

# Legal Addendum: Statutory and Guidance Breaches Arising from the Deadline 3 Submissions for One Earth Solar Farm NSIP (EN010159)

## Section 1: Introduction, Statutory Mandate, and Standard of Review

### 1.1 Legal Purpose of the Addendum and Integration with D3 Technical Findings

This Addendum provides a formal legal evaluation for the Examining Authority (ExA) and the Secretary of State (SoS), translating the findings of the Deadline 3 (D3) Technical Review into concrete instances of non-compliance with the legal and procedural requirements governing Nationally Significant Infrastructure Projects (NSIPs). The core legal argument is that the Applicant's pervasive pattern of non-constructive engagement, cross-referencing, and substantive deferral constitutes a material failure to provide the *sufficiency of information* necessary under the Planning Act 2008 (PA 2008) to enable a sound and legally defensible recommendation on the Development Consent Order (DCO) application. The report demonstrates that the Applicant's strategy of "procedural minimalism" fundamentally compromises the integrity of the Examination.

### 1.2 Statutory Framework for Examination Sufficiency

The authority of the Secretary of State to grant a DCO is established by the PA 2008, and the decision must be made in accordance with relevant National Policy Statements (NPSs) and legislation. The Examination stage is specifically designed to test whether the application evidence base is robust enough to meet the mandatory policy tests set out in the NPSs. Where the ExA cannot fully test the evidence due to persistent non-delivery, the legal basis for the SoS decision is intrinsically compromised. For the One Earth Solar Farm, the persistent deference of critical technical matters, such as specific residential receptor visual analysis and updated site-specific flood modelling, prevents the ExA from confirming compliance with the NPS requirement to mitigate adverse effects adequately. This creates a direct and material legal risk that the application remains unsubstantiated against core policy requirements.

### 1.3 NSIP Standards: The Duty of Constructive Engagement and Reduced Evidential Weight

The legal expectation for NSIPs extends beyond mere ticking of procedural boxes; it mandates that Applicants actively "support constructive engagement" throughout the process. This duty is essential for the ExA to conduct an "adequate examination" of all significant issues. The D3 review consistently characterizes the Applicant's engagement tone as "defensive, formal, and, at points, evasive" (Section 2.3 of the primary report). This documented non-constructive approach permits the ExA to afford **reduced evidential weight** to the Applicant's evidence and claims, including their assertions of policy compliance or sufficiency of mitigation. The cumulative effect of a defensive tone, coupled with procedural delay, provides concrete evidence that the Applicant is prioritizing rebuttal and liability protection over problem resolution. The causal relationship established here is that evasive

formality leads directly to a failure to engage constructively, which, in turn, legally justifies the ExA in affording reduced evidential weight to claims, ultimately rendering the evidence base insufficient for a lawful determination under the PA 2008.

#### **1.4 The Evidential Standard: The Robustness Principle**

For a project of national significance, the evidence base must meet a high standard of resilience and demonstrate a high degree of confidence in projected outcomes, environmental impact mitigation, and feasibility. The D3 findings show that reliance on outdated models (hydrology) or generic datasets (Best and Most Versatile, BMV, land) violates this principle (Sections 3.2, 4.2, 14 of the primary report). The lack of demonstrable technical rigor and willingness to incorporate new science or local knowledge undermines the integrity of the entire environmental assessment, making it impossible for the ExA to fulfill its mandate to test the application's legal and factual foundations under the PA 2008.

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### **Section 2: Statutory Breach of Examination Procedure Rules: Failure to Facilitate Examination**

The Applicant's D3 submissions demonstrate a pattern of systemic procedural failures by actively impeding the timely and comprehensive examination mandated by the Infrastructure Planning (Examination Procedure) Rules 2010.

