

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Formal request to extend examinations
Date: 09 February 2021 19:39:00
Attachments: [image001.png](#)
[EA1N_EA2 Informative to BEIS .pdf](#)
[EA1N_EA2 Informative to BEIS ANNEX 1.docx](#)
Importance: High

Dear [REDACTED] and [REDACTED]

Please find attached the formal request to extend the examinations for the East Anglia One North and East Anglia Two examinations.

In summary:

- We are requesting an extension of four months for both examinations please.
- Apologies for the short notice, but a decision on this by 22nd February would enable us to make the necessary arrangements to be put in place.
- Please let us know as soon as possible if you require any further information.

Many thanks

[REDACTED]

[REDACTED]

Operations Lead – National Infrastructure and Environment

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To: [REDACTED]
Department for Business,
Energy and Industrial Strategy

From: [REDACTED]
Operations Lead
The Planning Inspectorate

Cleared by: [REDACTED]

Date: [REDACTED]
09 February 2021

PLANNING ACT 2008: FORMAL REQUESTS FOR EXTENSIONS TO THE EXAMINATIONS OF APPLICATIONS BY EAST ANGLIA ONE NORTH LIMITED FOR THE EAST ANGLIA ONE NORTH OFFSHORE WIND FARM AND BY EAST ANGLIA TWO LIMITED FOR THE EAST ANGLIA TWO OFFSHORE WIND FARM - NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS (NSIPs)

Background

1. East Anglia ONE North (EA1N) Limited and East Anglia TWO (EA2) Limited submitted their respective applications for the development of two Offshore Wind Farms on 25 October 2019. The Examining Authority (ExA) appointed to examine the applications is the same for both projects, but while they consist of the same panel members, they are two separately appointed ExAs and ultimately both applications will be fully and independently considered on their planning merits and a separate recommendation report will be produced for each application.
2. The EA1N and EA2 applications were accepted for Examination on 22 November 2019. Preliminary Meetings (PM) were scheduled for 24 March 2020 with the Examinations commencing the following day. However, due to the spread of the coronavirus (Covid-19) pandemic the PMs were postponed a week prior to when they were due to be held. New virtual examination methods were designed and evaluated, and on 16 July 2020, the ExAs issued replacement arrangements for the PMs, to be undertaken in two parts in mid September and October 2020. Due to Covid-19 restrictions still in force, the Examinations would start using virtual methods but remain flexible so that, should public health requirements allow, they had the option of holding physical events if possible.
3. The Examinations for both projects began the day after the close of the PM part two on **6 October 2020**. The statutory closing date for the examinations of both the EA1N and EA2 Offshore wind farm projects is **Tuesday 6 April 2021**, unless the Secretary of State grants an extension for both before this date.

Examination

4. These examinations have been undertaken completely virtually, due to Covid-19 restrictions and two national lockdowns, which have resulted in some Interested Parties, Local Authorities and Statutory Bodies having their resources and capability reduced due to closure of schools, education and childcare facilities, and caring responsibilities. Furthermore, the range and scale of the two examinations, including a material change to both applications, has led to strains on delivery by participants. Written and oral matters have been deferred, leading to a need for significant content to be carried forward to future events and deadlines, placing an increasing burden of issues for examination into the end of the Examinations. The ExAs have received written submissions from various parties requesting further hearings be held, including from the Applicants (on the Red Throated Diver and the Outer Thames SPA). This has resulted in an increase from an original 12 hearings over 8 days to some 25 hearings over 21 days, and a resultant increase in the number of hearing 'weeks' over the course of the Examinations from 3 to 8.
5. Both Local Authorities (Suffolk County Council (SCC) and East Suffolk Council (ESC)) have informally notified the case teams, as well as the Panels at hearings, that due to the pandemic restrictions they have resource issues which have resulted in their inability to respond effectively to deadlines within the present timetable.

