

Written Representation

Interested Party: Richard Flindell

Interested Party Reference number: [REDACTED]

The Applicant, **Island Green Power/East Pye Solar**, has failed to comply with its statutory duties under **Section 47 of the Planning Act 2008**, specifically the duty to consult the local community about the proposed **East Pye Solar** farm. The pre-application process also breached the common law duty of procedural fairness by failing to adhere to the **Gunning Principles** of consultation.

The consultation process was legally defective, and the application should not have been accepted for examination under **Section 55** of the Act. Furthermore, the application should be recommended for refusal on grounds of procedural impropriety.

The legal framework includes Section 47(7) of the Planning Act 2008, which requires the Applicant to conduct the consultation in accordance with the proposals outlined in the Statement of Community Consultation.

The legal standards for a lawful public consultation are governed by the **Gunning Principles**, established by the Supreme Court in 2014. These principles require that a consultation must:

1. Occur when proposals are still in a formative stage.
2. Provide sufficient reasons for each proposal for intelligent consideration and response.
3. Allow adequate time for consideration and response.
4. Be conscientiously considered by the decision-maker.

A failure to meet any of these principles renders the consultation phase unlawful - especially for a huge project of national significance, making the subsequent application for a DCO procedurally flawed.

Factual Background and Specific Breaches

The pre-application community consultation involved several contentious phases:

- **Phase One (Non-Statutory) Consultation:** Conducted from **23 October to 6 December 2024**.

- **Phase Two (Statutory) Consultation:** Held over a seven-week period from **18 June to 6 August 2025**.
- **Targeted Consultation (22 October to 26 November 2025):** **This consultation aimed** to address localised layout modifications that significantly impacted residents of Saxlingham Nethergate.
- The formal DCO application was submitted to the Planning Inspectorate in **March 2026** and accepted for examination on **2 April 2026**.

Application of Gunning Principles to the Chronological Record

Breach 1: Failure to Permit ‘Intelligent Consideration’ (Gunning Principle 2) – Material Misdirection on Land Quality: During the consultation windows, the Applicant failed to provide clear and accurate baseline data on the Agricultural Land Classification (ALC) of the targeted land parcels. Initially, the consultation literature downplayed the agricultural value of the site, but it was later verified that **80% of the 2,700-acre project footprint consists of Grade 2 and Grade 3a agricultural land**, which is designated as Best and Most Versatile (BMV) under the National Planning Policy Framework (NPPF).

By withholding this information until later stages of public engagement, the Applicant materially misdirected the local community. This information deficit prevented interested parties from providing an ‘intelligent response’ regarding the project’s compliance with National Policy Statement EN-3, which mandates solar infrastructure should avoid BMV land where possible. Consequently, the community’s ability to evaluate the long-term threat to regional food security and agricultural livelihoods was directly compromised.

Furthermore, the single drop-in session at Saxlingham Nethergate Village Hall featured ‘representatives’ from East Pye Solar, who were unable to answer any questions posed by local residents. Essentially, this limited opportunity to share crucial information amounted to a handout of vast quantities of highly complex printed material that attendees were expected to take away, understand and comment on. This is certainly not a meaningful two-way consultation.

Breach 2: Failure to Consult at a ‘Formative Stage’ (Gunning Principle 1) – Geographically Predetermined Site Selection: The Applicant chose the sites based on factors such as commercial

availability, which violated the principle of consulting at a 'formative stage'.

The Applicant failed the Gunning Principle 1 test by presenting an inflexible layout that fixed the massive multi-site industrial footprint. Throughout the Phase One and Phase Two windows, the site boundaries across several host parishes, including **Saxlingham Nethergate, Hempnall, Shotesham, Brooke, Woodton, and Great Moulton**, were presented with rigid capacity parameters of 500MW. In **Saxlingham Nethergate**, the proposed solar panel arrays boundary fencing and cable route corridors were presented as fixed realities, despite early community feedback pointing out significant localised constraints. No meaningful alternative site layouts or scaled-back capacity variants were offered for public review, suggesting the Applicant was closed-minded and reduced consultation to a superficial validation exercise.

Breach 3: Failure to Demonstrate "Conscientious Consideration" (Gunning Principle 4) – Systemic Dismissal of Public Feedback on Safety and Infrastructure Risks.

The Applicant failed the Gunning Principle 4 test by showing that consultation feedback did not actively influence the project's development. Despite overwhelming evidence from the public and local authorities, the Applicant's record demonstrates a systemic failure to change its course.

During consultation, host communities and local parish councils presented localised evidence highlighting severe operational flaws in the scheme, including catastrophic highway safety risks and increased risk of localised flooding. Despite these representations, the Planning Inspectorate accepted the final application in April 2026 with the same intrusive footprint, ignoring concerns raised by Norfolk County Council. The pre-application consultation process was legally flawed, as the lack of information about BMV land and the predetermined nature of the proposals breached the common law duty of procedural fairness. The Examining Authority is respectfully urged to address these procedural deficiencies, find the Applicant's consultation abjectly inadequate under Section 47, acknowledge the public's material misdirection, and ultimately **recommend to the Secretary of State that Development Consent be refused due to procedural impropriety.**