#### **2.1 Non-Compliance with Rule 17 Requests: Impediment to ExA Authority**

Rule 17 grants the ExA a non-discretionary power to request further information at any point before the completion of the examination. Full and prompt compliance with these requests is essential for the examination to maintain its integrity. However, the Rule 17 requests regarding Cumulative Impact Assessment (CIA) granularity and Landscape and Visual Impact Assessment (LVIA) viewpoints were met with a status of "partial" or actively deferred to Deadline 4 (Sections 1.2, 1.3 of the primary report). For instance, the Applicant formally agreed to revisit LVIA viewpoints but failed to add new receptor-specific locations unless "deemed required," effectively maintaining their prior position while appearing to comply. By consistently deferring substantive responses and using qualified language such as "to be confirmed" (Section 1.3 of the primary report), the Applicant provides only the minimum formal documentation necessary to avoid outright non-compliance. This conduct falls short of the procedural safeguard established by Rule 17, which requires bespoke clarification and adaptation, and directly obstructs the ExA's ability to conduct a comprehensive and timely investigation.

#### **2.2 Substantive vs. Formalistic Compliance Under Rule 8**

While the Applicant achieved formal compliance with the procedural requirements of the Rule 8 letter by providing revision-numbered control documents (Section 7.1 of the primary report), the substance embedded within those updates remains critically deficient. The prevailing strategy throughout D3 involved providing full responses only to issues considered "new" and systematically cross-referencing earlier submissions for all previously raised concerns (Section 2.2 of the primary report). The assertion that "our position remains as previously stated" (Section 2.2 of the primary report) when faced with reiterated, detailed

technical critiques from Interested Parties (IPs) violates the requirement for iterative and cumulative engagement. This procedural minimalism frustrates the principle of procedural fairness enshrined in the Examination Procedure Rules, leaving large segments of the stakeholder evidence base unaddressed at a crucial juncture of the examination (Section 2.3 of the primary report).

### **2.3 Legal Deficiencies in Monitoring and Tracking Commitments**

Effective management and future enforceability of the DCO are dependent upon transparent and accountable tracking of all commitments and mitigation measures. Best practice in the NSIP regime dictates that commitments registers should be proactively iterated and, ideally, co-produced collaboratively with stakeholders (Section 7.2 of the primary report). A key finding of the D3 review is that the Applicant failed to demonstrate this collaborative iteration (Section 7.2 of the primary report). Although formal Evidence Plans (often used for ecological data) are non-legally binding agreements between the Applicant and relevant Statutory Nature Conservation Bodies (SNCBs), the principle behind them—upfront agreement and tracking—is paramount. The failure to co-produce a living commitments register means the ExA cannot confidently verify that all stakeholder concerns and Applicant promises have been translated into enforceable requirements within the Draft DCO. This procedural lapse increases the legal risk that final DCO requirements will be insufficient, ambiguous, or subject to dispute post-consent, undermining the long-term environmental monitoring capacity essential for validating the scheme's Environmental Statement.

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## **Section 3: Compromised Technical Basis: Material Breach of National Policy Statements**

The Applicant's failure to submit robust, updated technical evidence at D3 results in material non-compliance with the core policy requirements of National Policy Statements (NPSs), particularly concerning cumulative effects, flood risk, and land-use justification.

### **3.1 Cumulative Impact Assessment (CIA) Deficiencies and Breach of NPS EN-1**

NPS EN-1, the Overarching National Policy Statement for Energy, mandates a comprehensive assessment of cumulative impacts, requiring the Secretary of State to weigh "long-term and cumulative adverse impacts" against the project benefits. The Applicant's response to ExA requests for increased granularity in the CIA methodology—especially regarding visual impacts from adjacent solar developments—was limited to reiterating adherence to "industry standards" while deferring new modelling or specific breakdowns (Section 1.2 of the primary report). The assessment must be undertaken at a level of detail proportionate to the information available. By failing to provide the requested granular updates, the Applicant has effectively stalled the completion of Stage 4 (Assessment) of the CEA process. Without a robust, granular CIA, the ExA is unable to determine if the proposed mitigation is sufficient to address the full scope of cumulative harm, resulting in a direct breach of the substantive requirements of EN-1 and jeopardizing the policy justification for the proposal.

