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Case Officer
The Planning Inspectorate
National Infrastructure Directorate
Temple Quay House
Temple Quay
Bristol BS16PN

By email Sunnica@planninginspectorate.gov.uk

Our ref: SUN0011/SR

22 October 2020

Dear Sir,

Sunnica Energy Farm – Sunnica Ltd – Ref EN010106

1. We are instructed in this matter by the Sunnica Action Group, which objects to the above development proposal.
2. We understand that the proposed Sunnica Energy Farm has been classified as a Nationally Significant Infrastructure Project under the Planning Act 2008. It is also EIA development for the purposes of the EIA Directive and the implementing Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").
3. The planning applicant, Sunnica Ltd, is now engaging in a period of statutory public consultation 'to provide the community with further information about the proposed Sunnica Energy Farm and the opportunity to further influence our design proposals'.¹

Unlawfulness of the consultation

4. We note the National Infrastructure Planning ("NIP") page² and the documents published by stage, including the 'Notice of proposed application (s46)', which comprises an 'Acknowledgement of receipt of information concerning proposed application' that is dated 6 October and 'S46 Notification'.
5. We further note with concern that the 'S46 Notification' is dated 16 September 2020 but unaccountably was only published on 15 October 2020 on the NIP page and, what is more, none of the documents referred to in the notification has been published on the NIP page, including the S48 Notice.
6. This means that the public at large would not have been aware of the fact that the consultation period was starting until 15 October 2020 at the earliest, nor did they have access to the accompanying documents until at least that date and even then they would

¹ Statement of Community Consultation, p.9

² <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/sunnica-energy-farm/?ipcsection=docs>

only have had access to these documents via the private Sunnica website rather than on the central NIP government website.

7. The EIA Directive (2011/92/EU as amended) provides at Article 6 (4) that the public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures; Article 6 (5) provides that 'Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level'. [emphasis added]
8. The EIA Directive has been implemented in the UK in relation to this project by the EIA Regulations. However, there appears to be a lacuna in the EIA Regulations, as they do not provide that the 'Preliminary Environmental Information Report' (which is part of the EIA process as acknowledged by Sunnica Ltd in its Statement of Community Consultation at page 10) should be put on a website maintained by or on behalf of the Secretary of State; in addition, it appears that the Environmental Statement is only required in some circumstances to be placed on such a website.
9. In this case, as stated above, the relevant notices and environmental information have so far only been placed on Sunnica Ltd's private website.
10. Following two recent judicial review proceedings (in which we acted for the successful claimants)³ that challenged the transposition of the EIA Directive by the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (as amended) ("the EIA Regulations 1999"), the UK Government recently consulted on proposed amendments to the EIA regulatory regime for offshore oil and gas exploration.
11. You should be aware that one of the grounds for judicial review was that Article 6(5) of the EIA Directive requires publication of the Environmental Statement on "a central portal or easily-accessible points of access at the appropriate administrative level". In the view of Mrs Justice Lang in granting permission for judicial review 'it is certainly arguable that that means a governmental website, not Scot-Ads or BP's own website'.
12. You should note that in the UK Government's consultation on proposed amendments to the EIA Regulations 1999, it is proposing to make the public notice and EIA documentation available on a gov.uk website rather than on the applicant's private website alone to remedy the defects in the EIA Regulations 1999. The Infrastructure EIA Regulations are similarly defective.
13. We note that there is reference in the EIA Regulations to a register as defined by section 39 of the Planning Act 2008; this is a register of applications that the Secretary of State is obliged to maintain for applications for orders granting development consent. We

³ R (Neil Garrick-Maidment) v Secretary of State for BEIS; R (Greenpeace) v Secretary of State for BEIS

presume that the NIP is the register for this purpose. There can be no reason this should not be used for all the documents in relation to a proposal for a DCO.

14. In all the circumstances, we consider that there has been a failure to inform the general public adequately about this statutory consultation, thus potentially depriving the public of the right to effective participation in the consultation procedure. This is a serious matter.
15. Accordingly, we invite the Planning Inspectorate to re-start the consultation process from the date that all the section 46-48 notices and documentation are published on the central NIP government website and to commit to ensuring that all documentation for the future will be placed on the NIP government website.

Inadequacy of information

16. To engage in an effective and lawful consultation, the consultees have to adequate information about the development project they are being consulted about. In this case, our clients have the following comments about the inadequacy of the information provided to date:
 - a) We don't know the official size of the scheme.
 - b) We don't know the power generation of the scheme.
 - c) We don't know what types of batteries they will be using; it is 'expected' but not confirmed that they will use Lithium-ion Batteries which could pose a serious hazard to surrounding villages. We also are not told how many batteries there will be.
 - d) We are yet to see an Outline Battery Safety Management Plan, which would address one of the largest local concerns.
 - e) We are unsure about the sources of their information in some scenarios – Lucy Frazer MP wrote to Sunnica on 7 October 2020 to ask them to provide the data the soil classification is based upon, but they are yet to reply. A copy of that letter is provided for ease of reference.
 - f) As of the 22nd September, Sunnica admitted that some of the land owners whose land is currently shown in the scheme haven't concluded their negotiations with Sunnica.
 - g) Sunnica have offered no business plan or financial strategy for the scheme.
 - h) Sunnica have offered no financial commitment to decommissioning.
 - i) Some of the Ecological surveys conducted by Sunnica were done before the changes in the Scheme boundary and therefore aren't accurate.
17. PINS is invited to engage with Sunnica Ltd regarding the above defects and to request that Sunnica provide the missing information before the consultation process is re-started.

Yours faithfully,

HARRISON GRANT