

# EA1N AND EA2 PROJECTS – OBJECTION TO EXTENSION OF THE EXAMINATIONS

## Introduction and Overview

1. This objection is made on behalf of:
  - Suffolk Energy Action Solutions (SEAS)
  - Substation Action Save East Suffolk (SASES)
  - Save Our Sandlings (SOS)
  - Aldeburgh Society
  - Friston Parochial Church Council
  
2. On 1<sup>st</sup> April 2021, the examination authority (“**ExA**”) sent to all parties a copy of a letter (“**the ExA letter**”) indicating that the Secretary of State had granted an extension of 3 months for completion of the Examination. That application was made on 9<sup>th</sup> February 2021 and was granted on 30<sup>th</sup> March 2021, as set out in a letter from BEIS to the Planning Inspectorate (“**BEIS letter**”). The ExA gave no warning to the parties that it had either applied for this extension or that its grant was imminent.
  
3. The ExA letter came as a complete surprise not least given repeated statements by the ExA at the beginning of the examination that the six-month examination period was fixed by statute. The ExA regarded complying with this time period as a key, if not, the key priority of the ExA.

## Reasons given for the decisions to extend

4. The reasons given as set out in the ExA letter are:
  - (i) The impact of the Covid-19 restrictions and two national lockdowns on the ability of Interested Parties, Local Authorities and Statutory Bodies to engage effectively in the Examinations (“**Reason 1**”).
  - (ii) The impact of the Covid-19 restrictions and two national lockdowns on the ability of the Panels and Case Teams to examine the applications fully and produce robust recommendation reports that would enable the SoS to reach decisions within the statutory timescales (“**Reason 2**”).

(iii) The range, scale and pace of the two simultaneous Examinations during this unprecedented time, leading to a strain on delivery by participants (“**Reason 3**”).

5. Two of these reasons are said to be due to problems faced by participants due to Covid and the range and scale of the issues (Reasons 1 and 3). The third concerns the ability of the Panel and Case Team to examine the applications fully and produce robust recommendation reports (Reason 2).

6. The parties to this letter acknowledge that the Panel and the Case team might face problems absorbing and evaluating the voluminous evidence and submissions. We would be happy to support an extension of time for the task of reviewing the material.

7. However, we fundamentally disagree with the reasoning in the ExA letter. We have never been asked whether we wanted an extension to the Examination due to problems we faced as a result of Covid, nor have we ever suggested that an extension would improve our ability to engage more effectively. Had we been asked in February 2021, or at any time thereafter, we would have vehemently opposed any extension.

### **Reasons 1 and 3**

8. At the end of the hearings, all expressed the view – recorded on the transcript - that the ExA had made a real effort to accommodate everyone through the use of digital hearings. No one said that due to the Covid crisis they had been denied a right of engagement. There is no evidence that we are aware of that any party sought an extension or considered that it was under any insuperable difficulty in participating. Everyone accepted that in terms of seeking to overcome the problems of conducting digital hearings the ExA had gone to great lengths.

9. As to those who oppose the grant of consent the ExA did not ask whether we were under “*strain*” in terms of “*delivery*” or whether we wanted an extension. Out of Interested Parties, Local Authorities and Statutory Bodies the most affected, by far, have been local communities in terms of lack of human and financial resources.

10. Had an inquiry been made by the Authority as to whether an extension was required the answer from us would have been a resounding negative. Any suggestion of an extension would have been rigorously opposed, for obvious reasons.

11. **First**, the effect of the ExA letter is to create a vast inequality of arms between SPR and those who oppose it. The opposing groups have strictly limited resources. The ExA set

out a timetable for the submission of evidence and for hearings on 9<sup>th</sup> February 2021. This was the same day as the application for an extension was made. This new schedule provided for 8 days of hearings spread over a 10-day period. It operated upon the basis assumed that the evidence collection process would finish on 6<sup>th</sup> April.

