

FAO: John Wheadon

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EN010147 - BOTLEY WEST SOLAR FARM

Submission on behalf of Dustin Dryden

Fourth Response to the Secretary of State's Consultation of 11 June 2026

SUBMISSION 4 + ANNEX A (attached)

**APPLICANT'S POST-DEADLINE EVIDENTIAL RECORD: GAP ANALYSIS OF
THE APPLICANT'S POST-EXAMINATION SUBMISSIONS**

Dear Mr Wheadon,

This fourth submission should be read together with Mr Dryden's earlier submissions dated 15 June, 21 June and 24 June 2026, together with the Secretary of State's ("SoS") Request for Further Information ("RFI"), the Applicant's responses, the responses of Interested Parties and statutory consultees, and the further material subsequently published on the Planning Inspectorate's project website.

This submission is not concerned with whether the Applicant has now produced more information than was available when the Examination closed.

It is concerned with a different question.

Whether the cumulative effect of the Applicant's continuing post-examination submissions demonstrates that the application was not, in reality, supported by a sufficiently complete evidential record when the statutory Examination concluded and whether the SoS can now properly be satisfied that the evidential record before him is sufficiently complete, reliable and robust to enable him lawfully to determine the application under section 104 of the Planning Act 2008 ("the 2008 Act").

That question arises because Parliament has established, through the 2008 Act, a structured statutory process for the examination and determination of applications for development consent. The Examination is deliberately time-limited (sections 87 to 98), after which the Examining Authority must prepare its report and recommendation for the SoS. The SoS must then determine the application in accordance with section 104 of the Act.

The statutory scheme plainly contemplates that the Examination will provide the principal opportunity for evidence to be presented, scrutinised and tested by the Applicant, Interested Parties, statutory consultees and the Examining Authority. Whilst the SoS may properly seek further information where necessary to determine an application, that power exists to assist the statutory decision-making process. It is not intended to replace the Examination itself, nor to become a mechanism by which an application which was materially incomplete at the close of the Examination is progressively completed thereafter.

That approach is also reflected in the Planning Inspectorate's published procedural guidance, including Advice Note 8, which emphasises the importance of a fair, transparent and accessible decision-making process in which Interested Parties are able to participate meaningfully throughout the statutory procedure.

Mr Dryden fully accepts that the SoS has the power to seek further information and, where appropriate, to take account of material submitted in response. Equally, not every post-examination amendment is necessarily material. Minor drafting corrections, clarification of existing material or the correction of typographical errors will often assist the decision-maker without altering the substance of the application.

However, where the published record demonstrates the continuing submission of revised technical assessments, amended control documents, updated negotiation documents or additional evidence addressing matters which remained unresolved at

the expiry of the SoS's deadline of 9 June 2026, a legitimate question arises as to whether the application was, in reality, decision-ready at that date.

That question goes directly to the SoS's statutory duty under section 104 of the 2008 Act. Section 104 requires the SoS to determine the application in accordance with the relevant National Policy Statements unless one of the statutory exceptions applies. In carrying out that statutory function the SoS must necessarily be satisfied that the evidential record before him is sufficiently complete, reliable and robust to permit the lawful exercise of the power to grant development consent.

This submission seeks to assist the SoS in considering that question.

It does not seek to catalogue every document published since 9 June 2026, nor does it repeat every point made in Mr Dryden's earlier submissions. Instead, it identifies a number of significant matters where the published record indicates that the Applicant's evidential case continued to develop after the expiry of the deadline which the SoS had expressly decided should remain in place.

1. The significance of the Secretary of State's decision of 8 June 2026

The starting point is the SoS's decision of 8 June 2026 refusing the Applicant's request for a substantial extension of time within which to respond to the RFI.

The Applicant had requested an extension of approximately ten weeks beyond the existing deadline. The SoS declined that request and confirmed unequivocally that:

"The deadline of 23:59 on 9 June 2026 for response to the RFI therefore remains."

In reaching that decision, the SoS further explained that:

"The Secretary of State considers that maintaining discipline within the statutory framework established by the Planning Act 2008 ('PA 2008') is of fundamental importance to the efficient and fair operation of the development consent regime."

He also concluded that granting the requested extension:

"...could create an undesirable precedent and risk undermining confidence in, and the integrity of, the planning process. It may also give rise to concerns of fairness, as other respondents are working to the existing timetable and would not have benefited from an equivalent extension."

Mr Dryden respectfully agrees with those observations.

