



National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Customer  
Services: 0303 444 5000  
e-mail: [EastAngliaTwo@planninginspectorate.gov.uk](mailto:EastAngliaTwo@planninginspectorate.gov.uk)

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To All Interested Parties and Statutory  
Parties invited to the Preliminary  
Meeting

Your Ref:

Our Ref: EN010078

Date: 22 February 2021

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Dear Sir/ Madam

## **The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9**

### **Application by East Anglia TWO Limited for an Order Granting Development Consent for the East Anglia TWO Offshore Wind Farm**

#### **Notification of procedural decision made following Issue Specific Hearing 9 Agenda Item 1A**

At **Issue Specific Hearing 9**, the Examining Authority (ExA) heard submissions seeking a procedural decision and guidance on the conduct of the Examination in relation to concerns raised about the conduct of negotiations between the Applicant and Affected Persons. These submissions were heard as Agenda Item 1A, but the decision was reserved to be issued in writing, following the closure of the hearing.

**Annex A** to this letter contains the procedural decision made by the ExA. **Annex B** contains an updated tracker setting out all procedural decisions made by the ExA in this Examination.

Yours faithfully

*Rynd Smith*

**Lead Member of the Examining Authority**

#### **Annexes**

- A** Procedural Decision on Negotiations with Affected Persons
- B** Procedural Decisions made by the Examining Authority

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## Annex A

### **Application by East Anglia ONE North Limited for an Order Granting Development Consent for the East Anglia ONE North Offshore Wind Farm**

### **Application by East Anglia TWO Limited for an Order Granting Development Consent for the East Anglia TWO Offshore Wind Farm**

#### **Issue Specific Hearings 9: Agenda Item 1A Procedural Decision on Negotiations with Affected Persons**

Issue Specific Hearings 9 at Agenda Item 1A<sup>1</sup> provided for the hearing of concerns and requests for a procedural decision relating to the conduct of negotiations between the Applicants and Affected Persons.

The following Interested Parties were heard:

- Suffolk Energy Action Solutions (SEAS)
- Dr Alexander Gimson
- Rt Hon Dr Therese Coffey MP
- Cllr Marianne Fellowes
- The Applicants

An opportunity to be heard was extended to Ms Fiona Cramb, but she was not present. Consideration was given to her further written submission.

#### **Issues**

On 14 February 2021, SEAS made a written submission of complaint [AS-074], raising concerns about the Applicants' conduct of negotiations with Affected Persons, alleging that these were being offered draft terms of settlement that required them to withdraw their objections in these Examinations. This submission was considered by the ExAs and published as an Additional Submission (AS) without prejudice to later consideration of its content. Following its publication, a number of further written representations on the matters raised by SEAS have been submitted and some of these have been considered by the ExAs and also published as ASs, again without prejudice to later consideration of their content. Other such submissions have yet to be published, on the basis that the ExAs' time at the point of this decision has been devoted to the delivery of hearings during week commencing 15 February 2021. Matters not directly relevant to hearings were reserved to be decided in week commencing 22 February 2021.

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<sup>1</sup> [ISHs9 Agenda](#): the link is to the East Anglia ONE North website. The Agenda on the East Anglia TWO website is identical and does not need to be read twice.

On 16 February 2021, at CAHs2, Dr Alexander Gimson speaking on behalf of Mrs Elspeth Gimson (his mother, who is an Affected Person), referred orally to the same issues that SEAS had raised in its AS on 14 February 2021.

At ISHs7 on 17 February 2021, the Applicants raised concerns about a published AS from Ms Fiona Cramb [AS-076] (15 February 2021 email), in which she made allegations about the process used by the Applicants in negotiations to conclude Option Agreements with Affected Persons, which in summary terms suggested that the process may have inhibited participation in these Examinations.

The Applicants were concerned (initially) that Ms Cramb's allegations and (later) aspects of the SEAS AS were not factually based.

The Applicants gave oral evidence at CAHs2 that, as no Option Agreements have yet been formally concluded, any effects alleged by SEAS and or Ms Cramb as arising from concluded agreements could not have occurred. On this basis they sought withdrawal of Ms Cramb's submission specifically and to make a statement in response to the submissions raised more broadly by SEAS.

