

The Secretary of State for Energy Security and Net Zero

For the attention of: [REDACTED] **Head of Planning**

Department for Energy Security and Net Zero

3 - 8 Whitehall Place

London, SW1A 2AW

6th September 2026

Via: Botley West Solar Farm Case Team, Planning Inspectorate

Email only: BotleyWestSolar@planninginspectorate.gov.uk

Project: Botley West Solar Farm DCO - EN010147

Interested Party: Mr Dustin Dryden - IP No [REDACTED]

**RESPONSE TO CONSULTATION DATED 4 SEPTEMBER 2026 ON THE
APPLICANT'S JULY 2026 MATERIAL**

Dear Secretary of State,

THRESHOLD PROCEDURAL AND PUBLIC LAW SUBMISSION

I write on behalf of Mr Dustin Dryden in response to the consultation opened following the Secretary of State's decision to accept the Applicant's substantial body of further material submitted after the close of the Examination.

This submission is made at an early stage of the present consultation because the Applicant's July 2026 material raises a threshold question which, in Mr Dryden's respectful submission, must be addressed before the Secretary of State (SoS) can safely proceed to determine the application.

That question is:

Does the Applicant's July 2026 package constitute merely further information concerning the application examined by the Examining Authority, or does it, viewed

cumulatively and in substance, amount to a material post-Examination change to the application and to the environmental case upon which consent is sought?

Mr Dryden submits that the evidence presently points strongly towards the latter.

If that is correct, there is a serious question whether the present decision-stage written consultation can lawfully substitute for the statutory examination process through which changes to an accepted DCO application are ordinarily tested, examined and reported upon.

Mr Dryden accordingly asks the SoS **not to determine the application on 10 November 2026 unless and until this threshold procedural issue has been expressly resolved.**

This submission is not intended to exhaust Mr Dryden's response to the July material. Further submissions may follow before the consultation closes on 4 October 2026, including on residential visual amenity, environmental assessment, heritage, mitigation and the legal securing of the revised design.

1. The Applicant itself describes substantial post-Examination redesign-

The starting point is the Applicant's own evidence.

The new **Masterplan Development & Rationale, APP/21.7 Rev 1**, states expressly that its purpose is to explain changes made to the proposed masterplan **"following the close of the Examination"**.

It says that those changes were informed by:

- further landscape and visual assessment;
- additional site survey work; and
- ongoing consultation with the Oxfordshire Host Authorities.

The same document describes the result as a “**substantial reduction**” in the operational development area. It quantifies the removal as:

130.23 hectares of solar panel installation area and approximately **219.8 MWp of generating capacity**.

That total comprises:

- 31.82 ha / 53.7 MWp arising from the 100m residential buffer;
- 34.91 ha / 58.9 MWp associated with the new bat corridor;
- 1.64 ha / 2.8 MWp associated with Oxford Airport changes; and
- 61.86 ha / 104.4 MWp arising from further 100m–250m changes.

Those figures are not incidental. The Applicant’s July covering letter itself describes the result as a reduction from the equivalent of approximately **330,000 homes to 275,000 homes**, brought about by the loss of approximately 219 MWp and 130 ha of installation area. It expressly characterises this as the **trade-off between renewable generation and greater mitigation of landscape, visual and residential amenity impacts**.

The revised masterplan therefore changes both sides of the planning balance: the environmental effects and mitigation on one side, and the scale of the claimed energy-generation benefit on the other.

2. These are not simply reductions within an unchanged illustrative layout-

The Applicant’s own documents show that the July package reflects a continuing design process after Examination.

In the Northern Area, the Applicant says that post-Examination refinements were undertaken following further landscape and visual assessment and additional survey work. The revised design responds individually to the characteristics, orientation and visual relationship of

residential receptors. Panels have been removed where they formed part of the immediate setting or principal outlook from properties.

