



The Planning Act 2008

East Anglia One North (EA1N) and East Anglia Two (EA2) Offshore Wind Farms

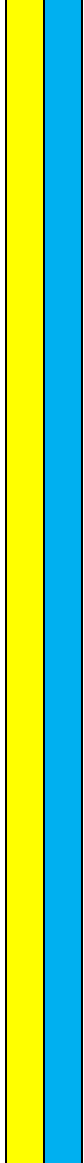
Planning Inspectorate Reference: EA1N – EN010077 & EA2 – EN010078

Deadline 8 – 25 March 2021

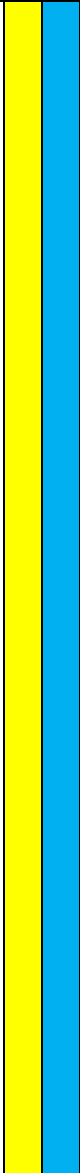
East Suffolk Council's Summary of Oral Case - Issue Specific Hearing 15

Issue Specific Hearing 15 (12 March 2021) – Draft Development Consent Orders (DCOs)

Examining Authority's Question		East Suffolk Council's Summary of Oral Case	References
Agenda Item 1 – Welcome, introductions and arrangements for these Issue Specific Hearings 15			
Agenda Item 1A – Negotiations with Affected Persons			
<p>Matters arising from correspondence from Suffolk Energy Action Solutions (SEAS) of 14 February 2021 [AS-074]</p> <p>The ExAs will seek concluding submissions from the Applicants, SEAS and IPs who wish to raise matters in relation to this item, taking account of:</p> <ul style="list-style-type: none"> • The originating and additional submissions made up to 5pm on 22 February 2021; • The ExAs Procedural Decision 31 of 22 February 2021 on Negotiations with Affected Persons; • Responses submitted at Deadline 7; and • Responses submitted at Deadline 8. <p>The Applicants will be provided with a right of reply.</p>		<p>ESC has no comments to make.</p>	
Agenda Item 2 – Progress Position Statement by the Applicants: Changes to the Drafts in Progress since ISH9.			
<p>The ExAs will ask the Applicants to present progress since ISHs9.</p>		<ul style="list-style-type: none"> • Article 17 'Authority to survey and investigate the land onshore' – ESC notes the additional wording inserted in the most recent draft DCOs (REP7-007) in relation to removing 	

