FORMAL SUBMISSION TO THE SECRETARY OF STATE

Interested Party Reference: [redacted]

Project: One Earth Solar Farm (EN010159)

Submission Type: Written Representation in Response to the Secretary of State's Consultation Letter dated 21 May 2026 (Requesting Responses to the Post-Examination Submissions Regarding Draft Requirements 7 and 22)

Subject: THE PRIMACY OF STATUTE OVER POLICY

1. THE CORE LEGAL FALLACY OF THE EXAMINATION PROCESS

1.1 This formal representation is submitted to the Secretary of State to identify a [redacted] that has compromised the integrity of the examination process. It is a foundational principle of public law that executive planning policy statements cannot unilaterally extinguish, dilute, or override mandatory statutory duties enacted by Parliament. [1]

1.2 Throughout this examination, the Applicant, the Examining Authority (ExA) and statutory consultees, including the Environment Agency, Lincolnshire County Council, and Nottinghamshire County Council, have operated under a profound legal [redacted]. They have treated the Critical National Priority (CNP) framework set out in the Overarching National Policy Statement for Energy (EN-1) [2] not as a policy weight to be balanced against other material considerations, but as an [redacted] [redacted].

1.3 In effect, the examination has proceeded on the false administrative premise that because a proposed infrastructure project satisfies a predefined national need for renewable energy, the technical, environmental, and safety thresholds mandated by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017[3] are downgraded to secondary administrative formalities.

1.4 This approach is ultra vires and introduces severe legal vulnerability into any final determination. In view of his letter dated 1 May 2026 requesting further information, and the responses to it, the Secretary of State is reminded that his statutory duty to ensure absolute compliance with the EIA framework remains entirely uncompromised by executive designations of policy urgency.

1.5 A comprehensive Legal Appendix is attached to this submission demonstrating that the High Court and Supreme Court routinely support and interpret the law exactly as described herein. Their Lordships have consistently established a zero-tolerance approach to authorities attempting to use executive policy or deferred conditions to cure fundamental deficiencies in baseline statutory environmental assessments.

2. THE STATUTORY BOUNDARY AND THE PRIMACY OF THE PLANNING ACT 2008

2.1 The precise legal relationship between national policy statements and statutory law is strictly governed by Section 104 of the Planning Act 2008.[4]

2.2 While Section 104(3) generally directs the Secretary of State to decide an application in accordance with any relevant National Policy Statement (NPS), the statute explicitly erects non-negotiable legal firewalls. Under Section 104(3)(b) and Section 104(3)(c), the Secretary of State must not decide an application in accordance with the NPS if he is satisfied that doing so would lead to the Secretary of State being in breach of any duty imposed by or under any enactment, or be otherwise unlawful by virtue of any enactment.[5]

2.3 The Infrastructure Planning (EIA) Regulations 2017 constitute an enactment under the terms of the Planning Act 2008. These regulations mandate an objective, rigorous, and exhaustive assessment of the likely significant effects of the development prior to any decision to grant consent.

2.4 If the ExA accepts deferred, incomplete, or speculative baseline data from an applicant under the administrative assumption that national need justifies an accelerated path, the resulting Environmental Statement (ES) fails the legal adequacy thresholds. Adopting a flawed process that accepts post-consent management plans in place of pre-determination assessments renders any subsequent decision by the Secretary of State a direct breach of statutory duty, and therefore unlawful under Section 104(3).

3. THE EXPLICIT POLICY FIREWALLS OF THE ENERGY NATIONAL POLICY STATEMENTS

3.1 The Department for Energy Security and Net Zero (DESNZ) explicitly recognized this growing administrative gap, wherein local safety and environmental duties were being [redacted] by planning authorities to a blanket presumption of consent. Consequently, the revised EN-1 and EN-3 statements designated on 6 January 2026[6] codified explicit, non-negotiable exceptions where the CNP presumption is completely extinguished.

