

Simon Raywood

From: Karen Squibb-Williams [REDACTED]
Sent: 04 October 2026 17:05
To: Botley West Solar Farm
Subject: EN010147 – Botley West Solar Farm – Final response on behalf of Mr Dustin Dryden (IP No. [REDACTED])
Attachments: EN010147 DD Final Submission 04.10.26.pdf

Dear Simon,

Further to my submission of 6 September, please find attached Mr Dustin Dryden's final submission in response to the Secretary of State's consultation dated 4 September 2026 concerning the Applicant's July material.

I would be grateful if you could please forward the attached submission to the appropriate DESNZ department and officials dealing with the Secretary of State's determination of the Botley West application.

This submission should be read alongside Mr Dryden's 6 September submission. It develops the threshold procedural and public-law issues raised there by addressing in greater detail the environmental assessment, legal securing and post-Examination design issues arising from the Applicant's July package.

I would be grateful if you could confirm safe receipt and onward transmission to DESNZ.

Many thanks, as ever, for your assistance.

Kind regards,

Karen



*Specialising in Forensic Sciences,
Technology, Expert Evidence & Property,
International Judicial Governance.*

KAREN SQUIBB-WILLIAMS
REGISTERED BARRISTER – Authorised to Litigate (BSB)

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The Secretary of State for Energy Security and Net Zero
For the attention of: Mr Ben Million, Head of Planning
Department for Energy Security and Net Zero
3 - 8 Whitehall Place
London, SW1A 2AW

4th October 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**

**FINAL SUBMISSION: ENVIRONMENTAL ASSESSMENT, LEGAL SECURING
AND POST-EXAMINATION DESIGN**

Dear Secretary of State,

I write on behalf of Mr Dustin Dryden further to his submission of 6 September 2026 concerning the Applicant's July 2026 material.

That earlier submission raised the threshold question whether the Applicant's July package is properly characterised as further information concerning the application examined by the Examining Authority ("ExA"), or whether, viewed cumulatively and in substance, it amounts to a material post-Examination change to the application and environmental case now before the Secretary of State.

Mr Dryden asked that no decision granting development consent be made unless and until that question, and its consequences for environmental assessment and lawful process, had been expressly resolved.

This final submission does not repeat that argument. It develops it by examining more closely the relationship between the Applicant's post-Examination design process; ES Addendum 3; the revised Masterplan; the new Landscape Parameter Plan; the outline Residential and Visual Amenity Plan ("oRVAP"); revised Requirement 15; new Requirement 16 and the Outline Skylark Compensation Strategy; the revised ecological and heritage material; and the development which the July draft DCO would actually authorise.

That examination reinforces, rather than diminishes, the concern raised on 6 September.

EXECUTIVE CONCLUSION

The Applicant's July material records a continuing process of environmental assessment, field survey, consultation and physical redesign after the statutory Examination had closed.

The resulting changes are substantial. The Applicant itself records approximately 130.23 hectares of solar installation area and 219.8 MWp of generating capacity removed, together with receptor-specific panel removal and offsets, relocation of infrastructure, new ecological corridors, aviation-driven changes, revised heritage assessment and materially revised DCO controls.

Source: EN010147/APP/21.7 Masterplan Development & Rationale, paras 1.10 - 1.14 and Post-Examination Masterplan Changes Table (July 2026).

The central issue is not that those changes may reduce environmental effects. Many plainly do. The issue is that the Applicant now relies upon those post-Examination changes as part of the case that the development is environmentally acceptable, while its own documents also demonstrate that significant elements of the design were still being evaluated after Examination; environmental assessment and design continued iteratively thereafter; some environmental parameters remain to be determined at detailed-design or post-consent stage; new Requirements 15 and 16 are relied upon to control matters which were not in their present form before the ExA; and the ExA has never examined the final July combination of design, assessment and securing mechanisms upon which the Secretary of State is now being invited to grant consent.

The question is therefore not simply whether the July proposal is smaller than the scheme examined by the ExA. It is whether the development which would actually be authorised by the DCO has itself been subjected to the environmental assessment and statutory scrutiny required by law, and whether the DCO confines that development to the assumptions, parameters and mitigation upon which the Applicant's July environmental conclusions depend.

A reduction in environmental harm is plainly desirable. But "betterment" is not itself an answer to those anterior procedural and EIA questions.