<p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item, running in the Order of provisions in the dDCOs, except as provided for in separate agenda items below.</p> <p>The Applicants will be provided with a right of reply.</p>		<p>equipment and facilities following the completion of survey or investigatory work and supports this addition.</p> <ul style="list-style-type: none"> Article 27 ‘Temporary use of land for maintaining authorised project’ – ESC notes the update provided to the definition of ‘the maintenance period’ which now excludes the replacement planting period identified by Requirement 15. Article 33 ‘Operational land for purposes of the 1990 Act’ and Permitted Development Rights. <p>ESC considers that it is not possible at this stage to determine the extent of operational land at the substations site. Whether land falls within the definition provided by section 263 with further information provided in section 264 of the Town and County Planning Act 1990 will be highly fact sensitive. ESC considers the wording within s263 potentially provides a relatively wide definition of operational land. There is scope for land on which buildings are not sited to qualify as operational land, not necessarily limited to the compounds. In any event, land within compounds will likely qualify as operational land as the Applicants confirmed during the hearing and within their REP6-067 response. The compounds are likely to include land upon which buildings and electrical equipment are not sited. In these circumstances, extensions or new structures/buildings could be erected without control, save where the Environmental Impact Assessment (EIA) Regulations are engaged.</p>	<p>ESC Response on dDCO commentary REP6-080</p> <p>ESC D7 Response Para 2.7-2.13 REP7-063</p> <p>ESC Response to ExQ2 2.0.2 REP6-079</p>
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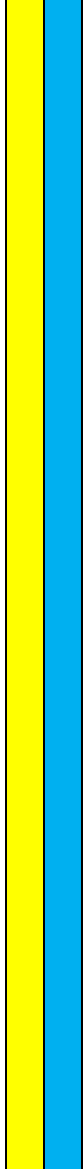
		<p>ESC therefore maintains that permitted development rights should be removed specifically in relation to the cable sealing end compounds, EA1N and EA2 substations and National Grid substation (Work No.s 30, 38 and 41). ESC suggested specific wording in paragraph 2.13 of REP7-063 which has been set out below. The Applicants however raised concerns regarding the specification of the need to apply for planning permission and therefore the wording has been amended to reflect their comments:</p> <p><i>Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order), no development in connection with Work No.s 30, 38 and 41 shall be carried out under Schedule 2, Part 15, Class B (a), (d) or (f). without the submission of a formal planning application and the granting of planning permission by the local planning authority.</i></p> <p>ESC considers that the limited removal of permitted development rights is justified. If these rights are not removed such development could occur without any control. The Environmental Statements identify that the projects will result in significant adverse residual impacts on the locality of the substations site. Given the sensitivity of the site, it is not considered appropriate that further extensions and development associated within the substations and sealing end compounds should be able to occur without the implications of the development being fully and robustly considered and assessed.</p>	
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		<p>The design of the substations and sealing end compounds will be subject of design refinement with the local community and local authorities engaged in this process. The ability for development to occur utilising permitted development rights as soon as the works are constructed would undermine this process.</p> <p>ESC does not wish to fetter the operator’s interests and it is not considered that removal of the specific rights suggested would unfairly inhibit the operators’ abilities to undertake their duties; it would however provide some appropriate controls. Although the Government has granted powers to electricity undertakers to carry out certain works through Part 15 of the Town and Country Planning (General Permitted Development) Order 2015, the ability to remove those powers is available and has not been removed. The Council considers that there are appropriate and legitimate reasons to remove these rights in the context of this site and invites the Examining Authority to do this. The removal of these rights would not impinge on the scope of the DCO, including the power of maintenance under Article 4 (which is wide but does not include extensions or entirely new buildings).</p> <p>Further comments are provided in ESC’s response to the Examining Authority’s Action Points for ISH15.</p> <ul style="list-style-type: none"> • Article 36 ‘Certification of plans etc’ – ESC welcomes the update to this article which refers to the certified plans detailed in the new Schedule 17. 	
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	<ul style="list-style-type: none"> • Article 37 ‘Arbitration’ – in the interests of clarity ESC considers that Article 37(2) should be revised to explicitly include the relevant planning authority and the highway authority as excluded from the application of Article 37(1), alongside the Secretary of State and Marine Management Organisation. Although the general excluding words in Article 37(1) are noted, there is no reason to expressly exclude the Secretary of State’s jurisdiction and not the relevant planning authority’s, for example. • Requirement 12 ‘Detailed design parameters onshore’ – <p>ESC welcomes the revisions to the order and format of the requirement.</p> <p>ESC has previously expressed comments in relation to the Design Principles Statement which would still stand. ESC supports the inclusion of an additional design principle as set out in ESC’s Oral Summary of Case for ISH9 (REP6-077). ESC has also sought a clearer commitment within the Design Principles Statement to make every effort to reduce the size and height of the substations during the post consent design refinement work.</p> <p>ESC welcomes the reduction in the working width of the Hundred River crossing identified within 17(b) and the commitment to provide some additional wording within the Outline Watercourse Crossing Method Statement (REP6-</p>	<p>ESC Oral Case ISH9 REP6-077 and ESC D5 Submission REP5-048</p>
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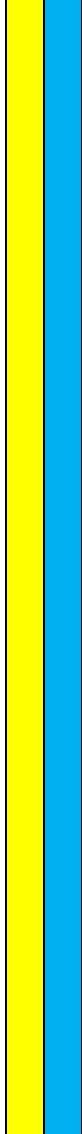
		<p>041) to provide further reductions if possible post consent during design refinement work.</p> <p>Post ISH15 the Applicants have confirmed that outline details of the Operational Noise Control Plan discussed under Requirement 27 below will be provided within an updated Design Principles Statement and update to the wording of Requirement 12. ESC will review these revisions at Deadline 8.</p> <ul style="list-style-type: none"> • Requirement 13 ‘Landfall construction method statement’ – ESC welcomes the revisions to this requirement to secure monitoring and remedial works if the monitoring identifies a risk of exposure of the infrastructure as a result of the rate and extent of erosion at the landfall site. Outline details of the monitoring has been provided in Appendix 2 of the Outline Landfall Construction Method Statement (OLCMS – REP6-022). ESC would be content with the addition of the Marine Management Organisation and Natural England as consultees, as requested by them. • Requirement 15 ‘Implementation and maintenance of landscaping’ – ESC welcomes the Applicants commitment that Work No.29 will be subject to a ten-year replacement planting period and looks forward to reviewing this amendment within the draft DCOs submitted at Deadline 8. ESC also welcomes the commitment within the Outline Landscape and Ecological Management Strategy (OLEMS REP6-007, paragraph 169-170) to provide details of longer-term management. 	<p>ESC Deadline 7 Response – para 2.3 REP7-063</p>
