

13 August 2026

East Park Energy: procedural fairness and the effect of Deadline 5 disruption on Examination scrutiny

Submission: 'Applicant Response to Stop East Park Energy's procedural requests dated 28 July 2026 and 04 August 2026'

Stop East Park Energy (SEPE) is an independent, community-led group established in response to concerns over the proposed East Park Energy development. The group operates on an unfunded, voluntary basis and has over 1,000 registered supporters. SEPE includes individuals with professional expertise in agriculture, analysis, civil engineering, construction, ecology and environmental science, energy, finance, law and planning, as well as professional experience with the NSIP process.

• This submission incorporates input from a lawyer with 35 years' experience practising in large City law firms, in roles including partner, head of department and managing partner

This submission:

1. Demonstrates that delays in publishing Deadline 4 submissions led the Applicant to defer substantive responses and potential document updates from Deadline 5 to Deadline 6, effectively displacing a scheduled round of full iterative scrutiny.
2. Submits that the Applicant's response mischaracterises SEPE's procedural requests and does not address the loss of that scheduled scrutiny opportunity or the resulting reduction in opportunities to scrutinise and test substantive matters before the Examination closes.
3. Shows that the Applicant's deferral has compressed substantive responses, potential document updates and their scrutiny into the final stage of the Examination, materially reducing the time and opportunities available to all parties to consider, scrutinise and respond to that material and resulting in an asymmetric sequence of scrutiny and a risk of procedural prejudice.
4. Maintains SEPE's request to the Examining Authority for an additional procedural deadline after Deadline 6, and such extension of the Examination period as is necessary to restore the scrutiny opportunity effectively lost at Deadline 5.

1. Introduction – procedural disruption and the loss of a scheduled opportunity for scrutiny

This submission is in response to the Applicant's letter to the Case Manager at the Planning Inspectorate (AS-038), dated 5 August 2026.

The Applicant's letter is in response to SEPE's two procedural filings, on 28 July and 4 August 2026 (AS-039 and AS-031). These filings highlight issues arising from the disruption impacts to Deadline 5, caused by significant time constraints when the short period between Deadlines 4 and 5 was truncated to three or four working days due to the delays in publishing all the Deadline 4 submissions in the Examination Library. As a result, at Deadline 5, the Applicant communicated its intention to defer substantive responses to Deadline 4 submissions from Deadline 5 until Deadline 6, citing the *"very limited time available between Deadline 4 and Deadline 5"*. The Applicant made it clear that its deferral included associated updates to Application documents and management plans.

Deadline 6 was originally on 4 August 2026. On the morning of the deadline, the Examining Authority issued a 'Notice of variation to the examination timetable', informing the Examination that Deadline 6 would be put back until 18 August 2026. In the letter, the Examining Authority referred to the *"recent delays to uploading submissions following deadline 5 to the Examination Library"*.

The additional time afforded by that postponement because of further delays in publishing submissions in the Examination Library, this time at Deadline 5, does not, however, address the particular procedural difficulty that has arisen in relation to the similar delays at Deadline 4,* and which forms the subject of SEPE's concerns and procedural submissions. The principal constraint is not a lack of time in which to respond to Deadline 5 material, but the fact that much of the substantive material which would ordinarily have been available for scrutiny at Deadline 5 has been deferred by the Applicant to Deadline 6. Extending Deadline 6 does not alter that position: the material available for consideration remains incomplete pending the Applicant's deferred submissions and document updates. The extension relating to the additional publication delays at Deadline 5 therefore cannot restore the opportunity that would have existed had that material been provided at Deadline 5 for scrutiny and response in the ordinary course of the Examination.

SEPE's first procedural filing (AS-039, 28 July) respectfully requested that the Examination timetable be extended and adjusted to accommodate an additional

* At Deadlines 4 and 5, documents were uploaded to the Examination Library nearly four working days following the deadline. Deadline 4 documents were uploaded in separate tranches. The gap between Deadline 4 and Deadline 5 was 11 calendar days (seven working days). The gap between Deadline 5 and the original Deadline 6 was 14 calendar days (10 working days).

deadline following Deadline 6, in order to compensate for the effective loss of a scheduled stage of comprehensive iterative scrutiny at Deadline 5 and to avoid procedural prejudice. Its second procedural filing (AS-03, 4 August) reiterated that request and explained why the existence of Deadline 7 did not resolve the difficulty: although it provided an opportunity to respond to the Applicant's deferred material, it did so only at the final deadline of the Examination, without any further opportunity for those responses, or the issues arising from them, to be considered and tested through the iterative scrutiny provided for by the original timetable.