1. Matters which should be resolved before any recommendation to grant

Mr Dryden respectfully submits that, before officials recommend that the Secretary of State grant the DCO, they should be satisfied - and any decision to grant should explain - at least the following matters:

- (1) whether the Applicant's July development is properly characterised as further information about the application examined by the ExA, rather than a substantive post-Examination change to that application;
- (2) whether the precise development capable of being authorised by the final DCO remains within the environmental envelope actually assessed;
- (3) whether the approximately 130.23ha/219.8MWp reduction relied upon in the July environmental case is identifiable in, and adequately secured by, the operative DCO documents;
- (4) whether Requirement 15 merely controls implementation of an environmental judgment already completed before consent, or instead allows substantive residential and visual assessment and consequent design decisions to be completed after consent;
- (5) whether the still-to-be-determined location of Tier B bat corridors remains within a defined and assessed worst-case environmental envelope;
- (6) whether sufficient information presently exists to identify the likely skylark impact and establish the adequacy and deliverability of the compensation which Requirement 16 leaves for subsequent determination;
- (7) whether the revised heritage assessment provides a sufficiently complete and tested basis upon which to determine effects of the July development upon the Blenheim Palace World Heritage Site ("WHS"), including its Outstanding Universal Value ("OUV") and setting;
- (8) whether the ExA's findings and recommendation can safely provide the statutory examination foundation for a development and environmental case which continued to evolve materially after the Examination had ended; and
- (9) if one or more of those matters cannot presently be resolved, whether the application should undergo further independent examination by whatever lawful mechanism is available rather than being determined on 10 November 2026.

These are not requests for the Secretary of State to repeat the entire Examination. They concern the legal and evidential foundation of the particular development now proposed for consent.

2. The Applicant's own chronology demonstrates continuing post-Examination design

The starting point remains the Applicant's own evidence. The Masterplan Development & Rationale states expressly that, following the close of Examination, "a number of further changes have been made to the masterplan" and that these changes were informed by further landscape and visual assessment, additional site

survey work and ongoing consultation with the Oxfordshire Host Authorities (“OHA”). The Applicant describes the resulting reduction in operational development as “substantial” and quantifies the reduction in solar installation area as 130.23ha and generating capacity as approximately 219.8MWp.

Source: EN010147/APP/21.7 Masterplan Development & Rationale, paras 1.10 - 1.14.

ES Addendum 3 provides an equally important chronology. It records that ES Addendum 1 accompanied a formal change request during Examination and that further updates were made at Deadline 7. ES Addendum 2 was then submitted on 9 June 2026, after Examination. Crucially, the Applicant records that at that date some design elements - including the residential-property buffer - were still being evaluated and were presented as a range. Only subsequently were the residential buffers and areas of panel removal clarified on a case-by-case basis. ES Addendum 3 was then produced to address that further design evolution and expressly replaced ES Addendum 2.

Source: EN010147/APP/21.2 ES Addendum 3, paras 1.3.2 - 1.3.5.

The joint Applicant/OHA Position Statement supplies further detail. It records continuing meetings, correspondence, revised masterplans and revised Requirement 15 drafting throughout June and July, including an emerging oRVAP on 6 July, presentation of the proposed final R15/masterplan approach on 7 July, draft documents on 9 July and a revised DCO on 14 July.

Source: EN010147/APP/21.5 Position Statement between Applicant and Oxfordshire Host Authorities, engagement chronology.

This matters because it demonstrates that the July package was not merely the final documentation of a design which the ExA had already examined. Assessment, survey, consultation and design were continuing together after Examination.

3. That distinction is important under the current PINS change procedure

Mr Dryden’s 6 September submission drew attention to the Planning Inspectorate’s current guidance on changes to an accepted application. That guidance, most recently updated on 18 August 2026, states that “Only the Examining Authority can decide whether a proposed change to an application can be accepted and examined.” It further states that the ExA considers whether the changed project remains “substantially the same”, including where relevant the combined impact of a series of incremental changes. If the effect is so substantial as to constitute a

different project, identified options include withdrawal/fresh application, a lesser change, or proceeding with the project originally applied for.

Planning Inspectorate, "Nationally Significant Infrastructure Projects: changes to an application after it has been accepted for examination", updated 18 August 2026.

The same guidance recognises that new or revised information does not necessarily constitute a project change. But during Examination it is the ExA which determines whether new information does in fact change the application. Most importantly for present purposes, once Examination has closed the ExA cannot accept further representations or submissions, including a request by the Applicant to change the application.