12. Everyone planned accordingly. We met these deadlines upon the premise, set out by the timetable issued by the ExA on 9<sup>th</sup> February 2021, that the schedule of submissions and hearings would take everyone to the end date for evidence. The actions of the ExA in adhering to the deadlines throughout the period from 9<sup>th</sup> February 2021 to 1<sup>st</sup> April 2021 reinforced that position.

13. To meet this timetable we, in effect, emptied the bank accounts to pay for experts and counsel and cancelled or deferred other commitments. All will therefore be severely hampered in their ability to participate further in this inquiry. Some may not be able to participate at all.

14. In this context, as the ExA surely know, SPR has unlimited resources. SPR has been under no strain. Relative to other participants it has unlimited financial, human, legal and technical resources at its disposal. It has been supported at the hearing by an army of paid professionals. Its costs will run into many millions of pounds and any extension can and will be funded commensurately.

15. **Secondly**, the Sizewell inquiry has now commenced. Many of those involved in the present examination will now be involved in the Sizewell examination. Many experts and others who had acted for opposition groups had budgeted their time upon the basis that this examination would end on 6<sup>th</sup> April and they could then turn all of their attention to Sizewell.

16. **Thirdly**, the overwhelming impression we are left with is that the extension benefits SPR. The effect of the ExA letter is to grant to SPR an unfair chance to plug the multitude of gaps that exist in its evidence in relation to a host of matters, including cumulative impact and alternative sites, that should have been addressed in evidence according to long passed deadlines. All the decisions it has taken about “delivery” of evidence have been determined by its own forensic calculations as to how to game the process, for instance, in delaying submitting evidence and its belated decision to serve evidence literally days before the deadline for the end of the evidence collection process. There is no right in law for an applicant to have multiple bites of the cherry. SPR has had more than ample opportunity to adduce evidence on all matters. If that evidence is inadequate – which we say it is – then the ExA should not be

giving SPR unlimited new chances to keep having a go. It is bound to conclude that SPR has been given a fair chance to put its case and if it is inadequate then its applications simply fail.

17. **Fourthly**, there is no explanation in the ExA letter as to why additional evidence is needed on any of the matters mentioned there which include: Biodiversity and Habitats Regulations Assessment (HRA); consideration of alternatives and cumulative impact onshore; flood risk and drainage; and issues around the proposed substations site at Friston, including, but not limited to, considerations of landscape, design, historic environment, visual impacts, and proposed mitigations. The deadlines for submission of evidence on these issues expired weeks and months ago. The ExA letter does not say in what respects that evidence is incomplete or why it is now needed.

18. **Fifthly**, it is the decision to extend that is the cause of an intolerable “*strain*” on delivery, not anything that has happened beforehand. Therefore, and perversely, the extension decision will lead to the very strain which the extension request sought to avoid, and yet further additional strain given the commencement of the Sizewell C examination.

## **Reason 2**

19. The second reason given concerns the Covid-19 restrictions and the two national lockdowns and concerns the ability of the Panels and Case Teams to examine the applications fully. The Panel is 5 strong and supported by a case team. The Panel have never before raised any issue about its ability to deal with the material arising. Indeed, it has always been the Panel’s position that the evidence collection process would end definitively on 6<sup>th</sup> April 2021.

20. Nonetheless if it is now the position of the Panels and the Case team that more time is needed to review the evidence then we have no objection to more time being taken.

21. However, as we understand the position of the ExA, as set out in its letter of application to the Secretary of State, that could not have been the position as of 9<sup>th</sup> February 2021.

