

also suggests that there is a good chance in any single year that stone curlews nesting within the project site originate from natal territories within the SPA, and vice versa. Such evidence means that it is far more likely that there is functional interchange between the project area and SPA populations (and by extension a potential vector for impacts on the SPA) than not.

Binding case law (the Dutch Nitrogen cases and others) has firmly established that decision makers cannot lawfully consent to development if there remains reasonable scientific doubt over whether it could adversely affect the integrity of a European (Habitats) Site. Decision makers are entitled to place significant weight on the opinion of Natural England, indeed the courts have held that NE's advice should given such weight, however that does not mean NE's advice is final or binding. In particular, where the opinion of the statutory authority is absent of supporting scientific evidence, and/or there is otherwise contrary evidence or cause for reasonable scientific doubt as to its veracity, there is a requirement to exercise precaution. We contend that this is the position the Secretary of State finds themselves in here.

Best regards

Dominic Woodfield CEcol CEnv MCIEEM
Director

APPENDIX E

Say No To Sunnica Action Group Ltd

Badlingham Farm, Chippenham, Ely, Cambridgeshire, CB7 5QQ

26 January 2023

Dear Sirs,

Planning Act 2008 (as amended)

Application by Sunnica Ltd for an Order Granting Development Consent for the Sunnica Energy Farm (the DCO Application)

The Sunnica DCO Examination Process

We are writing to express our concern about your approach to the Sunnica DCO examination. In particular, we regard your approach to the presentation of your case to be damaging to the fairness of the process. We are writing direct to you at this stage to provide an opportunity to remedy this approach.

As you will be aware, it is incumbent on an applicant to put forward its full case at the outset of any DCO examination and to identify the impacts that a proposed scheme will have. The process provides two main ways to do this: (1) a proper environmental impact assessment of all potential impacts; and, (2) a response to matters raised in any consultation. After the application is made, we accept that the process allows for the development of an application in light of the submissions of interested parties. This may include responding to entirely new points. However, the process does not permit 'case creep' whereby an applicant attempts to remedy the inadequacies of the original application at a later stage, nor does it permit a continuous evolution of the application obscured within copious repetition of submissions.

In our view, this examination has been blighted by case creep. There were significant flaws in the original application which you have tried to resolve through a drip-feeding of information. In some cases, that information has been available to you for months and has been disclosed with delay. When new information has been drip-fed in submissions, this is obscured by repetition of extensive parts of your submissions made at an earlier stage. That repetition is often not cross-referenced, and so it is extremely difficult to identify what is in fact new. On some occasions, you have taken multiple unpermitted attempts at responding to submitted documents. We provide in the annex to this letter what we say are examples of this.

The unfairness of this approach has already significantly impacted upon interested parties. This examination has been foisted upon them; they have not asked for this and they derive

no benefit from the application. The time required of volunteer residents to comb through the thousands of pages you have submitted, including cross-checking repetition and identifying new information, is vast. The expense of engaging experts to respond to examine lengthy repetitious documents, to identify how the case has evolved through the drip-feeding of information and reply, is considerable. These difficulties will also have been faced by the Examining Authority in examining this application. Put simply, this approach is not fair.

The time and expense already lost by this approach cannot be reversed. A proper approach to the original application (based on a careful and thorough consideration of impacts), rather than one where the scheme was developed on the basis of land ownership considerations, would have avoided this loss. However, SNTS invites you to remedy your approach going forwards. You must now set out your final case in full so that interested parties (including their experts) are not faced with a continually evolving case. You must cease to engage in extensive repetition or, in the alternative, cross-reference such repetition. When you provide new information you must identify this. It is only with these steps that there can be a move back towards a level playing field for interested parties.

This letter is copied to the Examining Authority for the Sunnica DCO Examination; any further correspondence on this issue will be provided to them. SNTS will make any submissions it feels necessary as a result of this correspondence in submissions in the examination. We also reserve our position in respect of making an application for costs at the appropriate stage.

Yours Faithfully

Dr C Judkins (Director)

Annex

Example of extensive repetition:

The Applicant's repeats its opinion on the landscape baseline provided in the Environmental Statement – Chapter 10 – Landscape and Visual Amenity **[APP-042**] at:

- Paragraph 2.1.7 of Appendix K to the Applicant's response to the Examiners' First Written Questions **[REP2-038]**.
- Page 156 (final paragraph) of the Applicant's response to SNTS's Written Representations **[REP3A-035]**.
- Page 44 second row first paragraph of the Applicant's response to SNTS Deadline 2, 3, and 3A Submissions **[REP4-036]**.

In our submissions at deadline 6 some of our experts comment on the extent of the repetition that they have experienced in the deadline 4 and deadline 5 submissions.

Example of the drip-feeding of information:

Drip-feeding of information has occurred both in respect of information which was available to the Applicant prior to the submission of the application, and to information responding in a piecemeal fashion to the case advanced by interested parties.

- The submission of appendixes A, I, J, K, L, M of the Applicant's Response to the Examiners First Written Questions at deadline 2 **[REP2-038]** rather than at the outset of the application.
- The submission of appendix A to the Applicant's response to the LPA's Deadline 4 Submissions, which concerns walkover surveys of arable flora undertaken on 5 and 7 September 2022, at deadline 5 **[REP5-057]** rather than when that data became available[1].
- The submission of further information and maps concerning the Chippenham Park RPG at deadline 5 **[REP5-060]** rather than in the heritage assessment as part of the original application.

Example of multiple attempts to respond to submissions:

Multiple attempts to respond to submissions means that interested parties cannot properly understand the case advanced against them and instruct experts in a timely manner. This difficulty is amplified by new information being obscured by repetition of past submissions.

[1] This information was prompted by the early submission of SNTS's report on ecology to Sunnica. This information was promised at deadline 1 but did not materialise. This is documented at appendix 2 (electronic page 81, and more generally) of the ecology report attached to SNTS's Written Representations **[REP2-240e]**

The most pertinent example of this is the applicant's response to SNTS's Written Representations at both deadline 3A **[REP3A-035]** and deadline 4 **[REP4-036]**.