



Suffolk County Council (20050784)

Answers to Examining Authority's Second Written Questions (ExQ2)

North Falls (EN010119)

Deadline 5

30 May 2025

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Glossary of Acronyms

<i>BNG</i>	<i>Biodiversity Net Gain</i>
<i>CNP(I)</i>	<i>Critical National Priority (Infrastructure)</i>
<i>CROWA2000</i>	<i>Countryside & Rights of Way Act 2000</i>
<i>(d)DCO</i>	<i>(Draft) Development Consent Order</i>
<i>EACN</i>	<i>East Anglian Connection Node</i>
<i>EIA</i>	<i>Environmental Impact Assessment</i>
<i>ExQ2</i>	<i>Examining Authority’s Second Written Questions</i>
<i>IP</i>	<i>Interested Party</i>
<i>LIR</i>	<i>Local Impact Report</i>
<i>NESO</i>	<i>National Energy System Operator</i>
<i>NF(OWF)</i>	<i>North Falls (Offshore Wind Farm)</i>
<i>ISH1 / ISH2</i>	<i>Issue Specific Hearing 1 or 2</i>
<i>OWF</i>	<i>Offshore Wind Farm</i>
<i>SCH(AONB)</i> <i>or SECHNL</i>	<i>Suffolk Coast & Heaths (Area of Outstanding Natural Beauty) or</i> <i>Suffolk & Essex Coast & Heaths National Landscape</i>

SLVIA	<i>Seascape, Landscape and Visual Impact Assessment</i>
SoS	<i>Secretary of State</i>
WTG	<i>Wind Turbine Generator</i>

“The Council” / “SCC” refers to Suffolk County Council

Purpose of this Submission

This document has been prepared by Suffolk County Council in response to the Examining Authority’s Second Written Questions (ExQ2) and is based on a template provided by the Planning Inspectorate case team. For ease of use, questions which are not addressed to Suffolk County Council have been deleted and where another authority is the Lead Authority, this has been attributed. Examination Library references have been used throughout to assist readers.

1 Answers to Examining Authority's Second Written Questions (ExQ2)

ExQ1	Question to:	Question:	Local Authority Answer:
1 General and Cross-topic Questions			
2 Agriculture and other land uses, ground conditions and soils			
3 Alternatives			
4 Aviation			
5 Climate Change and Resilience			
6 Compulsory Acquisition			
7 Cumulative Effects			
Q7.0.12	The applicant, and all IPs	Natural England – Risk and Issues Log (Deadline 4 Submission) – Landscape, Seascape and Visual Effects The Natural England – Risk and Issues Log [REP4-067] submitted at Deadline 4, together with Natural England's SLVIA Advice in Appendix I4 [REP4-067]	SCC noted the Applicant's expanded cumulative effect judgement in its response to Deadline 3 submissions [REP4-097] at paras 16-18. SCC made the point that there should be clarification as to whether the phrase "may be significant" is to be understood in the sense of "likely significant effects" or whether there is uncertainty regarding the possibility of significant cumulative effects. In

ExQ1	Question to:	Question:	Local Authority Answer:
		<p>provides a response to [REP2-024] and [REP3-044]. It contains the following regarding:</p> <ul style="list-style-type: none"> • For issue I12 the applicant now concludes that “<i>total cumulative effects on the special qualities of the SECHNL and the special character of the SHC may be significant</i>”. This updates the previous judgement described in Table 29.39 of the SLVIA stating that “<i>the cumulative effect is predicted to be moderate-minor, which is not significant in EIA terms</i>”. Natural England advice on cumulative effects remains unchanged. <p>Landscape, Seascape and Visual Impact is considered later within ExQ2 (section 14, below). Regarding Natural England’s concerns and the revised cumulative effect judgment, please can the applicant (and other IPs) provide further commentary on the judgment, and its relationship to the (a) NFOWF only, and (b) cumulatively with other OWFs.</p>	<p>any case, SCC considers that the distinction that the Applicant seeks to draw between ‘additional cumulative effects’ and ‘total cumulative effects’ is inadequately explained and may serve to mask or under-represent the contribution that the proposal makes to the cumulative effects. It is not clear to SCC whether the Applicant is saying that it is the impacts of the other projects which result in a cumulative effect which is ‘significant’, irrespective of the presence or absence of the NFOWF, and if that is the Applicant’s position, what distinguishing factors have justified that conclusion.</p> <p>In the Applicant’s response to SCC’s answers to ExQ1 [REP3-036], the Applicant stated that the intensification of effects on the SECHNL from NFOWF in combination with other OWFs did not cause those effects to become significant. SCC would appreciate clarification regarding whether the Applicant considers these comments to still accurately reflect its position and regarding the rationale behind this change in cumulative effects judgement.</p> <p>In any event, SCC does not agree with the Applicant’s reasoning for regarding either the effects of the project alone or on an additional cumulative effects basis as ‘not significant’ as regards the effects on the Special Qualities of the SECHNL, as explained in its LIR and in [REP4-097].</p>