They reflect important features of the statutory scheme established by Parliament. The structured timetable prescribed by the 2008 Act exists not simply to achieve administrative efficiency but to ensure that nationally significant infrastructure projects are examined within a disciplined, transparent and fair process in which all participants are afforded an appropriate opportunity to understand, scrutinise and comment upon evidence capable of influencing the SoS's decision.

The significance of the SoS's letter extends beyond the refusal of the Applicant's request for additional time.

The principles identified by the SoS - discipline within the statutory framework, procedural fairness, transparency and confidence in the integrity of the planning process - remain equally relevant when considering the significance of material submitted after the expiry of that deadline and, ultimately, whether the cumulative evidential record now before the SoS is sufficient to enable him lawfully to exercise his powers under section 104 of the 2008 Act.

Mr Dryden does not suggest that the SoS lacks the power to receive or consider post-deadline material. Nor does he suggest that every subsequent amendment should be disregarded.

Rather, the continued submission of amended and supplementary material forms part of the factual matrix which the SoS must evaluate when deciding whether the application before him has now reached the stage at which it may properly be regarded as supported by a sufficiently complete evidential record.

2. The continuing evidential record

Mr Dryden respectfully submits that the significance of the Applicant's post-deadline submissions lies not in any individual document but in the cumulative picture presented by the published record.

The issue is not whether every subsequent amendment is individually material.

Rather, it is whether the continuing need for revised assessments, amended control documents, supplementary technical material and updated negotiation documents demonstrates that the application had not, by 9 June 2026, reached the stage at which the SoS could properly regard the evidential record as complete.

That observation is not advanced as criticism of the Applicant. Any applicant will naturally seek to place the strongest available evidence before the decision-maker.

However, the SoS's statutory responsibility is different.

His task is not to determine whether the Applicant has continued to improve its case. His task is to determine whether the cumulative evidential record now before him is sufficient to enable the lawful exercise of the statutory power to grant development consent.

The attached **Annex A** identifies a number of the principal matters where the published record indicates that the Applicant's evidential case has continued to develop after the expiry of the SoS's deadline.

Individually, some of those matters may appear relatively modest.

Collectively, however, they demonstrate that a number of important aspects of the Applicant's case -including environmental assessment, compulsory acquisition, mitigation measures, statutory undertaker protections and the drafting of the proposed Development Consent Order - continued to develop after the close of the Examination and after the expiry of the RFI deadline.

It is the cumulative significance of those matters, rather than the importance of any individual amendment, which forms the basis of this submission.

3. What the published record demonstrates

Mr Dryden respectfully submits that the matters identified in **Annex A** should not be viewed in isolation. They are not advanced as a series of unrelated criticisms of individual documents. Rather, they represent different manifestations of a single underlying issue; namely, whether the Applicant's evidential case had reached the stage of completeness required to enable the SoS lawfully to determine the application under section 104 of the Planning Act 2008.

The published record, viewed as a whole, points towards four principal conclusions.

First, the Applicant's evidential case was not static at the expiry of the SoS's deadline of 9 June 2026.

The continuing publication of amended assessments, revised technical documentation, updated negotiation records and amended Development Consent Order documentation demonstrates that important aspects of the application continued to develop after the SoS had expressly determined that the Applicant should complete its response within the existing statutory timetable.

That observation is entirely consistent with the Applicant's own request for a substantial extension of time made on 22 May 2026. The subsequent publication of additional or amended material does not, of itself, establish that the Applicant's case is unsound. It does, however, support the proposition that the Applicant itself considered that further work remained necessary beyond the deadline ultimately maintained by the SoS.

Secondly, a distinction should be drawn between clarification of existing evidence and supplementation of the evidential record.

Mr Dryden readily accepts that corrections to drafting, clarification of explanatory material or the rectification of typographical errors will often assist the decision-maker without materially altering the substance of the application.

However, where post-examination submissions provide information which was not previously available, revise technical assessments, amend operative development control documents or address matters which remained unresolved during the

Examination, they are capable of demonstrating that the evidential record before the Examining Authority was not yet complete.

That distinction is important because the statutory Examination established by the Planning Act 2008 is intended to provide the principal forum within which evidence is presented, scrutinised and tested. The SoS's power to request further information exists to assist determination of the application; it is not intended to replace the statutory Examination or to become a continuing process by which an application is progressively refined after the close of that Examination.

Thirdly, the cumulative effect of the published record is more significant than any individual amendment.

Mr Dryden does not suggest that any single post-deadline document, viewed in isolation, demonstrates that development consent should necessarily be refused. Equally, he does not contend that every amendment is incapable of being considered by the SoS.

Rather, the significance lies in the pattern revealed by the documentary record.