The Applicant gives the example of Dornford Cottage, where it says that although the previously proposed development might have been mitigated through planting, **further design consideration concluded that the appropriate response was to remove the development from that location altogether.**

In the Central Area the Applicant goes further. It describes the design as having undergone “**substantial refinement following the close of the Examination**”, responding to additional landscape and visual assessment, further field survey work and continuing OHA discussions. It states expressly that the amendments are “**not isolated design changes**” but part of a wider refinement of the masterplan. Panels have been removed or repositioned around numerous residential receptors, including Wolsey Court, Campsfield Farmhouse, Rose Cottage, Heath Lane, College Farm, Pelican House, Owls Leat, Willow Cottage, Jericho Farm, New Barn Cottage, Burleigh House, Folly Bridge, Burleigh Farm, Goose Eye Farm and others.

The Southern Area likewise includes further removal of panels and potential relocation of substation infrastructure.

These are therefore changes in the **location, scale, configuration and environmental relationship of operational development**, not merely corrected drafting or an updated explanation of an unchanged project.

3. The new residential visual amenity work confirms that substantive assessment and design remained incomplete after Examination-

The new **Outline Residential and Visual Amenity Plan, APP/21.4 Rev 1** reinforces that conclusion.

The document identifies 57 residential properties or property groups for consideration and states that its assessment has been undertaken iteratively with refinement of the proposed development. It explains that its findings have directly informed additional offsets **on a property-by-property basis**, including increased separation distances, reconfiguration of development areas and retained landscape features.

It states expressly:

“This RVAA has been undertaken iteratively alongside the refinement of the Proposed Development...”

and that the purpose is to reach a design solution in which the residential visual amenity threshold is not breached.

That is significant. It demonstrates that the July residential evidence was not simply testing a fixed scheme which had already been examined. The assessment and design were proceeding together after Examination, with the assessment itself informing where development should or should not remain.

The Applicant has then introduced a materially revised Requirement 15 and a new certified oRVAP/Landscape Parameter Plan regime to secure that post-Examination design.

4. The Host Authorities themselves regard the revisions as significant and unresolved-

The joint Applicant/OHA Position Statement is also important.

The OHAs agree that the revised design is a **betterment** compared with the scheme at the end of Examination. However, they expressly state that:

- the revised scheme still falls short of the reductions they consider necessary;

- their concerns regarding Requirement 15 remain;
- their criticisms of the Applicant’s LVIA assessment methodology remain unresolved;
- the revised scheme **has not been assessed by a revised Environmental Impact Assessment**; and
- the revisions constitute a “**significant amendment to the design of the scheme**” such that Interested Parties should be given an opportunity to review and comment.

The present consultation provides the opportunity to comment which the OHAs requested. That is welcome.

But consultation alone does not answer the separate question whether what is now proposed remains the same application which the ExA examined.

5. The distinction between “further information” and a “change to the application” is legally important-

The Planning Inspectorate’s current guidance on post-acceptance changes was updated on **18 August 2026**, including to reflect changes introduced by the Planning and Infrastructure Act 2025.

It states:

“Only the Examining Authority can decide whether a proposed change to an application can be accepted and examined.”

The first question for the ExA is whether the changed project remains “**substantially the same**” as that originally applied for. Importantly, PINS states that this includes, where relevant, **the combined impact of a series of incremental changes**.

The guidance also distinguishes changes to the project from new or revised information which does not necessarily change the project. During Examination, it is for the ExA to decide whether new information in fact amounts to a change to the application.

If the effect of a proposed change would be so substantial as to constitute a different project, PINS identifies the Applicant's alternatives as withdrawal and fresh application, submission of a lesser change, or proceeding with the project originally applied for.

Most importantly for the present circumstances, the guidance states that once Examination has closed, the ExA cannot accept further submissions or a request from an Applicant to change the application.

That creates a question which cannot, respectfully, be avoided merely by describing the July material as "additional information".

The SoS must determine **what it is in substance**.

6. The present case appears materially different from the ordinary decision-stage request for information-

The Government's current **Planning Act 2008 Guidance on the decision-making stage**, published on 3 July 2026, plainly recognises that the SoS may request further information after Examination.

