



## **Preliminary Meetings for East Anglia ONE North Offshore Wind Farm; and East Anglia TWO Offshore Wind Farm**

### **Statement of Reasons for Procedural Decisions**

The reasoning within this statement is the reasoning of both Examining Authorities (ExAs) for the two applications named above. It applies to both applications and both Examinations with equal effect. References to 'the application', to 'the Examination' and/ or to the 'Examining Authority' '(ExA)' in the singular also refer to both applications, to both Examinations and to both ExAs.

Reasons are provided for procedural decisions in circumstances where there was contention about the nature of the decision and/or the ExA (for reasons) has not been able to accommodate requests that have been made.

#### ***Procedural Decision 20: Close of the Preliminary Meeting***

*There were written and oral submissions at the Preliminary Meeting seeking the deferral of the Examination for two broad reasons:*

- To enable the Examination to take account of outcomes and decisions from the BEIS<sup>1</sup> Offshore Transmission Network Review; and/ or*
- To enable hearings to be held in a traditional physical venue, attended in person by Interested Parties, including in circumstances where some could possibly be digitally excluded or lack the support to participate in virtual events.*

#### **Deferral of the Examination: BEIS Offshore Transmission Network Review**

*On 15 July 2020 BEIS announced a review of the existing offshore electricity transmission regime<sup>2</sup> to address perceived barriers to the further significant deployment of offshore wind (the BEIS Review). Options under consideration in the BEIS Review include increasing the levels of coordination in the provision of offshore electricity infrastructure that are supported in policy. The BEIS Review is potentially relevant because this Examination relates to an Application which proposes the development of offshore electricity infrastructure within the existing policy framework, which in broad terms requires the individual provision of connecting infrastructure as part of an individual development proposal for an offshore generating station. The proposed cable alignments and connection works address the current policy framework which, subject to the outcome of the review, might change within a relevant timescale. Submissions to the review were sought by BEIS up to 30 September 2020.*

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<sup>1</sup> The Department for Business, Energy & Industrial Strategy

<sup>2</sup> <https://www.gov.uk/government/publications/offshore-transmission-network-review>



*The ExA has given careful consideration to submissions proposing that the Examination should be deferred until the BEIS Review is complete. The ExA has decided not to defer the commencement of the Examination for the following reasons.*

*It is part of the normal business of government to review policy settings relating to individual project decisions from time to time. If government was routinely to defer project decision-making on the basis that relevant aspects of the applicable policy framework were under review, few decisions would be taken in a timely manner. Timeliness is an important consideration because National Policy Statement for Energy (NPS) EN-1 section 3.3 makes clear that there is an urgent need for new electricity generating capacity within all of the classes of Nationally Significant Infrastructure Project (NSIP) energy development to which it relates and that '[t]he UK is choosing to largely decarbonise its power sector by adopting low carbon sources quickly<sup>3</sup>. The possibility that the Application under Examination might contribute towards the meeting of that urgent need provides an important reason why the Examination process should not be delayed.*

*That being said, the purpose and scope of the BEIS Review is in principle an important and relevant consideration in the Examination and, to the extent that any important and relevant information emerging from it is available during the Examination, the ExA proposes to have regard to this.*

*As a result of the decision to close the Preliminary Meeting on 6 October 2020 the Examination is due to be completed on or before 6 April 2021. It is possible that outcomes from the BEIS Review will be available before that date, in which case the ExA will (as is the case with any underlying change in law or policy) take steps to ensure that they are, if important and relevant, taken into account. The ExA is required to report to the Secretary of State for BEIS (SoSBEIS) setting out the ExA's findings and conclusions in respect of the application and their recommendation as to the decision to be made on the application; the SoSBEIS will be the ultimate decision-maker on the application. In these circumstances, should the BEIS Review identify new considerations of importance and relevance to the SoSBEIS final decision that the ExA cannot examine for reasons of timing and sequence, it will remain open to the SoSBEIS to take those into account in the decision.*

#### *Deferral of the Examinations: Coronavirus/ Covid-19*

*In the Rule 6 Letter of 16 July, the ExA made proposals for virtual Preliminary Meetings and Examination events, as at that time, those were the only event methods that were clearly compliant with the public health controls and guidance then in force. A substantial number of written and oral submissions to the Preliminary Meeting proposed that the Examination should be deferred until physical-only hearing events and/ or blended events (which combine elements of virtual and physical hearing methods) are available and raising concerns that holding virtual events*

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<sup>3</sup> NPS EN-1 at para 3.3.5



*might exclude some Interested Parties from participation in the Examination or that others might prefer not to participate on a virtual basis.*

