

BY E-MAIL

Mr Grahame Kean
Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
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Your Ref EN010106
Our Ref: 133995503.5\661999.07003

5 August 2022

Dear Mr Kean

**APPLICATION BY SUNNICA LTD FOR AN ORDER GRANTING DEVELOPMENT
CONSENT FOR THE SUNNICA ENERGY FARM
RESPONSE TO PROCEDURAL DECISION DATED 28 JULY 2022**

I refer to your letter dated 28 July 2022. As you are aware I am writing on behalf of Sunnica Ltd (the '**Applicant**') as Pinsent Masons LLP is instructed as the Applicant's legal advisors. I set out the Applicant's response to that letter below:

Changes Application

1. I confirm that the position reported in my letter of 21st July 2022 (regarding the Changes Application) and the position the Applicant orally reported at the Preliminary Meeting held on 26 July 2022 remains accurate. The Applicant's intention is that it will submit the Changes Application on 30 August 2022. There was discussion at the Preliminary Meeting about how much comfort you should take from this commitment. The Changes Application is now at an advanced state of preparation. It is largely prepared and all environmental work related to the changes as consulted upon between 6 June and 6 July 2022 was completed in advance of the Preliminary Meeting and therefore the final work to be undertaken relates to the additional targeted consultation being undertaken at present. This consultation concludes on 24 August 2022 at which point the Applicant will consider the responses received, have regard to them, and decide whether any amendments to the Changes Application are required. It will then finalise the Changes Application and submit it on 30 August 2022. At this stage the Applicant cannot envisage a circumstance that would lead to a delay beyond this date.

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2. The Applicant respects the Examining Authority's procedural decision to postpone the commencement of the examination over the summer period. However, we would encourage the Examining Authority to schedule the recommencement of the Preliminary Meeting in early-mid September. The Applicant is keen to commence the examination, subject to balancing that desire with the logistical difficulties that Interested Parties have in undertaking substantive work during the summer period.

Relevant Representations

3. The Applicant has been working on its responses to relevant representations since they were published. It wishes to assist the Examining Authority in the efficient running of the examination and considers it would likely be helpful for all if it supplies its responses to relevant representations earlier than the examination timetable will likely provide for. This will help focus the examination on the issues of disagreement. On this basis, and assuming the recommencement of the Preliminary Meeting will be early-mid September, the Applicant intends to submit its responses to relevant representations prior to the recommenced Preliminary Meeting. We hope this will be of assistance.

Food Security

4. In the Preliminary Meeting you raised the issue of food security and asked whether it was an issue that should be considered in the examination. Whilst this point is not raised in the procedural decision of 28 July 2022, the Examining Authority did ask for views during the Preliminary Meeting and so the Applicant sets out its views below for your consideration.
5. The Applicant submits that food security/production should not be a principal issue but instead it is the use of "Best and Most Versatile Land" ('**BMVL**') that should be examined given it is BMVL that falls within planning policy and specifically the Energy NPSs, draft Energy NPSs and the NPPF.
6. The Energy NPSs, draft Energy NPSs and the NPPF do not make reference to food security in relation to the determination of applications for energy generation schemes. This is a conscious decision by Government. Further, NPS EN-1 and draft NPS EN-1 set out that energy is essential to our ability to produce and transport food, stating at paragraphs 3.2.1 and 2.3.1, respectively, that: "Energy underpins almost every aspect of our way of life. It enables us to heat and light our homes; to produce and transport food...".
7. As is reported in the Application (see Table 12.20 of Chapter 12 of the ES [APP-044]), over 96% of the land within Sunnica East Sites A and B and Sunnica West Sites A and B is classified as grades 3b, 4 or not in agricultural use. This means that it is lower quality land, not classified as BMVL. Lower quality agricultural land (in ALC grades 3b, 4 and 5) does not benefit from the same protection as BMVL, with paragraph 5.10.15 of NPS EN-1 and paragraph 5.11.14 of Draft NPS EN-1 setting out that in deciding DCO applications, little weight should be given to the loss of poorer quality agricultural land.
8. The use of the remaining 4% which comprises BMVL is justified by other sustainability considerations. These include the fact that much of that land represents small pockets of BMVL surrounded by lower grade land, and it would not be practicable to exclude it from the Scheme without also excluding larger areas of lower grade land. In addition, the Grade 3a land in the eastern parcel of Sunnica West is highly suitable and productive for solar generation given its south facing orientation.
9. Draft NPS EN-3 provides clarification and guidance on how policies relating to BMVL should be interpreted for solar NSIP schemes. It clarifies at paragraph 2.48.15 that the



development of solar arrays on BMVL is not prohibited and that given the scale of NSIP solar projects, the use of some agricultural land is likely. At paragraph 2.48.13 it also sets out that “land type should not be a predominating factor in determining the suitability of the site location”.

10. We would, therefore, submit that it is the agricultural classification of the land within the Scheme, together with the use of the 4% of BMVL, that should be examined rather than food security.
11. Finally, it is noted that food security is not raised as a principal issue in the Longfield Solar Farm project [EN010118] that is currently in examination and does not appear to have been a matter which was considered during the examination of Little Crow (EN10101). We have reviewed the Examining Authority's report and the impact on agricultural land as a resource is considered, but the impact of the scheme on the ability for the UK to produce the food it requires to feed its population does not appear to be a factor considered. This is in the context of the Food Security Report being published in December 2021, before the Examining Authority's report was published and the Secretary of State's decision.

Availability of Counsel.

12. I appreciate that the examination timetable is unable to accommodate everyone's availability. However, Richard Turnery (Counsel for the Applicant) is currently unavailable as follows: 29 – 30 September, 14 - 18 November, 21 – 22 November, 23 – 30 December and 3 – 6 January. I should be grateful if you could take that into consideration when setting the revised timetable in respect of Issue Specific Hearings.

Yours sincerely

Tom Edwards
for **Pinsent Masons LLP**
This letter is sent electronically and so is unsigned