Mr Dryden does not suggest otherwise.

But the guidance describes the normal expectation as one in which outstanding matters at decision stage are confined to targeted requests for additional information on "**specific, limited matters**".

The guidance separately recognises that where broad issues remain outstanding and extensive additional information is required, a “minded to” process may be appropriate, including publication of the ExA recommendation so that parties can respond effectively to the issues identified by the SoS.

Botley West appears to have moved well beyond a conventional request for information on a discrete unresolved point.

The July package includes, among other matters:

a materially revised masterplan; a substantial reduction in panel area and installed capacity; further landscape and visual survey and assessment; property-specific redesign; a new residential visual amenity plan; a new Landscape Parameter Plan; a materially amended Requirement 15; a new Requirement 16 and skylark compensation regime; revised biodiversity material; revised heritage material; revised landscape/ecology controls; revised illustrative plans; and a further environmental statement addendum.

The issue is therefore not whether the SoS may seek additional information. She plainly may.

The issue is whether that power is now being used to deal with what is, in substance, a **post-Examination redesign of the application itself**.

7. The statutory examination process has a purpose which should not be bypassed-

The Planning Act 2008 assigns distinct functions to the Examining Authority and the SoS.

The ExA examines the application, gathers and tests the evidence, may ask written questions and hold hearings, and ultimately reports its findings, conclusions and recommendation to the SoS. The SoS then decides the application.

The Government's July 2026 examination guidance emphasises that the examination process exists to test the evidence and enable an informed and robust recommendation to be made.

That structure matters.

There must be a legally meaningful distinction between:

- **supplementing the evidential record relating to the application which was examined, and**
- **substituting a materially revised project and environmental case after the examination function has ended.**

Otherwise the statutory change process could, in practical effect, be circumvented simply by making major design alterations after Examination, when the ExA no longer has jurisdiction to decide whether those changes should be accepted and how they should be examined.

Mr Dryden respectfully submits that this is precisely the question which now arises.

8. Environmental assessment provides a separate and important safeguard-

Botley West is EIA development.

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 require the SoS, before granting consent, to undertake the environmental assessment and reach a reasoned conclusion on the significant effects of the development. The Regulations also require that conclusion to remain up to date when consent is granted.

The familiar "Rochdale envelope" principle permits flexibility in detailed design, but only where the likely significant effects of the development have been adequately assessed within defined parameters and the eventual consent prevents development from escaping that assessed envelope.

The High Court considered those principles in **R (Substation Action Save East Suffolk Ltd) v SoS for BEIS [2022] EWHC 3177 (Admin)**.

The present July material raises two distinct EIA questions.

First, is the revised development still demonstrably within the environmental envelope which was examined?

Secondly, are substantive environmental judgments being deferred into post-consent detailed design rather than assessed before consent?

Those questions arise particularly clearly in relation to Requirement 15 and the residential visual amenity process, but are not confined to it.

The fact that the revised scheme may produce environmental “betterment” does not answer either question.

A materially different scheme does not cease to be materially different merely because some of its impacts are lower.

9. Requirement 15 requires especially careful examination-

The revised DCO now defines and certifies the new Outline Residential and Visual Amenity Plan and proposes Requirement 15 as a key control upon the extent and location of above-ground development.

The Applicant says that the final RVAP will be prepared at detailed design/discharge stage and must be substantially in accordance with the outline plan.

That mechanism may ultimately prove legally adequate.

But it should not simply be assumed to be so.

The SoS must be satisfied that the **environmental effects and mitigation necessary to make the development acceptable have themselves been sufficiently assessed before consent**, rather than leaving a material part of the assessment exercise to the later discharge of Requirement 15.

The new oRVAP itself shows that individual visual judgments have affected the design and location of operational development.

That makes the extent of any remaining post-consent discretion particularly important.

Mr Dryden intends to return to this issue in a further focused submission.