1.1

Accordingly, SEPE maintains its legitimate request that the Examination timetable be modified to meet the prejudice occasioned to SEPE and all other Interested Parties by actions, or non-actions, entirely not of their making. Not to do so would, in SEPE's view, constitute a breach of procedural equity and offend the principles of natural justice.

2. The Applicant's response does not address the basis of SEPE's request

SEPE submits that the central flaw in the Applicant's response is that it fails to engage with the case SEPE has actually advanced. SEPE is not, for example, seeking an open-ended right of reply, additional time because of its resources, or an additional round of exchanges over and above the iterative scrutiny already contemplated by the original Examination timetable. Its concern is specific: disruption between Deadlines 4 and 5, arising from delays in publishing submissions in the Examination Library within the already short scheduled period between those deadlines, led the Applicant to defer substantive responses and potential document updates from Deadline 5 to Deadline 6, effectively displacing a scheduled stage of iterative scrutiny and concentrating that scrutiny at the close of the Examination.

Much of the Applicant's rebuttal therefore addresses propositions SEPE has not advanced. Its reliance on the existence of Deadline 7, the finite nature of the Examination, its inquisitorial character, and the fact that some underlying subject areas have previously featured in the Examination does not answer the procedural issue. It also obscures an important distinction. Two of SEPE's six Deadline 4 submissions concern new matters: one presents new analysis of the Scheme's projected emissions avoidance and associated concerns with the reliability of the Applicant's assessment, while another responds at the first opportunity to the Applicant's Replacement Works Technical Note. The remaining submissions do not merely rehearse differences of opinion: they develop specific evidence, analysis and apparent inconsistencies identified within the Applicant's own Application material which have remained substantively unanswered. Prior consideration of a broad topic

cannot therefore be equated with substantive scrutiny of the particular evidence and issues SEPE has raised.

Nor does the subsequent extension of Deadlines 6 and 7 restore the scrutiny opportunity lost at Deadline 5: additional time cannot substitute for substantive material that was not available to scrutinise at the stage originally provided for it.

The Applicant's own submissions further undermine the position it now seeks to maintain. At Deadline 5, for example, it expressly described its responses as "*selective*", deferred substantive and detailed responses to Deadline 6, and indicated that those responses could be accompanied by updates to management plans and Application documents. The procedural difficulty identified by SEPE is therefore neither hypothetical nor a request for an additional opportunity for scrutiny, but for the effective restoration of one that has been lost: it arises from the Applicant's acknowledged deferral of substantive material within the structured Examination timetable, against a background in which new matters and specific evidenced issues remain to be substantively addressed.

In this respect, SEPE would respectfully remind the Examining Authority that paragraph 2.5 of 'Planning Act 2008: Guidance on the examination stage of an application' (as published 3 July 2026) states:

"The government expects examinations to be inclusive, accessible and fair, enabling all interested parties to participate meaningfully and have their views properly considered."

2.1

The Applicant presents a range of overlapping arguments, but they largely proceed from the same mischaracterisation of SEPE's request. In this submission, SEPE therefore first sets out the procedural sequence giving rise to its requests and its effect on the Examination timetable, before addressing individually the principal arguments made by the Applicant, in the order in which they appear in its response.

3. The Applicant's deferral of substantive responses at Deadline 5 and its effect on the sequence of scrutiny

The issues surrounding Deadlines 4 and 5, arising from the closely clustered deadlines and delays in publishing submissions in the Examination Library, have effectively resulted in the loss of a full round of scrutiny in the Examination. The Examination opened with a timetable setting out five deadlines specifically facilitating the iterative scrutiny of new or updated documents, submissions and responses. Following the constrained timing leading up to Deadline 5, it is now on course to complete only four such full rounds.

This is not a subjective matter, nor one for debate or conjecture. The Applicant is unambiguous in setting out its plan to defer “*substantive*” or “*detailed*” responses and updates to Application documents from Deadline 5 to Deadline 6.

