



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 5 - 3 February 2021

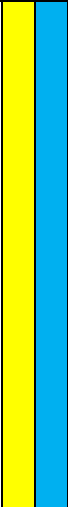
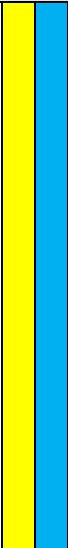
East Suffolk Council's Summary of Oral Case - Issue Specific Hearing 3

Issue Specific Hearing 3 (19 January 2021) – Biodiversity and Habitat Regulations Assessment

Examining Authority's Question		East Suffolk Council's Summary of Oral Case
Agenda Item 1 – Welcome, introductions and arrangements for these Issue Specific Hearings 3		
Agenda Item 2 – Effects on offshore ornithology (including HRA considerations)		
<p>a) Red-Throated Diver of the Outer Thames Estuary Special Protection Area (SPA)</p> <ul style="list-style-type: none"> i. Update on the status of agreement between the Applicants and nature conservation bodies. ii. The Applicants' Deadline 3 Red-Throated Diver assessment for East Anglia ONE North [REP3-049] and offshore order limits reduction [REP3-052], [REP3-073]. iii. Elaboration of Natural England's response to [REP3-049] and [REP3-052], as summarised in [REP3-113] and [REP3-117], and any additional comments submitted at Deadline 4. iv. The Applicants' response to the position of Natural England. v. Best practice protocol for minimising disturbance to Red-Throated Diver [REP3-074] and Deadline 4 responses to it. vi. Offshore In-Principle Monitoring Plan [REP3-040; REP3-041] and Deadline 4 responses to it. 		<p>ESC has no comments – comments on offshore birds are deferred to Natural England (NE) and the RSPB.</p>

<p>b) Kittiwake, Gannet, Guillemot, Razorbill and seabird assemblage of the Flamborough & Filey Coast SPA</p> <ul style="list-style-type: none"> i. Update on the status of agreement between the Applicants and nature conservation bodies. ii. Elaboration of Natural England’s response to [REP2-006], as summarised in [REP3-116] and [REP3-117], and any additional comments submitted at Deadline 4. iii. Implications for the East Anglia ONE North and East Anglia TWO assessments of the Secretary of State’s decision¹ to grant development consent for the Hornsea Project Three Offshore Wind Farm project. iv. Natural England and the MMO’s position on the wider applicability of the approach to securing HRA compensation measures in the made Hornsea Three Offshore Wind Farm Order 2020², specifically Article 45 and Schedule 14, should they be required. 		<p>ESC has no comments – comments on offshore birds are deferred to NE and the RSPB.</p>
<p>c) Lesser Black-Backed Gull (LBBG) of the Alde-Ore Estuary SPA</p> <ul style="list-style-type: none"> i. Update on the status of agreement between the Applicants and nature conservation bodies. ii. Drawing on the Applicants’ response [section 1.4 of REP3-070] to Natural England’s comments [section 1 of REP2-052] on the apportioning 		<p>ESC has no comments – comments on offshore birds are deferred to NE and the RSPB.</p>

<p>methodology for LBBG of the Alde-Ore Estuary SPA, and any further position from Natural England submitted at D4.</p>		
<p>d) The Applicants’ ‘without prejudice’ HRA derogation cases and compensatory measures</p> <p>i. Drawing on Deadline 3 submissions [REP3-053] [REP3-054] 3 and any responses to them at Deadline 4.</p> <p>ii. Approaches to securing ‘without prejudice’ compensation measures within the draft DCO/DMLs (notwithstanding the Applicants’ intention to provide further detail on compensation at Deadline 5).</p>		<p>ESC has no comments – comments on offshore birds are deferred to NE.</p>
<p>e) Any other offshore ornithology matters.</p>		<p>ESC has no comments – comments on offshore birds are deferred to NE and the RSPB.</p>
<p>Agenda Item 3 – Effects on subtidal and intertidal benthic ecology</p>		
<p>Outer Thames Estuary Special Protection Area (SPA) as a supporting habitat for qualifying features</p> <p>a) The Applicant and Natural England to set out their position on HRA findings and any work on going to address areas of disagreement.</p> <p>b) Natural England to set out their position on the Applicant’s D3 Clarification Note: Effects on</p>		<p>ESC has no comments – comments on offshore birds are deferred to NE and the Marine Management Organisation (MMO).</p>

<p>Supporting Habitats of Outer Thames Estuary SPA [REP3-059] and whether the submission addresses concerns raised that sandwave levelling is likely to have a significant effect on the interest features of the Outer Thames Estuary SPA.</p> <p>Sabellaria Reef</p> <p>c) The Outline Sabellaria Reef Management Plan [REP1-044] including, but not limited to, the options in section 1.7.2 and what the implications would be if all of these options were exhausted.</p>		
<p>Agenda Item 4 – Effects on marine mammals (including HRA considerations)</p>		
<p>a) Harbour porpoise of the Southern North Sea SAC</p> <p>i. Update on the status of agreement between the Applicants and the MMO and nature conservation bodies.</p> <p>ii. Elaboration of Natural England’s comments [REP3-118] on the Applicant’s Marine Mammals Addendum [REP1-038] in relation to project-alone HRA findings and any related submissions (including the Applicants’ response) at Deadline 4.</p> <p>iii. Underwater noise implications of the inclusion of monopile foundations for offshore platforms: Section 3 of the Applicants’ Deadline 3 Project Update Note [REP3-052] and any Deadline 4</p>		<p>ESC has no comments – comments on offshore birds are deferred to NE, the MMO and The Wildlife Trusts (TWT).</p>