### **3.2 Flood Risk Assessment (FRA) and Failure of the Sequential Test**

Compliance with flood risk policy, as outlined in NPS EN-1, requires robust technical data to support the mandatory application of the Sequential and Exception Tests. Critiques from stakeholders and the ExA highlighted the "absence of site-specific hydraulic modelling" and the failure to incorporate recent local flood events into baseline methodologies (Sections 3.2, 14 of the primary report). The Applicant acknowledged the deficiencies but explicitly deferred substantive additions to the Flood Risk Assessment (FRA) until Deadline 4, relying on generic models such as the "EA Tidal Trent 2023 model" rather than commissioning necessary site-specific analysis themselves (Section 3.2 of the primary report). The Sequential Test, being a mandatory policy hurdle, cannot be adequately performed if the baseline evidence regarding flood risk is demonstrably outdated or generic. The Applicant's decision to defer this fundamental policy requirement compromises the application's standing. If the risk profile changes materially upon receipt of the deferred site-specific modelling, the entire site selection justification may be invalidated, forming grounds for refusal or successful Judicial Review.

### 3.3 Best and Most Versatile (BMV) Land Loss: Evidential Deficiency

Planning policy concerning agricultural land requires developers seeking to build on Best and Most Versatile (BMV) land to demonstrate clearly that the benefits of the development outweigh the irreversible impacts of the land loss. This requires detailed field assessments using the Agricultural Land Classification (ALC) grading system. At D3, the Applicant initially relied on generalized DEFRA datasets and only agreed to "commission an independent soil survey" after persistent requests from the ExA and Local Authorities (Section 4.2 of the primary report). The reliance on generic data, without the required site-specific field assessments, means the Applicant has not established the necessary evidential foundation to perform the mandatory policy weighing exercise—the comparison of public benefit versus private loss of high-grade land. Consequently, the justification for the land-take remains factually unsupported, compromising the application's compliance regarding land use policy.

The critical nature of these evidential shortfalls necessitates immediate ExA action.

Table 2: Required Evidential Rectification for Legal Compliance

<b>Outstanding Technical Requirement (As of D3)</b>	<b>Statutory Basis for Requirement</b>	<b>Action Mandated for Applicant Compliance</b>
Site-Specific Hydraulic Flood Modelling (Sec 3.2)	NPS EN-1 and Flood Risk Sequential Test compliance	Urgent submission of updated, site-specific Flood Risk Assessment (FRA) incorporating recent local data.
Granular Cumulative Impact Assessment (Sec 1.2)	NPS EN-1 requirements for robust CEA	Submission of demonstrable updates to visual and landscape modelling, showing the requested receptor granularity.
Independent BMV Land Survey (Sec 4.2)	Policy requirement for weighing benefit vs. loss of agricultural land	Submission of independent soil data and revised justification demonstrating the benefit clearly outweighs the loss.

<b>Outstanding Technical Requirement (As of D3)</b>	<b>Statutory Basis for Requirement</b>	<b>Action Mandated for Applicant Compliance</b>
Comprehensive Commitments Register (Sec 7.2)	NSIP Best Practice and effective monitoring of DCO requirements	Co-production of an auditable, living register with stakeholders prior to D4, detailing resolutions and outstanding differences.
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## **Section 4: Legal Challenge to Compulsory Acquisition (CA) Powers: Breach of Statutory Test and Human Rights**

The Applicant's failure to establish necessity and proportionality in their justification for Compulsory Acquisition (CA) powers represents the application's most profound legal vulnerability, directly challenging fundamental property rights.

### **4.1 The Compelling Case Threshold: Legal Requirements under PA 2008 Section 122**

Section 122 of the PA 2008 sets two non-negotiable conditions for the inclusion of CA powers in a DCO: firstly, the land must be required for, or incidental to, the development; and secondly, there must be a **compelling case in the public interest** for the acquisition. Stakeholders have criticized the Applicant for relying on "worst-case scenario" language to justify land-take, without adequately demonstrating clear design necessity (Section 14 of the primary report).