3.2 Paragraph 4.2.15 of the designated EN-1 (January 2026) explicitly states: “This presumption [of Critical National Priority weighting outweighing residual impacts], however, does not apply to residual impacts which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.” [7]

3.3 The drafting of the 2026 policy is unambiguous: public safety and onshore flood risk are not matters of residual risk to be weighed in a balancing exercise. They are absolute, threshold entry requirements. If an application presents an unacceptable risk

to human safety or onshore flooding, the policy presumption in favour of consent ceases to exist.

4.1THE RELEVANCE OF TRADITIONAL ARRANGEMENTS AND THE PURPOSE OF THE 2026 UPDATES

4.1 For the avoidance of doubt, this representation does not argue that the 2026 updates have created a novel or entirely new legal hurdle. Under traditional planning arrangements, the relationship between executive policy weight and statutory duty has always required the latter to prevail. [8]

4.2 The true legal relevance of the January 2026 EN-1 and EN-3 updates is that they make explicit what has always been mandatory under the EIA Regulations 2017 from the outset. The statutory EIA framework has never permitted a policy-based balancing exercise to substitute for the rigorous elimination or mitigation of likely significant effects.

4.3 The 2026 updates simply strip away any lingering administrative ambiguity, forcing the Planning Inspectorate and applicants to acknowledge what the law has always demanded: that an unresolved, unacceptable risk to public safety or regional flooding is a fatal statutory barrier, not a residual policy weight to be balanced away.

5. APPLICATION TO THE PRESENT CASE: THE DISTINCTION BETWEEN DEFERRED DESIGN AND TOTAL BASELINE ASSESSMENT FAILURE IN HYDROLOGY AND SAFETY

5.1 To prevent the Applicant or the Secretary of State's legal representatives from shielding this application behind the classic administrative defences of planning judgment or the Rochdale Envelope principles, this section establishes a hard legal distinction. The fatal flaw in this examination is not a minor disagreement over final design details or post-consent optimization. It is a fundamental failure to provide the mandatory baseline environmental data required by the Infrastructure Planning (EIA) Regulations 2017. Because this baseline data is entirely absent, it is legally impossible for the decision-maker to lawfully conclude that the risks are acceptable.

5.2 Onshore Flood Risk: Failure of Baseline Hydrological Modeling for Both Isolated Local Runoff and Cumulative Impacts

5.2.1 The Applicant has advanced an Outline Flood Risk Management Plan and argued that the precise mechanics of local flood mitigation can be safely deferred to post-consent agreement via Development Consent Order (DCO) Requirements. This relies on a gross misapplication of the Rochdale Envelope principle. While established case law permits a developer to defer the precise engineering dimensions of a mitigation asset, it strictly forbids the deferral of the assessment of the environmental effect itself. [9]

5.2.2 In this case, the environmental baseline failure is twofold. First, in strict isolation, the Applicant's Environmental Statement (ES) completely fails to model the primary surface water runoff generated locally by the project's own immediate infrastructure footprint. Second, it completely fails to simulate or evaluate the cumulative regional hydrological impact across the interconnected river valley matrix, specifically the

physical mechanics of lateral overtopping and peak-flow displacement caused by the extensive introduction of physical infrastructure into the floodplain.

5.2.3 Neither of these failures is a matter of residual risk to be managed later. If the site itself generates unmitigated localized surface water runoff, and simultaneously displaces floodwaters laterally into surrounding vulnerable drainage systems, these hazardous effects manifest at the primary baseline level. By deferring the definitive modeling of both the isolated local project runoff and the cumulative matrix displacement to a post-consent scheme, the Applicant is attempting to defer the statutory Environmental Impact Assessment itself.[10]

5.2.4 Under Schedule 4 of the EIA Regulations 2017, the likely significant effects of the development, both in isolation and cumulatively, must be described in the ES prior to determination.[11] Because the primary baseline modeling for both local runoff and regional displacement was never conducted, the ExA and the Secretary of State lack the evidentiary basis to exercise lawful planning judgment. A planning judgment exercised in the total absence of primary baseline data is legally irrational. [12] Because these unassessed, unquantified local runoff and cumulative flood mechanisms represent a direct breach of the EIA Regulations 2017, they constitute an unacceptable risk under the explicit terms of Paragraph 4.2.15 of EN-1. Consequently, the policy-based CNP presumption is extinguished by its own internal limitations, leaving the application to be determined under the strict, unweighted requirements of statutory law.