Before this matter was heard, Ms Cramb submitted a further email of 18 February 2021 [AS-084] in which she made clear that, to the extent that she had suggested that there was any impropriety in the Applicants' conduct of negotiations, *'[m]y understanding is based on a fragment only of the facts. If it turns out that I am mistaken, then I will willingly amend or withdraw my letter.'* [AS-076] (15 February 2021 email).

## **Hearing**

The ExAs heard SEAS, which spoke to its written submission of complaint [AS-074] but did not add any new issues, other than to observe that if any of their concerns proved not to be factually based, they would be content to withdraw them. Dr Gimson did not add any new issues.

The Rt Hon Dr Therese Coffey MP and Cllr Marianne Fellowes for Aldeburgh Town Council both urged the importance of ensuring fair and open Examinations processes: to the extent that any negotiating practices by the Applicants might have led to an apprehension in the minds of any Affected Person that they were discouraged from involvement in the Examinations, prevented from raising substantive concerns on planning merits, or incentivised not to raise such concerns, such an outcome would not be in the public interest.

The Applicants' submissions made clear that a substantial process of negotiations between themselves and a large number of Affected Persons was still ongoing. No concluded Option Agreements had been signed. Some draft agreements had been circulated that included provisions broadly seeking the withdrawal of representations (including to these Examinations) and agreement to non-disclosure. Such terms were seen as being within the range of normal terms offered in such agreements. Further, such Agreements were negotiable

and relevant reservations could be agreed to provide for the preservation of an individual Affected Person's enduring rights of objection, where matters relevant to that person were still outstanding.

The Applicants accepted that there was no clear means by which the ExAs could or should reject, redact or remove (de-publish) submissions on the basis of factual inaccuracy alone: the remedy for any party in such circumstances was to advance submissions and evidence to demonstrate that a relevant submission is not accurate.

### **Decision**

The ExAs will not reject, redact or remove (de-publish) the SEAS AS [AS-074], Ms Cramb's AS [AS-076] as qualified by her further AS [AS-084] or related ASs that have been accepted and published.

**The Applicants** must be provided with a reasonable opportunity to respond to the issues raised in these and related ASs in writing, and this must be done by **Deadline 7**.

**Other Interested Parties** or **Affected Persons** (including additional Affected Persons) wishing to respond to the Applicants' position may do so by **Deadline 8**.

The ExAs will consider and may accept and publish any ASs on these matters made to them up to 5pm on 22 February 2021 (from Interested Parties and Affected Persons who did not engage in ISHs9 and do not yet have sight of this decision). From that time (by which this decision is published), further submissions on this matter will only be entertained as provided for in this decision, ie at Deadline 8, following consideration of the Applicant's position set out at Deadline 7.

The ExAs will form a view on the importance and relevance of any submissions on this matter after Deadline 8. They may determine to issue further decisions during the Examinations or reserve decisions to their Reports to the Secretary of State.

The Applicants, all Interested Parties and Affected Persons are reminded of the need to ensure that normal and necessary dialogue between Applicants and Affected Persons, conducted to narrow matters in dispute and reach concluded settlements where possible, should not raise any reasonable apprehension in the minds of Affected Persons that they are to be prevented from enjoying their statutory rights of participation in these Examinations or that their related human rights are not being responded to. Allegations of misconduct should not be made unless they can be clearly substantiated.

## Reasons

It is not in the public interest that there should be any enduring apprehension on the part of an Affected Person that they might be prevented from participating in these Examinations to raise their outstanding planning merits objections.

It is not in the interests of orderly Examinations for there to be protracted and avoidable disputes between parties on procedural matters. The ExAs trust that the Applicants will accept that the SEAS AS and Ms Cramb's AS remain on the record and take the opportunity to provide a clarifying statement at Deadline 7.

It is important that examinations are conducted in an orderly manner and that written submissions are not made to the ExAs on an unsolicited basis and beyond the mechanisms for the submissions of documents provided in the timetables. This is why the ExAs have decided to regulate any further such submissions with reference to established timetable deadlines.