That pattern demonstrates continuing refinement across a number of material topics, including residential visual amenity, landscape and heritage assessment, ecological mitigation, compulsory acquisition, statutory undertaker protections and the drafting of the proposed Development Consent Order itself.

The SoS may therefore wish to consider whether the cumulative effect of those continuing amendments demonstrates that the application had not, by 9 June 2026, reached the stage at which it could properly be regarded as supported by a sufficiently complete evidential record.

Fourthly, the SoS's statutory responsibility remains unchanged.

Section 104 of the Planning Act 2008 requires the SoS to determine the application in accordance with the relevant National Policy Statements unless one of the statutory exceptions applies.

In performing that statutory function, the SoS must himself be satisfied that the evidence before him is sufficient to support the planning judgment which Parliament has entrusted to him.

The question is therefore not whether more information now exists than existed when the Examination closed. Nor is it whether the Applicant has acted reasonably in seeking to improve or clarify its case.

The relevant question is whether, having regard to the cumulative evidential record now before him, the SoS can properly conclude that the statutory requirements governing the exercise of his powers under the Planning Act 2008 have been satisfied.

4. Conclusion

Mr Dryden respectfully submits that the published record demonstrates an application which has continued to develop after the close of the statutory Examination and after the expiry of the RFI deadline maintained by the SoS on 8 June 2026.

That observation is not advanced as criticism of the Applicant, nor is it suggested that every amendment is of equal significance.

Rather, it is advanced because the continuing refinement of the Applicant's evidential case is itself relevant to the SoS's statutory decision-making function.

The SoS sought further information because he was not satisfied that the evidential record available following the Examination enabled the application to be determined. The Applicant subsequently sought a substantial extension of time within which to respond. That request was refused because the SoS considered that maintaining discipline within the statutory framework established by the Planning Act 2008, preserving fairness between participants and maintaining confidence in the integrity of the development consent regime were matters of fundamental importance.

Those principles remain equally applicable when considering the significance of the continuing publication of post-deadline material.

Mr Dryden respectfully submits that the SoS should therefore approach the cumulative evidential record by asking not simply whether additional information has now been produced, but whether the application, viewed as a whole, is now supported by evidence which is sufficiently complete, reliable and robust to permit the lawful exercise of the statutory power to grant development consent.

The matters identified in **Annex A** do not suggest that every outstanding issue remains unresolved. Some have plainly been narrowed and others may have been satisfactorily addressed.

However, the published record also demonstrates that important matters continued to require amendment, supplementation or further negotiation after the expiry of the deadline maintained by the SoS.

Taken together with the matters raised in Mr Dryden's earlier submissions, that continuing evolution of the evidential record gives rise to a legitimate question as to whether the statutory tests governing the grant of development consent have yet been demonstrated on a sufficiently complete evidential basis.

Mr Dryden respectfully submits that, on the published evidence presently before the Secretary of State, he cannot properly be satisfied that the statutory requirements governing the grant of development consent under section 104 of the Planning Act 2008 have been met. The cumulative evidential record, read together with Mr Dryden's previous three submissions, demonstrates that material elements of the Applicant's case remained incomplete at the close of the statutory Examination and have continued to develop thereafter.

Development consent should therefore be refused. To grant development consent on the present evidential record would be inconsistent with the statutory scheme established by Parliament, which requires nationally significant infrastructure projects to be determined on a sufficiently complete, reliable and properly tested evidential basis.

[REDACTED]

Karen Squibb-Williams - **Barrister – Authorised to Conduct Litigation (BSB)**

[REDACTED]

[REDACTED]

[REDACTED]

Annex A

Examples of Principal Post-Deadline Evidential Issues

Issue	Position at 9 June 2026	Subsequent Position	Why it remains material	Relevant statutory / policy context
Residential Visual Amenity Assessment (RVAA)	Oxfordshire Host Authorities concluded that property-by-property Residential Visual Amenity Assessment remained necessary and expressed concern that assessment of individual receptors continued to be deferred.	Further Applicant material has subsequently been submitted addressing residential effects.	The issue is not whether additional material now exists, but whether residential visual effects were sufficiently assessed during the Examination and by the RFI deadline to permit reliance upon the Applicant's conclusions.	Planning Act 2008, s.104; NPS EN-1 (landscape, visual amenity and residential amenity); SoS RFI .
Questions 68 & 69 – Scheme Reduction and Viability	As explained in Mr Dryden's Submission 2, the Applicant relied principally upon assertions rather than objective financial evidence. No transparent viability appraisal, funding model or sensitivity analysis was disclosed.	No published material appears to provide the objective financial evidence requested by the Secretary of State demonstrating why materially smaller schemes would not remain viable.	Whether the scale of the Proposed Development is objectively justified remains central to the planning balance and to the Secretary of State's consideration of alternatives.	Planning Act 2008, s.104; SoS RFI Questions 68 & 69; NPS EN-1 (need and assessment of impacts).