5.3 Human Health and Public Safety: Failure of Spatial and Structural Safety Baseline Data and Breach of December 2025 National Fire Chiefs Council Guidelines

5.3.1 A similar structural defect invalidates the Applicant's approach to the severe public safety risks inherent in the massive deployment of Battery Energy Storage Systems (BESS). The Applicant has failed to provide definitive, localized baseline risk and gas dispersion models, opting instead to state that a final Battery Safety Management Plan (BSMP) will be agreed post-consent with local emergency services. This approach misdirects the Secretary of State on the temporal nature of the 2026 policy firewalls and directly contradicts the clear guidance on pre-determination safety assessments established by the courts. [13]

5.3.2 The physical reality of a BESS thermal runaway event involves a These emissions include . Under the Supreme Court's binding causation rules, these severe secondary consequences of battery failure are legally "effects of the project" that must be modeled and evaluated at the baseline stage. [14]

5.3.3 Furthermore, the Applicant's outline proposals fail to comply with the National Fire Chiefs Council (NFCC) Grid-Scale Battery Energy Storage System Planning Guidance, formally updated in December 2025. The revised guidelines have increased the mandatory minimum separation distance between BESS structures and occupied buildings to 30 metres, up from the previous 25-metre standard.[15] The guidelines also require developers to provide a detailed incident impact assessment mapping all

sensitive receptors within a 1km radius and to conduct site-specific fire gas plume modeling to assess .

5.3.4 By failing to provide a localized, unmitigated hazard assessment, a 1km receptor map, or gas plume modeling within the ES, the Applicant has failed to satisfy the statutory requirements of the EIA Regulations 2017. The legal defense of deferred mitigation is entirely inapplicable here. A post-consent condition cannot be used to determine whether a project is safe enough to be granted consent in the first place, particularly when local fire services lack the statutory authority to refuse planning permission and are increasingly adopting “controlled burn” tactics that require significant spatial separation to prevent catastrophic chain reactions.[16] Because the baseline safety risk remains unquantified and unmitigated within the statutory documentation, it automatically triggers the unacceptable risk to human health and public safety exception under Paragraph 4.2.15 of the 2026 EN-1, extinguishing the policy presumption in favor of development consent.[17]

6. COMPARATIVE SAFETY ANALYSIS: NFCC GUIDANCE DEC 2025 VS. PRE-EXISTING STANDARDS

To demonstrate the structural inadequacy of the Applicant’s Outline Battery Safety Management Plan (oBSMP), it is necessary to compare its parameters against both the previous 2023 NFCC standards and the current December 2025 NFCC Guidelines.[15] This comparison highlights that the Applicant’s design is based on obsolete fire safety assumptions that have been formally superseded.[18]

(Note: The bracketed numbers in the table below correlate directly to the Interested Party’s Technical Works Cited list appended at the end of this document).

(EN010159) Proposal			
Setback from Occupied Buildings	Minimum recommended distance was 25 metres [29, 30].	Increased to a minimum of 30 metres [29, 30, 31].	No localized spatial setbacks defined; deferred to detailed design [1, 11].
Spacing Between BESS Enclosures	Recommended a rigid 6-metre separation distance to limit fire spread [19, 32, 33].	Can be reduced to 3 feet (1 metre) if certified under UL 9540A / NFPA 855 [29, 30, 34].	Enclosures closely packed with no specification of thermal barriers [33, 35].

