



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 11 – 7 June 2021

East Suffolk Council's Response to the Examining
Authorities' Commentaries on the draft Development
Consent Orders

The table below details East Suffolk Council’s (ESC) comments in relation to the Examining Authorities’ commentaries on the draft Development Consent Orders (dDCOs).

dDCO	Question to:	Matter, Issue or Question asked:	1	2	ESC Response
General Observations					
<p>Matter raised in previous commentaries [PD-031] Both dDCOs</p>	<p>The Applicants, bodies discharging consents (MMO, SCC, ESC)</p>	<p>Deemed consent provisions</p> <p>There is precedent for the inclusion of deemed consents in DCOs in circumstances where approvals are required under Articles or Requirements but are not forthcoming in a defined time period. The justification for such an approach rests on the desirability of providing a unified consent under a made DCO and on specific risks to the timely and economic delivery of a nationally significant Infrastructure project (NSIP) that it is in the public interest to maintain. It follows that deemed consent provisions are not universally appropriate in all circumstances where a consent is sought. Equally, in assessing the reasonableness of a duration after which a deemed consent comes into force, regard must be had to</p>			<p>ESC has reached an agreed position with the Applicants regarding Schedule 16 of the dDCOs with the removal of the deemed consent provision in the dDCOs in relation to the discharge of requirements.</p> <p>In relation to Articles 12, 13, 15, 16 and 17 within the dDCOs which are subject to deemed consent provisions, these relate to matters which fall within the responsibility of Suffolk County Council (SCC) as the Local Highway Authority or Lead Local Flood Authority and therefore ESC will defer to SCC for comment.</p>

		<p>the technical and Institutional complexity of the matters to be decided and whether a decision could reasonably be made in the time-period allowed, prior to the operation of the deemed consent.</p> <p>The reasonableness of deemed consent provisions and the time-period for the grant of deemed consent under a number of provisions remain unagreed between the Applicants, ESC and SCC. Discussions are ongoing. Please provide a latest statement of position ensuring that agreed positions are documented and unagreed positions are clear and enabling the ExAs to adjudicate unagreed positions. Refer specifically to:</p> <ul style="list-style-type: none"> a) Street authority consent under Arts 12; b) Highway authority consent under Arts 13 and 15; c) Water discharge approval under Arts 16; and 		
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		d) Authority to survey and investigate the land onshore under Arts 17.		
	Contents			
		No matters for ESC to address.		
	Preamble			
		No remaining matters		
	Articles			
Arts 2	The Applicants, ESC, SCC, MMO	<p>Art 2(1) definitions: grid connection works and transmission works</p> <p>Definitions of “grid connection works” and “transmission works” include ‘any related associated development’.</p> <p>a) Are Schs 1 Pt 1 sufficiently clear about what the related associated development is?</p> <p>b) The latest version of the Norfolk Boreas dDCO submitted at D18 in that Examination refines this drafting as follows to say: ‘<i>and any related further associated development in connection with those works</i>’. This appears to add useful precision. Comments on the</p>		At Deadline 6 (REP6-080) ESC advised that the term ‘related associated works’ had not been defined and therefore further clarified was necessary. In response to this the Applicants stated that ‘ <i>associated development in respect of the transmission works is set out in paragraph 1 of Part 1 of Schedule 1 and associated works is set out in paragraph 2 of Part 1 of Schedule 1.</i> ’ ESC welcomed this further clarification; however, the Council would also support the additional wording being added to Article 2(1) as this provides further clarity in relation to the nature of the ‘related associated development’.

		adoption of this drafting are sought.		
Arts 2	All IPs	<p>Art 2(1) definitions: maintain</p> <p>This definition is wide, a matter raised at ISHs6, but is expressly limited ‘to the extent assessed in the [ESs]’. Parties’ concerns in relation to this matter are noted.</p>		ESC has no further comments to make on this definition.
Arts 2	All IPs	<p>Art 2(1) definitions: relevant to onshore substation design</p> <p>Reference to the “substations design principles statement” certified document are noted, and the operation of the substations design process will be discussed further at ISHs16 and 17.</p>		ESC will respond to any matters raised during ISH16 and ISH17 as appropriate.
Arts 12	The Applicants, ESC, SCC, (Street Authorities)	<p>Temporary stopping up of streets</p> <p>A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>		ESC will defer to SCC as the Local Highway Authority in relation to this matter.
Arts 17	The Applicants, ESC, SCC	<p>Authority to survey and investigate the land onshore</p>		ESC will defer to SCC as the Local Highway Authority in relation to this matter.

