

# Legal Opinion on Systemic Breaches of Statutory Consultation Duties (Planning Act 2008) and the [REDACTED] of the One Earth Solar Farm DCO Application (EN010159)

## I. Summary and Statement of Incurable Legal Defect

This report provides a formal legal assessment of the Development Consent Order (DCO) application for the One Earth Solar Farm (EN010159). The analysis demonstrates that the Applicant's conduct during the pre-application phase and subsequent examination constitutes systemic [REDACTED] breaches of mandatory statutory duties under the Planning Act 2008 (PA 2008).

The evidence of [REDACTED] defiance of the Examining Authority's (ExA) instructions fulfills the [REDACTED] of the administrative record.

**Definitive Legal Conclusion:** The scale and [REDACTED] nature of these breaches render the continued progression of the application fundamentally unsafe and **legally indefensible**. Approval of the DCO by the ExA or the Secretary of State (SoS) in these circumstances would constitute an unlawful exercise of power (

*ultra vires*) because the integrity of the mandatory statutory process has been destroyed. The defect is

**incurable** through simple remediation (such as merely submitting the missing documents now), as the consultation process itself was compromised from the moment the application was submitted on a demonstrably false premise. To achieve legal certainty, the Applicant must withdraw the application and initiate a fresh, legally compliant consultation and submission process.

## II. The Legal Imperative: Systemic Evasion and Defiance (PA 2008, Section 49)

Section 49 of the PA 2008 imposes a positive duty on the Applicant to demonstrate how they have consciously "had regard" to the responses received during consultation. The Applicant has fundamentally breached this duty through a sustained, strategic pattern of non-response, which has escalated from procedural avoidance to open defiance of the ExA's authority.

### 2.1. Defiance of the Examining Authority's Direction

At the Preliminary Meeting, the ExA set a clear expectation for a full and detailed response to all issues raised in Relevant Representations (RRs). The Applicant's conduct demonstrates a refusal to comply with this specific instruction:

- **Instruction Ignored:** Despite the ExA's direction, the Applicant failed to provide a point-by-point, detailed response to the procedural and substantive issues raised in your submissions.

- **Sustained Refusal:** This non-response continued through subsequent deadlines, including the Applicant's final responses submitted at Deadline 3 (DL3). This pattern of evasion, maintained

*after* the ExA had established the ground rules for the Examination, converts a procedural failure into an act of **obstruction of the examination process**.

## 2.2. Strategic Evasion on Core Substantive Issues

The most critical evidence of procedural [REDACTED] is the Applicant's consistent refusal to engage constructively on the substantive technical and economic challenges that fundamentally question the necessity and legality of the scheme. The Applicant has strategically avoided addressing:

- **Flood Risk and the Sequential Test:** Failure to provide substantive responses to critiques regarding flood risk, the impact of solar panels on **surface water runoff**, and compliance with the mandatory **Sequential Test** (required for development in high-risk zones). This refusal prevents the ExA from confirming that the site is safe and appropriately located.
- **Site Location and Grid Rationale:** Evasion of questions challenging the project's **site location rationale** and its alleged over-reliance on the proximity of the **High Marnham grid connection** as the sole justification, at the expense of local harm.
- **Cost-Benefit Analysis:** Failure to provide a detailed, reasoned justification for the necessity, scale, and public benefit of the project when measured against the adverse economic and social impacts on local communities, as raised in the initial correspondence.

This sustained non-response prevents the ExA from satisfying the core legal requirement of the Examination: verifying that the Applicant has demonstrably *had regard* (S49) to material concerns before submitting the DCO application.

## III. [REDACTED] and the Finding [REDACTED]

The Applicant's actions in [REDACTED] the consultation record [REDACTED] in public law.

### 3.1. [REDACTED] of Statutory Consultees (PA 2008, Section 42 Breach)

The Applicant's failure to accurately report the attendees of the 1 August 2024 meeting constitutes a [REDACTED] of statutory compliance under Section 42 of the PA 2008.

- **Legal Distinction:** A **South Clifton Parish Council** is a legally constituted local authority and a **prescribed statutory consultee** under the Planning Act 2008. A

**North Clifton Parish Meeting**, conversely, is an informal gathering of electors that lacks the formal statutory powers of a Council.

