



## **The Planning Act 2008**

### **East Anglia One North and East Anglia Two Offshore Wind Farms**

**Planning Inspectorate Reference: EA1N – EN010077 &  
EA2 – EN010078**

**Deadline 7 – 4 March 2021**

**East Suffolk Council's Response to Deadline 7**

## 1. Introduction

1.1. East Suffolk Council (ESC) has noted that the following additional information has been provided by the Applicants at Deadline 6 which is of relevance to the Council's responsibilities or of interest:

- Applicants' Written Summary of Oral Case CAH2, ISH7, ISH8, ISH9 (REP6-051 to REP6-054)
- Applicants' Responses to Hearing Action Points (REP6-049)
- Applicants' Responses to ExA's Further Written Questions (ExQ2) Volumes 1-8 (REP6-058 to REP6-065)
- Applicants' Comments on the ExA's Commentary of the dDCO (REP6-067)
- Applicants' Comments on East Suffolk Council's Deadline 5 Submissions (REP6-026)
- Outline Code of Construction Practice (REP6-003)
- Outline Written Scheme of Investigation (Onshore Archaeology) (REP6-005)
- Outline Landscape and Ecological Management Strategy (REP6-007)
- Outline Construction Traffic Management Plan (REP6-009)
- Outline Access Management Plan (REP6-011)
- Outline Travel Plan (REP6-013)
- Outline Operational Drainage Management Plan (REP6-017)
- Outline Landfall Construction Method Statement (REP6-021)
- Outline SPA Crossing Method Statement (REP6-036)
- Sizewell C Cumulative Impact Assessment Note (Traffic and Transport) (REP6-043)
- Outline Watercourse Crossing Method Statement (REP6-041)
- Outline Port Construction Traffic Management and Travel Plan (REP6-047)
- Landfall Hydrogeological Risk Assessment (REP6-021)
- HDD Verification Clarification Note (REP6-024)
- Deadline 6 Onshore Ecology Clarification Note (REP6-025)
- Ecology Survey Results (REP6-035)

1.2. The Council has not had the opportunity to fully review in detail all these documents given the limited time available between the publication of the material and Deadline 7. ESC however seeks to make some high-level comments at this stage on the submissions and if necessary, will make more detailed comments at Deadline 8.

## 2. Overarching Comments on Applicants' Deadline 6 Submissions - REP6-026, REP6-059 and REP6-067

2.1. ESC welcomes the additions and changes which REP6-067 commits will be undertaken by the Applicants in relation to the draft Development Consent Orders (dDCOs) and submitted at Deadline 7. A summary of the key changes in relation to matters raised by ESC have been noted below:

- Inclusion of a requirement in the dDCOs which secures the submission and approval by ESC of onshore preparation works management plan(s), an outline of the details of which has been provided within Appendix 1 of the updated Outline Code of Construction Practice (OCoCP, REP6-003).
  - Restructuring of Requirement 12 to provide a more logical and easier to follow order to the requirement.
  - Revision to the wording of Requirement 13 to reference the Applicants' commitment to monitoring, reporting, and undertaking remedial works (if necessary) at the landfall.
  - Update of the Important Hedgerows and Tree Preservation Order Plan and Annex 1 of the Outline Landscape and Ecological Management Strategy (OLEMS) to ensure consistency with Schedule 11 of the dDCOs.
- 2.2. The Council however notes that there are several matters which remain outstanding or not agreed between the Applicants and ESC which have been highlighted below.
- 2.3. Requirement 15 – The Applicants' justification for Work No.29 not being subject to a ten-year replacement period for failed woodland planting is not considered acceptable. It is not satisfactory to exclude Work No.29 from this provision because "the nature of the mitigation in this area is yet to be established" (REP6-067). If this area could be used for replacement woodland planting, then it should be subject to the ten-year provision.
- 2.4. Requirement 21(1) - The Applicants' comment in relation to the inclusion of reference to pre-commencement surveys in Requirement 21(2) is noted. ESC will provide further comment on this matter once the text of the proposed amendment to part (2) is available for review.
- 2.5. Requirements 23 and 24 – ESC welcomes the Applicants' commitment to amend 23(2)(b) and 24(2)(b) to refer to "internal fitting out works". The Council however maintains its view set out in REP6-080, that in addition to seeking agreement from ESC in relation to the duration and timing of the works, agreement must be sought for works not expressly identified on the face of the dDCOs as to whether the works are essential. It is considered the wording of the requirements should be amended to reflect this.
- 2.6. Schedule 16 – ESC welcomes the Applicants' agreement to provide 56 days for the discharge of requirements and the inclusion of wording in relation to the material which must be submitted with any application. The Council however remains concerned about the deemed consent provision and still does not consider it is justified considering the appeal option available. ESC also notes the commitment to provide 20 works days to request additional information, but this is still considered insufficient if a consultation is required. Finally, ESC is concerned about the limited

time periods provided for submissions in the event of an appeal. The Council refers to its previous comments provided in relation to this matter in REP6-080.