10. The same concern arises elsewhere in the July package-

The new Skylark Compensation Strategy provides another example.

The final number of displaced skylark territories and the final compensation requirement depend upon a three-year survey baseline and the carrying capacity of the eventual detailed masterplan. The resulting detailed compensation strategy is then to be approved under new Requirement 16.

Again, deferred detail is not inherently unlawful.

The legal question is whether the environmental effects and the outer parameters of the mitigation have been adequately established before consent, rather than the substantive environmental judgment being postponed.

Similar questions arise in relation to ecological corridors, biodiversity and detailed infrastructure design.

11. The SoS must also consider procedural fairness-

The present consultation is plainly relevant to procedural fairness, and Mr Dryden welcomes the opportunity to comment upon the late material.

However, the fact that written representations have been invited does not necessarily answer whether that procedure is sufficient in the circumstances.

In **SoS for Communities and Local Government v Hopkins Developments Ltd [2014] EWCA Civ 470**, the Court of Appeal restated the basic principle that a participant must know the case which he has to meet and have a reasonable opportunity to adduce evidence and make submissions on it. The Court also made clear that the relevant procedural rules are not an exhaustive code of common-law fairness and that what fairness requires is intensely fact-sensitive.

The question here is therefore not simply whether Interested Parties have been permitted to send another written response.

It is whether, given the scale and technical nature of the revised material, the present procedure affords a sufficiently effective opportunity for scrutiny of matters including:

- the relationship between the new masterplan and the examined scheme; the new receptor-specific residential judgments; the LVIA methodology; the environmental envelope; the extent to which changes are actually secured by the DCO; the relationship between the parameter plans and illustrative plans; heritage effects; ecology; and the revised planning balance resulting from the substantial reduction in generation.

Those are the types of matters which the statutory Examination process is specifically designed to interrogate.

12. Rule 19 must also be kept under review-

The Court of Appeal's decision in **R (Dawes) v SoS for Transport [2024] EWCA Civ 560** confirms the importance of the procedural protections in Rule 19 of the Infrastructure Planning (Examination Procedure) Rules 2010 where post-Examination evidence or facts cause the SoS to disagree with the ExA's recommendation or reasoning.

The ExA's recommendation is not presently the subject of this submission.

However, if the SoS proposes to rely upon the July 2026 redesign or new environmental evidence in order to depart from material ExA findings or conclusions, the precise requirements of Rule 19 will need to be addressed.

That is another reason why the July material cannot safely be treated as an undifferentiated body of "further information".

13. The recent Gatwick litigation does not remove the present issue-

Mr Dryden recognises that the courts have recently upheld extensive post-Examination decision-stage processes.

In **Barclay & Anor v SoS for Transport [2026] EWCA Civ 1040**, arising from the Gatwick Northern Runway DCO, the Court of Appeal refused the challenges arising from a decision-stage process which had included further consultation and a "minded to" procedure.

That authority is important and should not be ignored.

But it does not answer the threshold question raised here.

The issue in Botley West is not simply whether a SoS may obtain additional information, consult further or alter controls after an Examination.

The issue is whether the Applicant's July package has crossed the anterior boundary between **resolving outstanding matters concerning the examined project** and **materially changing the project itself after the statutory change procedure has ceased to be available**.

That factual distinction is central.

14. The current National Policy Statement framework does not remove the need for lawful process-

Mr Dryden acknowledges fully the strong national policy support for renewable energy infrastructure.

For Botley West, the relevant statutory NPS framework remains the **2024 suite of Energy NPSs**, because the application was accepted for Examination before the final publication of the 2025 amendments.

Paragraphs 1.6.2- 1.6.3 of EN-1 (2025) expressly preserve the 2024 NPS suite for applications accepted before the 2025 amendments were finally published, while allowing the 2025 NPSs to be treated as potentially important and relevant considerations.

The 2025 EN-3 came into force on 6 January 2026.

Mr Dryden therefore does not suggest that national need for solar generation must be re-proved.

The relevant point is different.