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	<ul style="list-style-type: none"> • Requirement 21 ‘Ecological Management Plan’ – ESC notes the minor revisions to 21(2). The Council accepts these revisions and is now content with the wording of the requirement. • Requirement 23 ‘Construction hours for transmission works’ and 24 ‘Construction hours for grid connection works’ – ESC welcomes the inclusion of the term ‘internal’ preceding fitting out works in 23(2)(b) and 24(2)(b). ESC has also been in discussions with the Applicants and agreed additional wording which secures the need for the ESC’s agreement in relation to whether the activities save for those identified within 23(2) (a) to (d) and 24(2) (a) to (d) are essential as well as in relation to the duration and timing of the works. Subject to the inclusion of this wording within the draft DCOs, the Council is content with the wording of Requirement 23 and 24. • Requirement 26 ‘Onshore preparation works management plan’ – ESC welcomes the inclusion of Requirement 26 which secures an Onshore Preparation Works Management Plan or Plans. Outline details of which have been provided within Appendix 1 of the Outline Code of Construction Practice (OCoCP – REP7-025). • Requirement 27 ‘Control of noise during operational phase’ 	<p>ESC ISH6 Oral Case - REP5-047 ESC ISH9 Oral Case - REP6-077.</p>
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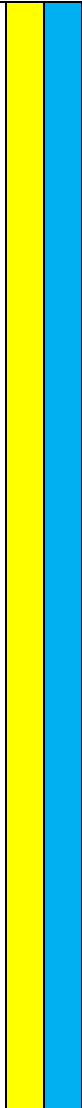
		<p>During the hearing ESC confirmed that discussions were ongoing with the Applicants in relation to this requirement and the operational noise limits.</p> <p>The Applicants have confirmed that the operational limits proposed and secured within Requirement 27 are the lowest that can be achieved at present based on their discussions with suppliers.</p> <p>Post-ISH15 the Applicants have committed to providing an Operational Noise Control Plan prior to the commencement of construction of the project substations. This plan will provide details in relation to the operational noise at the detailed design stage and commits to adopting Best Practicable Means to reduce the noise levels further at this stage providing mitigation measures do not add unreasonable costs, delays to the projects or result in adverse environmental impacts. Based on this new information and commitments, ESC now accepts the rating noise limits provided at this stage within Requirement 27 subject to updated wording to secure this commitment. Further information on this is provided within ESC Deadline 8 submissions.</p> <ul style="list-style-type: none">• Requirement 30 'Onshore decommissioning' – ESC welcome the inclusion within the requirement (1) and (3) to notify the relevant planning authority of the permanent cessation of commercial operation of the transmission works and grid connection works within 14 days. ESC also notes the	
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		<p>inclusion of the requirement to consult the relevant highway authority.</p> <ul style="list-style-type: none"> • Requirement 33 ‘Emergency planning arrangements’ – ESC notes and is content with the revisions to the wording which has been subject of prior discussions with both ESC and SCC. • Requirement 38 ‘Restriction on carrying out grid connection works where consented in another order’ – ESC notes the restriction in relation to Work No.34. • Requirement 41 ‘Operational Drainage Management Plan’ – ESC supports the current drafting of the requirement which provides the relevant planning authority with responsibility for discharging in consultation with SCC. ESC has provided further reasoning for this in the Council’s Oral Summary of Case for ISH11. • Requirement 43 ‘Restriction on carrying out grid connection works’ – ESC note the new requirement which seeks to prevent the national grid connection infrastructure being constructed without a genuine commencement on the EA1N and EA2 projects. • Schedule 11 ‘Hedgerows’ – ESC notes the inclusion of important hedgerow 28 within Part 1 which was previously omitted. 	<p>ESC ISH11 Oral Case submitted at Deadline 8 (reference not yet known)</p>
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	<ul style="list-style-type: none"> Article 38 and Schedule 16 ‘Procedure for discharge of requirements’ – <p>ESC welcomes the inclusion of 1(a) and (b) which relates to the nature of the information the Applicants must provide to the discharging authority. ESC also welcomes the amendment in 3(a) from 42 days to 56 days and recognises the modifications the Applicants have made in relation to other time periods specified in 2.(2) and 3.(2)(d) and (e).</p> <p>ESC however remains concerned about the deemed consent provision detailed within Schedule 16. It is not considered that this provision is necessary or justified. The provision is not contained within Appendix 1 of The Planning Inspectorate’s Advice Note 15: Drafting Development Consent Orders. A deemed consent provision was also not included within the recently made Hornsea Project 3 DCO, quashed Norfolk Vanguard DCO or proposed within the draft Norfolk Boreas DCO. It has therefore not been considered necessary within other recently consented DCOs for similar developments.</p> <p>In addition, it is not considered that there are any specific local circumstances that would warrant the need for a deemed consent provision. There were no significant delays caused by ESC during the discharging of the requirements associated with the EA1 DCO and no appeals lodged in relation to non-determination. The Council worked collaboratively with the Applicant to ensure the timely discharge of requirements.</p>	<p>ESC Response to ExA Commentary on dDCOs REP6-080</p> <p>ESC Deadline 7 Response REP7-063</p>
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		<p>ESC understands the need to avoid unnecessary delays during the discharge of requirements process and has previously established Planning Performance Agreements to assist in ensuring this is achieved. It should be noted that the model provided in Appendix 1 of the Planning Inspectorate’s Advice Note 15 provides the option of an appeal against non-determination as the suggested option.</p> <p>ESC considers that the deemed consent provision should not be included within Schedule 16 for the reasons provided above. Notwithstanding this position, should the Examining Authority consider that such a provision is necessary and justified, it is considered that the wording of the schedule should include the requirement for the Applicants to submit a ‘deemed discharge notice’ similar to that necessary under Article 29, Part 5 of the Town and Country Planning (Development Management Procedure) Order 2015.</p> <ul style="list-style-type: none"> • Schedule 17 ‘Documents to be certified’ – ESC notes and supports the detailed information provided in this schedule in relation to the certified documents. • Article 44 and Schedule 18 ‘Compensation Measures’ – ESC notes the provisions for compensatory measures provided in Parts 1-6 for kittiwake, gannet, guillemot, razorbill, lesser black backed gull and red throated diver and the commitment in 1-5(3) to consult the relevant local planning authority on the mitigation strategy. ESC defers to the 	
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		Marine Management Organisation and Natural England in relation to the adequacy of the wording of in this schedule.	
Agenda Item 3 – Protective Provisions			
The ExAs will inquire into progress on protective provisions amendments.		ESC has no comments to make.	
The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.			
The Applicants will be provided with a right of reply.			
Agenda Item 4 – Security for Technical Processes: Progress			
The ExAs will review the need and possible drafting approaches to provisions securing the provision of such HRA compensation measures as may be advanced without prejudice. (ISHs3 Agenda Item 2 and ISHs9 Agenda Item 4 refers).		ESC has no comments to make.	
The ExA will invite submissions from IPs who wish to raise matters in relation to this item.			
The Applicants will be provided with a right of reply.			
Agenda Item 5 – Agreements and Obligations: Progress			
The ExAs will review progress on any commercial agreements and planning		<u>Skills, Education and Economic</u>	

