

From: [Stephen Fox](#)
To: [One Earth Solar](#)
Subject: Technical and Legal Review of Applicant's Deadline 3 Submissions: One Earth Solar Farm NSIP (EN010159)
Date: 21 September 2025 18:26:08
Attachments: [Deadline 3 papersTechnical and Legal Review of Applicant.docx](#)

Dear Debora Alan,

I am writing to you regarding the One Earth Solar Farm NSIP (EN010159). Please find attached a comprehensive review of the Applicant's submissions to Deadline 3 which was not complete before my correspondence of yesterday.

The attached report details the Applicant's continued failure to substantively engage, demonstrating an approach that remains insufficient under both the letter and spirit of NSIP best practice and legal procedural fairness. This pattern has been ongoing since at least July 2024..

I brought this to the Examiner's attention in my Registration Representations, and the Examiner subsequently advised the Applicant that a full and detailed response would be expected. The Applicant has failed to provide this, which I believe amounts to contempt of the process. As the attached report clearly shows (and I have similar detailed evidence for all other deadlines and prior), this contempt is evident in how they handle submissions from all stakeholders.

This conduct reflects an endemic issue within One Earth, originating from the top of the organization. Proceeding with the examination under these circumstances would perpetuate this contempt and waste the resources of all stakeholders. An organization that exhibits such overt disregard for the process would likely view the terms of a Development Consent Order (DCO) as unenforceable, knowing that any enforcement action would be outweighed by the project's cash flows.

Ultimately, the credibility of the entire NSIP process is at stake.

Sincerely,

Stephen Fox

--

Technical and Legal Review of Applicant’s Deadline 3 Submissions: One Earth Solar Farm NSIP (EN010159)

Summary

This report comprehensively reviews the Applicant’s submissions at Deadline 3 (“D3”) of the One Earth Solar Farm NSIP (EN010159), with a focus on whether the Applicant has continued a concerning pattern of failing to respond constructively to stakeholder concerns, as previously documented at earlier deadlines. The report systematically scrutinizes the Applicant’s responses across all relevant categories: Rule 17 requests, written representations, principal technical and procedural critiques, comments on responses to the Examining Authority’s first written questions (ExQ1), comments on Local Impact Reports (LIRs), post-hearing submissions, and procedural compliance under the Infrastructure Planning (Examination Procedure) Rules. Each section further evaluates the tone, completeness, and legal adequacy of the Applicant’s responses, comparing observed patterns to NSIP best-practice standards and prior deadlines.

Introduction: NSIP Context, Principles, and Stakeholder Engagement Standards

The One Earth Solar Farm, with its associated Battery Energy Storage System (BESS) and supporting infrastructure, is subject to the Development Consent Order (DCO) regime under the Planning Act 2008. The Examination stage is governed by the Infrastructure Planning (Examination Procedure) Rules 2010 and the recently updated 2024 amendments, which set out strict procedural requirements, including timely, transparent, and meaningful engagement with all Interested Parties (“IPs”), statutory stakeholders, and local communities.

Central to the NSIP regime is the expectation that applicants engage constructively and iteratively—actively responding to issues, adapting proposals, and providing evidence-driven replies to technical and legal criticisms raised by stakeholders and regulators. Statutory guidance, Planning Inspectorate advice, and published best-practice standards emphasize robust tracking of commitments, reasoned explanations for points of disagreement, and a well-maintained ‘commitments register’ to facilitate examination and future monitoring. Failure to uphold these standards can materially affect the weight and credibility afforded to an applicant’s evidence and engagement record in the Examining Authority’s (“ExA’s”) recommendation to the Secretary of State.

1. Rule 17 Requests and Applicant’s D3 Responses

1.1. Summary of Rule 17 Requests at D3

Under Rule 17, the ExA requested the Applicant to provide further clarification and supplements in key technical areas, notably:

- **Cumulative impact assessment methodology**—granularity of visual impacts from adjacent solar developments, including breakdowns of receptor sensitivity and magnitude of change;
- **Justification for the selection of viewpoints** in the Landscape and Visual Impact Assessment (LVIA), with attention to residential receptors flagged by stakeholders;
- **Adequacy of ecological baseline data**—specifically updated survey data and clarification on temporal scope for protected species, e.g., badger baseline.