At item 6 in its Deadline 5 Cover letter, in its general response in relation to Deadline 4 submissions, the Applicant states:

“Responses to Deadline 4 Submissions

The Applicant notes that Deadline 4 fell on 10 July 2026 and that the Deadline 4 documentation was not fully available on the Planning Inspectorate’s project webpage until 16 July 2026. With Deadline 5 falling on 21 July 2026, this has resulted in only five days, including a weekend, in which to review all submissions, identify any new or material matters, obtain instructions and input from the relevant technical specialists, and prepare responses. **The responses submitted by the Applicant at Deadline 5 are therefore selective and do not provide a response to every Deadline 4 submission or every point raised within them. ... The Applicant will continue to review the Deadline 4 submissions and, should any further new or material matter be identified on which the Applicant has not already responded, will seek to address it at Deadline 6”**

At item 7, it states:

“Response to Host Authorities

The Applicant notes that the Deadline 4 submissions from the Host Authorities contain extensive and detailed comments on a number of the outline management plans, as well as the approach to replacement works. Given the nature and level of detail of the comments, the Applicant is undertaking a careful review alongside relevant technical discipline leads and, where appropriate, is drafting amendments to the management plans. **It would not assist the ExA or the parties for the Applicant to provide a necessarily abbreviated or insufficiently considered response within the very limited time available between Deadline 4 and Deadline 5. ... The Applicant intends to provide a substantive response at Deadline 6, including any necessary and proportionate updates to the management plans.”**

At item 8, it states:

“Response to Stop East Park Energy [REP4-081 to REP4-086]

The Applicant acknowledges the six Deadline 4 submissions [REP4-081 to REP4-086] made by Stop East Park Energy (SEPE). The Applicant notes that a number of the underlying themes have been raised previously by SEPE and

have been addressed in the Applicant's earlier examination submissions, including the Applicant Response to Stop East Park Energy [REP2-045] and its subsequent responses. However, **the Applicant recognises that the Deadline 4 submissions develop a number of those matters further and contain additional analysis.** The Applicant is undertaking a review of the submissions across the relevant legal and technical disciplines and against the Applicant's earlier responses. **However, for the reasons explained above regarding the limited time available between Deadline 4 and Deadline 5, it has not been practicable to complete a full review and detailed response at this deadline. The Applicant intends to provide a response at Deadline 6, together with any targeted updates to the application documents considered necessary or appropriate."**

At item 9 it refers to its response to Borough of Bedford Local Access Forum and the British Horse Society and once more refers to the decision to defer its response following the time constraints that materialised between Deadlines 4 and 5:

"Given the limited period available between publication of the Deadline 4 submissions and Deadline 5, it has not been practicable to complete that review or provide a fully considered response at this deadline. The Applicant will continue its detailed review of [REP4-044] and **intends to provide a substantive response at Deadline 6, together with any consequential updates to the relevant management plans considered necessary or proportionate."**

[Emphasis added to all quotes]

The Applicant's Deadline 5 material itself bears indications of the acknowledged time pressure, including paragraph-numbering errors, numerous minor typographical errors and, for example, the apparently corrupted word "wqresponse" at paragraph 1.2.1, REP5-023. These errors provide further contemporaneous evidence of rushed preparation and of the resulting limitations and incompleteness of its Deadline 5 material.

SEPE submits that the Applicant's own statements confirm that:

- it has substantially deferred its responses to Deadline 4 submissions from Deadline 5 to Deadline 6
- its Deadline 5 responses are limited and "*selective*", and
- its forthcoming Deadline 6 responses and submissions are not characterised as modest or limited in scope, but instead described as "*substantive*", with potential "*updates to the management plans*" and "*updates to the application documents*".

The effect of these deferrals on the sequence of scrutiny originally provided for by the Examination timetable is illustrated in the timeline set out in Table A.

Deadline	Date	Submission/response activity	Notes
Deadline 1	7 April	Written Representations submitted	Relevant Representations are acknowledged by the Applicant via thematic responses, but substantive iterative scrutiny had not yet commenced
Deadline 2	28 April	- Deadline 2 submissions - Applicant responses to Deadline 1 submissions	First scrutiny round
Deadline 3	26 May	- Deadline 3 submissions - Applicant responses to Deadline 2 submissions	Second scrutiny round
Deadline 4	10 July	- Deadline 4 submissions - Applicant responses to Deadline 3 submissions	Third scrutiny round
Deadline 5	21 July	- Deadline 5 submissions – severely time-constrained because of short period between Deadlines 4 and 5, compounded by length of time taken to publish all Deadline 4 submissions and Application documents in Examination Library - Applicant states that because of “limited time available between Deadline 4 and Deadline 5... [it] intends to provide a response at Deadline 6, together with any targeted updates to the application documents considered necessary or appropriate” (Cover Letter, item 8); submits “selective” and very limited interim responses to SEPE and other parties <i>Following delays in publishing Deadline 4 submissions, Deadline 5 documents similarly take nearly four working days to become available in the Examination Library</i>	Fourth scrutiny round materially disrupted, resulting in the breakdown of the deadline’s full intended scrutiny function
Deadline 6	4 August, postponed by ExA on 4 August to 18 August	Deadline 6 submissions – Interested Parties and statutory stakeholders cannot submit full responses because Applicant has deferred its substantive responses and any associated updated documents from Deadline 5 to Deadline 6; Applicant responses and updated documents will not be available until after publication of documents following new Deadline 6 date	Effectively forms fourth, rather than fifth, scrutiny round

