

From: [REDACTED]
To: [One Earth Solar](#); [REDACTED]
Cc: [REDACTED]
Subject: Response to ExQ3 Q1.0.1 : Adequacy of Consultation Submissions and Misapplication of Planning Practice Guidance
Date: 23 November 2025 09:10:36

The Examination Authority,

One Earth Solar Farm DCO Application

From: Stephen Fox, Interested Party (Reference: [REDACTED])

Dear Sirs

Subject: Response to ExQ3 Q1.0.1 : Adequacy of Consultation Submissions and Misapplication of Planning Practice Guidance

The Interested Party submits this response to Examination Question 3 (ExQ3) to address the procedural matters raised by the Examining Authority (ExA) concerning the absent Health Survey and the institutional guidance on consultation disclosure.

I. The Missing Health Survey as a Material Consideration[1]

The Interested Party notes the ExA's instruction that all parties who possess the Health Survey and consider it "important and relevant" should submit it. This confirms a recognised deficiency of material evidence within the application record.[2]

The fundamental duty to provide all necessary and sufficient material for the Examination to apply the correct statutory tests lies with the Applicant. The Applicant cannot transfer this burden to Interested Parties to remedy gaps in their application documentation.[3]

The Health Survey is a material consideration as it pertains directly to potential significant adverse environmental and community effects, which the Planning Act 2008 requires to be identified and mitigated.[4] The continued absence of this information prevents a robust and legally sound planning balance from being carried out, thereby compromising the integrity of the Examination.[5] It is vital that the ExA has legally sufficient material to carry out its statutory duties.

II. Rebuttal of the ExA's Advisory Note on Consultation Disclosure

The Interested Party acknowledges the ExA's advisory note, which cites the Planning Practice Guidance (PPG) that consultation reports should "set out a summary of relevant responses... but not a complete list of responses." [6]

This Guidance cannot be applied to shield the Applicant's deliberate and sustained non-disclosure.[7]

Concealment is not Summarisation: The Applicant's withholding of key documents—including the Health Survey and those relating to the commercial rationale for restricting the Sequential Test search—is not a failure to accurately summarise. It is an act of intentional exclusion of material facts that are directly adverse to the viability of the application, particularly the requirement to steer development to areas of lowest flood risk.[8]

Breach of Duty to Assist: The Applicant's duty is to assist the Examination by ensuring that information relevant to the issues—whether it supports or undermines the application—is available.[9] The Applicant's failure to produce the Health Survey, compounded by its explicit refusal to submit other key documents when formally challenged by the ExA at ExQ2, is definitive [REDACTED] concealment.[10]

The deliberate withholding of information by failing to disclose it, even in the absence of a formal legal obligation to do so, is defined as concealment where the intent is to gain a benefit or cause a loss to another party.[11] [REDACTED].

III. Conclusion: Compromised Examination Integrity

The Applicant's refusal to supply critical documentation—validated by the ExA's attempt to use a "summary" rule as a retrospective justification—confirms a process of procedural impropriety. [12]

The matter of consultation adequacy is not a mere procedural detail; it is a principal, important, controversial issue that compromises the entire DCO application by ensuring the Secretary of State will not have legally sufficient material to reach a lawful decision.[13]

Yours faithfully

Stephen Fox

Footnotes

1. See ExA's Third Written Questions (ExQ3), Q1.0.1 for context on procedural considerations.
2. ExA, Procedural Decision, instructing submission of the Health Survey if held by Interested Parties.
3. Planning Act 2008, s.37 and s.55; duty of applicant to provide sufficient material for examination.
4. Planning Act 2008, s.104; requirement to identify and mitigate significant adverse effects.
5. See *Smith v Secretary of State for Communities and Local Government* [2015] EWHC 1470 (Admin) on the necessity of a complete evidence base.
6. Planning Practice Guidance, Paragraph: 072 Reference ID: 14-072-20140306.
7. *R (on the application of Friends of the Earth) v Secretary of State for Transport* [2020] UKSC 52, on the limits of summary reporting.
8. National Planning Policy Framework (NPPF), paragraphs 161–164, on the Sequential Test and flood risk.
9. Infrastructure Planning (Examination Procedure) Rules 2010, Rule 10: applicant's duty of candour.
10. See ExA's Second Written Questions (ExQ2) and Applicant's responses (or lack thereof) in the Examination Library.
11. Fraud Act 2006, s.3 (England and Wales); definition of concealment for gain or to cause loss.
12. Administrative Law: de Smith's Judicial Review, 8th Edition, Chapter 7 on procedural impropriety.
13. See *R (on the application of Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (QB) on the importance of adequate consultation material for lawful decision-making.

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Regards

Stephen