		<p>A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>		
Schedule 1 - Authorised Project				
Pt 3 R12	<p>The Applicants, SCC, ESC</p>	<p>R12: Detailed design parameters onshore: ‘overall design and layout plans’</p> <p>The ExAs R17QE has requested the production of ‘overall design and layout plans’ for the main development scenarios and asked whether and if so, how such plans might be secured and whether it would be appropriate that development should be required to be in general accordance with a submitted plan. Please comment on the following possible means of providing for and securing the production of the plans and ensuring that development is in general accordance with a submitted plan.</p> <p>a) The ‘overall design and layout plans’ are submitted before the</p>		<p>ESC supports the principle of securing overall design and layout plans and considers that this could be through the SDPS (REP-082). This will then mean that they are taken into consideration during the detailed design process and preparation of the Landscape Masterplan and the Architectural Framework. These documents then feed into Requirement 12, the Landscape Management Plan secured by Requirement 14 and Requirement 41 in relation to operational drainage.</p> <p>The layout drawings would provide indicative details for the site in the event of different development scenarios. As detailed above, the outcomes of the SDPS feed into the Requirement Discharge Documents and therefore ensure they will be taken into consideration during the final design refinement.</p> <p>At present concerns have been expressed by SCC that the drainage proposals identified within the current plans submitted within AS-122 cannot be relied upon. ESC considers there is a need to provide updated drawings following the results of the infiltration tests which is currently being undertaken by the Applicants. This may be possible prior to the end of the examination. ESC however also considers that the SDPS should include a provision which requires updated plans to be provided</p>

		<p>close of the Examinations and form part of the substations' design principles statement' and/ or the 'outline landscape and ecological management strategy'. In this case, is anything then necessary to be done to amend the dDCOs to secure the drawings? Can R12 as currently drafted can be argued to be sufficient?</p> <p>b) The 'overall design and layout plans' are submitted to the relevant local planning authority. In that case, does R12 require amendment to ensure that the relevant drawing is submitted and approved and then forms part of the 'substations design principles statement', or the 'outline landscape and ecological management strategy', or is a free-standing document required (a new paragraph to R12 would be required to achieve this); and</p> <p>c) A provision that no stage of the relevant works (indicatively Works Nos. 30, 33, 38, 41 – [and any</p>		<p>as part of the design process. It is however acknowledged that these plans would only provide indicative details.</p> <p>If the overall layout plans are included/secured within the SDPS then ESC considers there would not need to be an amendment to Requirement 12. As 12(5) ensures the design details submitted under Requirement 12 must accord with the SDPS. The Landscape Masterplan produced as a result of the SDPS feeds into the production of the Landscape Management Plan so there would not need to be an amendment to Requirement 14 to secure this either.</p> <p>ESC considers that it would be potentially difficult to secure an updated final 'overall design and layout out plan' for the site in the event that the projects were developed sequentially. In this circumstance, the first project could be developed ahead of the second project, with the exception of the need to lay the ducting for the second at the same time as the cables for the first, it may therefore not be possible for the Applicant of the first project to provide 'final' details for the second project.</p> <p>For this reason, the inclusion of a provision which then prevented works commencing on the substations, cable sealing end compounds or ancillary works until the overall masterplan was approved would be challenging and potentially not possible if the projects were constructed sequentially.</p>
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		<p>other Works?]) may commence until an overall design and layout plan has been submitted to and approved by the relevant planning authority.</p>		
<p>Pt 3 R12</p>	<p>The Applicants, ESC, NGET, SASES</p>	<p>R12: Defining onshore operational land for purposes of the 1990 Act</p> <p>Concerns have been expressed about the extent of operational land that would benefit from substation permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 15, Class B (a), (d) or (f). ESC has submitted that the potential adverse effects of permitted development could be such that removal of those rights would be justified. The Applicants in turn have submitted that removal of operationally normal permitted development rights for a substation would unduly burden the proposed substation facilities once operational and would not be justified. In this context, a</p>		<p>a) ESC is content with the additional wording proposed to Requirement 12 which would secure the submission of a plan identifying the extent of operational land associated with Work Numbers 30, 38 and 41.</p> <p>b) It is agreed that the operational land should not extend beyond the compounds of the project substations, National Grid substation or Cable Sealing End Compounds (Work Numbers 30, 38 and 41) and therefore ESC agree to referencing these Work Numbers within Requirement 12.</p>