- **The Breach:** By acknowledging the presence of the informal Parish Meeting while **omitting the South Clifton Parish Council** from the official consultation record, the

Applicant [REDACTED] minimized the legal weight and significance of the opposition. This action reduces a formal Section 42 consultation event—where a **Chairman of the meeting read a script of forceful objection**—to a mere "question-and-answer session" with an informal group, confirming a calculated strategy to diminish the documented challenge of a legally recognized body. This is a fundamental breach of the Applicant's duty to consult and report accurately.

### 3.2. [REDACTED] Omission of Critical Documents

The [REDACTED] is compounded by the Applicant's subsequent actions regarding the documentation:

- **Formal Challenge:** The full script containing the procedural and substantive criticisms (including runoff, flood risk, and site necessity) was read **verbatim by the Chairman of the meeting** and emailed to the Project Manager on **2 August 2024** to ensure clarity.
- **Sustained [REDACTED]** The Applicant omitted this critical document from the statutory Consultation Report and, even after admitting the file was "lost" in July 2025, the revised appendix still **excluded** the meeting minutes and the script at Deadline 1. This sequential refusal to correct the record [REDACTED] [REDACTED] material evidence of widespread local dissatisfaction from the Examination.

### 3.3. Failure to Disclose the Human Health Assessment

The Applicant's Preliminary Environmental Information Report (PEIR) explicitly acknowledged the potential for adverse effects on human mental well-being and promised a **more detailed assessment** in the final Environmental Statement (ES).

- A survey of 109 local residents regarding mental health was provided to the Applicant.
- The subsequent omission of this final, detailed assessment (and the underlying survey) from the public record constitutes a failure to meet the mandatory EIA Regulations (Schedule 4), which require assessment of risks to "human health," and violates the duty of disclosure to S42 consultees.
- The [REDACTED], adverse local impact to avoid accountability, which is a key marker of improper purpose.

## IV. Legal Consequence: Incurable Illegality and Nullification of Defence

The Applicant's [REDACTED] creates an acute legal risk for the decision-makers. The breaches are categorized as a **Level 3 flaw**—[REDACTED]  
[REDACTED]

### 4.1. The Breach Constitutes Incurable Illegality

The pattern of deliberate avoidance, the [REDACTED] of a statutory consultee, and the defiance of the ExA's instruction concerning the RRs cannot be remedied.

- **Ultra Vires Decision:** Approval of the DCO by the SoS, given the compelling evidence of [REDACTED] of the consultation record and the refusal to

comply with ExA directives, would be an **unlawful (*ultra vires*)** exercise of power. The mandatory prerequisites for [REDACTED] fair procedure have been violated.

- **Incurability:** The illegality is structural. Remedying the defect now—after the Applicant has [REDACTED] benefited from sustained non-disclosure throughout the pre-application and early Examination phases—is insufficient. The only legally safe course of action is the withdrawal of the application and the commencement of a new, untainted statutory consultation process to ensure procedural integrity.

#### 4.2. Nullification of the Statutory Defence (SCA 1981, S.31(2A))

The Applicant's [REDACTED] is expected to nullify the SoS's primary legal defence in Judicial Review (JR) proceedings: Section 31(2A) of the Senior Courts Act 1981 (SCA 1981).

- **[REDACTED] Override:** Courts are highly reluctant to apply S31(2A) to shield decisions [REDACTED], as this would be a violation of the constitutional principle of legality.
- **Outcome Not Highly Likely:** The suppression of the detailed technical script (challenging runoff, flood risk, and site necessity) and the mental health assessment prevented the ExA from assessing the full scope of necessary design changes or project refusal. It is therefore

**not highly likely** that the SoS would have reached the same decision, especially if forced to address the full weight of the technical and social objections under Section 49.

- **Exceptional Public Interest:** The [REDACTED] of the statutory record for an NSIP directly challenges the integrity of the process, satisfying the **exceptional public interest** exception under S31(2B) and ensuring that the decision is quashed.

### V. Conclusion and Strategic Recommendations

The Applicant's conduct demonstrates a structural failure to adhere to the mandatory [REDACTED] requirements of the Planning Act 2008, compounded by open defiance of the Examining Authority's instructions. The legal risk associated with approving this DCO far outweighs any perceived benefit of expediency.