<p>responses to it, particularly from Natural England and the MMO.</p> <p>iv. Inclusion of Unexploded Ordnance (UXO) clearance activities within the DMLs: latest positions of the MMO and the Applicants.</p>		
<p>b) In-Principle Site Integrity Plans</p> <p>i. Content of the version 2 In-Principle Site Integrity Plans [REP3-044] and any Deadline 4 responses to them.</p> <p>ii. The inclusion of project-alone effects within Site Integrity Plans, drawing on concerns raised by the MMO [REP3-109], Natural England [REP3-118] and TWT [REP3-148].</p> <p>iii. DCO/DML security (REP-011)</p>		<p>N/A – comments on offshore birds are deferred to NE, the MMO and TWT.</p>
<p>c) Marine Mammal Mitigation Protocols</p> <p>i. Content of the updated draft Marine Mammal Mitigation Protocols [REP3-042] and any Deadline 4 responses to them.</p> <p>ii. DCO/DML security [REP3-011].</p>		<p>ESC has no comments – comments on offshore birds are deferred to NE, the MMO and TWT.</p>
<p>d) Cessation of piling</p> <p>i. Amended Condition 21(3) of the generation assets DMLs and Condition 17(3) of the transmission assets DMLs [REP3-011], [REP3-013]:</p>		<p>ESC has no comments – comments on offshore birds are deferred to NE, the MMO and TWT.</p>

views of MMO, Natural England and The Wildlife Trusts.		
e) Any other marine mammal matters.		ESC has no comments – comments on offshore birds are deferred to NE, the MMO and TWT.
Agenda Item 5 – Effects on fish and shellfish ecology		
a) Outstanding effects of concern on fish and shellfish ecology i. Underwater noise implications, including those arising from the inclusion of monopile foundations for offshore platforms: Section 3 of the Applicants.’ Deadline 3 Project Update Note [REP3-052] and any Deadline 4 responses to it, particularly from Natural England and the MMO. ii. Seasonal restrictions. iii. Other effects.		ESC has no comments – comments on offshore birds are deferred to NE and the MMO.
b) Means of security.		ESC has no comments – comments on offshore birds are deferred to NE and the MMO.
c) Any other fish and shellfish matters.		ESC has no comments – comments on offshore birds are deferred to NE and the MMO.
Agenda Item 6 – Effects on terrestrial ecology		
Nightjar and Woodlark of the Sandlings SPA		a) ESC has no comments, this is a matter for the Applicants and NE.

<p>a) The Applicant and Natural England to provide an update on the status of outstanding areas of disagreement in relation to the Sandlings SPA crossing and to provide an understanding of positions on this matter.</p> <p>b) Matters in relation to the crossing solutions and the Outline Crossing method Statement [REP1- 043].</p> <p>c) Update on the status of discussions and any work ongoing to address outstanding areas of disagreement in relation to the crossing of the Hundred River.</p> <p>d) Natural England to provide clarification on whether the Applicant’s D3 Outline Watercourse Method Statement [REP3-048] and whether this addresses its outstanding areas of concern.</p>	<p>b) ESC understands the Applicants’ position on the two SPA crossing options and the desire to utilise an open cut trench method. ESC considers that in principle the methodologies identified for both crossing options set out in the Outline SPA Crossing Method Statement (REP1-043) are adequate for the works proposed under both options, subject to the Deadline 2 comments made by stakeholders being addressed (page 6, REP2-029). The Council acknowledges the Applicants’ reasoning behind the preference for the use of open cut trenching and considers that, on balance, this method would overall present the least impact to all receptors (ecological or otherwise).</p> <p>Whilst the use of a trenchless option would appear to remove the need for works within the SPA boundary, it remains unclear to what degree ground investigations (Outline SPA Crossing Method Statement (REP1-043 paragraph 116) in the SPA would be required. Such investigations could require levels of access and work within the SPA which would result in significant habitat damage.</p> <p>It is also noted that a trenchless crossing technique (with the compounds located within the SPA buffer area) is likely to result in greater air quality impacts on designated sites when compared to the use of a trenched crossing technique or a trenchless technique with the compounds related outside of the SPA buffer area.</p> <p>c) NE’s concerns in relation to construction impacts on designated sites downstream of the Hundred River crossing are noted (Appendix C6 to the Natural England Deadline 4 Submission, REP4-092).</p>
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		<p>The Deadline 3 Onshore Ecology Clarification Note (REP3-060) states that the working width in the woodland adjacent to the Hundred River crossing will be restricted to 27.1m where cable ducts for both projects are installed together and we query whether a similar width could be achieved at the river crossing itself (as opposed to the 40m width stated in Section 4.8 of the Outline Watercourse Crossing Method Statement (OWCMS) REP3-048 for one project and 80m width for two), even if it is not possible to maintain this narrowed width throughout the 40m river crossing buffer zone. Such a reduction in width would minimise the construction impacts on bankside vegetation, channel structure and the riverbed.</p> <p>d) ESC has no comments, this is a matter for the Applicants and NE.</p>
<p>Outline Landscape and Ecological Management Strategy</p> <p>a) The Applicant’s D3 Outline Landscape and Ecological Management Strategy [REP3-030] including, but not limited to:</p> <ul style="list-style-type: none"> i. Outline Ecological Management Plan ii. Pre-construction surveys iii. Embedded and additional mitigation for badger, bats, Great Crested Newts and reptiles iv. Ecological enhancement 		<p>i) ESC currently has no specific comments on the Outline Ecological Management Plan (Section 10 of REP3-030). We agree with the principle of the approach set out; however, the delivery of successful ecological mitigation will be subject to the agreement of the final Ecological Management Plan(s).</p> <p>ii) ESC considers the Outline Landscape and Ecological Management Strategy (OLEMS) needs to recognise that the initial pre-construction walkover survey may identify the need for additional pre-construction surveys for receptors not currently listed in the OLEMS if the suitability of the site has changed (improved) over time (e.g. reptiles).</p> <p>ESC considers that the long term management and security of replacement mitigation woodland is unclear – particularly Work Numbers 24 and 29. It is understood that the OLEMS commits to a ten year maintenance period, but it</p>