The legal test for a "compelling case" is contingent upon the certainty and definition of the public benefits that will be delivered by the scheme. If the Applicant has deferred the resolution of critical technical issues, such as flood risk mitigation design, final environmental commitments, and overall financial viability, to a later deadline, the ExA cannot be confident that the final design and resource requirements are certain or that the benefits will materialize as promised. Consequently, if substantial evidence supporting the *necessity* of the land (the "required for" test) and the *certainty* of the resultant public benefits is lacking, the ExA cannot satisfy the "compelling case in the public interest" threshold under S.122 of the PA 2008. This deficiency is a material failure that legally prevents the authorisation of CA powers.

### **4.2 Failure of Proportionality and Human Rights Compliance**

The authorisation of CA represents a statutory interference with the human rights of affected landowners, notably Article 1 Protocol 1 (A1P1—the right to peaceful enjoyment of possessions) and, in the case of dwellings, Article 8 (the right to respect for private and family life) of the European Convention on Human Rights (ECHR). The interference must be legitimate and proportionate. The Applicant is required to demonstrate that the land-take is the minimum necessary and that reasonable steps have been taken to secure the land voluntarily.

The D3 review highlights outstanding issues regarding Human Rights Assessments (HRAs) and documents a continued lack of meaningful negotiation for voluntary agreements (Section 5.2 of the primary report). The absence or material inadequacy of a robust HRA constitutes a significant procedural failing, undermining the SoS's ability to discharge the legal duty to properly consider ECHR implications before authorising CA. Furthermore, the lack of attempts to negotiate voluntary agreements compromises the legal argument that the proposed CA is a proportionate measure and a genuine last resort.

Table 3: Compulsory Acquisition: Legal Risks and Justification Status

<b>Section 122 PA 2008 Test D3 Compliance Status (Based on Report Findings)</b>	<b>Legal Risk Assessment</b>
Land required for development	Partial: Justification relies on 'worst-case scenario' without clear design necessity (Sec 14). Challengeable under necessity and proportionality grounds, particularly for incidental or replacement land.
Compelling case in the public interest	Unsatisfied: Undermined by technical uncertainty and lack of resolution with IPs (Sec 15.1). High risk of SoS refusing CA powers due to lack of certain, evidenced public benefit profile.
Proportionality/Human Rights (A1P1/A8)	Deficient: HRA omitted or substantively inadequate (Sec 5.2). Non-engagement on voluntary acquisition. Breach of human rights considerations required for lawful interference; severe Judicial Review exposure.
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## **Section 5: Breach of Procedural Fairness and Heightened Judicial Review Risk**

The Applicant's non-constructive engagement with detailed stakeholder critiques, coupled with serious allegations regarding the integrity of the consultation record, subjects the DCO decision to significant and avoidable risk of successful Judicial Review (JR) based on procedural unfairness.

### **5.1 Legal Weight of Written Representations and Local Impact Reports (LIRs)**

Local Impact Reports (LIRs) submitted by Local Authorities (LAs) are mandated under the PA 2008 to provide local planning context and raise concerns regarding local enforcement resources, cumulative effects, and local model validity (Section 4.1 of the primary report). The Applicant's D3 responses to LIRs were largely reiterative, dismissing substantive concerns about resource deficits and pledging only to update models at a later deadline (Section 4.2 of the primary report). By asserting that standard controls "as set out in the Draft DCO" would suffice and delaying critical updates, the Applicant has failed to afford the LIRs the due weight intended by the NSIP regime. This failure to adapt to LA concerns compromises the principle of effective local governance and suggests a procedural deficiency in the consideration of local planning factors.

### **5.2 Allegations of Consultation Misconduct and Misrepresentation**

The legitimacy of the DCO application is founded upon a procedurally correct and transparent pre-application consultation record. Stakeholders, including the South Clifton Parish Council (SCPC) and independent analysts, alleged "misrepresentation of community feedback," the systemic omission of survey records (e.g., a GP-led mental health study), and systemic underestimation of site risks (Section 2.1, 14 of the primary report). If the Applicant materially omitted adverse findings or misrepresented community objections, the consultation record upon which the application is founded is fundamentally flawed. Under established principles of planning law, defective consultation can vitiate the entire planning decision, exposing the DCO to Judicial Review. The Applicant's evasive response to these specific allegations (Section 2.2 of the primary report), where they maintain consultation was "summarised" without providing the missing evidence, necessitates immediate ExA investigation. Failure to rectify or secure the procedural integrity of the consultation record implies that the ExA may be relying on flawed premises for its recommendation.