		Applicant now plans to make its deferred responses to Deadline 4 submissions at this deadline	
Deadline 7	18 August, postponed by ExA on 4 August to 1 September	- Deadline 7 submissions – responses to updates and responses made by Applicant at Deadline 6, a deadline later than scheduled, and now effectively at close of Examination - Applicant will not see any responses to its deferred responses and documents before it makes its own final submissions and uploads its final Application documents	Effectively forms fifth and final, rather than sixth and final, opportunity to make submissions

Table 1: Examination timetable and the effect of Deadline 5 disruption on iterative scrutiny

4. The Applicant’s arguments do not address the procedural consequences of the Deadline 5 disruption

Against that procedural background, SEPE responds below to the principal arguments presented by the Applicant in its letter to the Case Manager of 5 July 2026. As will be apparent, a number of those arguments address propositions that SEPE has not advanced, while others conflate the fact that an issue has previously featured in the Examination with substantive engagement with the specific evidence, technical analysis and inconsistencies raised by SEPE.

4.1

On page 2 of its letter, the Applicant attempts to imply that SEPE’s requested extension is unnecessary because the existing timetable provides an adequate opportunity to respond at Deadline 7; Interested Parties have no entitlement to further rounds of response; the Applicant’s Deadline 5 comments were merely procedural; and the outstanding issues are established “*matters of disagreement*” that have already been adequately addressed.

SEPE submits that the Applicant’s characterisation materially misrepresents the basis of SEPE’s request. SEPE is not seeking an “*open-ended entitlement*” to successive rounds of response and counter-response, nor is its concern to continue debating matters on which the parties disagree. The issue is that a scheduled stage of full iterative scrutiny has effectively been lost: substantive responses which would ordinarily have been available for scrutiny at Deadline 5 were deferred by the Applicant to Deadline 6, leaving Interested Parties with one fewer opportunity within the established Examination timetable to consider and respond to the Applicant’s position. The Applicant itself acknowledged at Deadline 5 that, because of the “*very limited time available between Deadline 4 and Deadline 5*”, it had not been practicable

to complete its review and detailed response and that those responses would instead be provided at Deadline 6.

Nor is it accurate to characterise the Applicant's Deadline 5 statements as wholly procedural. While deferring its substantive response, the Applicant nevertheless provided partial and selective commentary maintaining earlier positions, which was capable of operating as a preliminary rebuttal prior to engaging properly with SEPE's evidence or analysis.

Further, one of SEPE's Deadline 4 submissions set out a recently completed analysis of the Scheme's greenhouse gas emissions avoidance, using the government's Green Book and transparent assumptions, alongside a range of challenges concerning apparent errors, inappropriate assumptions and issues of transparency in the Applicant's documents (REP4-086). However, rather than adopting a form of "*holding position*" the Applicant now describes, the Applicant responded in this instance with a blend of 'cherrypicked' responses and repetition of previous content that was itself the subject of scrutiny in SEPE's submission. It is difficult to characterise this as anything other than a "*premature rebuttal*", as SEPE contends in its first procedural filing.

Importantly, the Applicant is not correct in claiming that:

"the matters identified by SEPE are principally matters of disagreement between the parties, which have already been the subject of substantive evidence and multiple submissions during the Examination"

Firstly, two of SEPE's six Deadline 4 submissions focus on a new Applicant document and a topic not previously scrutinised in detail by SEPE (or, to a large extent, by other parties) during the Examination. As noted above, SEPE's 'East Park Energy: review of the Applicant's carbon assessment – reliability, transparency and alternative lifecycle analysis' (REP4-086) presents, for the first time, an alternative analysis of the Scheme's projected emissions avoidance, alongside an assessment of specific apparently problematic assumptions, calculations and assertions made by the Applicant.

As the title suggests, SEPE's 'East Park Energy: response to the Applicant's Technical Note on Replacement Works – assessment of key issues' (REP4-082) responds to the Technical Note published at the previous deadline: a new document in the Examination which warranted a new, more detailed, stand-alone submission setting out SEPE's concerns – concerns largely shared by the Host Authorities.