The Secretary of State plainly has power to seek further information after Examination. Mr Dryden has never suggested otherwise. But there remains a legally meaningful distinction between additional information about the application which was examined and a substantive change to the application itself after the statutory process for accepting and examining changes has ceased to be available.

4. The Government's decision-stage guidance reinforces the concern

Current Government guidance on the Planning Act decision-making stage, published on 3 July 2026, states that the expectation is that there will be no outstanding and unresolved matters requiring the decision-making department to request further information after Examination. Where requests are unavoidable, the expectation is that they will concern "specific, limited matters". The guidance separately contemplates a "minded to" process where broad issues remain outstanding and extensive additional information is required.

DESNZ / Government, Planning Act 2008: Guidance on the decision-making stage of an application, published 3 July 2026.

The July package comprises substantial physical panel removal, a materially revised Masterplan, a new Landscape Parameter Plan, receptor-specific landscape/residential redesign, a new oRVAP, materially revised Requirement 15, new Requirement 16, revised ecological arrangements, revised heritage assessment and ES Addendum 3 replacing ES Addendum 2. That is a long way from the paradigm of a targeted request on a "specific, limited matter".

5. Environmental assessment supplies a separate legal safeguard

Botley West is EIA development. Regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 provides that the Secretary of State must not grant development consent unless an EIA has been carried out in

respect of the application. Regulation 21 requires the Secretary of State to examine the environmental information, reach a reasoned conclusion on significant environmental effects, undertake supplementary examination where appropriate, integrate that conclusion into the decision and ensure that conclusion is up to date at the time of decision.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, SI 2017/572, regulations 4 and 21.

This is not satisfied merely by establishing that additional environmental information has been consulted upon. The reasoned conclusion must concern the development actually proposed for authorisation.

6. The Rochdale Envelope does not provide an automatic answer

The Applicant's broad answer appears to be that the original ES assessed a maximum or worst-case development envelope and that the July scheme is smaller. Mr Dryden accepts that this is a relevant argument. He does not suggest that every reduction in development requires an entirely new EIA, nor that detailed design cannot lawfully be deferred within an adequately assessed envelope.

But current PINS EIA guidance explains the safeguards which make the Rochdale approach lawful: assessment should use a cautious worst case; sufficient information must exist to assess likely significant effects; mitigation must address that worst case; flexibility must not become an excuse for an inadequate project description; and maximum design parameters should be clearly defined and correspond with the DCO and associated control documents.

Planning Inspectorate, NSIP pre-application advice on environmental impact assessment: use of the Rochdale Envelope / design parameters.

That produces a central question: were the July measures merely optional environmental improvements within an already acceptable assessed scheme, or were some of them avoidance and mitigation measures required to address environmental effects subsequently identified or refined? The Applicant's own evidence demonstrates that at least some fall into the latter category. Panels were removed or development relocated because of residential visual effects, landscape character, bat commuting and foraging corridors, aviation safety and archaeology/heritage considerations.

That approach is consistent with the established EIA authorities. As summarised in R (Substation Action Save East Suffolk Ltd) v Secretary of State for BEIS [2022] EWHC 3177 (Admin), the details of a project may be deferred provided that the likely

significant effects are evaluated at the **outset** by adequate environmental information encompassing both the relevant parameters and the flexibility permitted by the consent, and the ambit of the consent is defined by those parameters.

7. Requirement 15 illustrates the problem particularly clearly

The July draft DCO introduces a materially revised Requirement 15. It prevents commencement until a residential and visual amenity plan has been approved by the relevant planning authority. That plan must be substantially in accordance with the oRVAP. It must specify and justify minimum distances between defined works and adjacent residential title boundaries. Ordinarily those distances must be not less than 100m and not more than 250m, subject to the provision concerning written agreements with affected residential owners.

Draft DCO Rev 11, Schedule 2, Requirement 15.

Mr Dryden accepts that this is a meaningful additional control. The Landscape Parameter Plan also identifies spatial extents for specified works subject to Requirement 15. It would therefore be wrong to suggest that the Applicant's July residential redesign is wholly unsecured. That is not Mr Dryden's submission.

The concern arises from the relationship between that control and the environmental assessment which precedes consent.

8. The oRVAP was itself part of the post-Examination design process

The Applicant's July covering material says the oRVAP was informed by detailed desk-based analysis and fieldwork providing site-specific design responses to individual residential receptors. The resulting design response was tailored to characteristics including slope, topography, aspect and orientation.