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			The Applicant's expanded judgement, recognising that there 'may be' significant total cumulative effects (i.e. such effects cannot be ruled out) means that in line with the precautionary principle the Applicant must set out ' <i>the measures envisaged for avoiding or mitigating significant adverse effects</i> ' as paragraph 4.3.3 of EN-1 requires for significant cumulative effects. The mitigation hierarchy should be followed regarding the judgement of significant cumulative effects on the special qualities of the SECHNL and the special character of the SHC. This is supported by EN-1, such as within paragraph 4.1.5.
8 Design			
9 Draft Development Consent Order			
9.1 Articles Part 2 – Principal Powers			
9.2 Schedule 1 Part 3 - Requirements			
Q9.1.13	The applicant, SCC	Other matters relating to dDCO requirements The SCC at ISH1 [REP4-094] and [REP4-095] confirmed that they seek a phasing requirements as set out in their LIR paragraph 7.3 [REP1-074]. SCC submit that this is reasonable in that it is formulated to trespass lightly on the undertaker's flexibility and the turbines are programmed to begin construction as late	(i): In its Response to Actions List for ISH1 and ISH2 [REP4-036], the Applicant makes several points regarding why it considers SCC's proposed phasing condition to fail to meet the legal tests of a DCO requirement. SCC deals with each of these in turn with reference to its previous representations.

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		<p>as year 4. The requirement would restrict the commencement of the offshore turbine works until it was clear that the East Anglian Connection Node (EACN) had been consented and was to be delivered as part of the Norwich to Tilbury project so as to avoid unnecessary impacts on the SCHAONB. The applicant's Response to Actions List for ISH1 and ISH2 [REP4-036] contends that such a requirement fails the relevant legal tests for a requirement because it is not necessary and is unreasonable.</p> <p>(i) The SCC are requested to respond to the applicant's reasons for rejection of such a requirement as set out in [REP4-036].</p> <p>(ii) The applicant relies upon their connection agreement with NESO which requires NESO to provide a connection which has been identified as the EACN. However, that is a commercial agreement which may have other consequences should its terms not be met. The applicant is requested to explain further its reliance upon the connection agreement as providing a basis for the assertion that a phasing requirement would be unreasonable in this case.</p> <p>(iii) Whilst the applicant states that it is not aware of any precedent for the imposition of a requirement of this sort, is it aware of any case where such a requirement has been suggested and rejected by the SoS?</p>	<ul style="list-style-type: none"> The Applicant notes that there is a presumption in favour of consenting the Norwich to Tilbury project because it is critical national priority infrastructure. The Applicant's connection agreement with NESO identifies the EACN as the connection point. Whilst Norwich to Tilbury is critical national priority infrastructure (CNP), this does not guarantee that it will receive consent. It is clear from EN-1 (para 3.3.63) that the presumption in favour of CNP is '<i>subject to any legal requirements</i>' and (para 4.2.7) that '<i>the policy applies following the normal consideration of the need case, the impacts of the project, and the application of the mitigation hierarchy.</i>' This examination is not in a position to consider any of those matters or form any views on whether they will be satisfied, which will be matters for the Norwich to Tilbury DCO Examination (once an application has been made). Consequently, this examination cannot conclude that the CNP presumption will fall to be applied in that case. There is also no guarantee that the project will receive consent in its current form. For instance, plans for the EACN may change such that the connection offer for the Applicant to connect there may be rescinded and replaced or otherwise delayed. Such scenarios would allow for the Applicant's WTGs to be installed for a significant period of time without being connected to the Grid, thus causing harm to the SECHNL without the clean energy benefits used to justify those harms. In this