<p>obligations. Progress on the MOU approach with local authorities will be reviewed. What has been agreed, documented and secured and what is outstanding requiring action before the close of the Examinations?</p> <p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.</p> <p>The Applicants will be provided with a right of reply.</p>		<p>A skills, education, and economic development Memorandum of Understanding (MoU) has been signed by ESC, SCC and ScottishPower Renewables. The MoU was signed by ESC in June 2020.</p> <p><u>S111 Agreements</u></p> <p>There are two proposed s111 Agreements, one for the EA1N project and one for the EA2 project. These include the following:</p> <ul style="list-style-type: none"> • Sums to support ecological, landscape and habitat enhancements, improve the existing public rights of way network and strengthening existing qualities of the Area of Outstanding Natural Beauty (AONB), in the landfall to substation area – as a result of significant impacts of the projects identified in the Landscape and Visual Impact Assessments (LVIAs) including on the AONB, disruption caused to public rights of way during construction and residual impacts on bats identified. • Sums per project to undertake landscape, environmental, access and amenity improvements and enhancements to Friston and its vicinity – due to significant impacts identified in LVIAs on landscape character, visual amenity and public rights of way during construction and operation. • Sums per project to contribute towards measures relating to the preservation and enhancement of heritage assets and their settings in Friston and its vicinity – as a result of 	
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impacts on the setting of heritage assets and loss of historic landscape character around the substations site.