Applicant response cover letter dated 16 July 2026, Landscape Update.

As explained in Mr Dryden's 6 September submission, the oRVAP identifies 57 properties or property groups and states that the assessment was undertaken iteratively alongside refinement of the Proposed Development. Its findings informed increased offsets, reconfiguration and retained landscape features.

That is important. It demonstrates that assessment was not simply being used to confirm the acceptability of a fixed examined design. The assessment itself helped determine where development should and should not remain. That occurred after Examination.

9. Winter assessment exposes the distinction between implementation and deferred environmental judgment

The Applicant's July covering letter makes a further important statement. It explains that the oRVAP was prepared while vegetation was in leaf, and that the flexibility retained through Requirement 15 allows detailed design to respond to findings which may arise during winter conditions. Further detail is to be supplied through the subsequent detailed Residential Visual Amenity Plan.

Applicant response cover letter dated 16 July 2026, Landscape Update.

Again, the mere existence of post-consent detail is not objectionable. The question is what function that later process performs. If winter assessment merely verifies implementation of mitigation whose environmental consequences have already been assessed within a defined worst-case envelope, conventional detailed-design control may be sufficient. But if winter assessment can identify materially different residential effects and consequently determine where operational development may acceptably be located, the substantive environmental/design judgment has not necessarily been completed before consent.

The Secretary of State is therefore respectfully requested to answer whether the winter-condition exercise is merely verification of mitigation already environmentally assessed, or whether it can alter the location or extent of operational development because the residential/visual environmental judgment remains incomplete. If the latter, the decision should explain why it is lawful for that substantive environmental assessment to be completed after the DCO has been granted.

10. "Substantially in accordance" does not itself answer that question

The Applicant relies upon the requirement that the eventual RVAP be "substantially in accordance" with the oRVAP. That provides an important constraint. But it does not answer the prior question. The Secretary of State still needs to identify the environmental envelope within which post-consent changes may occur and satisfy herself that the likely significant effects throughout that envelope have been assessed; the oRVAP and Parameter Plan impose sufficiently definite outer limits; the detailed RVAP cannot permit development outside those assessed limits; and the mitigation relied upon to reach the environmental conclusion is enforceably secured.

The statutory question is not whether a future planning authority can scrutinise the design carefully. It is whether the Secretary of State has sufficient environmental information now to grant the DCO.

11. The Host Authorities' agreement should not be overstated

The joint Applicant/OHA Position Statement records agreement that the Requirement 15 design represents a landscape and visual betterment over the development proposed at the end of Examination.

EN010147/APP/21.5 Position Statement between Applicant and OHA.

That is relevant and Mr Dryden does not dispute it. But it is not equivalent to agreement that the July project is procedurally the same application as the examined project; that its environmental effects have been comprehensively assessed; that Requirement 15 lawfully resolves every residential visual issue; or that further examination is unnecessary.

The OHA position retained concerns about Requirement 15 and LVIA methodology, considered further reductions necessary, and described the revisions as a "significant amendment to the design of the scheme". The OHA's acceptance of environmental betterment should therefore be given its proper - but limited - meaning.

12. The claimed 130.23ha / 219.8MWp reduction should be reconciled with ES Addendum 3

The Applicant's Masterplan Development & Rationale gives the following figures:

Post-Examination design change	Removed area	Removed capacity
100m residential buffer	31.82ha	53.7MWp
New bat corridor	34.91ha	58.9MWp
Oxford Airport removals	1.64ha	2.8MWp
Further 100–250m changes	61.86ha	104.4MWp
Total	130.23ha	219.8MWp

Source: EN010147/APP/21.7 Masterplan Development & Rationale, Post-Examination Masterplan Changes Table.

ES Addendum 3 describes the refinements differently. It identifies approximately 6.5ha at Sansom's Platt; 38.6ha for bat corridors; 1.3ha at Oxford Airport; 31.9ha for residential buffers; and 66.9ha through further landscape and visual panel removal.

Source: EN010147/APP/21.2 ES Addendum 3, Table 2.1.

Mr Dryden does not suggest that these differing figures necessarily disclose an error. There may be overlap between categories or differences in calculation methodology. But the documents reviewed do not transparently reconcile them. Before relying materially upon the 130.23ha/219.8MWp reduction in the planning balance, the Secretary of State is respectfully requested to satisfy herself how the total has been derived; why the individual figures differ; which physical areas correspond with the claimed reduction; and whether those removals are secured against subsequent reintroduction of development.