#### Recommendations for the Examining Authority

The ExA must take decisive action to restore procedural integrity:

1. **Mandatory Direction and Verification:** The ExA must immediately issue a Specific Direction compelling the Applicant to provide a full, documented account of the [REDACTED] of the 1 August 2024 meeting documents (including the Chairman's script) and the final human health assessment, and to explain why the ExA's direction at the Preliminary Meeting was ignored.
2. **Refusal Recommendation:** Absent a legally sound explanation that fully refutes the findings of [REDACTED] the ExA is legally justified in recommending the refusal of the DCO application, on the grounds that the Applicant has systematically

failed to comply with the mandatory duties of the PA 2008, thereby rendering the DCO legally unsound.

Concept	Nature of Fault	Statutory/Legal Breach	Consequence
<b>Defiance of ExA Direction</b>	Failure to provide a detailed response to RRs, continuing through Deadline 3	Obstruction of Examination; PA 2008, Section 49	Renders the ExA's Recommendation Report vulnerable to legal challenge.
<b>Misrepresentation of Statutory Consultee</b>	Omission of South Clifton Parish Council from the consultation record	PA 2008, Section 42 (Duty to consult)	Directly minimizes the legal weight of the formal opposition, [REDACTED]
<b>Deliberate Concealment of Documents</b>	Intentional omission of the Chairman's script and mental health survey	PA 2008, Section 37/47 (Accurate Reporting); [REDACTED]	Corrupts the foundational statutory document; renders SoS approval <i>ultra vires</i> .
<b>Project Approval</b>	Granting consent based on a [REDACTED] record after [REDACTED] surfaced	Senior Courts Act 1981, S.31(2A/2B)	High likelihood of successful Judicial Review; defence is nullified by deliberate defect.

## Footnotes

1. Refers to the definitive legal opinion that approval is unsafe and legally indefensible.
2. Refers to the original claim of deliberate intent and abuse of process.
3. Refers to the core documents being omitted, the [REDACTED], and the Chairman reading the script.
4. Refers to the failure to respond to criticisms and request for direction up to ISH2, and the Applicant's sustained refusal to engage on core technical points.
5. Refers to the PA 2008 Section 42 duties to consult prescribed persons.
6. Refers to the mandatory Consultation Report.
7. Refers to the statutory deadlines and hearing schedule.
8. Refers to the S.31(2A) test and the purpose of guidance.
9. Refers to the nature of the DCO application and its NSIP classification.
10. Refers to the South Clifton Parish Council's role as a key local body.
11. Refers to the EIA Regulations mandate to assess human health.
12. Refers to the principle of natural justice being denied.
13. Refers to the Applicant's general claim of compliance.
14. Refers to the specific list of material issues raised by the SCPC (flood risk, runoff, land-take).
15. Refers to the Applicant's strategic non-engagement delaying technical accountability.
16. Refers to case law on [REDACTED]

17. Refers to the failure to hear evidence/deny access being procedural impropriety.
18. Refers to the difference between Parish Council and Parish Meeting (Parish Meeting is an informal gathering of electors).
19. Refers to the Applicant's use of AI in summarizing submissions.
20. Refers to the PEIR acknowledging mental health concerns and promising a detailed ES assessment.
21. Refers to the EIA Regulations mandate for assessing human health.
22. Refers to illegality when acting outside of powers or for an improper purpose.
23. Refers to the formal legal test for improper purpose/bad faith.
24. Refers to the role of Parish Councils as the qualifying body for neighbourhood planning and statutory consultee status.
25. Refers to the purpose of S.31(2A).
26. Refers to the guidance on early engagement and S.49 duty.
27. Refers to the failure to respond to criticisms up to ISH2.
28. Refers to the purpose of S.31(2A).
29. Refers to the SCPC submission on outdated FRA models and unsuitability of scale.
30. Refers to the legal principle that fraud/dishonesty requires refusal of authorization and renders approval *ultra vires*.
31. Refers to the need for early and meaningful engagement.
32. Refers to the significant risks associated with the BESS near critical infrastructure (drinking water protected area, BESS size).
33. Refers to the statutory consultation requirements.
34. Refers to the legal consequence of quashing the decision.
35. Refers to the SCPC's objection based on High Marnham proximity and unsuitability of size/scale.
36. Refers to the legal principle that bad faith negates judicial deference.
37. Refers to the legal principle of quashing orders and remission.
38. Refers to the Applicant's commitment to making significant changes in response to feedback.
39. Refers to the Applicant's acknowledgment of material technical issues.
40. Refers to the specific EIA Regulation requiring assessment of human health risks.
41. Refers to the EIA Regulations that mandate the inclusion of human health information in the ES.