		<p>possible alternative mechanism is to provide that the extent of onshore operational land benefiting from substation permitted development rights is reduced to the minimum necessary and clearly defined. An 'onshore operational land plan' is a potential mechanism whereby that could be achieved.</p> <p>The Applicants responded to the February 2021 Commentaries [PD031] highlighting their view that it was not possible to submit an onshore operational land plan during the Examinations but set out its view that the operational land could be limited in extent and identifying that R12 could be amended to ensure that such a plan could be provided after the relevant operational areas had been commissioned.</p> <p>On that basis, the ExAs have proposed amendments to R12 to secure the production of an onshore operational land plan after commissioning and a new</p>		
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		<p>R44 providing that permitted development rights can only be exercised within the land defined as operational land on the plan.</p> <p>a) Does the proposed amendment set out below and at R44 add sufficient certainty about the extent of onshore operational land and clarify that the exercise of permitted development rights on that land would be appropriate?</p> <p>b) Are the correct Works within scope?</p> <p>c) If not, what alternative measures should be provided for?</p> <p>Add the following paragraphs to R12 after current paragraph (21)</p> <p><i>(22) The undertaker must submit a plan for approval by the relevant planning authority showing the extent of the completed works that comprises operational land onshore for the purposes of the 1990 Act ('the onshore operational land plan') no later than three months from the completion and</i></p>		
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		<p><i>commissioning of {Work No. 30, Work No. 38 or Work No. 41}.</i></p> <p><i>(23) The extent of the operational land shown on the onshore operational land plan provided by the undertaker pursuant to paragraph (22) must accord with the substations design principles statement and be within the Order limits.</i></p> <p>It should be noted that the timescale for approval and circumstances where the relevant planning authority did not approve a submitted onshore operational land plan would be matters addressed or capable of being resolved under Schs 16. See also R44 (proposed).</p>		
<p>Pt 3 None – additional requirement 44</p>	<p>The Applicants, ESC</p>	<p>Additional Requirement (R44) – Onshore Operational Land Plan</p> <p>See R12 above.</p> <p>The Commentary on R12 above proposes the preparation of and provides security for an onshore operational land plan. One of the</p>		<p>ESC recognises that the wording of requirement 44 would still allow the Applicants to utilise permitted development rights under Classes B (a), (d) and (f) within the land identified as operational land, which the Applicants have previously indicated would be confined to the fenced compounds. This would allow modifications to the substations and Sealing End Compounds to occur beyond that assessed by the Environmental Statements and permitted by the DCOs which is of concern. ESC therefore considers that permitted development rights under Class B (a), (d)</p>

		<p>purposes of that plan is to clarify where substation permitted development rights might be enjoyed. Please comment on the ExAs' proposed drafting below:</p> <p><i>44. 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 shall be carried out under Schedule 2, Part 15, Class B (a), (d) or (f) other than on land shown as onshore operational land on the onshore operational land plan.</i></p>		<p>and (f) of Part 15 should be removed for the operational land as well.</p> <p>Notwithstanding this position, ESC considers the inclusion of Requirement 44 and additional wording to Requirement 12 would help to limit the extent of development that could be carried out under Part 15 of the GDPO outside the operational land which is welcomed.</p> <p>ESC however recognised that the Applicants expressed significant reservations in relation to this matter during ISH17 specifically in relation to the potential unintended consequences of removing permitted development rights for Class B (a) of Part 15 of the GDPO. ESC will therefore seek to engage with the Applicants on this matter following the hearing.</p>
<p>Pt 3 None – missing requirement</p>	<p>The Applicants, NE, ESC</p>	<p>Missing Requirement – Ecosystem Services for Sandlings SPA</p> <p>The February 2021 Commentaries identified that Natural England had sought a requirement to ensure that proposed SPA mitigation measures in the form of planting must be in functioning condition/ providing ecosystem services as nesting habitat, before</p>		<p>The ecological mitigation land (Work No.12A) is secured by the dDCOs and Requirement 21. The Outline SPA Crossing Method Statement commits to the preparation of the areas within Work No.12A during the non-breeding season in the calendar year prior to the SPA crossing works commencing (paragraph 65, REP6-036). The Method Statement then commits to manage these areas for ten years (with the exception of the horse paddocks, which will be managed for five years). The Outline SPA Crossing Method Statement will feed into a final SPA Crossing Method Statement which forms part of the Ecological Management Plan (EMP). No stage of the onshore works may commence unless the EMP for that stage has been submitted and approved. It is therefore</p>