is not clear what happens in year 11 onwards. The period set for failed planting in these areas is only five years, this is considered insufficient, the replacement period for plant failures should match that of the maintenance period e.g. ten years.

iii) Badger – ESC has no comments on the measures proposed.

Bats – Whilst we welcome the proposed use of hazel hurdles (or similar) as additional construction mitigation to temporarily ‘bridge’ the gaps created in hedgerows, as set out in our Deadline 4 response (REP4-059) a number of queries remain. This includes whether any other additional measures (such as the use of other temporary vegetation at the crossings is proposed) and whether the use of hurdles is proposed post-construction as well. If the use of hurdles post-construction is intended in place of replanting, then this needs to be further explained as it is unlikely to be an appropriate long term mitigation measure. There would also be concerns raised from a landscape perspective.

GCN – ESC has no comments on the measures proposed.

Reptiles – It is not clear whether the Reptile Precautionary Method Statement (PMoW) will be part of the EMP, or whether it will be a separate standalone document? We consider that if it is not part of the EMP then considerably more detail on its proposed content should be provided in the OLEMS. Also see ii) above in relation to the potential need for the PMoW to be informed by pre-construction surveys.

iv) As set out in our Deadline 2 response (REP2-029), ESC does not consider that the evidence provided to date demonstrates that the projects will deliver overall ecological enhancement.

The assessment presented in the Ecological Enhancement Clarification Note (REP1-035) relies on the use of part of the DEFRA Biodiversity Metric 2.0 to calculate the habitat unit totals, however simply comparing the absolute values does not demonstrate that ecological enhancement is likely to be achieved as it ignores the differing values of each of the habitat types. Also, if based purely on a comparison of units lost vs units created, the projects result in a net loss of non-linear (i.e. non-hedgerow) habitat units. Excluding arable units (which are the predominant habitat type lost but which are of low ecological value), 81 habitat units will be lost but only 71 created. In addition, whilst we acknowledge that the presented number of hedgerow units gained through new planting appears considerable (a net gain of 497 new units plus 8 enhanced units), we query whether the figures presented are correct and seek clarification on these. In order to assist the understanding of the figures presented, it would be beneficial if the Applicants produced a map to illustrate the hedgerow units created.

In addition to the above, the Ecological Enhancement Clarification Note (REP1-035) states at Table 3 that 85.59km of new hedgerow planting will be provided at the substations. This figure appears excessive and further clarification in relation to this matter is required.

<p>Defra has published a policy paper on the changes to the Habitats Regulations, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019: https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-thehabitats-regulations-2017 The Applicant and Natural England will be invited to comment on the extent to which the changes to the Regulations may have implications for their position on HRA matters.</p>		<p>ESC has no comments.</p>
<p>Agenda Item 8 – Any other business relevant to the Agenda</p>		
<p>The ExAs may raise any other topics bearing on biodiversity and HRA as is expedient, having regard to the readiness of the persons present to address such matters. 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. If necessary, the Applicants will be provided with a right of reply.</p>		<p>The Applicants provided further assessment of noise impacts on ecology at Deadline 4 (REP-005). ESC will provide written comments on this at Deadline 5.</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 8. To</p>		

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.

Agenda Item 10 – Closure of hearings