### 5.3 Evidential Impact of Non-Collaborative Tone

The defensive, dispassionate, and dismissive tone observed across all Applicant submissions (Section 8.1 of the primary report) is not merely a stylistic criticism; it serves as contemporaneous evidence that the Applicant failed to meet the NSIP goal of finding solutions through dialogue and "good faith" (Section 8.1 of the primary report). The recurrent use of procedural language ("our position remains," "matters previously addressed") in place of substantive engagement provides tangible proof of non-constructive behaviour. This behavioral pattern legally reinforces the ExA's justification for affording reduced evidential weight to the Applicant's claims, particularly where those claims rely heavily on self-assessment of compliance.

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## Section 6: Conclusions, Legal Risks, and Recommendations

### 6.1 Summary of Findings: Continuous Structural Legal Failure

The Applicant's D3 responses unequivocally confirm a structural pattern of engagement unchanged from previous deadlines, prioritizing superficial procedural compliance over substantive adaptation (Section 13.1 of the primary report). This strategy has led to demonstrable breaches across four key legal pillars of the NSIP regime:

1. **Breach of Examination Rules:** Systematic failure to comply fully with Rule 17 and the substantive requirements for iterative documentation under Rule 8, thereby obstructing the ExA's function.
2. **Breach of Substantive Policy:** Failure to provide sufficient, updated evidence (BMV surveys, granular CIA, site-specific hydraulic models) to satisfy mandatory policy tests under NPS EN-1.
3. **Breach of Property Rights Law:** Failure to provide a certain and evidenced "compelling case in the public interest" under PA 2008 S.122 and failure to demonstrate proportionality regarding Human Rights (A1P1).
4. **Breach of Procedural Fairness:** Increased exposure to Judicial Review risk due to reliance on a consultation record tainted by allegations of misrepresentation and omission (Sections 2.1, 5.2 of the primary report).

## 6.2 Evidential Weight Determination

Based on the documented continuity of non-constructive engagement, procedural deferral, and technical insufficiency, the ExA is legally justified in concluding that the Applicant's D3 evidence is insufficient for a complete and robust examination. Furthermore, under Planning Inspectorate guidance related to effective engagement, the ExA is entitled to apply **reduced evidential weight** to material submitted under such circumstances.

## 6.3 Technical and Legal Recommendations

To rectify these material breaches and to ensure the Examination retains procedural integrity, the ExA must compel the following specific actions:

1. **Mandatory Rule 17 Action:** The ExA should immediately issue a Rule 17 request demanding specific, point-by-point, non-cross-referenced responses to all outstanding technical and stakeholder critiques. This demand must include the immediate submission of site-specific hydraulic flood modelling, independent BMV soil survey data and policy justification, and granular CIA updates demonstrating specific receptor impacts.
2. **CA Justification Rectification:** The Applicant must submit a formal, comprehensive, and revised justification for Compulsory Acquisition, demonstrating:
  - A robust Human Rights Assessment (HRA) addressing A1P1 and Article 8 concerns, confirming that the interference is proportionate.
  - Evidence that voluntary agreements and reasonable alternatives have been fully explored and exhausted.
  - Confirmation that technical uncertainties (e.g., flood risk design and land requirements) have been resolved to support the certainty of the "compelling case" under S.122.
3. **Procedural Integrity:** The Applicant must provide the missing consultation records (e.g., mental health survey data) and formally reconcile the discrepancies alleged by statutory and non-statutory stakeholders to secure the procedural integrity of the consultation record.
4. **Determination of Sufficiency:** Should this pattern of structural failure persist through to Deadline 4, the ExA must explicitly consider recommending refusal of the DCO application, or a major deferral until the failings are rectified, on the basis that the Applicant has failed to provide the necessary robust and legally sufficient evidence required by the Planning Act 2008.