*The ExA has given careful consideration to submissions proposing that the Examination should be deferred until these conditions can be met. The ExA has decided not to defer the commencement of the Examination in response to these submissions for the following reasons. Whilst in the period between May and August 2020, Covid-19 infection rates in England generally fell and the Government took a sequence of steps to re-open social activity and boost the economy, in September and October 2020 it became apparent that infection rates were generally rising again and that new social and business limitations were required to control the virus.*

*On 22 September 2020, a raft of new public health controls and guidance changes were announced, with a view to suppressing the general rise in infection rates. These have led to significant reductions in the extent of social mixing that is lawful and supported, including announcement of a broad 'Rule of 6' (a limitation on the numbers of people able to directly socialise) and a decision not to re-open conference centres for business events from 1 October 2020 as originally intended. The new controls and guidance are indicatively flagged as likely to remain in place without relaxation until March 2021. There is also scope for additional local lockdown controls to come into force that can affect participants in the Examination who are located in various different locations in the UK and the potential for these to limit travel and event participation must be taken into account too.*

*Currently applicable public health controls and guidance do not provide for the efficient delivery of generally accessible physical or blended Examination events in this Examination (and in this respect it must be noted that whilst a number of economic sectors have their own coronavirus guidance, the position applicable to planning casework has to be derived from multiple guidance sources). Whilst those attending such events in the course of their employment are exempt from certain controls, Interested Parties who are not attending for work do not apparently benefit from exemptions. Physical or blended events would therefore have strict limitations on the numbers of attendees and require the development of Covid-secure venue management practices that meet both Planning Inspectorate and public health controls and guidance, in venues that the Planning Inspectorate does not own or manage. Considerable work is required to enable blended events to occur safely and it is not currently anticipated that any such events could be delivered in this Examination before January 2021. If they were to proceed, physical or blended events under current controls and guidance would be likely to have the unintended effect that (for example) whilst employees of the Applicant, Government Agencies or Local Authorities might foreseeably attend hearings in person in team groups, very few local resident*



*Interested Parties might be able to do so<sup>4</sup>. There is also the risk of rapid change. Public health controls and guidance do need to change swiftly to address changes in the Covid-19 infection rate. What is lawful and supportable on one day might not be on the next. This exposes those who design, manage and attend physical or blended Examination events to ongoing uncertainty about whether or on what changed terms events might be able to proceed. Set against this uncertainty, the ExA must ensure that it is able to provide adequate notice of all events, so event designs cannot be changed as rapidly as might be wished for.*

*Virtual events do not suffer from these variable limitations and risks. They are by now an established method of event delivery that has generally proven to be robust and able to be delivered even in the strictest phase of lockdown. The ExA's commitment to fairness and equality of involvement drives it to seek Examination processes that can equally and certainly be offered to all Interested Parties and virtual events provide the best means of doing so at present.*

*On 13 May 2020, the Secretary of State for Housing, Communities and Local Government (SoSHCLG) (who is responsible for oversight of the planning system as a whole) made a Written Ministerial Statement<sup>5</sup> (WMS) which identified the Government's view that continued effective operation of the planning system makes an important contribution to the UK's economic recovery from the effects of the Coronavirus pandemic. In the SoSHCLG's view, stopping planning decision-making would lead to significant gaps in the nation's delivery of development, with consequential but avoidable adverse impacts on employment and economic growth. Whilst the outcome of an individual Examination or decision-making process must always relate to the planning merits of the Application, the general proposition that decision-making should not be deferred is clear from the WMS.*

*The WMS sets out the Government's view that to avoid delay, the Planning Inspectorate should adopt virtual events and that these should become 'the default method of operation in the vast majority of cases'. It identifies that 'in exceptional circumstances it may not be fair to proceed virtually and that alternative arrangements may be needed. These alternative arrangements should be taken forward speedily, where possible, taking into account the Government's guidance on social distancing.'*

*The WMS has remained in force throughout the downturn in Coronavirus infections, and at a point in time when rates are rising once more and new controls are being imposed, is still a weighty consideration.*

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<sup>4</sup> The Planning Inspectorate has reviewed alternative models include the limited attendance hearing model developed by the [Grenfell Tower Inquiry](#) to reach this conclusion.