- 2.7. Permitted development rights and operational land – The Applicants’ (REP6-067) and National Grid Electricity Transmission’s (NGET, REP6-109)) comments on the extent of operational land are noted. ESC however considers that whether specific land falls within the definition of operational land, in particular whether under section 263(2) of the Town and Country Planning Act 1990 it is comparable with land in general or comparable to land held for the purposes of the undertaking, will be highly fact-sensitive. It is therefore considered that it is not possible at this stage to determine what will be, for all time, the exact extent of operational land; the Council’s view is therefore unchanged from that set out in REP6-080.
- 2.8. ESC considers that permitted development rights should still be removed for Scheduled 2, Part 15, Class B (d) and (f) of the Town and Country Planning (General Permitted Development Order) 2015. There is scope for land on which buildings are not sited to qualify as operational land, not necessarily limited to compounds. In any event, land within the compounds will be likely to qualify as operational land and such compounds may include land on which buildings are not sited e.g. to accommodate ancillary uses. In each case, extensions or other alterations could occur without control, save in so far as Environmental Impact Assessment (EIA) is engaged. It is therefore considered appropriate that extensions or alterations to buildings and other development is controlled.
- 2.9. ESC also remains of the view that permitted development rights should also be removed for Scheduled 2, Part 15, Class B (a) of the Town and Country Planning (General Permitted Development Order) 2015.
- 2.10. The Environmental Statements identify that the projects will have a significant adverse impact on the landscape character and visual amenity of the locality, in addition to an adverse impact on the setting of a number of heritage assets. The Assessments have included consideration of the visual appearance of the substations. The DCOs, if consented, would be granted on the basis of the assessments provided. Given the sensitive nature of the site, it is not considered appropriate that modifications to the substations could then be undertaken following construction utilising permitted development rights. Such modifications could result in a change in the visual appearance of the development which would potentially have consequences for the identified impacts of the developments, even if not of a scale or extent which justified EIA. Given the sensitive nature of the site and close proximity of receptors, it is considered that consent for such modifications should be necessary. This will ensure that such modifications are fully and robustly assessed prior to any works taking place. It is not considered that such a consent process would unfairly inhibit the operators’ abilities to undertake their duties; it would however provide some appropriate controls.

- 2.11. The Applicants have agreed to community engagement in relation to the post consent design refinement. It would undermine this process if permitted development rights could then be utilised to modify the infrastructure consented.
- 2.12. The suggested wording could readily be converted to an article in the DCOs if that was considered preferable. However, ESC is not persuaded that the removal of permitted development rights can only be achieved through an article in the dDCOs rather than a requirement. Section 120(2) of the 2008 Planning Act states:

*The requirements may in particular include:*

- a) requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development.*
- b) requirements to obtain the approval of the Secretary of State or any other person, so far as not within paragraph.*

- 2.13. ESC would however like to amend the suggested wording in the requirement suggested to provide greater clarity and precision:

*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.*

- 2.14. Operational Noise – No substantially new information has been provided in relation to this matter and therefore the Council refers to the position which was set out at Deadline 6 (REP6-081).
- 2.15. Cumulative Impact Assessment – ESC notes the commitment from the Applicants to provide an assessment in relation to the National Grid infrastructure and effect of the future connections offered and will provide comment on this information once submitted.
- 2.16. Bats - Whilst the Applicants' response to ESC's Deadline 5 comment (REP5-048) on this matter is noted (Section 2.3, ID1, REP6-026), the Council maintains the opinion that the absence of brown long-eared bats from the survey results is likely an under recording of this species in the area rather than a complete absence of the species. All of the bat survey techniques used (emergence/re-entry, activity transects and static bat detector) rely primarily on acoustic recording and the nature of brown long-eared bat behaviour (particularly the absence of echolocating or very quiet echolocating) is an acknowledged limitation of this type of surveying. Further comment on this matter was made at Issue Specific Hearing 7 (ISH7, REP6-075).

