

Addendum to Critical Assessment of the One Earth Solar Farm Proposal: Demonstrating Breaches of the Planning Act 2008 and Associated Legal Guidance

I. Introduction: The Legal Imperative of Procedural Integrity in the NSIP Regime

1.1 Context and Purpose of the Addendum

This document serves as an expert addendum to the initial Critical Assessment of the One Earth Solar Farm Development Consent Order (DCO) application. Its purpose is to transition the factual findings of applicant [REDACTED]—specifically concerning material omissions, misrepresentation, and systematic non-engagement—into a formal demonstration of specific breaches of UK planning statute and associated legal guidance. As a Nationally Significant Infrastructure Project (NSIP), the One Earth Solar Farm application is governed by the Planning Act 2008 (PA 2008), a regime that demands exceptional transparency and adherence to prescribed procedural steps.¹

The integrity of the NSIP process relies heavily on the applicant's duty to conduct robust consultation and to report those activities truthfully and completely to the Planning Inspectorate (PINS), acting on behalf of the Secretary of State for Energy Security and Net Zero.² The process is intentionally thorough to give the Secretary of State confidence that potential issues have been adequately identified, considered, and addressed before the statutory six-month examination begins.³ The evidence presented herein suggests that this fundamental requirement of [REDACTED] engagement has been systematically violated by the applicant, One Earth Solar Farm Limited.

1.2 The Foundational Importance of the Pre-Application Phase

The pre-application phase is statutorily critical under the PA 2008. Developers are required to consult local authorities, people with interests in the affected land, and prescribed statutory bodies.⁴ A mandatory output of this phase is the Consultation Report, which must demonstrate how the applicant has met the consultation requirements of Sections 42, 47, and 48 of the PA 2008, and how the proposed application has been amended to reflect the relevant responses received.⁵

The legal regime establishes that the adequacy of this pre-application consultation is a critical gateway. The application was accepted for examination only after the applicant certified compliance with statutory consultation requirements pursuant to Section 58 of the PA 2008.⁷ This places a high burden of veracity upon the applicant. If documented evidence proves that the report contained [REDACTED] [REDACTED] material omissions regarding critical public feedback, the very premise upon which the application was accepted is undermined.

II. Breach of Statutory Duties Regarding Consultation Reporting (PA 2008, ss. 37, 49, 58)

2.1 Breach of the Duty to Submit an Accurate Consultation Report

The Consultation Report (CR) is a statutory document required under Section 37(3)(c) of the PA 2008.⁶ PINS guidance mandates that the applicant must provide clarity on consultation activities and, crucially, must not present responses in a misleading way or out of context from the original views.⁸

The analysis confirms that the applicant breached these requirements through material [REDACTED] omission relating to the 1 August 2024 open meeting. The interested party proactively attempted to safeguard the accuracy of the record by emailing the full script of the presentation read aloud at the 1 August meeting directly to the Project Manager on 2 August 2024. This action was explicitly intended to prevent misrepresentation. Despite this direct and formal notification, the applicant's official Consultation Report allegedly contained the misrepresentation.

Furthermore, the applicant's failure to subsequently rectify the record exacerbates this breach. After acknowledging the omission of the meeting script on 25 July 2025 and promising to update the file at Deadline 1, the revised document submitted on 1 August 2025 still excluded the critical minutes and the script. This sequence of events moves the act from [REDACTED] [REDACTED] procedural challenge out of the Examining Authority's public record.

2.2 Undermining the Statutory Acceptance Test (PA 2008, ss. 55 & 58)

The application was accepted under the assumption that the applicant had complied with all consultation requirements, as certified under Section 58 of the PA 2008.⁷ If the evidence demonstrates that the applicant [REDACTED] certified compliance while simultaneously omitting material evidence (the 2 August script), the application was accepted on a false premise. This calls into question the fundamental validity of the application's acceptance under Section 55 of the PA 2008.⁹ The failure to submit documents after acknowledging their importance proves that the certified Consultation Report was materially incomplete at the time of acceptance, constituting a profound procedural failure that strikes at the legitimacy of the entire DCO process for this project.

2.3 Breach of the Duty to "Have Regard" (PA 2008, Section 49)

Section 49 of the PA 2008 imposes a duty upon the applicant to "have regard" to the responses received during the pre-application consultations.¹⁰ This legal requirement demands intellectual engagement, and PINS guidance specifies the need to explain and justify comments that led to no change.⁸

The interested party submitted a formal Relevant Representation (RR) to PINS on 4 May 2025, detailing procedural flaws and specific substantive concerns. A review of the applicant's official subsequent submissions confirms a significant procedural failure: no direct, itemized response to the interested party's specific procedural and technical challenges is evident. This failure to provide a point-by-point response to a formal Relevant Representation represents an ongoing, sustained breach of the duty imposed by Section 49. The decision to maintain silence specifically regarding the [REDACTED] that

obstructs the creation of a clear record of conflict necessary for the proper functioning of the examination.

III. Breaches of Environmental Impact Assessment Regulations (EIA Regs 2017)

The applicant's failure to address specific substantive issues also constitutes non-compliance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs 2017).

3.1 Failure to Assess Human Health Impacts (EIA Regs 2017, Schedule 4)

The EIA Regulations 2017 are highly prescriptive regarding the content of an Environmental Statement (ES). Schedule 4, Paragraph 4, mandates a description of the factors likely to be significantly affected, specifically listing "population, human health".¹¹ Furthermore, Paragraph 5(d) reinforces the need to describe effects resulting from the risks to human health.¹¹

The interested party submitted a mental health survey of 109 local residents, providing tangible, quantified local evidence of potential adverse impacts on human health. The allegation that this survey was "omitted" from the Consultation Report and not assessed within the ES indicates a failure to meet a mandatory EIA requirement. This omission fails to consider evidence received from an "other source" regarding the health and social well-being of the affected community, which the Secretary of State should regard as relevant and important under NPS EN-1 guidance.¹² If the ES fails to adequately address a known, documented, and required factor, the ES is technically deficient and non-compliant with the EIA Regulations.