1.2. Analysis of Applicant's D3 Responses

The Applicant's formal responses restated prior positions and cross-referenced earlier documentation (notably their Environmental Statement and LVIA appendices), but committed only to submitting revised/additional data "at Deadline 3" or deferring certain actions to Deadline 4. For instance, while agreeing to revisit LVIA viewpoints, the Applicant maintained that all selections "accorded with guidance" and offered supplementary justification but avoided adding more receptor-specific viewpoints unless "deemed required." In respect of the ecological baseline, the Applicant agreed to provide Appendix 6.7 Badger Baseline as requested.

A critical aspect is the Applicant's stance on the cumulative impact assessment. The Applicant reiterated adherence to "industry standards," without demonstrable updates to granularity or the breakdowns specifically requested by the ExA. Landscape and cumulative visual impact assessments were thus only partially supplemented, with the Applicant deferring substantial critical assessment or new modelling to subsequent deadlines.

1.3. Tone, Completeness, and Legal Adequacy

The tone of these responses remains notably formal and qualified—making repeated assertions of policy and guidance compliance but often avoiding substantive engagement with the ExA's technical "why" behind the requests. Multiple issues are left "pending" or deferred, with "to be confirmed" tags appearing in the Examination Library checklist, indicating partial or non-compliance with Rule 8 requirements at the relevant juncture.

From a legal perspective, the Applicant's approach can be characterized as formalistic rather than constructive—providing the minimum documentation to comply with the process, but seldom offering the depth of bespoke clarification or adaptation expected by Rule 17—a key procedural safeguard for effective examination. The repeated use of cross-references and qualified commitments ("will be provided at Deadline 4") dilutes the legal adequacy of their engagement as per the standards set out in Rule 17 and in NSIP regime guidance.

Rule 17 Request Area	Applicant's D3 Response	Status at D3
Cumulative Impact Assessment	Reiterated "industry standards"; deferred new modelling.	Partial
LVIA Viewpoints	Agreed to revisit; provided supplementary justification, but no new viewpoints.	Partial
Ecological Baseline Data	Agreed to provide badger baseline (Appendix 6.7).	Complete (for this specific request)
General Technical Clarifications	Often cross-referenced prior documents; commitments deferred to D4.	Pending / Deferred

Analysis: This pattern of partial or deferred delivery, generic justification, and procedural minimalism is at odds with best-practice norms, which require applicants to “engage in a spirit of openness and responsiveness to prompt examination of all significant issues”.

2. Written Representations and Applicant’s D3 Responses

2.1. Stakeholder Input at D3

Written representations for D3 reiterated deep stakeholder concerns regarding:

- Effects on residential and landscape amenity;
- Biodiversity net gain and ecological mitigation commitment;
- Hydrological risks, particularly on floodplain modelling accuracy and local flood events omissions;
- Process failings—alleged misrepresentation of community feedback, insufficient review of alternative sites, and disregard of mental health survey results.

Key submissions, such as from South Clifton Parish Council (SCPC), supported by independent analysis (Fox, 2025), claimed that the consultation process was fundamentally deficient (e.g., narrow sequential test, outdated flood models, systemic underestimation of site risks), undermining the application’s policy compliance and procedural legitimacy.

2.2. Applicant’s D3 Responses: Pattern and Content

Throughout their D3 submissions, the Applicant continued the pattern of providing full responses only to issues considered “new” or “not previously addressed” and systematically cross-referenced earlier submissions, sometimes with updated appendices. Where issues had been raised before, Applicant asserted that “no further comment” should not be interpreted as agreement, but that “our position remains as previously stated”.

On technical and process criticisms:

- The Applicant’s response to the omission of specific properties from visual or amenity impact assessments was to reference “representative viewpoints” or “current standards,” with few if any substantive changes offered in response to requests for more granular property-by-property analysis.
- SCPC’s criticism of the sequential test and the failure to assess alternative grid-connected sites was met by reiteration of geographic and technical constraints without providing new data.
- For critiques alleging consultation misconduct or misrepresentation (e.g., omission of survey records and a GP-led mental health study), the response was to maintain that all statutory consultation had been “summarised” and that feedback had “informed design evolution,” yet without providing the missing evidence or reconciling the discrepancies documented by local stakeholders and independent reviewers.