Annex A

Examples of Principal Post-Deadline Evidential Issues

Issue	Position at 9 June 2026	Subsequent Position	Why it remains material	Relevant statutory / policy context
Question 30 – Restoration of Best and Most Versatile Agricultural Land	The revised Soil Management Plan continued to qualify restoration by reference to what was "wherever practicable" and "as far as possible".	No subsequent published material appears to overcome the absence of precedent for restoring agricultural land following a solar development of this scale and duration.	The Secretary of State must decide what weight can properly be attached to the Applicant's assertion that the loss of BMV land is temporary and reversible.	Planning Act 2008, s.104; SoS RFI Question 30; NPS EN-3 (Agricultural Land Classification and BMV land).
Heritage Impact Assessment	Historic England confirmed that it had commented upon draft documentation and could not confirm that its comments had been incorporated before final submission.	Further revisions have subsequently been published.	The continuing refinement of heritage evidence suggests that important matters remained under active development after the Examination.	Planning Act 2008, s.104; NPS EN-1 (historic environment); Planning (Listed Buildings and Conservation Areas) Act 1990 (where applicable).
Landscape and Visual Impact Assessment	Oxfordshire Host Authorities identified further matters requiring clarification or amendment.	Additional documentation has subsequently been published.	The Secretary of State should distinguish between clarification of existing evidence and material revision of the assessed landscape effects.	Planning Act 2008, s.104; NPS EN-1 (landscape and visual impacts).
Bird Strike Mitigation	Operational arrangements remained dependent upon	Discussions appear to have continued after 9 June 2026.	The Secretary of State should distinguish between mitigation which is secured	Planning Act 2008, s.104; NPS EN-1 (aviation safety and mitigation).

Annex A

Examples of Principal Post-Deadline Evidential Issues

Issue	Position at 9 June 2026	Subsequent Position	Why it remains material	Relevant statutory / policy context
	agreement with the relevant aviation authorities.		and mitigation which remains contingent upon future agreement.	
Drainage and Flood Risk	Further technical information remained under discussion with relevant consultees.	Additional drainage material has subsequently been submitted.	The issue is whether later submissions clarify existing evidence or introduce material evidence which was absent when the RFI response was submitted.	Planning Act 2008, s.104; NPS EN-1 (Flood Risk and Surface Water); Environment Agency representations.
Ecology / Skylark Compensation	Oxfordshire Host Authorities identified further work concerning habitat provision and off-site compensation.	Additional ecological documentation has been published.	The Secretary of State should be satisfied that ecological mitigation is fully evidenced rather than dependent upon continuing refinement.	Planning Act 2008, s.104; NPS EN-1 (Biodiversity and Ecological Networks); SoS RFI.
Statutory Undertaker Protections (Thames Water)	Negotiations and protective provisions remained incomplete.	Negotiations have continued after the RFI deadline.	Outstanding statutory undertaker issues remain directly relevant to compulsory acquisition powers affecting statutory undertakers.	Planning Act 2008, s.127; Protective Provisions; Thames Water representations.
Compulsory Acquisition and Land Negotiations	The Applicant's Land Rights Negotiation Tracker demonstrated that negotiations with affected landowners and statutory undertakers remained incomplete.	Updated negotiation trackers have continued to be published.	Continuing negotiations do not of themselves undermine the application, but they demonstrate that aspects of the compulsory acquisition case remained under active development.	Planning Act 2008, ss.122–123 (compelling case in the public interest); Guidance related to procedures for compulsory acquisition (DCLG/Ministry guidance).

Annex A

Examples of Principal Post-Deadline Evidential Issues

Issue	Position at 9 June 2026	Subsequent Position	Why it remains material	Relevant statutory / policy context
Draft Development Consent Order	Revised draft DCO, Explanatory Memorandum and Schedule of Changes submitted by 9 June 2026.	Amended versions were subsequently submitted to correct Requirement 15 (200m to 250m) and accepted by the Secretary of State as late submissions.	Whilst described as correcting a typographical error, the amendment demonstrates that the principal statutory instrument itself continued to require amendment after the deadline maintained by the Secretary of State.	Planning Act 2008, ss.114–120 (content and effect of a DCO); Secretary of State's letters of 8 June, 11 June and subsequent acceptance of late amendments.