		<p>works can commence within the boundary of the SPA.</p> <p>The Applicants responded saying that they <i>'do not consider it to be necessary or appropriate for a requirement to be added which prevents construction of the Projects until the proposed SPA mitigation measures (Work No. 12A) must be in functioning condition. The functionality of the habitat is outside the Applicants control as in reality, the habitat could be prepared to an optimum standard, but avian species simply chose not to use the area prior to construction.'</i></p> <p>The ExAs observe that the matters to be fairly included in any requirement should sensibly relate to the management and condition of habitat in broadly floristic terms. It should not require the presence of mobile/avian species which may choose not to use the land for reasons beyond the Applicants' control. However, it remains our</p>		<p>considered that the provision of Work No.12A is appropriately secured. If the mitigation was not provided in accordance with the EMP and the final SPA Crossing Method Statement, then the Applicants would be in breach of the DCOs.</p> <p>If, however it is determined by the Examining Authority and Natural England (NE) that that there is a need for a requirement to ensure that the mitigation land is at an appropriate and established stage prior to works commencing in order to secure the SPA against Adverse Effects on Integrity, ESC considers that the wording would need amending.</p> <p>The requirement would only be necessary if the SPA is crossed with open trenched methods but would not be required in the event trenchless techniques are adopted. This would need to be reflected within the wording.</p> <p>It is not considered necessary or reasonable to include all the land within Work No.s 11 and 13 within the requirement and therefore it is suggested that the requirement would only limit work within Work No.12.</p> <p>ESC would be concerned with the inclusion of the term 'completed' within the requirement. The land is going to be subject to ongoing management which would continue for parts of the site for ten years.</p> <p>It is also considered that there would need to be identifiable targets specified within the SPA Crossing Method Statement so that it is clear to the Applicants, NE and ESC when the requirement</p>
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		<p>understanding drafting on this point is needed to ensure the avoidance of an adverse effect on integrity (AEoI) as asserted by NE in D5 submissions [REP5- 084] at page 2 and then again at D8 [REP8-162].</p> <p>To ensure that there is a need for a requirement on this point (on the basis that it relates to feature of the SPA), NE are requested to check their records:</p> <p>a) to confirm whether this request relates to the nightjar (an SPA feature) or the nightingale (an SSSI feature); and</p> <p>b) to advise on the need for and extent of security based on the outcome of this check.</p> <p>If the matter at issues remains the need to secure the SPA against and AEoI and to achieve adequate security on this point, it would seem necessary for the relevant habitat values to have been provided and to be assessed to be in functioning condition, capable</p>		<p>has been met and can therefore be discharged. A commitment to the targets would need to be set out within the Outline SPA Crossing Method Statement.</p> <p>If an additional requirement is considered necessary by NE and the Examining Authorities, ESC considers that the wording should be amendment to the following:</p> <p><i>If an open cut trenched technique is adopted to cross Work No.12, construction of Work No. 12 {an appropriate extent of the onshore works defined with provisional reference to Works Nos. 11, 12, and 13} shall not commence until Work No. 12A has been agreed by the relevant planning authority in consultation with the relevant statutory nature conservation body to have been completed-at an appropriate condition in compliance with agreed targets in accordance with the ecological management plan.</i></p>
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		<p>of accommodating relevant mobile/ avian species, before development commences. Such a requirement might provide as follows:</p> <p><i>{n}. Construction of {an appropriate extent of the onshore works defined with provisional reference to Works Nos. 11, 12, and 13} shall not commence until Work No. 12A has been agreed by the relevant planning authority in consultation with the relevant statutory nature conservation body to have been completed in accordance with the ecological management plan.</i></p> <p>Drafting changes should be submitted by both parties together with reasons for any outstanding differences.</p>		
		Schedules 13 & 14 – Deems licences under the 2009 Act – generation assets and offshore transmission assets (the DMLs)		
		No matters for ESC to address.		
		Schedule 15 – Arbitration Rules		
		Schedule 16 – Procedure for Discharge of Requirements		
Paras 1	All IPs, Discharging	Final Positions on Procedure for Discharge of Requirements		ESC is now content with the wording contained within Schedule 16.

	Authorities (see Art 38)	Are there any remaining issues about the form and structure of this Schedule or the adequacy of the processes provided by it?		
Schedule 17 – Documents to be Certified				
Generally	The Applicants and all IPs	<p>Certified documents audit</p> <p>The ExAs welcome the introduction of Schs 17. The content and effect of documents recorded in the schedule will be raised in ISHs17. The Applicants will be requested to undertake an audit of all certified documents to ensure that version control and citations are correct. This work is to be submitted at Deadline 11. Interested Parties may comment on it at Deadline 12, enabling the Applicants to provide any final correcting revisions at Deadline 13.</p>		ESC will provide comments at Deadline 12 as requested.
Part 2	The Applicants and all IPs	<p>Certified documents audit: approval and consultation processes</p> <p>The certified documents include outline and in-principle plans and</p>		The Examining Authorities' comments are noted.

