

FAO: John Wheadon

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Via Email Only: BotleyWestSolar@planninginspectorate.gov.uk

EN010147 – BOTLEY WEST SOLAR FARM

Submission on behalf of Dustin Dryden

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

FINAL SUBMISSION

Dear Mr Wheadon,

1. The central question

Throughout the Request for Further Information (RFI) process attention has focused upon individual issues, documents, technical disciplines and responses.

The statutory question now facing the Secretary of State (SoS) is whether, having considered evidence now before him, he can be satisfied that the statutory requirements governing the exercise of his powers under section 104 of the Planning Act 2008 have been met.

In determining that question, the Secretary of State must also ensure that the decision-making process has remained procedurally fair. The common law duty of procedural fairness, reflected in the principles established in *R v Brent LBC ex p Gunning* and subsequently affirmed by the higher courts, requires that those affected by a decision are given a fair opportunity to understand, consider and comment upon material capable of influencing the outcome before the decision is taken.

It cannot be answered simply by reference to the quantity of material submitted, nor by the fact that *some* of the additional information requested has been provided.

As is explained below, Mr Dryden is clear that the available evidence is not sufficient and that the evidence which is available logically demonstrates that consent should not, and cannot, lawfully be given.

2. The conclusions arising from the previous submissions

Mr Dryden's previous submissions advance four principal propositions.

First, the extensive nature of the RFI unequivocally demonstrated that the SoS was not satisfied that the evidence available following the Examination and analysed by the Examining Authority in its report enabled the application to be determined.

Second, the Applicant's request for a substantial extension of time to respond to the RFI, together with its continuing publication of amended and supplementary material after the expiry of the SoS's deadline of 9 June 2026, confirms that substantial elements of the Applicant's case remained significantly incomplete after the close of the Examination, and remains so today.

Third, substantial issues central to the determination of the application - including, but not limited to, residential visual amenity, landscape and heritage effects, agricultural land restoration, compulsory acquisition, statutory undertaker protections and the drafting of the proposed DCO - continued to require amendment, clarification or further negotiation throughout the consultation period.

Fourth, even after the RFI process there is no complete, fully scrutinised evidential basis upon which development consent can lawfully or confidently be granted.

3. The significance of that conclusion

Mr Dryden respectfully submits that the Examination process did not enable a complete body of evidence to be produced and the subsequent RFI and consultation process has also failed to produce the necessary evidence.

The SoS's letter of 8 June 2026 recognised the importance of maintaining discipline within the statutory framework established by the Planning Act 2008 and preserving confidence in the integrity and fairness of the development consent regime. However, Mr Dryden believes the SoS has failed his own test. The RFI process has, because of its nature and scale, in effect, continued to perform part of the function which Parliament intended the Examination itself to fulfil: the statutory Examination established by the Planning Act 2008 is intended to provide the principal forum in which evidence is presented, scrutinised and tested before the Secretary of State is required to reach his statutory decision.

4. Procedural fairness

The extensive RFI process has resulted in the continuing production of amended documents, supplementary evidence and further submissions after the close of the statutory Examination. The cumulative effect has been materially to expand the evidential basis upon which the SoS is now expected to determine the application.

The common law requires that any consultation or opportunity for representations is conducted fairly. The well-established principles identified in *R v Brent LBC ex p Gunning*, and subsequently endorsed by the Court of Appeal, House of Lords and Supreme Court, require that: (i) consultation takes place whilst proposals remain genuinely capable of influence; (ii) sufficient information is provided to permit intelligent consideration and response; (iii) adequate time is afforded for that response; and (iv) the representations received are conscientiously considered before any decision is reached.

Although the present process is not itself a statutory consultation in the conventional sense, those principles reflect the wider common law duty of procedural fairness which governs public decision-making. Where substantial new evidence continues to emerge after the statutory Examination has concluded, fairness requires that IPs have a genuine opportunity to consider and respond to that material before the SoS reaches his decision. Otherwise, the application risks being determined upon evidence which has never been subjected to fair scrutiny by all participants in the statutory process.

5. The statutory decision now required

The Planning Act 2008, 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 doing so, the SoS must exercise judgment by weighing the claimed benefits of the Proposed Development against its adverse impacts on the basis of a complete, reliable and properly scrutinised body of evidence.