Secondly, the other issues identified by SEPE cannot properly be dismissed as straightforward "*disagreement between the parties*", as the Applicant suggests. SEPE has consistently identified specific, evidenced inconsistencies within the Applicant's own case – including unreconciled materials quantities and associated transport

movements, and discrepancies between the Scheme presently under examination and that described within the Application – on which the Applicant has repeatedly failed to engage substantively. The fact that such matters have been raised previously does not demonstrate that they have been adequately examined; where detailed points remain unanswered, their repetition or development is a consequence of deflection or the absence of a substantive response, not evidence of a continuing difference of opinion.

SEPE also notes that, throughout the Examination, the Applicant has shown little hesitation in correcting perceived errors or misunderstandings in Interested Parties' submissions. It is therefore notable that, in relation to many of the detailed, specific and evidence-based points raised by SEPE since Deadline 1, the Applicant has neither substantively answered those points nor sought to demonstrate that they are factually mistaken. That distinction is significant: matters left substantively unanswered cannot simply be characterised as differences of opinion.

The Applicant's attempt to recast these unresolved evidential issues as ordinary disagreement therefore avoids, rather than answers, the procedural concerns raised by SEPE.

4.2

Later at page 2, the Applicant refers to SEPE as being "*a voluntary community organisation*" and that "*participation in an Examination can place significant demands on all parties*". However, SEPE's concern is not the time or resources available to it, nor does it seek identical resources or an open-ended sequence of replies. The issue is that the disruption around Deadlines 4 and 5 has effectively removed a scheduled stage of full iterative scrutiny, leaving "*substantive*" Applicant responses – and potentially associated amendments to Application documents – to be considered for the first time at the final stage of the Examination.

The Applicant states:

"The sole concern for any allegation of procedural fairness is whether a particular party has been provided with a reasonable opportunity to place its case before the Examining Authority ("ExA") and to comment on relevant material."

SEPE contends that this formulation supports, rather than answers, its concern. The question is precisely whether Interested Parties now have a "*reasonable opportunity*" to comment on relevant material. Where substantive responses and potential document updates have been deferred from Deadline 5 to Deadline 6, the existence of Deadline 7 does not itself establish that the remaining opportunity permits meaningful

scrutiny before the Examination closes. On the Applicant's own formulation, that is directly relevant to "*procedural fairness*". See section 5.1.

4.3

On page 3, the Applicant claims that:

"The central premise of SEPE's request is that there is a procedural imbalance in the fact that they will not be able to respond to the Applicant's Deadline 6 submissions and that the Applicant would essentially be getting the 'last word' in the examination process."

SEPE refutes this characterisation of its request. Across its two procedural filings, SEPE has made it clear that the issue at hand is not that either SEPE or any other party "*will not be able to respond to the Applicant's Deadline 6 submissions*". It is rather that with the disruption caused by timing issues between Deadlines 4 and 5, the original opportunity to respond to those submissions has now been lost, leaving only Deadline 7, the final Examination deadline, to respond to the Applicant's submissions relating to Deadline 4.

4.4

In its page 3 paragraph opening "Most importantly in the context of SEPE's concerns...", the Applicant continues to mischaracterise SEPE's case: SEPE does not contend that there is no subsequent deadline at which it can respond, but that an earlier scheduled stage of scrutiny has effectively been displaced, thereby concentrating unresolved and repeatedly passed over material issues into the final Deadline 7 opportunity. The existence of Deadline 7 does not remedy the loss of that preceding scrutiny stage.

Additionally, SEPE does not, of course, dispute that every Examination must ultimately be finite; its concern is simply that this Examination should not close having effectively lost a scheduled stage of proper scrutiny with the risk of material issues remaining substantively unresolved.

4.5

At page 4, the Applicant relies on the inquisitorial nature of the Examination and implies that SEPE is wrong to "*repeatedly restate*" positions. SEPE does not dispute that an Examination is inquisitorial and led by an Examining Authority. That does not, however, answer the procedural concern raised by SEPE. The Examination timetable is itself part of an Examining Authority-led process, providing the structured opportunities through which submissions are considered and scrutinised. SEPE is not

repeatedly restating its position; it has progressively developed detailed evidence and technical analysis precisely because the Applicant has persistently sidestepped, rather than substantively engaged with, the specific issues raised.

4.6

On the same page, the Applicant states that government guidance “*does not establish an entitlement to an unrestricted series of responses*”; however, SEPE has made no such claim. Nor does SEPE contend that every submission requires a further right of reply. It seeks only to address the loss of a scheduled opportunity for scrutiny that arose when substantive Applicant responses due for consideration at Deadline 5 were deferred to Deadline 6. The inquisitorial nature of the Examination does not make that lost opportunity immaterial; rather, the loss of a stage within the Examining Authority’s own structured process creates a risk that relevant evidence and issues will not be afforded adequate scrutiny by all parties before the Examination closes, resulting in procedural prejudice to SEPE and other parties.

