



Department for
Business, Energy
& Industrial Strategy

Department for Business,
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Our Ref: EN010021
Your Ref:

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Dear Sir

PLANNING ACT 2008

APPLICATION TO MAKE NON-MATERIAL CHANGES TO THE DOGGER BANK CREYKE BECK OFFSHORE WIND FARM ORDER 2015 (“the Application”)

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the Application which was made by Doggerbank Offshore Wind Farm Project 1 Projco Limited (“Projco 1”) and Doggerbank Offshore Wind Farm Project 2 Projco Limited (“Projco 2”) (“the Applicant”) on 29 June 2018 (and as revised on 22 February 2019) for changes which are not material to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (“the 2015 Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“the 2008 Act”). This letter is the notification of the Secretary of State’s decision in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”).
2. The original application for development consent under the Planning Act 2008 was submitted to the Planning Inspectorate on 29 August 2013. Development consent was granted on 17 February 2015 and came into force on 11 March 2015. The 2015 Order was subsequently corrected by The Dogger Bank Creyke Beck Offshore Wind Farm (Correction) Order 2015 on 2 October 2015, which came into force on 5 October 2015.
3. The 2015 Order granted development consent for two offshore wind farms, Dogger Bank Creyke Beck A Offshore Wind Farm (“Project A”) and Dogger

Bank Creyke Beck B Offshore Wind Farm (“Project B”), each of up to 1.2 Gigawatts comprising up to 200 wind turbine generators. The benefit of development consent for Project A was granted to Doggerbank Project 1 Bizco Limited (“Bizco 1”) and the benefit of Project B was granted to Doggerbank Project 4 Bizco Limited (“Bizco 4”). The two wind farm projects were originally developed by Forewind, a consortium comprising SSE, Equinor (formerly Statoil), Innogy (formerly RWE) and Statkraft. Following the grant of the 2015 Order, the wind farm projects have been split between the parent companies. As part of the reorganisation, Bizco 1 was renamed Projco 1 and Bizco 4 was renamed Projco 2. Both of the Projcos are now jointly owned by SSE and Equinor. For the remainder of this letter, the development consented under the 2015 Order, and the proposed changes sought in this change application, will be referred to as “the Project”.

4. Project A is located approximately 131km from shore at its closest point in the southern corner of the former Dogger Bank Zone¹ in the North Sea. It covers an area of approximately 515km². Project B is on the western edge of the former Dogger Bank Zone and also approximately 131km from shore at its closest point. It covers an area of approximately 599km².
5. The Applicant originally sought consent for changes to each wind farm project to:
 - Allow each wind turbine generator to have a maximum rotor diameter of up to 280 metres rather than the consented up to 215 metres;
 - enable maximum hammer energy for monopile foundations of up to 4000kj during installation rather than the consented up to 3,000kj;
 - increase the monopile diameter up to 12m from the consented up to 10m;
6. However, the Applicant subsequently withdrew the hammer energy and monopile increase elements of the Application by way of a letter to BEIS on 22 February 2019 and the Application is now only to allow each wind turbine generator to have a maximum rotor diameter of up to 280 metres.
7. There is no increase sought in generating capacity and the number of larger turbines per project would therefore be constrained by the originally consented maximum capacity. For example, the Secretary of State notes from the Application that for turbines with a maximum rotor diameter of 280m, a maximum number of turbines would in effect be 70 per wind farm project.
8. The Secretary of State notes that the Application would also necessitate consequential variations to the four marine licences that were granted pursuant to schedules 8 to 11 of the 2015 Order. The Secretary of State understands that a

¹ The Dogger Bank Offshore Wind Farm Zone located in the North Sea between 125 and 290 km off the coast of the East Riding of Yorkshire and extending over an area of approximately 8,660km.

separate request for variation to the deemed marine licences has been submitted to the Marine Management Organisation (“MMO”) for determination.

