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Your Ref: SUN0011/SR
Our Ref: EN010106
Date: 26 October 2020

Dear Ms Ring

Planning Act 2008 (as amended)

Proposed application by Sunnica Ltd for an Order Granting Development Consent for the Sunnica Energy Farm

Thank you for your letter of 22 October 2020 regarding the abovementioned project, which is currently the subject of a statutory pre application consultation exercise by the developer.

Section 46 of the Planning Act 2008

In paragraphs 4 to 6 of your letter you refer to section 46¹ of the Planning Act 2008 (PA2008). You consider that the publication on the National Infrastructure Planning (NIP) website of the letter from the Inspectorate on 15 October, to acknowledge receipt of Sunnica Ltd's Secretary of State notification (and enclosures) on 16 September, has limited consultees access to the pre application consultation material.

We disagree. The purpose of section 46 of the PA2008 is for the developer to notify the Secretary of State of a proposed application for a Development Consent Order (DCO). It states the notification must happen at the same time or before the developer commences statutory pre application consultation with consultees under section 42 of the PA2008. Therefore, there is no duty on the Inspectorate or the developer to publish this correspondence and notification. However, the Inspectorate routinely publishes correspondence sent pursuant to section 46 on the NIP website in the spirit of openness and transparency. This information is purely procedural and is published as soon as possible after it is received and sent. It has no bearing on the ability of consultees to respond to the consultation itself and is not for the purpose of notifying consultees about the start of the consultation or the deadline for responding.

The enclosures sent with the section 46 notification on 16 September were sample consultation letters and materials that are published on Sunnica Energy Farm's

¹ <https://www.legislation.gov.uk/ukpga/2008/29/section/46>

consultation website and /or were intended to be sent directly to consultees by the developer pursuant to section 42² of the PA2008. According to Sunnica's consultation website and the notification sent to us, the statutory pre application consultation started on 22 September 2020.

In paragraph 6 of your letter you state that the public would have been unaware of the consultation starting until 15 October 2020. The developer has a duty to publicise the proposed application under section 48³ of the PA2008. Secondary legislation in the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009⁴ prescribes how this should be carried out, in Regulation 4. This includes the publication of the section 48 notice in a national newspaper and for two successive weeks in a local newspaper circulating in the vicinity of the proposed project in advance of the start of the consultation. Regulation 4 also prescribes the information that must be included in the notice including information about how to respond to the publicity and access consultation materials.

I note from the developer's consultation website that the section 48 notice has been published there, alongside a notice publicising the Statement of Community Consultation (SoCC), pursuant to section 47⁵ of the PA2008.

When the application is submitted to the Inspectorate we will check whether the developer has complied with its duties under sections 42, 47 and 48 of the PA2008, before making a decision about whether or not to accept it for examination. We will also seek views from the relevant local authorities about the adequacy of the consultation that was undertaken, including whether or not the developer carried out the consultation in accordance with the Statement of Community Consultation.

If you have concerns about the manner in which Sunnica Ltd has conducted the statutory pre application consultation then you should address them directly to Sunnica Ltd in the first instance, to allow them an opportunity to take any necessary action (while the consultation is ongoing). You can also address your concerns to the relevant local authorities, to inform their adequacy of consultation representation at the time it is requested.

EIA Directive and the Purpose of Preliminary Environmental Information

With regard to the points you raise about the EIA Directive and the availability of Preliminary Environmental Information (PEI) in paragraphs 7 to 15, we would respectfully disagree with your interpretation of the purpose of the PEI Report. Our Advice Note 7⁶ - Environmental Impact Assessment: Preliminary Environmental Information, Screening and Scoping (section 8) describes the purpose of the PEI Report as a consultation document. The PEI Report is not an Environmental Statement and therefore the case law you refer to is not applicable.

The Inspectorate will publish the application documents, including the Environmental Statement, on the NIP website after the application has been submitted.

² <https://www.legislation.gov.uk/ukpga/2008/29/section/42>

³ <https://www.legislation.gov.uk/ukpga/2008/29/section/48>

⁴ <https://www.legislation.gov.uk/uksi/2009/2264/contents/made>

⁵ <https://www.legislation.gov.uk/ukpga/2008/29/section/47>

⁶ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2017/12/Advice-note-7.pdf>

Alleged Inadequacy of Information

With regard to the items you identify in paragraph 16 (a) to (i), the Inspectorate will not comment at this time on the merits of the project or the consultation. This is to ensure that the Inspectorate's impartiality is not fettered at the time the application is submitted, both in terms of the decision as to whether the application should be accepted for examination and also the examination of the application if it is accepted.

In general, you should note that no application has been submitted yet and the purpose of the pre application consultation is for the developer to gather feedback to inform the ongoing design, land assembly and environmental assessment process. While the development boundary for the scheme and its design elements have been set by the developer for the purposes of consultation, they may change in light of feedback received from the consultation and the developer's statutory duty to have regard to consultees views under section 49⁷ of the PA2008.

For the avoidance of doubt, and for the reasons set out above, the Inspectorate declines to request that Sunnica Ltd re-starts its pre application consultation, as referred to in paragraph 17 of your letter.

The Inspectorate's role at the pre application stage is to provide advice to potential developers and anyone who is interested in or is seeking to participate in the PA2008 consenting process, about making an application or making a representation about an application. We have a duty to publish the advice we give under section 51⁸ of the PA2008. You can check our advice register and the Sunnica project page of the NIP website for any advice we have given in respect of the Sunnica Energy Farm project to date. This letter constitutes advice under section 51 of the PA2008 and we will therefore publish it in the same way on the NIP website alongside your letter.

Please contact us again if you would like advice about the PA2008 process and how to participate effectively in it via our helpline or the National Infrastructure Enquiries email address set out at the head of this letter. Further advice about participating in the consenting process is contained in our Advice Note 8⁹ series, in particular Advice Note 8.1 – Responding to the developers pre application consultation¹⁰.

Yours sincerely


Mark Wilson
Operations Manager - Energy

This communication does not constitute legal advice.
Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.

⁷ <https://www.legislation.gov.uk/ukpga/2008/29/section/49>

⁸ <https://www.legislation.gov.uk/ukpga/2008/29/section/51>

⁹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-8.0.pdf>

¹⁰ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-8-1v4.pdf>