<sup>5</sup> <https://questions-statements.parliament.uk/written-statements/detail/2020-05-13/HCWS235>



*The WMS makes clear the Government's view that 'the current legislative framework allows for virtual hearings'. The courts have considered circumstances where they might proceed to address planning-related casework virtually and have concluded that virtual processes are appropriate, even in circumstances where arrangements need to be made for a party to go to other locations to use digital devices or telephones because they do not have access to such devices of their own<sup>6</sup>.*

*In relation to other factors relevant to consideration of whether a delay to the start of the Examination is appropriate, the ExA also notes that the prolongation of time prior to a decision on any major infrastructure proposal can cause or exacerbate inhibiting or blighting effects. Individuals, families and businesses whose land or rights are affected by undecided proposals can experience personal, social and economic difficulty in buying, selling or leasing land; investment and environmental management decisions may also be deferred pending the decision, with adverse effects. It is generally not in the public interest that such adverse effects become any more prolonged or extensive than they need to be.*

*Balancing these considerations, the ExA is clear that they counter-balance views that it should defer or delay the commencement of the Examination until such a time as traditional physical events can be held, especially as it is not possible to predict with any certainty when that might be. Notice has already been provided for virtual Examination events in this Examination that will meet the SoSHCLG's expectations set out in the WMS without delay, be lawful and provide a reasonable opportunity to be heard to most Interested Parties. We therefore propose to commence the Examination with the virtual events that we served notice for in the Rule 6 Letter of 16 July 2020.*

*Moving on in the Examination Timetable, should it prove possible and prudent to conduct physical or blended events from January 2021 onwards, subject to technical and capability advice from the Planning Inspectorate, the ExA will use its best endeavours to do so. However, it cannot predict the future passage of the pandemic and it will not at this stage make firm undertakings to deliver physical or blended events that it may not be able to deliver. The situation will be kept under continuous review. The ExA will undertake to ensure that where hearings are deemed to be necessary and that it is not possible to conduct physical or blended events, virtual events will be held.*

#### *Digital exclusion, access and support*

*There is a genuine issue that some Interested Parties could possibly be digitally excluded<sup>7</sup> and the ExA has taken action to respond to this and will continue to do so.*

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<sup>6</sup> [Tingey v SoSHCLG & Horsham DC](#) [2020] (High Court of Justice, Queens Bench Division, Planning Court) [OD-013].

<sup>7</sup> 'Digital exclusion' describes circumstances where a person is not normally able to access or use digital technology or services.



*The Planning Inspectorate's virtual events technology (Microsoft Teams) supports access to events by Interested Parties using analogue (land line) telephones as well as by digital devices. It provides a means to address this concern. The Examination FAQs<sup>8</sup> provide more information. The Planning Inspectorate has also delivered a range of familiarisation events for Interested Parties, providing opportunities to test digital and analogue access in practice events held before hearings are due to commence. It will continue to provide similar events as necessary throughout the Examination.*

*Taking this provision into account, Interested Parties who still consider that they cannot participate in virtual events for exceptional (personal and individual) reasons should write to the ExA by **Deadline 1** of the Examination Timetable, setting out their request to be heard on a face-to-face or assisted<sup>9</sup> basis and their reasons for making this request. Where reasons relate to a lack of access or ability to use the technologies necessary to participate in virtual events, the ExA will make all reasonable attempts that comply with the public health controls and guidance in force at the time to enable such individuals to be heard face-to-face, or in assisted virtual events. These events could take the form, for example, of Open Floor Hearings or Compulsory Acquisition Hearings (or parts of hearings) conducted as a sequence of face-to-face or assisted appointments, enabling individual Interested Parties to be heard orally but in a socially distanced manner.*

*It should be noted that the available capacity at such events may be limited and, consistent with the WMS, the ExA will not agree to allocate speaking time at such events simply to address a preference to be heard using non-virtual means, as it would be unfair to support a hearing of a person who has the means to be heard virtually, if this were to lead to the loss of capacity to hear a person who cannot be heard virtually. Allocation decisions will aim to address and remedy substantive instances of digital exclusion. It follows that digital exclusion from events should not provide a reason why an Interested Party should be excluded from participation in the Examination or why commencement should be delayed.*

*If there are Interested Parties who cannot access digital documents, the Applicant has arranged for physical copies of Application documents to be made available. The details of these arrangements can be found in **Annex D** to the Rule 8 Letter. They comply with 'Guidance on procedural requirements for major infrastructure projects' (adapting a range of notice and inspection requirements to support Covid-secure, largely digital processes) published by MHCLG on 20 July 2020<sup>10</sup>. It follows that lack of access to digital documents is not a reason why an Interested Party*

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<sup>8</sup> [Frequently Asked Questions: Joining a virtual meeting or hearing by telephone](#) (pg 18).

<sup>9</sup> An assisted virtual event is one where virtual technology is provided in a local physical venue that an Interested Party can reasonably attend, with technical assistance and/or reasonable adaptations in place to ensure that technology can be accessed and used by people who would not normally be able to access or use it.