Where compulsory acquisition powers are sought, Parliament has imposed additional statutory requirements through sections 122, 123 and, where applicable, section 127.

Those statutory responsibilities require more than the existence of an extensive documentary record.

They require the Secretary of State to be satisfied that the evidential record is sufficiently complete, reliable and properly scrutinised to support the lawful exercise of those statutory powers.

A particular matter we feel appropriate to draw attention to in this context is the view of ICOMOS. This is a matter dealt with in recent submissions by the Begbroke and Yarnton Green Belt Campaign (BYG). In its submission dated 24 June 2026, it reminded the SoS that ICOMOS does not believe BWSF should be granted a DCO.

In its subsequent submission sent under cover of a letter to PINS dated 8 July 2026, it referred to ICOMOS' recent objection to housing development at Land South of Perdiswell Farm a field which would be enclosed by BWSF cables (located adjacent

to the boundary of the Blenheim Palace WHS). In that objection, as summarised by BYG, ICOMOS made the important point that the potential for harm to a WHS is not just another issue to be weighed in the planning balance when making decisions about whether development should be allowed. It is clear that ICOMOS is warning that the development of both the housing site and BWSF is likely to be in breach of the UK Government's commitment under the 1972 World Heritage Convention.

The SoS will therefore determine this application against the background of an express warning from ICOMOS that development affecting the setting of the Blenheim Palace World Heritage Site likely engages the UK's obligations under the 1972 World Heritage Convention. That is plainly a material consideration. It cannot properly be regarded as merely another planning objection to be weighed in the ordinary planning balance but forms part of the wider legal and international obligations which the SoS must take into account before deciding whether development consent can lawfully be granted.

A further illustration of the continuing deficiencies in the evidential record is provided by the recent submission from Leading Edge Aviation (LEA), forwarded to the SoS by the BYG Campaign. LEA explains that, despite being one of the principal European flight training organisations operating from London Oxford Airport, it "was not contacted for consultation by the Applicant at any stage in the last three years" and consequently did not participate in the statutory Examination.

Its submission raises detailed operational concerns regarding emergency landing opportunities, engine failure scenarios, residual glint and glare, bird strike risk, thermal plume effects and the long-term safety of flight training operations. Whether or not those concerns are ultimately accepted, they constitute evidence from a principal operational user of the airport which the statutory Examination never had the opportunity to test.

Their emergence only after the Examination reinforces Mr Dryden's submission that the evidential basis upon which the SoS is now asked to determine the application remains materially incomplete and that procedural fairness requires IPs to have the opportunity to comment upon such material before any final decision is taken.

6. Conclusion

Mr Dryden respectfully submits that, when the Applicant's responses, the statutory consultees' observations, the continuing post-deadline submissions and Mr Dryden's previous submissions, along with those made by other IPs, are considered together, the published record demonstrates that material elements of the Applicant's case were incomplete at the close of the statutory Examination and although continued to be develop thereafter, undoubtedly remain incomplete (for example, no Applicant RVAA visit to Goose Eye Farm).

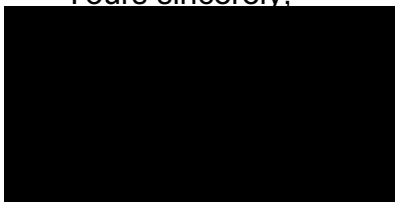
NSIPs such as the Botley West Solar proposal can only be determined upon a complete, reliable and properly scrutinised evidence base enabling assessment of the likely benefits and adverse impacts of the Proposed Development. That exercise cannot properly be undertaken where material elements of the evidence remain incomplete or continue to develop after the statutory Examination has concluded.

Accordingly, on the evidence presently before him, the SoS 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.

Development consent should therefore be refused.

It is appropriate to add at this stage a final consideration; should the Applicant submit further material of any type at the current deadline of 16 July 2026 then all IPs should have the opportunity to comment on that material and a reasonable time to do that fully. To determine the application without such an opportunity would risk departing from the common law principles of procedural fairness reflected in the Gunning authorities and endorsed by the Supreme Court.

Yours sincerely,



Barrister – Authorised to Conduct Litigation (BSB)