- Sums to support access, environmental and ecological enhancements to the AONB (EA2 project only) – due to significant residual impacts identified on the AONB from the offshore turbines, and
- An administration fee.

The content of the s111 documents has been agreed with the Applicants and copies of the draft Agreements were provided at Deadline 6 in ESC's response to the publication of the Examining Authority's second round of questions (REP6-079).

The s111 Agreements seek to secure funding to provide compensatory measures in relation to some of the adverse impacts arising as a result of the construction and operational phases of the EA1N and EA2 projects. The Agreements have been taken into account by the Council when considering its overall position on the projects.

ESC has signed the s111 Agreements and provided these to the Applicants for their signatures. It is understood that the Applicants will submit the signed copies of the Agreements into the examinations at Deadline 8.

Tourism Fund

The Applicants have agreed to contribute £150,000 to support the promotion and marketing of the East Suffolk area as a tourist

		<p>destination during the construction phases of the projects. The intention is to utilise the fund over a three-year period to fund specific initiatives and campaigns designed to promote East Suffolk as a tourist destination. The Applicants have stated that the fund is to be administered by Suffolk Community Foundation.</p> <p><u>Environmental Exemplar Projects MoU</u></p> <p>ESC has also engaged with the Applicants in relation to an Environmental Exemplar MoU, this has not yet been signed by either party, but the content has been agreed. It is the intention for the MoU to be used to support projects which seek to aid the net zero transition or enhance biodiversity/encourage the appreciation of it. It is the intention to finalise the MoU and submit a signed copy before the end of the examination. However, it will not be possible to provide the signed MoU for Deadline 8, it is understood however that the Applicants will provide an unsigned version of the document at Deadline 8.</p>	
<p>Agenda Item 6 – Consents of Parties: Progress</p>			
<p>The ExAs will ask about the grant of Crown consent (PA2008 s135) and any other consents required from IPs.</p> <p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.</p>		<p>ESC has no comments on this.</p>	

<p>The Applicants will be provided with a right of reply.</p>			
<p>Agenda Item 7 – Other Consents: Progress</p>			
<p>The ExAs will monitor progress on and co-ordination with any consents beyond the NSIP regime and not provided for in the dDCOs, but necessary for delivery.</p> <p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.</p> <p>The Applicants will be provided with a right of reply.</p>		<p>ESC has no comments on this.</p>	
<p>Agenda Item 8 – Any other business relevant to the Agenda</p>			
<p>The ExAs may raise any other topics bearing on the structure and drafting of the dDCOs, certified documents and related agreements that bear on the dDCOs as is expedient, having particular regard to matters bearing on the dDCOs raised in ISHs 7 and 8 and CAHs3 and the readiness of the persons present to address such matters.</p> <p>The ExAs may extend an opportunity for participants to raise matters relevant to the topic of these hearings that they consider should be examined by the ExAs.</p>			

<p>If necessary, the Applicants will be provided with a right of reply.</p>			
<p>Agenda Item 9 - Procedural decisions, review of actions and next steps</p>			
<p>The ExAs will review whether there is any need for procedural decisions about additional information or any other matter arising from Agenda items 2 to 9.</p> <p>To the extent that matters arise that are not addressed in any procedural decisions, the ExAs will address how any actions placed on the Applicants, Interested Parties or Other Persons are to be met and consider the approaches to be taken in further hearings, in the light of issues raised in these hearings. A written action list will be published if required.</p>			
<p>Agenda Item 7 – Closure of hearings</p>			