2.17. We also note the comment in the relation to maternity bat roosts being present at other substation sites (Section 2.3, ID2, REP6-026). As set out in our Deadline 5 response (REP5-048), and acknowledged in the Applicants' comments on this matter, different bats are affected by noise to different degrees and the presence of a maternity colony of one species in such a location does not mean that all other species have not been affected. Further information on the species present roosting within existing substations would have been beneficial.

2.18. Built Heritage – ESC provided comments in relation to the Heritage Assessment Addendum and Appendices (REP4-006 to REP4-012) at Deadline 5 (REP5-048) and no new information has been provided with the exception of the Applicants comments on the Council's submission (REP6-026). ESC's comments at Deadline 5 remain relevant.

**3. Overarching Comments on Applicants' Deadline 6 Submissions - REP6-036, REP6-041, REP6-009, REP6-047, REP6-025, REP6-003, REP6-007, REP6-052**

3.1. Outline SPA Crossing Method Statement (REP6-036) – ESC welcomes the commitment to manage the whole of Work No. 12A (with the exception of the area of horse paddock) for ten years post construction (Section 2.10).

3.2. Reference is made in paragraph 86 (Section 3.4) to the potential for intrusive pre-construction surveys within the Special Protection Area (SPA) crossing area. Whilst ESC notes that the trenchless construction technique is not the Applicants' preferred construction method for the crossing, the need for intrusive surveys within the SPA as part of the trenchless technique should be clarified as they could result in damage to the SPA not otherwise assessed as part of the consideration of this technique. This has been previously raised at Deadline 2 (REP2-029).

3.3. Outline Watercourse Crossing Method Statement (REP6-041) – Whilst ESC agrees with the Applicants' characterisation of the woodland present to the west of the Hundred River, as set out at ISH7 (REP-075) the Council considers that this woodland is a UK Priority habitat (lowland mixed deciduous woodland).

3.4. As set out in ESC's Deadline 4 response (REP4-059) and ISH7 submission (REP6-075) the Council considers that it remains unclear in Sections 3.2 and 4.8 as to why the crossing of the Hundred River requires double the width for two projects when in other sensitive locations a narrowed width has been achieved. The reduction in the working width in this location beyond that committed to in the Outline Watercourse crossing Method Statement (REP6-041) would potentially significantly reduce the required loss of the woodland to the west of the river which is a UK Priority habitat.

- 3.5. ESC welcomes the intention to retain trees on the western bank of the Hundred River (extending 5m inland) set out in Section 4.9.
- 3.6. ESC would also wish to highlight that pre-construction surveys should also include bats if any trees to be removed offer bat roost potential.
- 3.7. Outline Construction Traffic Management Plan (OCTMP, REP6-009) - ESC welcomes the commitment to the use of Euro VI vehicles now set out in this document. ESC requests that this should be expanded to ensure that the following aspects are covered when the document is finalised. This will require amendments to Section 2 and 4 of the OCTMP:
- a) Monitoring of the Euro class of non-Euro VI vehicles with identification of action to be taken if a significant proportion of these vehicles are older than Euro V.
  - b) Provision for recording the route taken by HGVs to/from the site, if required to ensure that there is no disproportionate number of non-Euro VI vehicles passing through the Air Quality Management Area (AQMA).
  - c) Confirmation that the 70% limit and associated provisions should be applied if Sizewell C and either EA1N or EA2 are under construction simultaneously, before opening of the Two Villages bypass.
- 3.8. Outline Port Construction Traffic Management and Travel Plan (OPCTMTP, REP6-047) - ESC accepts the amendments to the OPCTMTP, subject to the addition of the following sentence at the end of paragraph 30 in Chapter 4: *“The air quality screening exercise and (if required) assessment will be carried out in accordance with Institute of Air Quality Management Guidance entitled “Land-Use Planning & Development Control: Planning For Air Quality” (v1.2), January 2017, or any update to this guidance.”*
- 3.9. Onshore Ecology Clarification Note (REP6-025) - As set out at ISH7 (REP6-075), whilst ESC defers to Natural England on matters relating to air quality impacts on statutory designated sites, the Council remains concerned that under the worst case scenario Horizontal Directional Drilling (HDD) as part of the landfall construction could result in an adverse impact on part of the Leiston-Aldeburgh Site of Special Scientific Interest (SSSI). Subject to Natural England’s views, the Clarification Note does not acknowledge the substantial contribution from the proposed development to air pollution levels at the nearby designated habitat sites. No undertakings are made to ensure that emissions to air from Non Road Mobile Machinery (NRMM) operating for extended periods close to designated habitat sites will be minimised. The detailed design of the projects should commit to all available mitigation measures to minimise this impact and appropriate monitoring should be carried during the construction phase to ensure that the conclusion presented by the Applicants is the outcome that occurs.