4.7

At page 5, the Applicant argues that SEPE has merely listed disputed topics and that the existing Examination record demonstrates those matters have already been sufficiently examined. However, the Applicant again conflates the fact that a broad topic has featured in the Examination with evidence that the specific issues raised by SEPE within that topic have actually been examined or substantively addressed. SEPE has not simply ‘listed’ disputed topics: across successive submissions it has identified and progressively developed detailed, evidenced concerns, including apparent errors, omissions and internal inconsistencies within the Applicant’s own documents. In numerous instances the Applicant has responded only at a high or thematic level, or has avoided the specific, evidenced point altogether, requiring SEPE to repeat and further evidence matters that remain unanswered. The existence of earlier Applicant responses, hearings and written questions therefore does not establish that these particular issues have been resolved or even substantively engaged with; nor can an issue properly be characterised as no more than a continuing “*disagreement*” where the Applicant has yet to address the evidence on which SEPE’s concern is based.

Indeed, the Applicant’s own Deadline 5 position – that it recognises SEPE’s “*Deadline 4 submissions develop a number of those matters further and contain additional analysis*”, was “*undertaking a review of [SEPE’s] submissions across the relevant legal and technical disciplines*”, and would provide its “*detailed response*” and “*any targeted updates to the application documents*” at Deadline 6 – directly undermines the suggestion that the matters identified by SEPE had already been adequately examined.

4.8

At page 5, SEPE is concerned to see the Applicant's mischaracterisation of its comments on the Replacement Works Technical Note:

"Regarding replacement works, SEPE's suggestion that this remains "entirely unaddressed" by the Applicant is wholly incorrect. The Examination already contains the Applicant's Technical Note on Replacement Works [REP3-075] (noting SEPE's own Deadline 4 submission describes itself as a response to that Technical Note). Replacement works were also the subject of the ExA's Second Written Questions and the Applicant's subsequent response. What remains outstanding is, therefore, the Applicant's response to SEPE's latest analysis, not the examination of replacement works as a topic."

The Applicant's selective extraction of the words "*entirely unaddressed*" misrepresents SEPE's statement. SEPE plainly recognises that replacement works have featured as a "*topic*" in the Application and Examination before REP3-075; that is not the point at issue. As the Examination has progressed, concerns about replacement works have become increasingly significant, leading to the Applicant's stand-alone Technical Note at Deadline 3 setting out its proposed framework in far greater depth, and including important new details. That framework prompted substantial and wide-ranging concerns from the Host Authorities, SEPE and other Interested Parties at Deadline 4. It was those concerns that SEPE described as remaining "*entirely unaddressed*". The full wording of SEPE's 28 July filing makes this explicit:

- "issues relating to the proposed replacement works framework, which the Applicant acknowledges remain entirely unaddressed (item 7, REP5-001)"

The issues raised at Deadline 4 in relation to the Replacement Works Technical Note do indeed remain "*entirely unaddressed*" at the present time, since the Applicant has now deferred its response to these concerns until Deadline 6. This is acknowledged by the Applicant itself in its Deadline 5 Cover Letter, item 7, where it references the Host Authorities' "*extensive and detailed*" comments on the contents of the Technical Note:

"Response to Host Authorities

The Applicant notes that the Deadline 4 submissions from the Host Authorities contain extensive and detailed comments on a number of the outline management plans, as well as the approach to replacement works. Given the nature and level of detail of the comments, the Applicant is undertaking a careful review alongside relevant technical discipline leads and, where appropriate, is drafting amendments to the management plans. It would not assist the ExA or the parties for the Applicant to provide a necessarily

abbreviated or insufficiently considered response within the very limited time available between Deadline 4 and Deadline 5.”

The timeline at Table 2 demonstrates how, because of the disruption to the deadline schedule, the Applicant’s submissions and any revisions in relation to the Replacement Works Technical Note are still unavailable as the Examination approaches the now postponed Deadline 6.

The Table also serves to illustrate the sequence of disrupted deadlines relating to a single specific topic under examination.