It is important that written submissions have regard to the relevant factual background. This is why the ExAs have decided to seek submissions from the Applicants at Deadline 7 and not to accept further submissions from other Interested Parties on this matter after the date of this decision until Deadline 8, by which time they will have been able to read and respond to the Applicants' Deadline 7 submissions.

The ExAs have considered the general practices around the management of Examination documents set out in the Planning Inspectorate's Advice Note 8.4 (**AN8.4**). In summary, AN8.4 advises as follows.

**Para 7.5** sets out which submissions the ExAs may disregard.

- Late submissions. (This is not applicable in circumstances where the ExAs have exercised discretion to accept submissions, as they did in the instances of all submissions at issue here.)
- Submissions which are vexatious or frivolous, ie intended to cause annoyance or offence or have no serious purpose. (The ExAs have considered the Applicants' concern that certain of the submissions here may be vexatious but have concluded that they are not. They raise a general point of public interest. To the extent that that elements of the submissions are alleged to be inaccurate, the Applicants have a right of reply to them. Vexatiousness is not simple inaccuracy. To be vexatious a submission must intentionally seek to divert or waste the time of the ExAs and the Examinations. This does not apply here as the authors made statements that they may have believed or still believe to be true, but without a full understanding of (or access to) relevant factual information. The ExAs will not reach a concluded position on this point until it has considered the Applicants' submissions at Deadline 7 and Interested Parties' submissions at Deadline 8. It urges all respondents to

diligently review factual material and to confine their remarks to that which they know to be verifiably true and to provide evidence where necessary.)

- Submissions relating to the merits of policy in a National Policy Statement. (This reason is not applicable here.)
- Submissions relating to compensation for compulsory acquisition. (The ExAs consider this reason to be tangentially relevant, but note that the purpose of submissions at issue is to refer to the potentially adverse effects of terms in draft agreements relating (amongst other things) to compensation, on participation in the Examinations on planning merits matters, so the submissions go beyond compensation alone.)

In conclusion, the submissions by SEAS, Ms Cramb and related Interested Parties were not submissions that the ExAs were entitled to disregard for established and or statutory reasons.

**Para 8** sets out which submissions the ExAs may redact.

- 8.1 *'We cannot accept anonymous or confidential submissions from Interested Parties, except in cases of national security and only when directed to do so by the Secretary of State. This is very rare, and if this happens Interested Parties will be informed that the Secretary of State has issued a direction to allow this. Some information about protected species is not published, for example, the locations of badger setts or the nests of rare birds.'*
- 8.2 *'All other Examination documents submitted to the Planning Inspectorate must be published on our website.'* (ExAs' emphasis)
- 8.3 *'The Planning Inspectorate operates a policy of redacting (blinking out) private information on our website. For example we will endeavour to redact personal postal addresses, telephone numbers, e-mail addresses and personal signatures before submissions are published on the website.'* (The ExAs note that the information concerned here is not private. Inaccuracy does not make it private or redactable.)
- 8.4 *'When writing your representations, you should consider whether anything you have written saying is confidential, and only include information you would wish to appear in the public domain.'* (The ExAs note tangentially applicable as the content of executed Agreements may contain a confidentiality clause/ non-disclosure agreement: but equally the allegation made by Ms Cramb is a general one and does not appear to breach any specific confidence. Also, until an agreement is signed by the relevant AP it does not bind them.)

From this, the ExAs conclude that there is no basis to remove or redact a submitted document in response to an allegation of factual inaccuracy alone.

**Para 10** sets out how a submission may be withdrawn by an Interested Party.

Withdrawal is a voluntary process. If as a consequence of a discussion between the Applicants and an Interested Party, either wishes to withdraw part of its submissions, they may do so. However – AN8.4 paragraph 10.2 applies:

10.2 *'Your written request will be published on the website alongside the original submission, which will remain published on the project website for public record.'*

From this, the ExAs conclude that the accepted submissions relevant to this decision will remain on the record, alongside any rebuttal or withdrawal statement that any party seeks to submit at the relevant Deadline.