22. On 9<sup>th</sup> February, the ExA set out a revised timetable for the submission of evidence and for hearings. This was the same day as the application for an extension was made. This new schedule provided for hearings spread over a 10-day period. The ExA identified issue specific hearings, hearings to address compulsory purchase and additional hearings to act as a reserve capacity should they be needed. It assumed that the evidence collection process would finish

on 6<sup>th</sup> April. In that letter the ExA expressly stated that in its view the revised timetable would enable all the issues to have “*sufficient time for examination*” and that there would be “*adequate*” time for submissions and responses. The letter stated in this respect:

“The Examination timetable has been amended (see Annex B) to provide for these events, specifically at items 37 to 47, whilst items 29 to 36 and items from 48 onwards in the timetable remain unamended. ***The reasons for the changes are to ensure that detailed technical matters requiring to be examined orally have sufficient time for examination. Each individual hearing is now held with no further business on the same day, ensuring adequate time for oral submissions and responses from all participants, without timing implications for following events.*** The hearings have also been designed to reserve or provide time to enable any additional Affected Persons requesting to be heard under Regulations 14 (Issue Specific Hearings), 15 (Compulsory Acquisition Hearings) and/ or 16 (Open Floor Hearings) to be heard, should any such requests to be heard be received. Information explaining the status of additional Affected Persons and how they can request to be heard can be found in my letter of 5 February 2021.”

(emphasis added)

23. We do not understand how the ExA can therefore suggest to the Secretary of State on 9<sup>th</sup> February 2021 that it did not have a chance to consider the applications and the evidence fully given that on the same day it took detailed timetabling measures to **ensure** that (i) it collected the relevant evidence; (ii) the parties had sufficient time to submit that evidence and (iii) that it would have a chance to review it.

### **Objections**

24. This decision is procedurally unfair.

25. The ExA is under a duty in law to ensure procedural fairness. It is a basic tenet of fairness that before a body, such as the ExA which plays a pivotal role in a decision-making process, takes an important procedural step it should hear the parties. This procedural decision was taken without notice or consultation. This is made even more troubling given that publication of the extension decision was less than a week before the examination period was due to end, where that week was bisected by a four-day Easter weekend.

26. The participants were not consulted when the ExA applied for an extension on 9<sup>th</sup> February 2021 even though in that application the ExA made various (unwarranted) assumptions about the position of the parties.

27. The participants were also not consulted when the ExA received the BEIS letter and then had to decide how to respond to it. The Secretary of State letter does not compel the ExA to extend the proceedings, nor does it lay down how any extension should operate.

28. Even if there were reasons for an extension in early February 2021, these fell by the wayside and became irrelevant history by the date of the decision to extend. They were not relevant reasons on 1<sup>st</sup> April 2021. No one asked for an extension either at the end of the hearings or in the final round of written submissions. The position had fundamentally changed by the end of March.

29. In these circumstances the parties are entitled to know:

- a) what has passed between the ExA/Planning Inspectorate and the Secretary of State?
- b) whether anything has passed between Scottish Power and the Secretary of State and/or the ExA/Planning Inspectorate?
- c) whether anything has passed between National Grid and the Secretary of State and/or the ExA/Planning Inspectorate?

30. The ExA/Planning Inspectorate is requested to provide the answers to the questions above and provide the information and documents below under its inherent duty to ensure transparency and/or under the Freedom of Information Act:

- (i) a copy of the application made to the Secretary of State on 9<sup>th</sup> February 2021.
- (ii) any and all documents with or relating or referring to SPR and National Grid in relation to the issue of an extension.
- (iii) all correspondence, emails, notes of meeting and other records relating to all communications with the Secretary of State and/or his staff covering the application for an extension from 9<sup>th</sup> February onwards until 1<sup>st</sup> April 2021.

Given that this is a public inquiry there can be nothing confidential about any of these matters, which relates to a procedural issue only.

31. There is no good reason for the evidence collection process to be reopened.

32. The parties have no objection to the ExA taking additional time to consider the evidence.

33. Save for this, the ExA should revoke the decision to extend the examination<sup>1</sup>.
34. We reserve all our rights.

8 April 2021

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<sup>1</sup> We accept that since all parties have adjusted their positions accordingly the date for deadline 9 should remain as 15<sup>th</sup> April 2021.