13. Bat corridors provide a second example of remaining design flexibility

ES Addendum 3 identifies a three-tier bat-corridor system. Tier A provides 25m corridors on either side of identified key flightlines/features. Tier C provides 5m corridors. For Tier B, however, the Applicant states that locations are “indicative at this stage”, with final locations to be agreed during detailed design. Tier B requires a 10m corridor on either side of the relevant feature. ES Addendum 3 says the bat-corridor refinement removes approximately 38.6ha of solar installation area.

EN010147/APP/21.2 ES Addendum 3, paras 2.4.1 - 2.4.3.

There is nothing inherently unlawful in fixing final locations at detailed-design stage. But before consent the Secretary of State should be satisfied that every location in which a Tier B corridor may ultimately be fixed falls within the worst-case environmental envelope assessed in the ES and ES Addendum 3, and that the DCO/oLEMP constrains the subsequent choice accordingly. If that is established, the matter can properly be treated as detailed implementation. If it is not, an environmental parameter remains to be determined after consent.

14. Requirement 16 raises a more substantial issue

The new Requirement 16 concerns skylark compensation. It prevents commencement of relevant Work No.1 development until a skylark compensation strategy has been approved by the Secretary of State after consultation with the relevant statutory nature conservation body and local planning authority. The strategy must be substantially in accordance with the Outline Skylark Compensation Strategy and include compensation location(s), ecological suitability and capacity, landowner agreements, implementation arrangements, management and maintenance, monitoring, success criteria and adaptive management.

Draft DCO Rev 11, Schedule 2, Requirement 16.

Those are meaningful controls. The difficulty is that the underlying ecological impact and compensation requirement were not yet fully established when the July strategy was produced.

15. The skylark baseline and compensation quantum were still unknown

The Outline Skylark Compensation Strategy records 72 skylark pairs/territories in 2023 and 228 in 2024. Because of that substantial inter-annual variation, a third year of survey was agreed for 2026. Those surveys were still ongoing when the July strategy was prepared. The three-year average would subsequently determine the baseline; carrying capacity would depend upon the final masterplan; and the number of displaced territories requiring off-site compensation would be calculated only thereafter.

EN010147/APP/20.4 Outline Skylark Compensation Strategy Rev 1, sections 1 - 3.

The sequence is therefore, in substance: future survey result → baseline population → final-masterplan carrying capacity → displaced territories → compensation requirement → compensation location/capacity. That goes beyond leaving only minor implementation detail to a requirement. At the July stage, the final magnitude of the ecological impact requiring compensation had apparently not yet been established. Nor had the final compensatory provision.

16. The Secretary of State should resolve the Requirement 16 / EIA question before consent

The relevant question is not whether Requirement 16 contains a process capable of producing a compensation scheme. It plainly does. The question is whether, before granting the DCO, the Secretary of State can reach the reasoned environmental conclusion required by the EIA Regulations where the baseline, displacement figure, compensation quantum and final compensation land remain to be determined through that later process.

The Secretary of State is therefore respectfully requested to establish before determination: the completed 2026 survey result; the resulting three-year baseline; the assumed carrying capacity of the development assessed for the purposes of the decision; the resulting displacement figure; the scale of compensation required; whether suitable compensation land of sufficient capacity is demonstrably available; and whether the DCO secures that compensation before the relevant environmental effect occurs.

If those matters are now known, there is no obvious reason why they should not be put before the Secretary of State and Interested Parties. If they remain unknown, the

decision should explain why their deferral is nevertheless compatible with the EIA Regulations and the assessed Rochdale envelope.

17. The contrast with substation flexibility is instructive

ES Addendum 3 records that the Applicant may ultimately use fewer than six project substations. But it expressly says there is insufficient design certainty to commit to that reduction and therefore consent continues to be sought for up to six substations, which the Applicant states is the configuration environmentally assessed.

EN010147/APP/21.2 ES Addendum 3, paras 2.2.5 - 2.2.6.

Mr Dryden does not raise the same objection to that arrangement. It illustrates the conventional Rochdale approach: identify the maximum development which may occur, assess that maximum, and allow detailed design to select a lesser configuration within it. The Secretary of State should require equivalent clarity in relation to the residential, bat and skylark parameters.