<sup>10</sup> <https://www.gov.uk/guidance/guidance-on-procedural-requirements-for-major-infrastructure-projects>



*should be excluded from participation in the Examination or why commencement should be delayed.*

*If there are concerns relating to the technical content of documents and lack of access to affordable professional advice, the ExA draws attention to the potential for advice to be sought from Planning Aid England. It is for any Interested Party seeking advice to make their own contact with that organisation<sup>11</sup> or an equivalent source of advice. Interested Parties with concerns about access and participation may also wish to contact community and representative bodies (elected MP, Councillors in County, District, Town or Parish Councils, community-based campaign groups) who are already participating in Examination events and ask to be represented. The ExA is satisfied that there are no remaining reasons relating to access or advice that provide a reason why Examination commencement should be delayed.*

*Returning to the primary starting point for all Nationally Significant Infrastructure Project casework, all Interested Parties are reminded that the Examination will be a primarily written process. Paragraph 71 of the DCLG Examination Guidance<sup>12</sup> says: '[t]he use of written representations will be the primary means by which the Examining Authority will examine applications. They will also be one of main types of evidence which the Secretary of State will take into account when taking a decision.' It follows that if any Interested Party finds that it is unable to attend a hearing, however that event is held, important and relevant matters can be set out in a Written Representation that should be submitted at the deadline immediately following the hearing. Such submissions will always be considered by the ExA and, in principle, will be accorded equivalent weight to matters raised orally at a hearing.*

### **Procedural Decision 21: Approval of the Draft Timetable with Changes**

*Submissions made in writing or orally at the Preliminary Meeting raised concerns about the ability of individual Interested Parties to participate in particular rounds of hearings, and concerns about the ability of the ExA to accommodate sufficient requests to be heard at Open Floor Hearings (OFHs) within the time provided in the draft timetable. Concerns were also expressed about the effect of virtual events and digital exclusion which, although not arguing for the deferral of the Examination, did argue for the provision of alternatives to virtual events, including requests that virtual*

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<sup>11</sup> **Planning Aid England** is a service provided under the auspices of the Royal Town Planning Institute (RTPI) under which qualified volunteers (Chartered Town Planners) provide advice. Initial requests can be made via: <https://planningaid.zendesk.com/hc/en-us/requests/new>, 020 7929 8338 or Planning Aid England, RTPI, 41 Botolph Lane, London EC3R 8DL.

<sup>12</sup> Planning Act 2008: Guidance for the examination of applications for development consent, DCLG, March 2015  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418015/examinations\\_guidance\\_final\\_for\\_publication.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance_final_for_publication.pdf)



*OFHs 1, 2 and 3 proposed in the draft timetable for early October should be conducted physically or using a blended process. Requests were made for a higher level of specification about hearings proposed to be held before Christmas and the value of a more detailed Site Inspection to the Sandlings before the autumn becomes too far progressed was also proposed.*

*In relation to specific requests for the dates of certain events to be varied, the ExA has attempted to balance these fairly for all parties. It has not been possible to respond positively to all such requests, as some pull in opposite directions. However, noting the common direction of a number of requests, the ExA have decided to make Hearings and Accompanied Site Inspections (ASIs) in January (Timetable Items 22 and 23) commence a week later than proposed in the draft Examination Timetable.*

*The ExA has addressed concerns about digital exclusion in its reasoning on Procedural Decision 20 above and, flowing on from that, it will use its best endeavours to ensure that people who may be digitally excluded will be provided with face-to-face and/ or virtual assisted hearing opportunities as long as it is lawful and supported by guidance to do so. A new requirement at Deadline 1 enables Interested Parties who consider themselves to be digitally excluded to identify themselves. Such opportunities will be provided from January 2021 (and that is one reason why hearing events from that time are flexibly described). Requests for greater clarity about the purpose and content of hearings have been addressed with changes to the timetable drafting and the provision of formal notice for hearings up to December 2020. These changes (see **Annex D** to the Rule 8 Letter) should make it much easier for Interested Parties to identify when matters of interest to them will be heard.*

*In reviewing the provision and arrangements for hearings, the ExA notes that it has not proven feasible to change the arrangements for OFHs 1, 2 and 3 from virtual to physical or blended events and, given the substantial body of Interested Parties who have requested to be heard at those events as they were described in the draft Timetable (as virtual events) it would be unfair to make a late change to them. However, there was a substantial body of concern from Interested Parties that more people had requested to be heard in OFHs 1, 2 and 3 than there was time available in those events – meaning that a large number of people would not be heard when they had originally requested. For this reason, the ExA has amended the timetables to add new OFHs 4 and 5 in early November: these changes ensure that all those who did request to be heard at an OFH at the start of the Examination can now be heard to meet their preference.*

*It has not proven feasible to deliver a Covid-secure Accompanied Site Inspection (ASI) before the end of autumn and so a timetable change has not been made to address this request. However, the ExA agrees with the principle of the request and has decided to undertake an additional detailed Unaccompanied Site Inspection to the Sandlings before the end of autumn.*





The Examining Authorities for  
East Anglia ONE North Offshore Wind Farm; and  
East Anglia TWO Offshore Wind Farm.

6 October 2020