6. In addition, written submissions have been received from the following bodies raising concerns over timing and resources:
 - **ESC** noted that *“as with all other stakeholders and Interested Parties ESC is also experiencing difficulties with resourcing the examination and hearings. This is specifically as a result of the national lockdown and school closures”*.
 - **Natural England (NE)**, who have raised in writing several times that their resources have been reduced significantly due to the national lockdown, restricting their ability to attend hearings during the Examinations and/or make submissions for deadlines timetabled for the Examination. There is a substantial amount of outstanding work on Habitats Regulations Assessment matters between NE and the Applicants which has now been deferred for resolution, which in turn significantly reduces the capacity of IPs to respond to it and the ExAs to examine it in the round.
 - The **Environment Agency (EA)** and **Historic England (HE)** both raised issues with timing and resources relating to the current public health situation. EA is unable to attend hearings, while HE have stated it has not been able to visit the sites to verify the findings and that it cannot therefore be definitive in its advice.
 - The **Marine Management Organisation (MMO)** has identified that it may not attend all hearings and raised concerns over the remaining time left within the examination and the time to provide a response at each deadline.
 - Active national and local pressure groups **SASES**, **Save our Sandlings**, **AEPA**, the **RSPB**, and **Suffolk Wildlife Trust** have all raised participation concerns relating to resource constraints, some observing in legal submissions from counsel that the maintenance of pace in such circumstances would reduce the ability of the ExAs to properly hear submissions and evidence and prevent matters that are required to be examined from being examined, unless additional hearing capacity was made available.
7. In addition to the IPs who have informed the ExA's of their difficulties, three members of the Panels and also members of the Case Team in support of the Examinations have school aged children who have now been at home since December. The demands of home schooling has had a large impact on the ability of the Panels to sufficiently resource the projects and dedicate the necessary time needed to properly digest the information submitted into the examinations in order to thoroughly examine it. The need to resource the Examinations has led to unsustainable work patterns in which shifts are worked over evenings and weekends without breaks or leave for many weeks at a time.
8. The ExA's Rule 8(3) letters published on 9 February 2021 made changes to the Examination Timetables that were deemed necessary in order to ensure that detailed technical matters requiring to be examined orally have sufficient time for examination. It is the ExA's opinion however that due to a combination of the scale and pace of the Examinations and the fact that significant matters have been deferred towards their ends, that the current timetables are undeliverable. Should the Examinations close on 6 April 2021, there is now a high risk that recommendation reports would be submitted with a considerable number of matters unresolved and/or inadequately examined which would result in the Secretary of State being unable to reach a decision in the 3 month timescale. There may be increased risk of legal challenges from parties asserting that the timetables as delivered did not provide them with a reasonable opportunity to be heard or to participate in written processes in the circumstances.
9. A four month extension to both timetables would allow for additional time between deadlines and events which would enable all IPs, including statutory bodies, as well as the Panel, sufficient time to engage properly and effectively in the process, thoroughly interrogate the evidence and produce a robust recommendation report that would enable the Secretary of State to reach a decision within the statutory timescale. Whilst it may be that the current resource pressures step down as lockdown restrictions are stepped down in due course, this time is also required to address the substantial backlog in the examination of issues that has accumulated due to IPs' and ExAs' capacity restrictions to date.
10. An urgent decision by **Monday 22 February 2021** is requested to enable timetable changes to be made to provide adequate notification to IPs to ensure their full and effective

engagement. This is also required as on 4 March 2021 the ExA are required to issue their Reports on the Implications for European Sites (RIES) (a key summation of natural environment and habitats regulations evidence used to support Habitats Regulations Assessment by the Secretary of State). Significant content for these is currently outstanding and is likely to remain so. If a decision is taken later than this date, elements of Examination procedure (such as the REIS) may need to be repeated in the extension period, in turn increasing the time required.

Legal background

11. Section 98(1) of the Planning Act 2008 places a duty on the Panels to complete their examinations of the applications within the period of six months. Section 98(3) of the Act requires the Panels to submit their recommendation reports to the Secretary of State within the period of three months from the close of the examinations. Section 107(1) of the Act places a duty on the Secretary of State to decide the applications within a period of three months from receipt of the Panel's Recommendation Reports. Section 98(4) of the Act gives the Secretary of State power to (i) set a new deadline for the close of the Panels' examinations that is later than the statutory six months maximum and (ii) roll forward the deadline for the submission of the Panel's recommendation reports to the Secretary of State so that they fall three months (the normal period) after the new closure date. Section 107(3) gives the Secretary of State power to set a new deadline to take a decision about whether to grant development consent.
12. In delivering examinations under PA2008, the ExAs must also comply with the rules of natural justice which require that a reasonable opportunity to be heard (including an opportunity to participate in written processes) is accorded to all parties.