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		<p>(iv) The applicant is requested to fully explain and provide time estimates of any delay to the proposed development that it submits would result from the imposition of the suggested requirement given the current programming of offshore turbine works and that only the commencement of those works would be restricted.</p> <p>(v) For the avoidance of doubt, can the applicant confirm that its position is that the precedent effect and the wider consequences that might flow from such a decision would render the imposition of the requirement unreasonable? Please also comment on whether subsequent decisions in relation to the imposition of such requirements would be based upon the particular circumstances and justification provided in each case?</p> <p>(vi) Please comment on whether the Hinkley Point C project referred to provides a reasonable comparison to the particular facts of this case in terms of the timing of that scheme and the related connection project and the applicable landscape protection policies. Is it known whether any equivalent requirement was suggested and considered by the SoS in relation to the Hinkley Point C application?</p>	<p>respect, SCC considers the proposed DCO requirement to be necessary and reasonable.</p> <ul style="list-style-type: none"> • SCC considers the proposed requirement to be supported by national policy meaning there is no need to establish an ‘exceptional’ basis for the requirement as claimed by the Applicant. SCC made the point in response to action points of ISH1 & 2 [REP4-095] that the proposed requirement is necessary to comply with updated duty in section 85 of the Countryside and Rights of Way Act 2000. This is because the proposed requirement ensures that it is not possible for a scenario in which the proposed development adversely affects the SCHAONB without providing the benefits of clean energy production which serves as the justification for these adverse effects. • EN-1 affords designated landscapes, including the SECHNL, an elevated status of protection when compared to other landscapes. The purposes of the designated landscapes ‘<i>should be given substantial weight by the Secretary of State</i>’ (paragraph 5.10.32). Paragraph 5.10.8 requires projects impacting a designated landscape to be ‘<i>designed sensitively given the various siting, operational, and other relevant constraints</i>’. SCC considers that the proposed requirement would ensure that the project is designed sensitively so as to avoid unnecessarily adversely impacting the natural beauty of the SECHNL until it is clear that the project’s grid

ExQ1	Question to:	Question:	Local Authority Answer:
			<p>connection will be constructed. The proposed requirement has a policy basis and does not require any justification on an ‘exceptional’ basis.</p> <ul style="list-style-type: none"> • The Applicant states its concern with the burden of discharging the proposed requirement. The proposed requirement does not need to be discharged via the formal process set out in the DCO; rather, to be satisfied, the Applicant must only send a notification to the relevant authority. SCC did not envisage a notification of this kind as requiring formal approval and is happy to amend the drafting of the requirement to ensure that the notification does not require formal approval. Complying with the requirement will not lead to a ‘significant delay’ and will not hinder the project’s 2030 delivery. • SCC does not agree that the proposed requirement would serve as a hinderance to enabling implementation of the DCO. If the EACN is consented, then the implementation of the DCO is not delayed since the requirement can be satisfied with a simple notification. If the EACN is not consented or if the Applicant’s connection agreement is otherwise delayed, then it is not the proposed requirement but the delayed connection which will hinder the DCO’s implementation. It should be noted that the phrase ‘National Grid substation’ in the proposed requirement need not refer only to the EACN were the Applicant to end up connecting to a different substation. In that case

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			<p>too, the proposed requirement would be satisfied with a simple notification that the substation has received development consent.</p> <ul style="list-style-type: none"> Due to the minimal burden imposed by the proposed requirement, SCC does not consider that the proposed requirement would set a precedent which adversely affects the rapid delivery of offshore wind energy. Such a requirement may set a positive precedent which prevents projects from causing adverse effects without the benefits of those projects secured. SCC noted in its response to deadline 3 submissions [REP4-097] that there are instances in Europe where offshore wind farms have been constructed without a grid connection. Therefore, it may be desirable to set a precedent to prevent such a scenario from happening in the UK, especially where such projects negatively affect nationally designated landscapes.
9.3 Schedules 8, 9, and 10 – Deemed Marine Licences under the 2009 Act			
9.4 Schedule 12 – Documents to be Certified			
9.5 Schedule 14 – Protective Provisions			
9.6 Planning obligations and other agreements			

