

**Case Name:** *Suffolk Energy Action Solutions SPV Ltd, R. (On the Application Of) v The Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 2623 (Admin) (06 October 2022)

**Full case:** [Click Here](#)

**Commentary:** This case was a renewed application for permission to apply for judicial review of the Secretary of State for Business, Energy and Industrial Strategy's (the "Defendant") two development consent orders of 31 March 2022:

1. East Anglia ONE North Offshore Wind Farm Order 2022; and
2. East Anglia TWO Offshore Wind Farm Order 2022.

The judge dismissed the application stating that the "grounds of claim are unarguable".

Suffolk Energy Action Solutions SPV Limited (the "Claimant") argued on 10 grounds that, in essence, "the interested parties created a so-called "chilling effect" by persuading landowners, whose properties were proposed to be purchased in connection with the onshore elements of the wind farm scheme, to enter into arrangements, in particular so-called "heads of terms", which prevented or, in the Claimant's terminology, "gagged" landowners from making submissions to the examining authority." The Claimant argued that those submissions might have been relevant to the proper evaluation by the examining authority of the harmful consequences of the onshore development, in particular on ecology.

In the judgment, it was noted that "many of the landowners, in whose land the interested parties needed to acquire an interest, submitted relevant representations" with none withdrawing those representations during the course of the examination. Indeed, the judge went on to clarify that the examining authority inspected the requested locations and that "no suggestion [was] made that the ability of the claimant to identify land containing important relevant features which they felt the examining authority should see and inspect was limited as a result of landowners signing heads of terms." No option agreements were entered into between the interested parties and the landowners during the examination period, with no payments made for any land or rights over land during that period.

The judge identified that it is only the heads of terms that were material and noted that these heads of terms were non-binding. The heads of terms did not prevent the landowners from submitting information to the examining authority nor did the heads of terms prevent members of the public from accessing land to consider the environmental impacts. Importantly, the judge noted that "heads of terms and option agreements are not only lawful but commonplace" adding that there "needs to be a sound legal rationale for [the] court to find that the decision-making process was nevertheless arguably flawed, on the basis of an assertion that some relevant

information might have been forthcoming but was not.”

In finding against the Claimant on all grounds, the judge concluded that the Claimant’s so-called “chilling effect” case was founded on no more than speculation and upon analysis was “in the nature of a straw man”.

*Case summary prepared by Amy Penrose*