Consideration of the materiality of the proposed change

9. The Secretary of State has given consideration to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the development consent order (“DCO”) as originally made.
10. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations.
11. So far as decisions on whether a proposed change is material or non-material, guidance was produced by the then Department for Communities and Local Government, the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)², which makes the following points. First, given the range of infrastructure projects that are consented through the 2008 Act, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material. Second, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:
 - (a) whether an update would be required to the Environmental Statement (“ES”) (from that at the time the original DCO was made) to take account of likely significant effects on the environment;
 - (b) whether there would be a need for a Habitats Regulations Assessment (“HRA”), or a need for a new or additional licence in respect of European Protected Species;
 - (c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO; or
 - (d) whether the proposed change have a potential impact on local people and businesses.
12. Third, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
13. The Secretary of State began his consideration of the materiality of the proposed changes by considering the 4 matters lettered (a), (b) (c) and (d) above:
 - (a) The Applicant supplied a document titled ‘Dogger Bank Project -RE-PM575-00019 Non-Material Change Application: Environmental Report’ in support of the change application. The Applicant concluded that there

² <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

would be no new or materially different impacts from those assessed in the original Environmental Statement for the 2015 Order except those on Marine Mammals. Impacts on the Southern North Sea Special Area of Conservation (“SNS SAC”) were not assessed in the original Environmental Statement but an assessment of impacts from the Projects alone and in-combination on the SNS SAC is being undertaken as part of the Review of Consent Offshore Wind Farms in the Southern North Sea Harbour Porpoise Site of Community Importance (“SNS SAC Review of Consents”)³. The Secretary of State considers the SNS SAC Review of Consents to be the best place for the assessment of impacts from the Project on the SNS SAC and as such has included an additional requirement in the Amending Order which prevents any activities which may have a likely significant effect on the SNS SAC from taking place before the final decision on the SNS SAC Review of Consents is released. All consultation responses support this approach to assessment of impacts to the SNS SAC. Therefore, the Secretary of State concludes that, given the removal of the hammer energy component from the change application, then the impacts of the project on the SNS SAC would be no different from those originally assessed for the 2015 Order so far as the protected feature is concerned.

- (b) The Secretary of State considers that an HRA is required in order to assess the acceptability of the Application currently before him. It is also used when determining whether the changes in an application are material and non-material. In light of representations also received from Natural England and others, the Applicant was asked to provide further information to inform the Secretary of State’s determination. This information was also to inform any Appropriate Assessment (“AA”), if needed. The Secretary of State’s detailed consideration of the HRA is considered further below. But, the project if the change sought is granted when compared to the originally consented project, is not materially different so far as the protected feature is concerned. Consequently, the Secretary of State does not consider this Application to be for a material change to the consented project. The effects of the originally consented project and the project if the change sought is granted on the SNS SAC are considered further below.
 - (c) The Secretary of State is satisfied that the proposed changes do not entail any new compulsory acquisition of land.
 - (d) The Secretary of State is also content that potential impacts on local people and businesses are no greater than those that arise from the development permitted by the 2015 Order.
14. The Secretary of State has concluded that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggest that the changes proposed are material. He is therefore satisfied that the changes proposed in

³ In January 2017, a candidate Special Area of Conservation (cSAC) was submitted to the European Commission to designate an area of the southern North Sea for the protection of harbour porpoise – a species of marine mammal. This designation has triggered a statutory duty, under the Habitats Regulations, for the Department to review a number of planning consents for offshore wind farm developments and to assess the impacts of these projects on the new SAC.

the Application are not material and should be dealt with under the procedures for non-material changes.

Consultation and Consideration of Matters Raised in Representations Received

Publicity

15. The Applicant has publicised the Application in accordance with regulation 6 of the 2011 Regulations and on 14 June 2018 consulted the persons required by regulation 7 of the 2011 Regulations, in the manner prescribed. Due to an initial publication error requiring re-publication of the public notices by the Applicant, the deadline for receipt of representations on the Application was extended until 14 September 2018.
16. The Application was also made publicly available on the Planning Inspectorate's website, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

Representations

17. No representations were received from any private individuals.
18. The Secretary of State notes that no objections to the Application were received in the representations from: The Crown Estate; Marine and Coastguard Agency; Environment Agency; Historic England; and Trinity House.

Representations relating to Habitats and Species

19. The Secretary of State has considered the relevant and important policies in respect of the United Kingdom's obligations as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), which transpose the Habitats Directive (92/43/EC) into UK law. The Habitats Regulations require the Secretary of State to consider whether the Project would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an AA must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if he has ascertained that it will not adversely affect the integrity of a European site.
20. Natural England's representation set out its view that the proposed increase in hammer energy may impact on marine mammals (Harbour Porpoise) and an HRA was required to consider the impacts of the project alone and in combination with other plans and projects on the SNS SAC. In respect of impacts on ornithology from the proposed changes, for disturbance and displacement, barrier effects and habitats loss and change, Natural England considered the worst-case scenario assessed in the ES would remain unchanged. For northern gannet and black-legged kittiwake, the Applicant

submitted an addendum clarifying collision risk height and Natural England agreed with their conclusions that the use of fewer, larger turbines would reduce collision estimates from the Project alone and cumulatively with other projects.