18. Heritage should be considered on the July development, not simply the examined development

Heritage provides a further example of the same underlying issue. The Applicant has revised its heritage Settings Assessment to take account of later design refinements. That fact is itself important: the heritage case before the Secretary of State is not simply the heritage case which was before the ExA. The revised Settings Assessment records a substantial reduction in solar-array land compared with the earlier scheme. Those reductions may plainly reduce some heritage effects. Mr Dryden does not contend otherwise.

But the statutory task is to assess the particular development proposed for authorisation, including its effects upon the setting and Outstanding Universal Value of the Blenheim Palace World Heritage Site.

19. Historic England and ICOMOS evidence makes independent scrutiny especially important

During Examination, Historic England raised substantive concerns about parts of the proposed development and its relationship with the Blenheim Palace WHS and other heritage assets. ICOMOS-UK also raised concerns regarding effects upon the WHS and the need for adequate landscape breathing space and removal of harmful development.

Historic England Written Representation; ICOMOS-UK Cultural Landscapes and Historic Gardens Committee Written Representation, Botley West Examination Library.

The importance of that evidence is not that it automatically dictates refusal. It is that heritage effects - particularly effects upon the setting and OUV of a World Heritage Site - were among the matters which drove debate over the configuration and extent of the project. The Applicant has subsequently revised that configuration materially. The Secretary of State should therefore be satisfied that the heritage conclusions relied upon for the final July scheme have themselves been adequately scrutinised, rather than assuming that a reduction in development automatically resolves every issue previously raised.

Mr Dryden also notes that the Applicant's July covering material recorded Historic England as still considering the revised heritage material at that stage. Accordingly, any final position subsequently reached by Historic England on the July scheme should plainly be taken into account before determination.

20. Absence of an updated ICOMOS assessment should be treated carefully

Mr Dryden has not identified within the Applicant's July package an updated ICOMOS assessment specifically addressing the final revised July development. He does not assert that no such assessment exists. The point is narrower. If no updated ICOMOS assessment of the final July scheme is before the Secretary of State, she should consider whether the heritage evidence is nevertheless sufficient to reach a robust conclusion upon effects on the WHS and its OUV, particularly given that the Applicant itself considered the design changes significant enough to revise its Settings Assessment.

This is a matter of evidential completeness rather than an assertion that ICOMOS possesses a statutory veto.

21. "Betterment" cannot replace the statutory analysis

A recurring theme in the Applicant's July material is that the changes are "betterments". That may be correct. The OHA itself accepts betterment in landscape and visual terms.

But three propositions should not be conflated: first, a revised design produces less environmental harm than an earlier design; second, that revised design remains the same application, in substance, as the development which underwent Examination; and third, the environmental effects of the development actually authorised by the

final DCO have been adequately assessed and all mitigation upon which that conclusion depends is legally secured.

The first proposition does not logically establish the second or third. That distinction is central to this submission.

22. The ExA's recommendation remains important - but its evidential foundation must be considered

Mr Dryden does not suggest that the ExA's report ceases to have value merely because later information has been received. Nor is the Secretary of State bound to reject every post-Examination refinement. But the statutory architecture matters. The ExA examines the application, tests evidence, reaches findings and conclusions and makes a recommendation. Current Government guidance emphasises that the recommendation should be clear, comprehensive and unambiguous and that the expectation is that unresolved matters requiring further information should not remain at decision stage.

Here, significant assessment and design work occurred after the ExA had completed that function. The Secretary of State therefore needs to consider whether the ExA's conclusions can safely be transposed to the final July development - or whether the differences concern matters sufficiently substantial to require further examination.

23. Written consultation is valuable but is not necessarily equivalent to Examination

Mr Dryden welcomes the Secretary of State's decision to consult Interested Parties on the July material. The consultation provides an important opportunity to make the present representations and satisfies an important procedural safeguard in relation to additional environmental information. But consultation and Examination perform different functions.

The statutory Examination is inquisitorial. It enables the ExA to ask questions, test evidence, identify inconsistencies, require further information, conduct hearings where appropriate and ultimately make independent findings and recommendations. The present consultation invites written responses to a very substantial body of technical material after that function has ended.

That may be sufficient for genuinely discrete additional information. The more the July material is found to constitute substantive redesign and new environmental judgment, however, the more difficult it becomes to treat written decision-stage consultation as a complete substitute for independent examination.