(EN010159) Proposal			
Incident Impact Assessment	No explicit requirement to map distant sensitive receptors [28, 29].	Mandatory mapping of all sensitive receptors within a 1km radius [29, 31].	Deficit of receptor mapping; deferred to post-consent scheme [1, 8].
Vapour Plume Modelling	Plume analysis not systematically required for planning stage [18, 19].	Mandatory fire gas plume modelling to evaluate [redacted] [29, 31].	Zero localized plume modelling provided in the Environmental Statement [1, 19].
Primary Firefighting Strategy	Focus on active water cooling to extinguish the battery fire [16, 33].	Advocates a "controlled burn" to prevent highly [redacted] [29, 36].	Assumes active water suppression and manual firefighting intervention [11].
Water Supply Requirements	Recommended a water supply of 1,900 l/min for at least 120 minutes [11, 30, 37].	Minimum of 25 L/sec (1,500 l/min) or an equivalent static supply of ~180,000L for 120 minutes [30].	Four 120,000L tanks (combined 480,000L) providing 1,900 l/min for 2 hours [11].

7. THE POST-CONSENT SAFETY TRAP: SUNNICA (2024) AND CLEVE HILL (2020-2024)

The procedural danger of deferring detailed safety planning to post-consent requirements is illustrated by the contrasting case studies of the Sunnica Energy Farm and the Cleve Hill Solar Park.[20] [21] These precedents reveal a systemic flaw in the UK planning system: if safety, water containment, and spatial design parameters are not resolved during the pre-consent DCO examination, subsequent local scrutiny is rendered legally and financially powerless.

The Sunnica Energy Farm, a project spanning Suffolk and Cambridgeshire, was granted development consent in July 2024 by the Secretary of State, despite the expert planning examiners (ExA [redacted] and [redacted]) formally recommending that the DCO be rejected.[20] Crucially, the DCO placed no upper limit on the capacity of the co-located Lithium-ion BESS.[20] During the examination, local communities and Members of Parliament raised severe concerns, comparing the lack of safety regulations to the pre-Grenfell cladding tragedy. Despite these warnings, the DCO was approved with an Outline Battery Fire Safety Management Plan, deferring the detailed safety design to a post-consent Requirement. The local fire services (Suffolk and Cambridgeshire FRS) explicitly stated they lacked the specialized technical resources and know-how to evaluate the safety of the BESS design, yet they were charged with signing off on the final plan. This created a critical safety gap, leaving the local communities exposed to unquantified thermal runaway risks. [20]

The consequences of this "post-consent trap" materialized during the delivery of the Cleve Hill Solar Park (Project Fortress) in Kent.[21] Cleve Hill, a 373MW solar farm with a collocated 150MW BESS, was granted development consent in May 2020, subject to Requirement 3, which obliged the developer to prepare a detailed Battery Safety Management Plan (BSMP) to be approved by Swale Borough Council. In March 2024, Swale Borough Council's planning committee rejected the detailed BSMP, ruling that it failed to demonstrate adequate public safety measures, citing a lack of on-site water storage capacity, insufficient access to the battery enclosure, and the absence of a detailed evacuation plan. [21]

The developer appealed the council's rejection to the Planning Inspectorate. On 5 July 2024, the planning inspector approved the appeal and ordered Swale Borough Council to pay the developer's full legal costs.[17] The inspector's reasoning was clear: because the mandatory consultees - Kent Fire and Rescue Service (KFRS) and the Health and Safety Executive (HSE) - had issued standard non-objections, the council lacked the technical authority to reject the plan. The inspector noted that Swale Council could not provide independent, expert-backed technical evidence to justify departing from the consultees' advice. KFRS had previously clarified that they possessed "no authority to approve or decline planning permission" and that the decision rested solely with the local planning authority. [22]

This exposes the structural loop of the post-consent trap: A) The local planning authority is not a competent technical body on battery chemistry or explosion dynamics, and must therefore rely on the advice of the FRS and HSE. B) The FRS and HSE do not have a statutory mandate to regulate pre-construction BESS planning safety under their own regimes and therefore issue standard neutral responses or non-objections. C) The developer uses these non-objections to argue that all safety requirements have been met. D) If the local authority attempts to reject the detailed safety plan to protect its residents, it is penalized with a punitive costs award for unreasonable conduct. [17]