		<p>strategies secured by Requirements and to which the relevant decision maker (normally the relevant local planning authority or the MMO) must refer when discharging Requirements.</p> <p>As part of the audit of certified documents, and with reference to the preferred draft DCOs, the Applicants are requested to prepare a table that identifies the following elements:</p> <ul style="list-style-type: none"> • The name of each outline or in-principle plan and strategy; • The name of any body consulted during its preparation; • Whether and if so which provisions in the dDCOs are relied upon to secure a final or detailed version of the document; • The identity of the body approving any final or detailed version of the document; and • The identity of any consultees engaged in the preparation or approval of the final or detailed version of the document. 		
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	<p>The Applicants, ESC and NE</p>	<p>Certified documents: approval and consultation processes</p> <p>Natural England has made the following requests in relation to outline and in-principle plans and strategies. The Applicant’s response and the comments of East Suffolk Council are sought.</p> <p>a) That NE be secured as a consultee on the final Code of Construction Practice (CoCP) (R22); and</p> <p>b) That the HDD Verification Clarification Note [REP6-024] should be updated once pre-construction surveys are complete and then become a certified document to be considered in the discharge of R13.</p> <p>In relation to item a), in R22 the means of security could be: <i>‘... has been submitted to and approved by the relevant planning authority and the relevant statutory nature conservation body.’</i></p>		<p>a) ESC has no objection to NE being identified as a consultee in relation to the final Code of Construction Practice (CoCP). The wording provided by the Examining Authorities would be appropriate.</p> <p>b) The HDD Verification Clarification Note (REP6-024) seeks to provide the Examining Authorities confidence that HDD techniques can be utilised at the landfall. The Applicants have updated the Outline Landfall Construction Method Statement (OLCMS, REP8-053) to provide a clear commitment to utilise HDD techniques in this location. The final details in relation to the HDD works will be secured within the final Landfall Construction Method Statement, which must accord with the OLCMS.</p> <p>It is not clear what further information would be obtained from securing an updated HDD Verification Note post-consent. For this reason, ESC does not consider that securing an updated HDD Verification Note under Requirement 13 would be necessary.</p> <p>c) Notwithstanding ESC’s response to b) above, if the Examining Authorities wish to secure an updated HDD Verification Note the additional wording suggested would be appropriate.</p>
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		<p>In relation to item b), in R13 the means of security could be:</p> <p>(a) a detailed horizontal directional drilling verification note (which accords with the horizontal directional drilling verification clarification note);</p> <p>(b) a landfall construction method statement for the construction of that part of Work No. 6 or Work No. 8 (which accords with the outline landfall construction method statement); and</p> <p>(c) a landfall monitoring plan (which accords with the outline landfall monitoring plan contained within appendix 2 of the outline landfall construction method statement).</p> <p>Please provide comments on the means of drafting.</p>		
Schedule 18 – Offshore Ornithology Compensation Measures				
		No matters for ESC to address.		
Agreements and Obligations				

<p>MoU (REP10-028)</p>	<p>The Applicants, ESC</p>	<p>Memoranda of Understanding (MoUs) The signed Memoranda of Understanding (MoUs) [REP10-028] are between ScottishPower Renewables (UK) Limited and East Suffolk Council. ScottishPower Renewables (UK) Limited is not the Applicant in either instance. What locus does this company have in this process and what weight can the ExAs ascribe to the MoUs in these circumstances?</p> <p>To the extent that the MoUs manage matters to be delivered by the Applicants (East Anglia ONE North Limited and East Anglia TWO Limited), would it not be more appropriate for them to be signed by and binding on the Applicants?</p>		<p>The Memorandum of Understanding at REP10-028 that has been signed by ScottishPower Renewables (UK) Ltd and ESC follows the precedent of the Memorandum of Understanding at REP5-058 that has been signed by the same parties and SCC. REP5-058 was signed with SPR (UK) Ltd in recognition of the fact that it has the controlling interest in the Applicant companies and is intended to have wider application than EA1N and EA2. It is for this same reason that REP10.028 is also signed by SPR (UK) Ltd.</p> <p>It is understood that in the case of both REP5-058 and REP10-028 the Applicants do not ask the ExAs to ascribe weight to the MoUs.</p>