2.3. Tone, Completeness, and Legal Adequacy

The tone in D3 responses is defensive, formal, and, at points, evasive. Independent reviewers and ExA notes regularly characterize the Applicant’s approach as “deflecting rather than engaging,” especially when faced with requests for direct engagement with local communities or for correction of the consultation record. This inability or unwillingness to directly address detailed critiques gives the impression of a process designed more to rebut than to resolve differences.

In terms of completeness, the heavy reliance on cross-referencing past submissions and limiting comments to “new” matters leaves large segments of the stakeholder evidence base unaddressed at D3. This undermines the procedural fairness envisaged by the Examination Procedure Rules and NSIP best-practice standards, which demand clear explanations and iterative, cumulative engagement with representations across all deadlines.

3. Comments on Responses to ExA’s First Written Questions (ExQ1) at D3

3.1. Background

At D3, interested parties, local authorities, and statutory consultees had the right to comment on the Applicant’s Deadline 2 responses to the ExA’s ExQ1, a crucial step for testing the technical evidence base of the application.

Typical themes in these interactions include:

- Flood risk and climate change resilience (site-specific modelling, allowance for recent flood events, and proper cumulative impact analysis);
- Heritage impact and adequacy of field verification;
- Ecological baseline consistency and transparency (handling of new and protected species data);
- Adequacy and transparency of data and models underpinning the environmental case.

3.2. Applicant’s D3 Responses: Approach

The Applicant’s D3 approach was again characterized by a selective substantive engagement: if criticisms were judged to be “already addressed” earlier, no new reply was offered; new points were given technical responses that were often procedural in tone, with a strong emphasis on referencing prior documentation.

Where the ExA or stakeholders highlighted deficiencies in flood risk assessment (notably the absence of site-specific hydraulic modelling and the omission of recent local flood events in baseline methodologies), the Applicant at D3 pledged to update the Flood Risk Assessment (FRA) but explicitly deferred substantive additions to Deadline 4, referencing ongoing “discussions with the Environment Agency” and reliance on “the best available EA Tidal Trent 2023 model” rather than new modelling commissioned themselves.

The same approach held for biodiversity net gain and other environmental metrics—Applicant tended to restate reliance on Natural England metrics and provide aggregate

figures, declining to increase specificity where requested and often deferring detailed calculations to future submissions.

3.3. Tone, Completeness, and Legal Adequacy

Here too, the tone remains procedural and non-collaborative, with ExA and multiple stakeholders documenting frustration at the lack of transparent, timely, and complete responses. Outstanding technical reservations, such as advice to model certain risks (e.g., the effect of submerged panels on flood flow routes), were usually met with commitments to “update modelling” or “produce further analysis,” thus shifting resolution beyond the current deadline and effectively impeding real-time stakeholder or ExA scrutiny.

This habit of deferral and continuous referencing back to prior documentation, instead of producing new evidence or revised analysis at the standing deadline, undermines the legal standing of the Applicant’s engagement. It falls short of the robust, iterative cycle of clarification and adaptation at the heart of the Examination Procedure Rules and best-practice standards for infrastructure delivery.

4. Comments on Responses to Local Impact Reports (LIRs) at D3

4.1. Local Authority Critiques at D3

Local authorities—Bassetlaw District Council, West Lindsey District Council, and Nottinghamshire/Lincolnshire County Councils—raised repeated concerns regarding:

- Substantive engagement with issues around Best and Most Versatile (BMV) agricultural land loss, adequacy and methodology of soil surveys;
- Reliance on outdated or incomplete traffic and hydrology models;
- Cumulative and in-combination effects with other nearby solar developments;
- Ongoing resource deficits in local authorities for enforcement and long-term monitoring obligations, particularly regarding drainage and flood risk.

4.2. Applicant’s D3 Response Strategy

In almost all instances, the Applicant’s D3 responses appear at best partial and at worst largely reiterative:

- For BMV land, Applicant referenced DEFRA datasets and agreed to “commission an independent soil survey,” but only after ExA and Council requests persisted.
- On cumulative traffic modelling, the Applicant admitted to using outdated counts but pledged only to update models at a later deadline.
- On resource and enforcement concerns, the Applicant offered little in the way of meaningful proposals or mitigation, asserting that standard controls and monitoring “as set out in the Draft DCO” would suffice.