Deadline	Date	Submission/response activity
Deadline 3	26 May	Applicant submits Replacement Works Technical Note
Deadline 4	10 July	Host Authorities, SEPE and other Interested Parties submit significant and wide-ranging concerns over the proposed replacement works framework published at Deadline 3
Deadline 5	21 July	Applicant defers response to Deadline 4 comments to Deadline 6, acknowledging that Deadline 4 submissions from the Host Authorities contain “extensive and detailed comments on a number of the outline management plans, as well as the approach to replacement works”. It adds that it “is undertaking a careful review alongside relevant technical discipline leads” and drafting amendments to the management plans. The Applicant states that it “would not assist the ExA or the parties for the Applicant to provide a necessarily abbreviated or insufficiently considered response within the very limited time available between Deadline 4 and Deadline 5.”
Deadline 6	18 August (previously 4 August)	Delayed Applicant responses now due to be published at the penultimate Examination deadline following the “extensive and detailed comments” from the Host Authorities

Table 2: Replacement Works Technical Note – sequence of scrutiny and deferred Applicant response

4.9

At page 6, the Applicant argues that the Examination need not run for the full six-month statutory period and that a shorter timetable is consistent with government guidance. However, SEPE has not suggested that the original length of the Examination timetable was inappropriate in itself; its requests arise from the subsequent disruption to that timetable and the effective loss of a scheduled stage of scrutiny, making the Applicant’s reliance on the intended overall duration of the Examination irrelevant to the issue raised.

4.10

Later at page 6, the Applicant states “*SEPE has not identified any specific document, new assessment, proposed change or unforeseen late-arising matter which cannot reasonably be addressed through Deadline 7 submissions*” and is therefore speculating about material not yet submitted.

SEPE submits that this reasoning is circular: neither the Examining Authority, nor SEPE nor any other party engaged in the Examination can identify the precise content or significance of documents, assessments or changes that have not yet been submitted or published, and it is the Applicant’s own deferral of that material which creates this uncertainty. The absence of such specificity therefore cannot rationally be relied on as evidence that the final Deadline 7 opportunity will necessarily provide adequate scrutiny of material that the Examining Authority, SEPE and other parties have not yet been able to see. For SEPE, this uncertainty is particularly material given that numerous specific issues and detailed technical analyses already advanced remain substantively unanswered, having been repeatedly left unaddressed by the Applicant across successive deadlines.

4.11

At page 7, the Applicant argues that its Deadline 5 comments were merely a procedural holding position rather than a premature substantive rebuttal, and that deferring its detailed response to Deadline 6 caused no prejudice because SEPE can respond at Deadline 7. This characterisation overlooks the substance of what the Applicant actually did.

At Deadline 5, the Applicant simultaneously relied on existing responses and positions, along with ‘cherrypicking’ new rebuttal points in response to SEPE’s submissions while acknowledging that SEPE had developed its lines of argument, provided further analysis requiring “*multidisciplinary review*”, and raised matters that might require consequential amendments to the application documents. Having accepted that SEPE’s new material required further substantive consideration, the Applicant could not reasonably treat its earlier positions as an adequate response to that developed evidence before providing the reasoning, technical analysis or document revisions resulting from its review. SEPE’s concern is therefore not that the Applicant was required to answer every submission simultaneously, but that it selectively advanced conclusions while deferring the substantive basis on which those conclusions could properly be tested, without an equivalent subsequent opportunity for scrutiny.

4.12

In response to the Applicant's summary at page 8, SEPE submits that:

- **Some of SEPE's outstanding responses do relate to new matters.** The Applicant states that *"the outstanding responses SEPE have cited... do not relate to new matters"*. As set out earlier in this submission, this is incorrect: two of SEPE's six Deadline 4 submissions concern an important new document and matters not previously scrutinised.
- **The issues that SEPE raised at Deadline 4 are not all new matters, but that is precisely the point.** Many are specific, evidenced issues that SEPE has had to develop or raise repeatedly in the face of the Applicant's continued deflection from the substantive points at issue.
- **Previous responses do not establish that the issues have been addressed or resolved.** In numerous instances the Applicant has failed to engage with the specific technical analysis or examples provided by SEPE – including significant reconciliation issues and internal inconsistencies within the Application – or relied on generic or thematic responses that leave the underlying issue substantively unanswered.
- **The reference to Deadline 7 again misses SEPE's case.** SEPE does not contend that no opportunity to comment remains; its concern is that an important late-stage scrutiny round has effectively been lost, concentrating substantive responses, potential document revisions and SEPE's and other parties' opportunity to scrutinise them into the final deadline.
- **The Examining Authority's decision to change the timetable is not relevant to SEPE's concerns relating to the late publication of Deadline 4 submissions and consequent 'lost' round of full scrutiny.** By deferring substantive responses to Deadline 4 submissions from Deadline 5 to Deadline 6, the Applicant has displaced a scheduled stage of scrutiny and materially reduced the opportunities available to other parties to test those responses before the Examination closes, creating an asymmetry in which the Applicant has additional time to prepare its substantive responses without a corresponding opportunity for Interested Parties to scrutinise and test them through a further round of Examination scrutiny.
- **Additional time to respond to Deadline 5 material has very limited practical value.** The Applicant states that: *"the variation in the timetable allows additional time for all Interested Parties to respond to Deadline 5"*. However, as