Both the applicable policy framework and the updated policy environment require environmental effects, mitigation, landscape and visual consequences and heritage effects to

be properly assessed and weighed. National need does not displace the statutory requirement that the particular project which is authorised must have been lawfully assessed.

Indeed, the Applicant itself now accepts through its July redesign that further avoidance of landscape, visual, residential, ecological and heritage effects was achievable and necessary notwithstanding the national need case.

15. The August 2026 NPPF is also now an important and relevant consideration-

A new National Planning Policy Framework was published on **17 August 2026**, replacing the December 2024 version.

For an NSIP decision it does not displace the statutory NPS framework, but it is capable of constituting an important and relevant consideration.

The Framework continues to give significant support to renewable and low-carbon energy while requiring adverse impacts, including cumulative landscape and visual impacts, to be addressed appropriately.

Its heritage policies continue to require great weight to be given to the conservation of designated heritage assets and clear and convincing justification for harm, including harm arising through setting. World Heritage Sites are expressly identified as assets of the highest significance and Outstanding Universal Value.

This is particularly relevant because the Applicant's heritage Settings Assessment has itself been revised after Examination to reflect subsequent design refinements.

Mr Dryden will make a further heritage submission, including as to the need for an updated ICOMOS position on the revised scheme.

16. The Planning and Infrastructure Act 2025 does not appear to provide an answer to the present problem-

Mr Dryden has also considered the recent reforms introduced by the **Planning and Infrastructure Act 2025**.

Those reforms make a number of significant changes to the Planning Act regime, including procedural reforms and changes to legal challenges and DCO amendment processes.

However, no provision has been identified which authorises an Applicant, after the statutory Examination has closed, simply to introduce a substantive application change directly at decision stage in place of the change procedure described by PINS.

Significantly, the Planning Inspectorate's own change guidance was updated in August 2026 to reflect key 2025 Act reforms, yet continues expressly to state that only the ExA decides whether a proposed application change may be accepted and examined, and that once Examination closes the ExA cannot accept a further change request.

That makes the proper characterisation of the July material particularly important.

17. Mr Dryden does not at this stage contend that every post-Examination change automatically requires a fresh Examination-

For clarity, Mr Dryden does **not** presently advance the proposition that every modification to a DCO application after Examination is unlawful.

Nor is it submitted that the SoS lacks power to obtain further information or to consult upon it.

Nor is it presently asserted that the Planning Act contains an express provision requiring every material post-Examination issue to be remitted to the identical ExA panel.

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The submission is narrower and, respectfully, stronger:

The SoS must distinguish lawfully between further information concerning the application which was examined and a substantive change to that application.

Where the latter has occurred, the decision-stage information-gathering process should not be used as a substitute for the statutory process through which application changes are accepted, subjected to participation, examined and taken into account in the ExA's recommendation.

18. The SoS is therefore asked to determine the following threshold matters expressly-

Before any decision is taken on the DCO, Mr Dryden respectfully requests that the SoS address expressly:

1. whether the July 2026 package, considered cumulatively, constitutes a change to the application and whether the project remains substantially the same as the project which was examined;
2. if it is said not to amount to a change, the factual and legal basis for that conclusion having regard to the Applicant's own description of substantial post-Examination refinement, further assessment, survey work and removal of approximately 130.23 ha / 219.8 MWp;
3. if it does amount to a change, what provision of the Planning Act 2008 regime permits that change to be accepted after the statutory Examination has closed;
4. whether the ExA's Report and recommendation relate sufficiently to the development now proposed for consent;
5. whether the development now proposed remains demonstrably within the environmental envelope assessed during the Examination;
6. whether all likely significant environmental effects have been adequately assessed before decision, including those relevant to Requirements 15 and 16;

7. whether the July changes and mitigation are legally secured with sufficient certainty by the revised DCO and certified plans;
8. whether Rule 19 is or may become engaged by reliance upon the new material;
9. whether a written decision-stage consultation is sufficient, as a matter of procedural fairness, to test the extensive new evidence and revised design in the particular circumstances of this application; and
10. what lawful procedure is available if the SoS concludes that further examination of the revised development is required.