SUMMARY OF PROCEDURAL FAILURES

Case Study	DCO Date	BESS Design Details	Post-Consent Outcome / Systemic Failure
Sunnica Energy Farm[20]	July 2024	Spans ~2,500 acres; battery capacity has no upper limit in the DCO.	Approved despite ExA recommending rejection; local fire services lacked technical resources to evaluate the design but were tasked with signing off the safety plan.[20]
Cleve Hill Solar Park[21]	May 2020	373MW solar farm with collocated 150MW BESS.	Swale Borough Council rejected the detailed BSMP in March 2024 on safety grounds. Overturned on appeal on 5 July 2024; council ordered to pay full costs because they departed from the non-objections of KFRS and HSE.[17] [21]

8. CONCLUSIONS AND ACTIONABLE LEGAL RECOMMENDATIONS

8.1 The findings of this report indicate that the examination of the One Earth Solar Farm (EN010159) is legally compromised. By allowing the Applicant to defer critical hydrological modeling and battery safety assessments to post-consent requirements, the ExA and statutory consultees have created a severe regulatory gap that directly violates the Infrastructure Planning (EIA) Regulations 2017.[3]

8.2 Under the binding doctrines of Pearce[10], Squire[13], and Finch[14], the Secretary of State cannot lawfully grant development consent while deferring the evaluation of significant environmental and safety risks. Furthermore, the comparative analysis of the Sunnica and Cleve Hill case studies proves that deferring these safety parameters to post-consent requirements is a procedural trap. [20] [21] It strips local planning authorities of their regulatory power and deprives the public of their statutory right to participate in safety governance.

8.3 Because the Applicant has failed to model regional cumulative water displacement, isolated local surface water runoff, and localized BESS ██████ ██████ ██████ ██████) in accordance with the December 2025 NFCC Guidelines, the Environmental Statement is fundamentally deficient. [15]

8.4 These unmitigated, unquantified risks constitute a ██████ of the EIA Regulations 2017, thereby triggering the explicit "unacceptable risk" exceptions set out in Paragraph 4.2.15 of the 2026 EN-1.[7] The Critical National Priority presumption in favor of consent is therefore extinguished by its own internal limitations, leaving the application to be determined under standard, unweighted statutory criteria. Given the

profound evidentiary deficits in the Applicant’s Environmental Statement, the Secretary of State is legally obliged to refuse development consent.

Stephen Fox

MASTER LIST OF CITATIONS AND FOOTNOTES

1. R (on the application of Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5. Policy guidance documents do not possess the force of statute and cannot relieve a public authority of its mandatory statutory obligations.
2. Overarching National Policy Statement for Energy (EN-1), Department for Energy Security and Net Zero.
3. Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, Statutory Instrument 2017 No. 571.
4. Planning Act 2008, Chapter 29, Section 104 (Decisions in cases where national policy statement has effect).
5. Planning Act 2008, Section 104(3)(b) and Section 104(3)(c), which explicitly bound the Secretary of State’s decision-making power to the limits of existing statutory enactments.
6. Department for Energy Security and Net Zero, Revised Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy Infrastructure (EN-3), formally designated by the Secretary of State on 6 January 2026.
7. National Policy Statement for Energy (EN-1), designated 6 January 2026, Section 4.2 (Critical National Priority Infrastructure), Paragraph 4.2.15.
8. Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 regarding the correct legal interpretation of planning policy as distinct from statutory mandates, confirming that policy application must always yield to clear statutory frameworks.
9. R v Rochdale MBC ex parte Tew [1999] 3 PLR 74 and R v Rochdale MBC ex parte Milne [2001] 81 CR and TR 27. These foundational rulings established the Rochdale Envelope principle, making it explicitly clear that developers cannot defer the actual assessment of significant environmental effects to a future date.
10. Pearce v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 326 (Admin). Mr. Justice Holgate ruled that a decision-maker cannot grant development consent while deferring the evaluation of significant environmental impacts to a subsequent stage due to a lack of baseline information.
11. Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, Schedule 4, Paragraph 5(e), which mandates a description of the likely

significant effects of the development resulting from the cumulation of effects with other existing and/or approved projects.

12. R (on the application of Blewett) v Derbyshire CC [2004] Env LR 32. Confirmed that an ES must not have gaps so fundamental that it fails to constitute an environmental statement at all.