- 3.10. Outline Code of Construction Practice (REP6-003) – ESC welcomes the commitment to provide an Onshore Preparation Works Management Plan.
- 3.11. The express commitment to enter into a Planning Performance Agreement (PPA) with ESC to provide a cost recovery mechanism for administering the projects is welcomed (Section 1.5). In addition to the recovery of costs associated with the discharging of requirements the Council would also wish for the PPA to allow the recovery of costs in relation to inspections for example of landscaping etc.
- 3.12. The Council notes the additional clarification in relation to essential activities provided in Section 3.1, but the comments provided in paragraph 2.5 above remain relevant. ESC also notes the amended wording utilised in Section 9.1 to provide a great commitment that noise and vibration mitigation techniques will be ‘implemented wherever possible’.
- 3.13. The OCoCP should include undertakings to minimise the potential impact of emissions to air from NRMM on nearby designated habitat sites. This should include an undertaking for NRMM to be located away from designated habitat sites wherever possible, in order to prevent further damage being caused to these sites to that already identified in the Deadline 6 Onshore Ecology Clarification Note (REP6-025). It should include requirements for minimum standards for NRMM, and appropriate monitoring to confirm that the impacts on air quality at designated sites do not exceed that forecast.
- 3.14. The OCoCP includes an undertaking for NRMM to comply with the requirements of EU Directive 2016/1628. Whilst this is welcomed, it needs to be clarified, as this directive applies mainly to the manufacture, approval, import and distribution of NRMM, and not to its use at a construction site. Is it intended that all NRMM used at the site will conform with the Stage V emission limits set out in Annex II of Directive 2016/1628? This diverges from comments made in the Applicants’ Oral Case for ISH7 (REP6-052) which makes the case for not adopting Stage V emission limits. It is ESC’s understanding that the Applicants will commit to using NRMM with minimum Stage IV emission limits, but this does not yet seem to be clearly identified in any documentation. ESC considers that clarification of the Applicants’ proposals for use of NRMM is required.
- 3.15. ESC welcomes the commitment to a comprehensive set of dust control measures for locations where potential dust impacts are greater and looks forward to confirming these through discussion around the Code of Construction Practice (Section 10.1).
- 3.16. Outline Landscape and Ecological Management Strategy (REP6-007) – ESC seeks to make the following comments on the OLEMS:



- Section 1 – ESC welcomes the commitment to provide an onshore preparation works management plan which will provide a mechanism through which to agree details of the early planting.
- Section 5 – The details provided for Work No.29 are not definitive and therefore ESC’s comments in paragraph 2.3 above remain relevant.
- Section 6.9 - The need for pre-commencement reptile surveys should be kept under review. If there are significant changes in the amount of suitable reptile habitat on the cable route prior to the commencement of works surveys may be required ahead of mitigation being implemented.
- Section 8.1 - Elsewhere in the OLEMS the Applicants have committed to a pre-construction walkover survey of the whole construction area to identify if any conditions have changed and therefore if further specific surveys or mitigation measures are required for species not listed in paragraph 397 (e.g. reptiles). This should be recognised in the list in this paragraph. ESC refers to its previous comments at Deadline 4 (REP4-059).
- Table 8.1 – Great crested newt post-construction survey timings are likely to need to follow those of the pre-construction surveys (March to May), rather than the pre-construction translocation timings (March to October) (unless it is intended to also carry out terrestrial surveys post-construction?).
- Paragraphs 169-170 - ESC welcomes the commitment to consult with the Council regarding the measures implemented during the longer-term maintenance of the site but the approval process for this is unclear at the present time. Further clarification on this matter is considered necessary.

3.17. Applicants’ Responses to Hearing Action Points 7 (REP6-052) - Whilst it is accepted that ESC’s suggestion that an assessment of the impact of operational noise on bats could follow a similar methodology to that used by Sizewell C was only made at ISH7, this was because that assessment was only published in late January 2021. Discussions regarding the likely impacts of operational noise on ecological receptors (particularly bats) has been an ongoing matter between the Applicants and the Council since before the start of the examination (REP1-072) and ESC considered that making the Examining Authority and the Applicants aware of assessment work on this matter utilised by other Nationally Significant Infrastructure Projects would be beneficial to the thorough consideration of the issue.

#### **4. Summary**

4.1. ESC has provided high-level comments in relation to submissions made by the Applicants at Deadline 6. There has however been limited time available to review in detail all the documents submitted and therefore should any further detailed comments be considered necessary ESC will provide these at Deadline 8.