Discussions about specific technical topics, such as protective provisions for drainage authorities or the Environment Agency, were limited to affirmations that Schedule 14 of the Draft DCO “contained the necessary clauses.” Yet, as evidenced by the Environment

Agency’s D3 assessment, key points—such as the lack of necessary site-specific hydrogeological and flood risk assessments—remained unresolved, with substantive updates promised but not delivered at D3.

4.3. Tone, Completeness, and Legal Adequacy

The Applicant’s tone in responding to local authority LIRs is formal and largely non-conciliatory, giving precedence to their own assessment of sufficiency and repeatedly downplaying the scale of updates required. In several cases, authorities and ExA noted both the absence of responsive material at D3 and the continued procedural minimalism—where critical analysis is deferred and substantial dialogue precluded by reference to future deadlines.

5. Post-Hearing Submissions at D3

5.1. Coverage and Process

A number of post-hearing submissions at D3 addressed points raised directly in Issue Specific and Compulsory Acquisition Hearings. These included:

- Specific queries about noise and construction impacts on residential receptors;
- Concerns about the adequacy of the ecological mitigation strategy (seen as “vague and lacking enforceable commitments” by stakeholders);
- Outstanding issues around compulsory acquisition justifications and resolution of private access and common land issues.

5.2. Applicant’s D3 Response Pattern

The Applicant’s post-hearing responses continued the established theme of referencing previous documentation and process compliance (“matters have been fully addressed in our oral submissions and supporting statements,” “mitigation will be secured by requirement in the dDCO”), rarely resulting in any enhancement of the underlying technical or legal commitments. Community representatives and landowners, such as JG Pears and Parish Councils, documented continued frustration with the lack of meaningful engagement and the absence of attempts to negotiate voluntary agreements in line with compulsory acquisition best practices.

Stakeholders highlighted that, even after hearings, points raised—such as alternative access routes, the need for human rights assessments, and proportionality of land-take—were acknowledged in general procedural terms but not substantively addressed in the context of D3 documentation.

5.3. Tone, Completeness, and Legal Adequacy

The Applicant’s contributions in this area were marked by a highly procedural and dispassionate tone, relying on formality at the expense of proactive problem resolution. Legal adequacy thus became questionable due to the apparent lack of effective engagement with

both the spirit and the letter of NSIP guidance regarding voluntary acquisition, human rights, and dialogue on public benefit proportionality.

6. Comments on Additional Submissions Received by D2 Accepted at D3

Where the ExA accepted supplementary Deadline 2 submissions—for example, from local MPs or specialist community objectors—Applicant’s D3 responses remained exclusively procedural, summarizing stakeholder objections and referencing general compliance with standards, but declining to reopen or meaningfully address key points, such as visual impact and rights of way analysis. In instances where councils or land agents made late representations, the Applicant’s approach was to offer only process-driven replies (“Protective Provisions are included at Schedule 14, Part 4...”) and reiterate that engagement had been sufficient “as evidenced by” their consultation report.

7. Applicant Submissions Under Rule 8 Letter Requirements at D3

7.1. Formal Compliance

The Applicant broadly fulfilled the Rule 8 letter’s documentary requirements by providing updated versions of central control documents—revised dDCO, schedules, Application Guide, Explanatory Memorandum, and negotiation trackers. Each of these was accompanied by revision numbers as stipulated, ensuring formal compliance with process.

7.2. Substantive Sufficiency and Tracking

However, the quality and substance of submitted updates varied:

- Many underlying thematic issues—such as environmental monitoring, voluntary engagement with affected parties, and best-practice mitigation—were not encapsulated in new or updated submissions, merely acknowledged as being “addressed in draft DCO Schedules or Appendices.”
 - Commitments registers and monitoring proposals, as required by best-practice guidelines, were not evidently iterated or co-produced collaboratively with stakeholders, as called for in national guidance.
-

8. Tone Analysis of Applicant’s D3 Responses

8.1. General Observations

Across all categories, third-party commentary—documented in stakeholder submissions, ExA transcripts, and oral hearing records—repeatedly described the Applicant’s tone as defensive, formal, and at times dismissive:

- The Applicant’s oral and written statements “lack empathy” and “fail to acknowledge the legitimacy” of stakeholder concerns;
- Recurrent procedural language (“our position remains,” “matters previously addressed,” “reasonable mitigation”) is deployed in place of substantive engagement or adaptation.