21. Concerns were also raised by the Whale and Dolphin Conservation (“WDC”) and The Wildlife Trusts in their representations in respect of cumulative underwater noise disturbance and marine mammals. Both parties requested that either an HRA be undertaken or a decision on the application be postponed until the Secretary of State’s separate SNS SAC Review of Consents was complete.
22. The Marine Management Organisation (“MMO”) consulted on the deemed Marine Licence and similarly noted in its representation the increase in hammer energy and potential impact on marine mammals and that an alone and in-combination HRA was required. In respect of Benthic Ecology, the MMO agreed that if monopiles of 12m diameter were to be used then this would not exceed the maximum impacts assessed in the Environmental Statement. However, if another foundation type is preferred then further information would be required to ensure the measurements do not exceed the maximum assessed. The MMO also had some concerns on the impact of noise and vibration on herring, due to the proximity of Project A and Project B to the Flamborough Head herring spawning ground off the coast of East Yorkshire. In view of uncertainties relating to modelling and assessment, the MMO was unable to agree the increases in hammer energy and pile diameter would also not give rise to any new or materially different likely significant effects in relation to fish. However, since the increases to hammer energy and pile diameter were removed from the change application the MMO’s concerns in relation to fish are no longer of relevance.
23. Since the publication of the previous HRA undertaken in 2015, Flamborough and Filey Coast Special Protection Area (“FFC SPA”) and the SNS SAC have been designated. In considering this matter, the Secretary of State has considered the Supporting Statement submitted with the Application, alongside the responses from Natural England and all other parties.
24. The Applicant subsequently provided separate Statements of Common Ground with the WDC, The Wildlife Trusts, Natural England and RSPB (who did not make a representation during the consultation process). Following careful consideration of all the representations received, further clarification and information was requested from the Applicant and Natural England on 2 November 2018. Representations were received from Natural England on 21 November 2018 and the Applicant on 27 November 2018.
25. Following without prejudice discussions with BEIS officials on possible timing of a decision to potentially enable determination before the SNS SAC Review of Consents consultation process is concluded, the Applicant decided to withdraw elements of the Application relating to an increase in hammer energy and monopile diameter on 22 February 2019.

26. The Secretary of State considers that the assessments made in the HRA which was carried out on the application for the 2015 Order("the 2015 HRA") and the HRA for East Anglia Three offshore wind farm are relevant for the change application. The 2015 HRA did take account of FFC as a potential SPA, but did not take account of the SNS SAC. The Secretary of State concludes that the proposed changes to the project will have no adverse effect on the integrity of the FFC SPA when considered either alone or in-combination with other plans and projects.
27. The Secretary of State considers that his conclusion of the Project having no adverse effect alone or in combination with other plans or projects on the FFC SPA makes it likely that if the Project remains unchanged, it would not be included in any future review of consents for the FFC SPA.
28. The Secretary of State also concludes that, with the removal of the change sought to the permitted hammer energy, that the other changes would not (of themselves) alter the potential impacts on the harbour porpoise protected feature of the SNS SAC. However, so far as the impacts on the total project on the SNS SAC are concerned, the project is being reviewed as part of the SNS SAC Review of Consents. This will assess any general amendments needed to existing consents as a result of the establishment of the SNS SAC. This separate process, which covers multiple Southern North Sea consents considered alone and in combination, includes a detailed review of the impacts of underwater noise on the SNS SAC. The Secretary of State considers that the SNS SAC Review of Consents is the appropriate mechanism for ensuring there is no adverse effect from this Project on the integrity of the SNS SAC and that the full effects of the Project will be assessed within that process.
29. However, to ensure there can be no likely significant effects on the SNS SAC before the conclusion of the SNS SAC Review of Consents, the Secretary of State considers it appropriate to include an additional requirement in the Amending Order to ensure that no offshore construction works for Project A and Project B may commence until after the conclusion of the SNS SAC Review of Consents process.
30. On 13 March 2019, the Secretary of State consulted the Applicant, Natural England and the MMO on a draft HRA and inclusion of a draft additional requirement. Although the Applicant sought to make changes to the draft additional requirement to limit restrictions only to piling activities, it is considered that this would not restrict other noise disturbance activities that may also potentially have a likely significant environmental impact on the SNS SAC. The Secretary of State does not consider therefore that it is appropriate to include the Applicant's changes. The MMO and Natural England made minor comments which were considered and reflected, where deemed appropriate, within the final HRA report.
31. The Secretary of State is satisfied that the HRA consequently does not prejudice the outcome of the SNS SAC Review of Consents, including any changes that may

be necessary to the Project's consents or marine licences as a result of that process.