24. Procedural fairness remains fact-sensitive

Mr Dryden does not contend that common-law fairness always requires an oral hearing. In *Secretary of State for Communities and Local Government v Hopkins Developments Ltd* [2014] EWCA Civ 470, the Court of Appeal emphasised that a participant must know the case to be met and have a reasonable opportunity to adduce evidence and make submissions, while recognising that fairness is intensely dependent upon context.

Secretary of State for Communities and Local Government v Hopkins Developments Ltd [2014] EWCA Civ 470.

The present concern is therefore fact-specific. The July material raises technical questions concerning landscape methodology, property-specific residential judgments, winter conditions, DCO securing, environmental-envelope assumptions, ecological baselines and compensation, heritage effects and the relationship between the revised design and the examined environmental case. The Secretary of State should consider whether written representations alone provide a sufficiently effective process for resolving those matters if they are material to the decision.

25. Mr Dryden recognises the significance of the Gatwick litigation

Mr Dryden also recognises that recent authority demonstrates that substantial decision-stage processes can lawfully be used to resolve outstanding matters after an NSIP Examination. *Barclay v Secretary of State for Transport* [2026] EWCA Civ 1040, concerning the Gatwick Northern Runway project, is an important recent example.

Barclay & Anor v Secretary of State for Transport [2026] EWCA Civ 1040.

That authority is therefore not ignored. The distinction which Mr Dryden respectfully asks the Secretary of State to confront is factual and anterior: is the July Botley West package resolving outstanding matters concerning the development which was examined, or did assessment and consultation after Examination produce a materially changed development and environmental case which the ExA never examined? If the former, Gatwick materially assists the Applicant. If the latter, the problem is different.

26. Rule 19 should remain under review

The ExA's recommendation is not presently available to Interested Parties. Mr Dryden therefore cannot know whether the Secretary of State's eventual conclusion will differ from the ExA's recommendation, or whether post-Examination evidence will cause such a difference.

The Court of Appeal in *R (Dawes) v Secretary of State for Transport* [2024] EWCA Civ 560 confirmed that Rule 19 is directed to procedural fairness where new evidence or new facts not considered by the ExA cause the Secretary of State to be disposed to disagree with its recommendation. The new evidence need not be the sole cause, but it must be causative of the disagreement.

R (Dawes) v Secretary of State for Transport [2024] EWCA Civ 560; *Infrastructure Planning (Examination Procedure) Rules 2010, rule 19.*

Accordingly, if the July evidence contributes to a departure from the ExA's recommendation in circumstances engaging Rule 19, the procedural requirements of that Rule must be observed. Mr Dryden expressly reserves his position in that respect.

27. National need does not answer these questions

Mr Dryden repeats his recognition of the very substantial national policy support for renewable energy generation and for solar development in particular. This submission does not seek to reopen the generic need case. The issue is whether the particular project authorised has been lawfully examined, environmentally assessed and adequately controlled. National need is an important consideration in the planning balance. It does not displace the requirements of the Planning Act 2008, the EIA Regulations or procedural fairness.

28. The cumulative picture should be considered, rather than each change in isolation

No single issue identified above should be considered artificially in isolation. The relevant sequence is cumulative:

- Examination closes;
- the Secretary of State seeks further information;
- further landscape and visual assessment is undertaken;
- additional field survey occurs;
- further OHA consultation takes place;
- physical design changes are developed;
- ES Addendum 2 is produced while some design remains under evaluation;
- case-by-case residential design continues;
- the Masterplan changes further;
- new oRVAP and Landscape Parameter Plan are produced;

- Requirement 15 is materially revised;
- Requirement 16 is introduced;
- ecological and heritage material is revised;
- ES Addendum 3 replaces ES Addendum 2;
- further environmental/detail decisions remain for subsequent discharge.

The Applicant's documents should be considered in that cumulative context. That is also consistent with current PINS change guidance, which expressly recognises the relevance of the combined impact of incremental project changes when considering whether a project remains substantially the same.

29. Mr Dryden's submission is deliberately narrower than an assertion that the Secretary of State lacks jurisdiction

For clarity, Mr Dryden does not submit that every post-Examination amendment is unlawful; that the Secretary of State cannot receive further information; that any DCO which differs from the draft before the ExA is automatically unlawful; that detailed design can never lawfully be deferred; that environmental betterments are legally objectionable; or that the Planning Act expressly requires the Secretary of State to reconvene the original ExA.