Table 4: Statutory Breach Analysis of One Earth Solar Farm D3 Submissions

D3 Substantive/Procedural Failing (Report Section)	Corresponding PA 2008/Rule/Guidance Breach	Legal Consequence/Risk to DCO
Deferred/Partial Rule 17 Compliance (Sec 1)	Breach of the duty to facilitate examination (Rule 17)	ExA inability to complete examination; justified application of reduced evidential weight.



<b>D3 Substantive/Procedural Failing (Report Section)</b>	<b>Corresponding PA 2008/Rule/Guidance Breach</b>	<b>Legal Consequence/Risk to DCO</b>
Non-Granular Cumulative Impact Assessment (Sec 1.2)	Failure to meet NPS EN-1 requirements for robust CEA	Application fails to demonstrate mitigation of long-term adverse impacts; SoS cannot lawfully weigh benefits.
Reliance on Outdated/Generic Flood Models (Sec 3.2)	Failure to meet Sequential Test requirements (EN-1)	Risk of successful Judicial Review on inadequate assessment of fundamental site risks.
Lack of Specific Property Impact Analysis (Sec 2.2)	Breach of Procedural Fairness and Human Rights Act (A1P1/A8)	Risk of successful Judicial Review on inadequate assessment of private loss; CA powers jeopardized.
Inadequate CA Justification/HRA Omissions (Sec 5.2)	Failure to meet the "compelling case" test (PA 2008, s.122)	SoS cannot legally authorise compulsory acquisition powers due to technical uncertainty.
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## Final Remarks and Outlook

This legal analysis demonstrates unequivocally that the D3 strategy adopted by the Applicant risks collapsing the robust framework of the NSIP process by substituting mandated substantive engagement with calculated procedural evasion. The prevailing legal risk is that, absent a fundamental and evidenced change in approach at Deadline 4, the DCO application for the One Earth Solar Farm will be deemed legally unsound, insufficient in evidence, and incapable of lawful determination by the Secretary of State.

## Footnotes:

1. *Planning Act 2008* (the 2008 Act), Section 104, Development Consent Order Decision Principles, as detailed in *TDRA Factsheet: What is a Development Consent Order*.
2. *The Infrastructure Planning (Examination Procedure) Rules 2010*, Rule 17(1).
3. *Planning Act 2008: Guidance for the Examination of Applications for Development Consent*, archived guidance on NSIP engagement and the Applicant's obligation to facilitate the examination.
4. *Nationally Significant Infrastructure Projects: Advice on Cumulative Effects Assessment*, guidance on CEA stages and NPS EN-1 requirements.
5. *Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*, 2013, Paragraph 13.
6. *The Infrastructure Planning (Examination Procedure) Rules 2010*, full contents.
7. *National Policy Statement for Energy (EN-1)*, requirement for sequential and exception tests in flood risk assessment, as referenced in *Submission on Sequential and Exception Test Failures*.

8. *Landmark Chambers, Development Consent Orders and Compulsory Purchase*, analysis of Section 122 of the PA 2008.
9. *Research Briefing, Compulsory acquisition of land, September 2013*, legal test under PA 2008 Section 122(3).
10. *Landmark Chambers, CPO: Compelling case, human rights, and alternatives*, guidance on necessity and intent for use of land, referencing Paragraph 13 warning.
11. *Guidance on the compulsory purchase process*, requirement to consider Article 1 of the First Protocol (A1P1) and Article 8 of the ECHR.
12. *DLA Piper, Powers of Compulsory Acquisition: Planning Act 2008*, requirements for satisfying the decision maker.
13. *Cheshire East Local Plan, RUR-5*, policy on Best and Most Versatile agricultural land loss, requiring clear demonstration that benefits outweigh impacts.
14. *Town and Country Planning (Development Management Procedure) (England) Order 2010*, reference to ALC grading system and consultation with Natural England.
15. *Annex H: Evidence Plans*, emphasis on upfront agreement and good practice in engagement.
16. *Planning and Infrastructure Bill Impact Assessment*, noting the risk of refusal if engagement is ineffective and the consequence of reduced evidential weight.
17. *Judicial Review and Nationally Significant Infrastructure Projects*, call for evidence outlining the potential for Judicial Review against DCO decisions.