13. R (on the application of Squire) v Shropshire Council [2019] EWCA Civ 888. Established that a planning authority cannot rely on another regulator’s future licensing or permitting regime to bypass its statutory duty to assess effects prior to granting consent.

14. R (on the application of Finch) v Surrey County Council [2024] UKSC 20. The Supreme Court held that an Environmental Impact Assessment must identify and evaluate downstream, indirect effects that are the inevitable consequence of the project’s operation.

15. National Fire Chiefs Council (NFCC), Grid Scale Battery Energy Storage System Planning - Guidance for FRS, formally approved and published in December 2025, Section 11 (Separation Distances).

16. NFCC December 2025 Guidance, Section 13 (Controlled Burn Strategy). The guidelines acknowledge that applying firefighting water to a BESS thermal runaway has limited effect and can generate [redacted] runoff.

17. Swale Borough Council (Cleve Hill Solar Park BSMP Appeal, 5 July 2024, Ref: EN010085). The Planning Inspectorate’s decision highlights the structural trap of post-consent safety deferrals.

18. National Fire Chiefs Council (NFCC) Grid Scale Energy Storage System Planning Guidance (Superseded 2023 Edition).

19. Outline Battery Safety Management Plan and associated Environmental Statement for the One Earth Solar Farm (EN010159).

20. Sunnica Energy Farm Development Consent Order 2024 and Secretary of State Decision Letter (12 July 2024).

21. Cleve Hill Solar Park Battery Safety Management Plan Rejection and Subsequent Planning Appeal Decision (5 July 2024).

22. Kent Fire and Rescue Service (KFRS) standard consultation responses defining the limits of their statutory planning authority.

TECHNICAL WORKS CITED (by the interested party)

1. Green Energy Law vs_ EIA Regulations.docx

2. Design Development Report - National Grid
3. EN-1 Overarching National Policy Statement for Energy - Parliament
4. Pearce -v- BEIS judgment - Courts and Tribunals Judiciary
5. R (on the application of Finch on behalf of the Weald Action Group) v Surey County Council and others - Supreme Court
6. Environmental Statement - Environment Agency - Citizen Space
7. Rochdale Envelope Risk Analysis - Kingsway Solar Community Action
8. Battery Energy Storage System (BESS) Analysis - Kingsway Solar Community Action
9. Volume 3 - Non-Technical Summary - One Earth Solar Farm
10. One Earth Solar Farm - Planning Inspectorate (Outline Battery Safety Management Plan)
11. One Earth Solar Farm | Infrastructure project - Planning.data.gov.uk
12. The Failure of the One Earth Solar Farm (EN010159) proposal and the Systemic Collapse of Procedural Integrity
13. One Earth Solar Farm - Outline Design Parameters
14. CUMULATIVE SEARCH SHORT LIST - Beacon Fen Energy Park
15. Battery Energy Storage System Safety Concerns 7000Acres Response to: Outline Design Principles
16. Outline Battery Storage Safety Management Plan
17. 7000Acres 1 Battery Energy Storage System Safety Concerns Response
18. 7000Acres Battery Energy Storage System Safety Concerns
19. Sunnica Solar and Battery Plant - Burwell Parish Council
20. Overarching National Policy Statement for energy (EN-1), 2025
21. THE LATEST ON SCOPE 3 EMISSIONS [redacted] KC
22. The interaction between planning and other regulatory controls - R(Squire) v Shropshire Council
23. Grid scale energy storage system planning - Guidance for fire and rescue services - NFCC
24. Fire chiefs update BESS guidance - the Fire Protection Association

25. Battery Energy Storage Systems - Fire Knowledge
26. Major UK solar park development moves closer after appeal ruling - Pinsent Masons
27. The dangers of Lithium-ion Batteries - Faversham's Future
28. Sunnica Decision Letter - 12 July 2024 - Planning Inspectorate
29. The Sunnica Energy Farm Order 2024 - Legislation.gov.uk
30. Cleve Hill sees battery safety management plan rejected - Solar Power Portal
31. Cleve Hill successful in appealing BESS refusal by Swale Council - Solar Power Portal
32. Legal win for 150 MW UK BESS as safety objections ruled unreasonable - Energy Storage
33. Chickenst EIA - Local Government Lawyer
34. Rosefield Solar Farm - BESS Plume Assessment Summary