Formal request

13. The Department for Business, Energy and Industrial Strategy (BEIS) is formally requested to prepare a submission to the Secretary of State asking him to (i) grant an extension to the examinations of the applications for a period of four months until 6 August 2021 in order to allow for the adequate examination of these applications, by providing IPs and stakeholders the opportunity to engage in these examinations effectively under written process and/or participation at virtual events. This would also include sufficient time to allow for Accompanied Site Inspections, if public health restrictions allow, given that these controls have prevented such an inspection from taking place during the course of the Examinations to date. This period also takes account of the need to ensure that timetables for these Examinations and that for the nearby Sizewell C new nuclear power station do not directly clash.
14. The above request is made given the extenuating circumstances pertaining to these examinations which consist of two projects examined in parallel, held entirely virtually due to public health restrictions, including two lockdowns as well as school closures affecting resourcing of both IPs and the ExA's. Extending the examinations as suggested would increase the effectiveness and fairness of the examination of these proposals as well as enable the ExA's to produce robust recommendation reports that would assist the Secretary of State in making a decision within the statutory timescale.
15. If BEIS agrees to prepare a submission to the Secretary of State on the above basis, it should make clear within the submission that in setting new deadlines, under s98(8) the Secretary of State must make a statement to Parliament announcing the new deadlines.
16. A decision is requested by **Monday 22 February 2021** to enable action to be undertaken within the existing examination timetable in the event that the Secretary of State denies these requests and/or to enable the actual additional time taken to examine these applications to be minimised. If the Secretary of State decides not to extend the examinations period, the Planning Inspectorate considers that there is a significant risk to the procedural robustness of these examinations and therefore a heightened risk of legal challenge to both the process itself and to any subsequent decision.

17. It follows that BEIS is asked to request for the Secretary of State to (i) take his decision in respect of the proposed extensions and (ii) discharge the requirements set out in s98(8) of the Act by making a statement to Parliament announcing the extensions set out above, as soon as is reasonably possible. A draft written statement is attached at Annex 1.

Presentation and handling

18. There is potential for public, industrial and local media interest in the decision. Media lines to take will be agreed between the press office of the Department for Business, Energy and Industrial Strategy and the Planning Inspectorate, keeping MHCLG press office sighted.


Operations Lead
The Planning Inspectorate

Annex 1: Draft Written Ministerial Statement for the extension of the statutory examination period

House of Commons: Written Statement (HCWS<X>)

Department for Business, Energy and Industrial Strategy

Written Statement made by: **Secretary of State for Business, Energy and Industrial Strategy (name)** on **<date>**

Business, Energy and Industrial Strategy Update

This statement concerns the application for the East Anglia ONE North Offshore Wind Farm made by East Anglia ONE North Limited under the Planning Act 2008, dated 25 October 2019 and the application for the East Anglia TWO Offshore Wind Farm made by East Anglia TWO Limited under the Planning Act 2008, dated 25 October 2019.

Under section 98(1) of the Planning Act 2008 (the Act) an Examining Authority appointed to examine an application must complete its examination within six months. The examinations for these applications began on 6 October 2020 and are due to close on 6 April 2021. The recommendation report would need to be sent to the Secretary of State on or before 6 July 2021.

Under section 107(1) of the Act, following receipt of the Examining Authority's recommendation report, the Secretary of State must decide whether to grant development consent. A decision in this case would therefore be made on or before 6 October 2021.

Sub-sections 98(4) and 107(3) of the Act gives the relevant Secretary of State power to set new deadlines in respect of the above which are later than the statutory maxima. For these applications, the relevant Secretary of State is the Secretary of State for Business, Energy and Industrial Strategy. In exercising this power, the Secretary of State for Business, Energy and Industrial Strategy must, amongst other things, make a statement to Parliament announcing the new deadlines.

The deadline for the completion of the examinations is to be extended to 6 August 2021 (an extension of four months), to enable participation in the examinations to occur, which has been limited by Government public health provisions and advice concerning coronavirus (COVID-19). Consequently, the deadline for the Examining Authority to submit its recommendation report to the Secretary of State for Business, Energy, and Industrial Strategy is amended to 6 November 2020 and the deadline for the Secretary of State for Business, Energy and Industrial Strategy to take his decision is amended to 8 February 2022; equivalent extensions of three months in each case.

The decision to extend these examinations under the Planning Act 2008 regime is not taken lightly and reflects the exceptional public health circumstances the country finds itself in and the fact that public health controls and guidance have limited effective participation in the examinations to date.

The decision to set a new deadline is without prejudice to the decision on whether to grant development consent.