## Annex B

### **Application by East Anglia ONE North Limited for an Order Granting Development Consent for the East Anglia ONE North Offshore Wind Farm**

### **Application by East Anglia TWO Limited for an Order Granting Development Consent for the East Anglia TWO Offshore Wind Farm**

#### **Log of Procedural Decisions made by the Examining Authorities**

The ExAs have made the following groups of procedural decisions<sup>1</sup>:

- **Procedural decisions made in the pre-examination period** before the Preliminary Meeting, initially to support Examination including physical hearing events before the onset of the Covid-19 pandemic, and then to ensure continued preparation for Examination using Covid-safe methods. There are 19 of these decisions, numbered in date order from 1 to 19, of which 5 have been superseded and cancelled and 14 remain in effect having been confirmed following the Preliminary Meeting.
- **Procedural decisions made following the Preliminary Meeting.** There are three of these, numbered in sequence from 20 to 22. These decisions are set out in full in the **Rule 8 Letters** of 12 October 2020. Noting that some elements of these decisions were contested in written and oral submissions to the Preliminary Meeting, a statement of reasons was also provided and can be accessed by a hyperlink from those letters.
- **Procedural decisions made during the Examinations.** There are currently nine of these, numbered 23 to 31, relating to:
  - **PD 23:** requests by the Applicants for changes to the applications including the inclusion of additional land.
  - **PD24:** a decision by the ExA not to issue a second round of written questions (ExQ2).
  - **PD 25:** a decision by the ExA to accept non-material revisions to details of the onshore substations (updated details of finished ground levels and height of structures).
  - **PD 26:** a decision by the ExA to amend the timetables to respond to requests by the Applicants for changes to the applications and to provide additional time for Open Floor and Issue Specific Hearings.
  - **PD 27:** publication of Questions on the Energy White Paper (December 2020) under EPR Rule 17.
  - **PD 28:** amendment of Timetable to accommodate revised hearings in February 2021.
  - **PD 29:** Examination process decisions for additional Affected Persons under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.
  - **PD 30:** amendment of Timetable to accommodate revised hearings in March 2021.
  - **PD 31:** Procedural Decision on Negotiations with Affected Persons (ISHs9 Agenda Item 1A) (This letter).



The table below provides access to the original documents in which each procedural decision was recorded.

Publication date: 22/02/2021

## Procedural Decisions Tracker

The ExA has made the following Procedural Decisions under Section 89(3) of the PA2008. Decisions are numbered in order of the date on which they were made. Decisions shown with a green status (✓) remain applicable. Decisions shown with a red status (✗) have been cancelled or superseded and no longer have effect.

Procedural Decision	Subject	Date Issued	Status	Notes
1	Request for hard copy documents	23/12/2019	✓	East Anglia ONE North: <a href="#">Link to letter: Annex B</a> East Anglia TWO: <a href="#">Link to Letter: Annex B</a>
2	Document submission procedure relating to both East Anglia applications	23/12/2019	✓	East Anglia ONE North: <a href="#">Link to letter: Annex B</a> East Anglia TWO: <a href="#">Link to Letter: Annex B</a>
3	Means of identifying documents relating to one/both East Anglia applications	23/12/2019	✓	East Anglia ONE North: <a href="#">Link to letter: Annex B</a> East Anglia TWO: <a href="#">Link to Letter: Annex B</a>
4	Tracking List relating to SoCG, Commercial Side Agreements and Planning Obligations	21/02/2020	✗	Superseded by PD 12
5	Tracking List relating to changes to application documents and plans	21/02/2020	✗	Superseded by PD 13
6	Tracking List relating to changes to mitigation measures	21/02/2020	✗	Superseded by PD 14
7	Requests for Statements of Common Ground	21/02/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex G</a> East Anglia TWO: <a href="#">Link to Letter: Annex G</a>
7.1	Requests for early submission of selected Statements of Common Ground	21/02/2020	✓	Further to PD 7 East Anglia ONE North: <a href="#">Link to Letter: Annex G</a> East Anglia TWO: <a href="#">Link to Letter: Annex G</a>
8	Decision to hold early Issue Specific Hearings	21/02/2020	✗	Superseded by PD 16 and FAQ
9	Request to nominate locations to be viewed at Site Inspections	21/02/2020	✗	Superseded by PD 17
10	Decision to postpone the Preliminary Meeting and early Hearings	17/03/2020	✓	East Anglia ONE North: <a href="#">Link to Letter</a> East Anglia TWO: <a href="#">Link to Letter</a>
11	Request for Comments on Relevant Representations	21/05/2020	✓	East Anglia ONE North: <a href="#">Link to Letter</a> East Anglia TWO: <a href="#">Link to Letter</a>
12	Tracking List relating to SoCG, Commercial Side Agreements or Planning Obligations	16/07/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>