established in this submission, much of the substantive material due at Deadline 5 has been deferred to Deadline 6. The Applicant cannot credibly maintain that the issue is “*additional time*” to respond to Deadline 5 *per se*, when the issue is instead the limited and “*selective*” substance available to respond to. Additional time does not remedy that deficiency and, in practical terms, principally benefits the Applicant in preparing the material that remains outstanding.

- **The claimed absence of procedural prejudice therefore rests on the same mischaracterisation throughout the Applicant’s response:** SEPE is not seeking an additional round simply because it ‘disagrees’ with the Applicant, but rather the restoration of a late-stage scrutiny opportunity effectively lost where significant, evidenced matters remain substantively unanswered.

5. The resulting risk of procedural prejudice

SEPE contends that it is clear that the deferral of the Applicant’s responses to Deadline 4 submissions from Deadline 5 to Deadline 6 creates a material risk of procedural imbalance. SEPE raised significant and wide-ranging concerns at Deadline 4, including specific technical analysis of traffic and transport assessments, apparent reconciliation issues and inconsistencies in Application documents, the material discrepancy between the Scheme detailed in the Application and that currently under examination, new analysis of the Scheme’s likely carbon dioxide emissions avoidance, and serious issues in relation to a new document, the Replacement Works Technical Note, many of which were echoed in the Host Authorities’ submissions. However, rather than being able to review relevant Applicant responses and updates at Deadline 5, respond at Deadline 6 and, if necessary, comment further at Deadline 7, all parties will now have only between 6 and 8 working days – depending on when the Deadline 6 submissions are published – to consider and respond to that material and prepare final documents and closing submissions, before the seventh and final deadline.

Further, the Applicant’s deferred responses and associated Application and management plan updates are likely to be submitted alongside other documents and updates already scheduled for submission by the Applicant at the originally planned Deadline 6. If so, Interested Parties, Host Authorities and other stakeholders will face a potentially substantial volume of revised or new material, with very limited time to review and respond to it before the final Deadline 7. This risks placing a disproportionate burden on Deadline 7, with a significant body of substantive material and associated responses effectively compressed into the final stage of the Examination.

5.1

In this respect, SEPE would respectfully draw the Examining Authority's attention to the High Court judgment of The Honourable Mrs Justice Andrews DBE in *Mr Les Barlow (on behalf of Harthill Against Fracking) -v- Secretary of State for Housing, Communities and Local Government & INEOS Upstream Limited* [2019] EWHC 146. At paragraph 58 of the learned lady justice's judgment she sets out the factors to be considered in the determination: of whether a party in a planning case has had a reasonable opportunity to make its submissions. Such factors are:

- i. "the nature, volume and complexity of the evidence in question,
- ii. its importance to the issues to be determined on the planning application ...,
- iii. how much time that person in fact had to assimilate and understand the evidence and to prepare a response to it ...,
- iv. the resources available to the party concerned and whether they had access to relevant expertise. A lay person is likely to need longer to digest and assimilate information of a technical nature and respond to it than someone who has access to expert assistance ...,
- v. what responses the party concerned was able to put forward in the time that they were given, and
- vi. what else they might have said or done if they had been given a longer time to prepare their response."

The learned lady justice also notes that:

"The last of these factors is also relevant to the issue of whether there has been material prejudice."

Barlow ultimately failed on its facts, but SEPE contends that all the factors set out in this key judgment are germane to the instant application, including the final remark relating to "*material prejudice*".

6. Requests to the Examining Authority

In light of the matters set out above, and consistent with SEPE's procedural filings of 28 July and 4 August 2026, SEPE respectfully repeats its requests that the Examining Authority:

1. modifies the Examination timetable to include an additional, suitably adequate, procedural deadline between Deadline 6 and the existing final Deadline 7, thereby restoring the opportunity for Interested Parties and statutory stakeholders to consider, scrutinise and respond to the Applicant's deferred

substantive responses to Deadline 4 submissions and any consequential amendments to the Application documents; and

2. extends the Examination period to the extent necessary to accommodate that additional procedural deadline and restore the opportunity for scrutiny and response effectively lost at Deadline 5.