This tone stands in marked contrast to best practice, which, as summarized by the National Infrastructure Commission and Planning Inspectorate, calls for engagement that is “diverse, open and sincere, addressing inevitable tensions in good faith and finding the right balance,” and which “should result in a record of clear, reasoned outcomes and a willingness to reconsider positions when evidence warrants it”.

9. Completeness Evaluation of Applicant’s D3 Responses

9.1. Patterns of Deferral and Partiality

Numerous instances evidence incomplete engagement:

- Several required items in the D3 checklist were left “pending” or “to be confirmed”;
- Responses to technical points—such as glint and glare impact modelling, biodiversity net gain calculations, or traffic impact assessments—were either partial or deferred to future deadlines;
- Key control documents (e.g., the Flood Risk Assessment) were updated only in limited form, with central modelling exercises deferred to Deadline 4 or beyond.

9.2. Omissions and Procedural Minimalism

A recurring theme is the Applicant’s tendency to cross-refer to other documents, omit responses to previously addressed points, and limit engagement to new or escalated items, thus leaving many stakeholder concerns unaddressed at the point most critical for cumulative examination. This procedural minimalism—engaging only as strictly required and avoiding iterative adaptation—frustrates the purpose of the Examination Procedure as enshrined in NSIP statutory framework and guidance.

10. Legal Adequacy of Applicant’s D3 Responses

10.1. Policy Compliance

While the Applicant consistently certifies that their submissions are in compliance with relevant planning law—citing the Planning Act 2008, EIA Regulations, and Wildlife & Countryside Act—they frequently fail to meet the higher standard of legal adequacy required by the NSIP regime: that of comprehensive and fair stakeholder engagement, iterative documentation, and the exploration of reasonable alternatives.

10.2. Procedural Fairness

Legal representatives from local authorities and stakeholder groups have challenged the “compelling case in the public interest” for compulsory acquisition, the sufficiency of documentation supporting private rights over ridings, and the procedural completeness underpinning environmental and social impact claims. The Applicant’s failure to update evidence bases to address new science, recent events, or stakeholder-identified omissions has been cited as a breach of the “robustness” principle on which DCO consent must rest.

11. NSIP Best-Practice Standards: Comparison and Compliance

11.1. Constructive Engagement Benchmarks

Best-practice standards—as promulgated in NSIP reforms, Planning Inspectorate Advice Notes, and DCO examination guidance—require:

- Early, substantive consultation and engagement (including with non-statutory IPs and smaller communities);
- Iterative clarification and updating of key control documents in line with stakeholder input;
- Transparent tracking of all commitments and points of difference, co-produced where possible;
- Proactive resolution of technical criticisms supported by evidence, not just assertion.

11.2. Observed Deficiencies

The Applicant’s D3 record—characterized by repeated deferral, cross-referencing without substantive update, and limited adaptation to new information—is inconsistent with these best-practice standards. While some formal procedural boxes are ticked (revision numbering, document submission), the substantive outcomes desired by the regime—collaborative problem-solving and evidence-driven consensus—are noticeably absent.

12. Examination Procedure Rules Compliance at D3

12.1. Timetable and Documentation

The Applicant has submitted the necessary suite of documents as required by the Rule 8 letter and the updated 2024 Examination Procedure Rules, including tracked versions, revised DCO schedules, and updated Application Guides. Each is revision-numbered and accompanied by (formal) statements of compliance.

12.2. Substantive vs. Procedural Compliance

However, compliance on a substantive basis is compromised by the repeated pattern of only partial engagement with key issues. Many required items are listed as ‘pending’ or tied to future deadlines, undermining the confidence that the process is sufficient for the ExA and

Secretary of State to make a fully informed decision without additional rounds of questioning or further delay.

13. Comparison with Applicant's Response Patterns at Deadlines 1 and 2

13.1. Evidenced Continuity of Approach

A direct comparison shows that the Applicant's D3 strategy is largely unchanged from D1 and D2:

- Predominant use of procedural and cross-referential language;
- Limited substantive updating or bespoke responses to criticisms raised;
- Steadfast reliance on earlier documentation, even as stakeholders and the ExA highlight the need for adaptation or more granular data;
- Deferral of substantive engagement to "subsequent deadlines" wherever possible.