19. Requested course-

Mr Dryden respectfully submits that it would be premature for the SoS to determine the application on **10 November 2026** without first resolving those matters.

If a lawful procedural mechanism exists by which the materially revised proposal can be subjected to further independent Examination, Mr Dryden submits that it should be used. Given the familiarity of the original Examining Authority with the extensive evidential record, there would be obvious practical merit, if legally and administratively available, in any renewed examination being undertaken by the same ExA or substantially the same panel.

If, however, the present Planning Act regime provides no lawful mechanism by which a substantive post-Examination change of this scale can now be examined, that absence of a mechanism cannot itself justify treating the changed proposal as though it were merely further information.

In that event, the proper consequence would, Mr Dryden submits, be that the SoS should **not grant development consent for a materially revised project which has not undergone the statutory examination process**. The Applicant would remain able to pursue the revised proposal through a fresh application.

20. Judicial review risk-

Mr Dryden raises these matters now precisely so that they may be considered and resolved before the SoS reaches a decision.

On the evidence presently available, a decision granting the DCO without squarely addressing the distinction between the examined application and the July 2026 revised proposal would, in Mr Dryden's respectful submission, expose the decision to a substantial and avoidable risk of challenge under section 118 of the Planning Act 2008.

Potential issues would include, depending upon the reasoning ultimately adopted:

- misdirection as to whether the July package constitutes a substantive application change;
- failure to follow or properly apply the statutory scheme governing examination of an accepted application;
- failure adequately to assess the development proposed for consent under the EIA regime;
- unlawful or excessive deferral of material environmental assessment;
- failure to secure mitigation relied upon in the decision;
- procedural unfairness;
- failure to comply with Rule 19 if engaged;
- failure to take relevant considerations into account;
- and/or irrational reliance upon the ExA's examination and recommendation as sufficient for a materially revised proposal.

Mr Dryden does not advance those matters as predetermined grounds of challenge. The purpose of this submission is to identify the issues **before decision**, so that the SoS has the opportunity to adopt a lawful procedure and address them fully.

21. Further submissions-

The Applicant's late package is extensive and raises a number of detailed technical and legal issues.

Mr Dryden is continuing to review the material and presently intends to make further focused submissions before the consultation deadline concerning, in particular:

- residential visual amenity and Requirement 15;
- the relationship between the revised development, ES Addendum 3 and the assessed Rochdale envelope;
- the legal securing of the revised masterplan and mitigation;
- heritage and the Blenheim Palace World Heritage Site, including the position of Historic England and ICOMOS;
- ecological assessment and deferred mitigation;
- and the revised scale/generating-capacity and viability evidence.

Those submissions will develop, rather than replace, the threshold procedural point made in this letter.

Conclusion-

The essential point is straightforward.

The Applicant itself now says that **after the Examination closed** further assessment, additional survey work and consultation led to substantial redesign, including the removal of approximately **130.23 ha of solar installation and 219.8 MWp of generating capacity**, together with widespread receptor-specific and environmental changes.

The statutory Examination did not examine that July 2026 package.

The current PINS guidance states that it is the ExA which decides whether an application change can be accepted and examined, applying a test of whether the resulting project remains substantially the same, including the cumulative effect of incremental changes. It also confirms that the ExA cannot accept a change request after Examination has closed.

The SoS should therefore not proceed directly from this written consultation to a grant of development consent without first addressing the fundamental question of **what development she is now being asked to consent and whether that development has undergone the examination and environmental assessment required by law.**

Mr Dryden respectfully requests that no decision to grant the DCO be taken unless and until those matters have been resolved.

Yours sincerely,

[Redacted signature]

[Redacted name]; Barrister – Authorised to Conduct Litigation (BSB)
on behalf of **Mr Dustin Dryden**, Interested Party - [Redacted]