32. The Secretary of State has considered the representations received in response to the consultation and the information subsequently provided and does not consider that any further information needs to be provided by the Applicant or that any further consultation of those already consulted is necessary.

General Considerations

Transboundary Impacts

33. Under Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), the Secretary of State has considered whether the proposed development is likely to have a significant effect on the environment in another European Economic Area ("EEA") State. In the application for the 2015 Order, the Secretary of State concluded that there would be no likely significant effects on the environment of another EEA State. The Secretary of State has considered whether the change sought through this Application will have any potential impacts on another EEA State and, as set out above, has concluded that there is no change in the environmental impacts considered within the existing Environmental Statement for the project. The Secretary of State has consequently concluded that there would not be likely significant effects on the environment of any other EEA state whether the Application is considered of itself or cumulatively with the environmental effects already considered for the 2015 Order.
34. The Secretary of State has also considered whether there may be potential impacts on European sites in other EU Member States, known as transboundary sites, from this Application. Noting that the Secretary of State has reached a conclusion that there will be no Likely Significant Effects on European sites (over and above those already assessed in the HRA for the 2015 Order), the Secretary of State has also concluded that there is no route whereby sites in other EU Member states may be impacted by this Application.
35. The Secretary of State therefore concludes there is no need for transboundary consultation with other EEA States.

Equality Act 2010

36. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age;

gender; gender reassignment; disability; marriage and civil partnerships;⁴ pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

37. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

Human Rights Act 1998

38. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

39. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting amended development consent. The Secretary of State is of the view that biodiversity has been considered sufficiently in this application for an amendment to accord with this duty.

Secretary of State's conclusions and decision

40. The Secretary of State notes that since the grant of the 2015 Order, there have been advancements in technology that would make the projects more efficient and cost effective. These advances are based on the size of wind turbine generators that are available or likely to be available during the course of the construction development programme. Changes to the consented wind turbine rotor diameter have therefore been sought.
41. The Secretary of State has considered the ongoing need for the Project. The Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3) both set out that for the UK to meet its energy and climate change objectives, there is an urgent need for new electricity generation plants such as offshore wind farms. The Secretary of State considers, therefore, that the ongoing need for the project is established.

⁴ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

42. The Secretary of State has considered the nature of the proposed change, noting that it would have no additional significant environmental effects. He concludes that the proposed change is not material. Having considered the effects of any change and the benefits of the changes in facilitating the deployment of the Project, the Secretary of State has concluded that it would be appropriate and advantageous to authorise the proposed changes as detailed in the Application.
43. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the 2015 Order as set out in the Application. The Secretary of State is satisfied that the changes requested by the Applicants is not a material change to the 2015 Order and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes to the 2015 Order so as to authorise the changes detailed in the Application.

Modifications to the draft Order proposed by the Applicant

44. To ensure there can be no likely significant effects on the protected features of the SNS SAC before the conclusion of the SNS SAC Review of Consents, the Secretary of State has included an additional requirement to ensure that no activities associated with Project A offshore works or Project B offshore works which may have such an effect on the SNS SAC can commence until the SNS SAC Review of Consents has been completed and the Secretary of State has affirmed, modified or revoked the decision to make an order granting development consent in respect of the Project A offshore works or Project B offshore works (respectively) under regulation 33(4) of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I 2017/1013). The Secretary of State considers, with the requirement and the HRA as drafted, that the Application does not affect or prejudice the SNS SAC Review of Consents.
45. Minor drafting improvements have been made by the Secretary of State to the revised draft Amending Order proposed by the Applicant on 8 February 2018. These changes do not materially alter the terms of the draft Amending Order.

Challenge to decision

46. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

47. The Secretary of State's decision on this Application is being notified as required by regulation 8 of the 2011 Regulations.

Yours sincerely,

Gareth Leigh
Head of Energy Infrastructure Planning

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/dogger-bank-creyke-beck/?ipcsection=docs>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)