Those propositions would overstate the law. The submission is instead that the Secretary of State must determine what the July package is in substance, whether the development proposed for authorisation has been adequately assessed, and whether material environmental judgment has been impermissibly deferred.

30. The resulting public-law risk is avoidable

The concern raised by these representations is not technical for its own sake. If development consent were granted without resolving the matters identified above, a subsequent challenge could potentially raise, depending upon the reasoning in the eventual decision:

- mischaracterisation of a substantive post-Examination application change as mere further information;
- failure to ensure that EIA has been carried out in respect of the development actually authorised;
- failure to define or assess an adequate worst-case/Rochdale envelope;
- unlawful or excessive deferral of substantive environmental assessment;

- failure adequately to secure mitigation upon which the environmental conclusion depends;
- failure to take relevant considerations or material evidence into account;
- procedural unfairness;
- irrational reliance upon the ExA's conclusions in relation to a materially evolved project; and
- where applicable, non-compliance with Rule 19.

Mr Dryden does not assert that each such ground is already established. Their ultimate viability would depend upon the DCO made, the Secretary of State's reasons and the evidence upon which the decision is based. The point is that the present process offers the opportunity to avoid those risks before a decision is made.

31. Course respectfully requested

Mr Dryden therefore respectfully requests that the Secretary of State does not grant development consent on 10 November 2026 unless and until the matters identified in this submission and the submission of 6 September have been expressly resolved.

First, whether the July development remains, cumulatively and in substance, substantially the same application as that which underwent Examination.

Second, whether the development capable of being authorised by the final DCO lies wholly within an adequately assessed environmental envelope.

Third, whether the physical reductions and environmental mitigation upon which the July conclusions depend are sufficiently and unambiguously secured.

Fourth, whether Requirements 15 and 16 merely govern detailed implementation of environmental conclusions already reached, or defer substantive environmental judgments until after consent.

Fifth, whether the completed evidential basis is sufficient in relation to residential visual amenity, ecology/skylark compensation and heritage/WHs effects.

Sixth, whether the ExA's report remains an adequate independent examination foundation for the materially evolved July design and environmental case.

If those matters can properly be resolved on the existing record, the Secretary of State should explain clearly how. If they cannot, the proper response should not be to assume that the fact that the July scheme is environmentally "better" cures the procedural and environmental-assessment difficulty.

32. Further examination

If the Secretary of State concludes that the July development or important aspects of its environmental case require independent examination, Mr Dryden respectfully submits that the Secretary of State should not determine the application on the presently proposed timetable. Any lawful mechanism available to secure appropriate further examination should instead be considered.

If legally possible and administratively practicable, there would be obvious advantages in involving the same ExA, or substantially the same panel, because of its extensive familiarity with the application and Examination evidence. Mr Dryden does not contend that he has identified an express statutory entitlement to that particular procedure.

If no lawful mechanism exists by which a materially changed post-Examination project can now receive the examination required, that procedural difficulty cannot sensibly be resolved by simply treating substantive changes as “further information”. If the development is no longer substantially the same project and cannot lawfully be examined within the existing application process, the consequence may instead be that development consent should not be granted through the present application, leaving the Applicant to pursue whatever further statutory process is appropriate.

33. Conclusion

The Applicant has plainly made considerable efforts since Examination to reduce environmental effects. Mr Dryden does not seek to diminish those efforts. Indeed, they are important precisely because they demonstrate the extent to which the project continued to evolve.

The Applicant’s own evidence establishes that further assessment, field survey and stakeholder consultation after Examination resulted in substantial physical redesign; that ES Addendum 2 was produced while design elements were still being evaluated; that further case-by-case design work followed; that ES Addendum 3 then replaced it; and that new or materially revised control mechanisms were introduced to secure the resulting development.

The legal question is therefore not whether the Secretary of State prefers the July scheme to the earlier scheme. Nor is it whether reductions in environmental harm are welcome.

Whether the development which the Secretary of State is now being asked to authorise is, in substance, the development which underwent statutory Examination; whether its likely significant environmental

effects have been adequately assessed before consent; and whether the DCO securely confines the authorised development to the parameters and mitigation upon which that environmental assessment depends.

Those questions go to the integrity of the statutory decision-making process. Mr Dryden respectfully submits that they should be answered expressly before any development consent is granted.

Yours sincerely



Barrister - Authorised to Conduct Litigation (BSB)

on behalf of Mr Dustin Dryden, Interested Party - 