This continuity suggests a structural approach to engagement that places process and liability protection above evidence-based problem-solving and risk resolution.

14. Independent and Stakeholder Analyses at D3: Examples

Independent analysis by technical and legal experts (e.g., Stephen Fox, South Clifton Parish Council, JG Pears, Bassetlaw District Council) highlights:

- Systematic downplaying or omission of flood risks and cumulative effects;
- Failure to update modelling to reflect recent science or local knowledge (e.g., unaddressed hydrological data and recent regional flood events);
- Insufficient community engagement and misleading reporting/record keeping in consultation summaries;
- Reliance on "worst-case scenario" language to justify land-take, without demonstrating clear design need or minimization.

These witnesses and IPs document a consistent "pattern of non-engagement and misrepresentation," concluding that the application's procedural and technical foundations remain compromised at D3, and recommending refusal or, at minimum, further, more open examination on putatively resolved points.

15. Conclusions and Recommendations

15.1. Summary of Findings

The Applicant's D3 responses continue a structural pattern of engagement that prioritizes procedural compliance over substantive, constructive dialogue. Across all major engagement

categories—Rule 17 compliance, responses to written representations and LIRs, post-hearing submissions, and technical critiques—substantive issues remain deferred, diluted, or addressed only in general, referencing prior documentation rather than providing new evidence or responsive adaptation.

The tone remains formal, defensive, and frequently dismissive. This approach is frequently flagged by the ExA and stakeholders as failing the spirit of open, empathetic, and evidence-based engagement which forms the core of the NSIP examination model.

Completeness and legal adequacy are questionable. By engaging selectively or through cross-referenced repetition, the Applicant fails to address the full scope of the examination's issues and leaves substantial portions of the evidence base uncontested. This approach exposes the application to material risks—both procedurally (as the ExA may withhold weight from such representations) and substantively (as legal challenges or reconsiderations become more likely).

Best-practice NSIP engagement standards are not being met. Genuine iterative engagement, coproduction of resolutions, living commitments registers, and transparent consultation records are absent or poorly reflected in the D3 documentation.

15.2. Technical and Legal Recommendations

- **ExA should require further, specific, and point-by-point responses** from the Applicant on all outstanding technical and stakeholder critiques, with independent verification where relevant.
- The Applicant should be directed to **update all models** (notably hydrological and traffic) to reflect the most recent science, local evidence, and cumulative effects, and to re-engage with affected parties where reasonable alternatives or voluntary acquisition have not been properly explored.
- A comprehensive **commitments register, co-produced with stakeholders**, should be required prior to close of examination, ensuring all objections, negotiations, and agreed mitigations are accurately tracked and monitored post-consent.
- The ExA should explicitly consider the Applicant's pattern of procedural, rather than substantive, compliance in determining the **weight and sufficiency of its evidence base** under the Planning Act 2008.
- If this pattern of engagement persists through to D4 and beyond, the ExA should consider **recommending refusal of the DCO**, or, at minimum, major deferrals until the core failings are rectified.

16. Final Remarks and Outlook

This report demonstrates unequivocally that, at Deadline 3, the One Earth Solar Farm Applicant has not corrected the pattern of substantive engagement failures highlighted at earlier deadlines. The prevailing approach remains insufficient under both the letter and spirit of NSIP best practice and legal procedural fairness. For a project of national significance, but local and regional impact, the imperative for meaningful, open, and evidenced engagement with all Interested Parties remains paramount. Unless future submissions demonstrate a

marked change in approach, the Applicant's application risks being deemed inadequate for approval in its current form.

Key references for this review:

- National Infrastructure Consenting Examination Library, D3 and prior document series
- Planning Inspectorate NSIP Best-Practice and Commitments Register Guidance
- Rule 8 letter and Examination Procedure Rules, as updated April 2024
- Transcripts of Issue Specific and Compulsory Acquisition Hearings: July–September 2025
- Independent analysis and stakeholder reports: SCPC, Fox, Bassetlaw DC, JG Pears, and others