Procedural Decision	Subject	Date Issued	Status	Notes
13	Tracking List relating to changes to application documents and plans	16/07/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>
14	Tracking List relating to changes to mitigation measures	16/07/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>
15	Statements of Common Ground and Commonality – additional requests	16/07/2020	✓	Further to PDs 7 and 7.1 East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>
16	Decision to hold early Open Floor Hearings	16/07/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>
17	Request to nominate locations to be viewed at Site Inspections	16/07/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>
18	Request for updates following recent decisions: a) relevant to HRA and b) relevant to the Sizewell C project	16/07/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>
19	Submission of draft Development Consent Orders and Book of Reference	16/07/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex F</a> East Anglia TWO: <a href="#">Link to Letter: Annex F</a>
20	Close of Preliminary Meeting and commencement of Examinations	12/10/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex B(2)</a> East Anglia TWO: <a href="#">Link to Letter: Annex B(2)</a>
21	Approval of the Draft Timetable with Changes	12/10/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex B(2)</a> East Anglia TWO: <a href="#">Link to Letter: Annex B(2)</a>
22	Publication of First Written Questions (ExQ1)	12/10/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex B(2)</a> East Anglia TWO: <a href="#">Link to Letter: Annex B(2)</a>
23	Acceptance of Non-material and Material Changes and Engagement of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010	19/11/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex A</a> East Anglia TWO: <a href="#">Link to Letter: Annex A</a>
24	Deferral of Second Written Questions (ExQ2)	19/11/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex A</a> East Anglia TWO: <a href="#">Link to Letter: Annex A</a>
25	Acceptance of submissions in relation to onshore substations (updated details of finished ground levels and height of structures)	2/12/2020	✓	East Anglia ONE North: <a href="#">Link to Action List: Action 1</a> East Anglia TWO: <a href="#">Link to Action List: Action 1</a>

Procedural Decision	Subject	Date Issued	Status	Notes
26	Amendment of Timetable to accommodate Non-material and Material Changes (see PD23) and additional hearing time	8/12/2020	✓	East Anglia ONE North: <a href="#">Link to Letter: Annex B</a> East Anglia TWO: <a href="#">Link to Letter: Annex B</a>
27	Publication of Questions on the Energy White Paper (December 2020) under EPR Rule 17	16/12/2020	✓	East Anglia ONE North: <a href="#">Link to Letter</a> East Anglia TWO: <a href="#">Link to Letter</a>
28	Amendment of Timetable to accommodate revised hearings in February 2021	25/01/2021	✓	East Anglia ONE North: <a href="#">Link to Letter</a> East Anglia TWO: <a href="#">Link to Letter</a>
29	Examination process decisions for additional Affected Persons under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010	5/02/2021	✓	East Anglia ONE North: <a href="#">Link to Letter</a> East Anglia TWO: <a href="#">Link to Letter</a>
30	Amendment of Timetable to accommodate revised hearings in March 2021	9/02/2021	✓	East Anglia ONE North: <a href="#">Link to Letter</a> East Anglia TWO: <a href="#">Link to Letter</a>
31	Procedural Decision on Negotiations with Affected Persons (ISHs9 Agenda Item 1A)	22/02/2021	✓	East Anglia ONE North: This letter East Anglia TWO: This letter