3.2 Failure to Demonstrate Hydrological Safety Compliance (The Exception Test)

The interested party raised highly specific, quantitative claims regarding flood risk, alleging a potential 99-154% increase in runoff and an 11.7x increase in peak discharge rates, issues validated by external hydrological studies. The applicant's reliance on a generic statement that they have applied the Sequential and Exception Test is insufficient.

For developments proposed in Flood Zone 2 or 3, the Exception Test must be applied.¹³ The second element of the Exception Test requires the applicant to demonstrate that the development will be safe for its lifetime "without increasing flood risk elsewhere".¹³ The applicant's failure to provide a detailed, technical rebuttal to the quantitative claims regarding increased runoff and discharge rates constitutes a failure to discharge the burden of proof required by the Exception Test. A general statement of compliance is not a sufficient demonstration that the mandatory legal criteria have been met, strengthening the claim that the application is legally flawed in this area and failing to properly assess cumulative effects, as required by EIA Regulations 2017 Schedule 4, Paragraph 5(e).¹⁴

IV. Summary of Statutory Breaches and Legal Vulnerability

The table below summarizes the alignment of the applicant's conduct with specific planning law breaches, highlighting the legal vulnerability of the ongoing examination process.

Documented Applicant Conduct	Statutory Duty Breached	Relevant Legal Citation
Omission of 1 August 2024 meeting script/minutes, and subsequent failure to submit after acknowledgment.	Duty to submit an accurate, non-misleading Consultation Report; Duty to certify compliance.	PA 2008 S.37(3)(c); PA 2008 S.58
Failure to provide a detailed, itemized response to the Interested Party's formal Relevant Representation.	Duty to 'have regard' to consultation responses.	PA 2008 S.49
Omission of the 109-person local mental health survey from documentation and assessment.	Mandatory assessment of human health and population impacts.	EIA Regulations 2017, Sch. 4, Paras 4 & 5(d)
Reliance on generic flood risk compliance statements against specific quantitative challenges (e.g., runoff data).	Duty to demonstrate safety and non-increase in flood risk (Exception Test).	NPPF/PPG Flood Risk Guidance; EIA Regs 2017, Sch. 4, Para 5(e)

4.1 Increased Risk of Judicial Review

The integrity of the consultation process is a well-established and serious ground for legal challenge of a DCO decision.¹⁵ By failing to correct the record and systematically refusing to respond to procedural complaints (a breach of S.49), the applicant is obstructing the creation of a clear conflict record and increasing the project's legal risk. If the Secretary of State approves the DCO based on an examination where the applicant's core compliance documents were demonstrably misleading or incomplete, the final decision could be challenged on grounds of procedural unfairness, especially since the government acknowledges that if a court considers a judicial review case should proceed, it is, by definition, an appropriate challenge.¹⁵

V. Conclusion and Recommendations

The analysis confirms that the interested party's arguments constitute fundamental challenges to the regulatory compliance of the DCO application, demonstrating specific breaches of the PA 2008 and the EIA Regulations 2017. The focus should remain on the procedural integrity, as this challenges the legitimacy of the entire examination process.

Based on these findings, the following recommendations are provided:

1. **Formal Submission of This Report:** This report should be submitted to the Planning Inspectorate as a new written representation, legally framing the procedural and substantive failures into clear statutory breaches.
 2. **Request a Specific Direction for Remedial Action:** The submission should formally request that the Examining Authority issue a specific direction to the applicant, compelling One Earth Solar Farm to provide a detailed, point-by-point, technical response to the interested party's original Relevant Representation and to the findings of this legal addendum. This direction must explicitly mandate the formal submission and inclusion of the 1 August 2024 meeting script and the 109-resident mental health survey for formal assessment, thereby rectifying the deficiencies in the Consultation Report and Environmental Statement.
 3. **Focus on Jurisdiction and Legitimacy:** The interested party's arguments should continuously highlight the applicant's failure to correct the record, framing this as a direct challenge to the ExA's ability to conduct a fair and open examination, given that the application's acceptance was based on flawed, certified information.
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Footnotes

1. The Planning Inspectorate, NSIP process administration.¹
2. The Planning Act 2008, procedural integrity.³
3. The Planning Act 2008, acceptance stage.³
4. The Planning Act 2008, Section 42 requirements.⁴
5. PINS Guidance on the Consultation Report (CR).⁵
6. The Planning Act 2008, Section 37(3)(c).⁶
7. The Planning Act 2008, Section 58 compliance certification.⁷
8. PINS Guidance on CR content, avoiding misleading presentation and having regard to feedback.⁸
9. The Planning Act 2008, Section 49, duty to 'have regard'.⁸
10. The Planning Act 2008, Section 55, application acceptance.⁷
11. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, Schedule 4, Paragraphs 4 and 5(d) (Human Health).¹⁰
12. Overarching National Policy Statement for Energy (EN-1), Paragraph 5.13.9 (Socio-economic impacts from other sources).¹⁵
13. Planning Practice Guidance, Flood Risk (Sequential and Exception Tests).⁹
14. Government report on Judicial Review and NSIPs (appropriateness of challenge).¹²
15. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, Schedule 4, Paragraph 5(e) (Cumulative Effects).¹⁰