LEGAL APPENDIX: RELEVANT CASE LAW DEMONSTRATING ESTABLISHED JUDICIAL SUPPORT

A. THE CONSTITUTIONAL PRIMACY OF STATUTE OVER EXECUTIVE POLICY Case: R (on the application of Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5. Relevance: The Supreme Court reaffirmed the bedrock constitutional principle that executive policy or administrative guidance cannot override, dilute, or frustrate statutory provisions enacted by Parliament. In this context, it confirms that the Secretary of State cannot use the EN-1 Critical National Priority policy to circumvent the strict baseline data requirements mandated by the statutory EIA Regulations 2017.

B. POLICY INTERPRETATION IS A MATTER OF LAW, NOT DISCRETION Case: Tesco Stores Ltd v Dundee City Council [2012] UKSC 13. Relevance: The Supreme Court ruled that the interpretation of planning policy is a matter of law for the courts, not merely a matter of subjective planning judgment for the decision-maker. This prevents the Applicant or the Secretary of State from arguing that the definition of unacceptable risk in EN-1 Paragraph 4.2.15 is purely subjective. If the Applicant breaches the EIA Regulations regarding baseline data, the risk is objectively unacceptable as a matter of law, depriving the decision-maker of the ability to simply judge the risk away.

C. THE STRICT LIMITS OF DEFERRED MITIGATION (THE ROCHDALE ENVELOPE) Cases: R v Rochdale MBC ex parte Tew [1999] 3 PLR 74 and R v Rochdale MBC ex parte Milne [2001] 81 CR and TR 27. Relevance: These foundational rulings established the Rochdale Envelope principle. The courts made it explicitly clear that while developers can submit applications with flexible design parameters (the Envelope), the Environmental Statement must still assess the maximum worst-case scenario of those parameters prior to consent. Developers cannot defer the actual assessment of significant environmental effects to a future date. The total failure to model lateral flood overtopping and cumulative peak-flow displacement is a failure of assessment, not a deferral of design.

D. DEFERRAL OF BASELINE ASSESSMENT IS UNLAWFUL Case: Pearce v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 326 (Admin). Relevance: The High Court ruled that a decision-maker cannot grant development consent while deferring the evaluation of significant environmental impacts to a subsequent stage due to a lack of baseline information. Outline management plans proposing to calculate cumulative regional matrix flooding or safety assessments post-consent are rendered legally invalid by this precedent.

E. RELIANCE ON OUTSIDE REGULATORS DOES NOT CURE EIA DEFICITS Case: R (on the application of Squire) v Shropshire Council [2019] EWCA Civ 888. Relevance: The Court of Appeal established that a planning authority cannot rely on another regulator’s (or emergency service’s) future licensing regime to bypass its statutory duty to assess the indirect environmental and safety effects of a project prior to granting consent.

F. MANDATORY ASSESSMENT OF DOWNSTREAM AND SECONDARY EFFECTS Case: R (on the application of Finch) v Surrey County Council [2024] UKSC 20. Relevance: The Supreme Court held that an Environmental Impact Assessment must identify and evaluate the downstream, indirect effects that are the inevitable consequence of the project's operation (such as).

G. THE DISTINCTION BETWEEN MINOR OMISSIONS AND TOTAL BASELINE FAILURE Case: R (on the application of Blewett) v Derbyshire CC [2004] Env LR 32. Relevance: While Blewett established that minor gaps in an Environmental Statement do not automatically invalidate it, the court drew a hard legal line stating that an ES must not have gaps so fundamental that it fails to constitute a lawful environmental statement. Given that regional cumulative flood displacement and are primary spatial risks of this development, failing to quantify their baseline hazards constitutes a fundamental structural gap. This breaches the statutory requirements of the EIA framework, thereby instantly triggering the EN-1 self-destruct clause.