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10 Ecology/Biodiversity/BNG/HRA			
11 Flood Risk, groundwater and surface water			
12 Historic Environment & Archaeology			
13 Human Health			
14 Landscape, Visual and Seascape Effects			
Q14.0.1	<p>The applicant.</p> <p>Additionally, SECHP, Natural England and SCC, or other IPs may optionally respond.</p>	<p>Whether or not the applicant is a Statutory Undertaker for the purpose of CROWA 2000 s.85(A1)</p> <p>CROWA 2000 applies when a “relevant authority” (which includes “<i>any statutory undertaker</i>” as defined by s.85(3) CROWA 2000) is “<i>exercising or performing any function</i>” relating to or affecting an Area of Outstanding Natural Beauty (“AONB”). There is no requirement for the “relevant authority” to be exercising a <i>statutory function</i>.</p> <p>The definition of “<i>relevant authority</i>” includes “<i>any Minister of the Crown</i>”. Because some ministerial functions are undertaken by virtue of prerogative powers rather than statutory provisions, the exercise of prerogative powers could just as much impact on an AONB as could the exercise of statutory powers. Is s.85(A1) CROWA 2000 limited only to the exercise or</p>	<p>SCC stated its position during ISH 2 and the corresponding written summary [REP4-096] that it considers the Applicant to be a relevant authority in the context of the duty in virtue of being a statutory undertaker. SCC has set out its reasoning in Footnote 2 of Annex 1 of its response to the Examining Authority’s First Written Questions (“ExQ1”) [REP2-059].</p>

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		<p>performance of <i>statutory</i> functions by the relevant authority?</p> <p>SCC has noted that no limitation appears in the legislative provision itself and nor, in this context, should such a limitation be implied. SCC's view is that the applicant is a statutory undertaker, and so a relevant authority. It contends that this is a sufficient basis to bring it within the scope of s.85(A1) CROWA 2000 when it exercises or performs "any function" which relates to or affects an AONB, irrespective of whether that function flows from or involves the discharge of a statutory power or duty.</p> <p>In response to submissions made by SCC at ISH2, the applicant said that it would confirm the applicant's position on whether it is a statutory undertaker for the purposes of the duty and set these out at applicant's Response to Actions List for ISH2 [REP4-036]. It does not appear to be set out within this document, although it is noted that at ISH2 the applicant's view was that it is a special purpose vehicle set up solely for the Project and does not have wider statutory undertaker functions.</p> <p>(i) Please set out whether or not the applicant considers itself as a "statutory undertaker" and,</p> <p>(ii) whether or not the applicant is therefore a relevant authority.</p>	

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		The implications of being subject to the new duty in s.85(A1) CROWA 2000, if what it was proposing would “affect” any land within an AONB.	
Q14.0.8	The applicant, SECHP and other IPs	<p>Consideration of Tranquillity</p> <p>At ISH2 IPs raised the issue regarding the consideration of tranquillity within REP3-044. The ExA requested a written response from the applicant explaining its position in relation to effects on tranquillity and its approach to assessment in the Assessment of the Special Qualities of the Suffolk and Essex Coast and Heaths National Landscape and Suffolk Heritage Coast. This has been provided within (pp 80-84) of the applicant's Response to Actions List for ISH1 and ISH2 [REP4- 036].</p> <p>(i) The ExA invites IPs to comment on this rationale.</p> <p>(ii) Please can the applicant update REP3-044 on the basis of information submitted, specifically to address the contributors to, and detractors from, tranquillity.</p>	<p>The Applicant references paragraph 17 of its Technical Note [REP3-044] which states that indicators not affected by the proposed development do not need to be considered. However, the Applicant concludes that there will be a small scale of change for the special quality of relative tranquillity, meaning that it will be affected by the proposed development and so is worthy of consideration.</p> <p>SCC made the point in its response to the technical note [REP4-097] that all special qualities which are affected by the proposed development must be considered in assessment to ensure that the effects on the natural beauty of the SECHNL are fully understood. SCC considers the full assessment of impacts would assist the Secretary of State in their decision-making in relation to the new duty found in s85 of CROWA 2000. Both EN-1 and the Defra guidance on the duty state that measures being undertaken to comply with the duty must be proportionate to the effects on the designated landscape in question. Therefore, for the decision maker to come to a conclusion on what measures should be undertaken, the full extent of the effects caused by the proposed development must be ascertained.</p> <p>SCC defers to Natural England and the SECHNLP regarding the robustness of the Applicant’s conclusion regarding the project’s effects on the relative tranquillity of the SECHNL. However, SCC notes that there may be some</p>

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			<p>considerations not mentioned in the Applicant’s judgement which are of relevance. For instance, “<i>relatively dark skies</i>” is mentioned as a contributor to tranquillity in the SECHNLP’s Natural Beauty and Special Qualities Indicators document (provided as Appendix H to SCC’s LIR [REP1-074]). The lighting from the project’s WTGs may affect this special quality indicator at nighttime though is not mentioned in the Applicant’s judgement.</p>
15 Navigation and Shipping			
16 Socio-economic Effects			
17 Terrestrial Traffic and Transportation			