



Department for  
Business, Energy  
& Industrial Strategy

1 Victoria Street  
London SW1H 0ET

T [REDACTED]  
E [beiseip@beis.gov.uk](mailto:beiseip@beis.gov.uk)  
[www.beis.gov.uk](http://www.beis.gov.uk)

David Scott  
Consent Team Manager  
Dogger Bank Offshore Wind Farm Project  
1 Waterloo Place  
Glasgow  
G2 6AY

By e-mail only: [REDACTED]@[sse.com](mailto:[REDACTED]@sse.com)

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Dear David Scott

**PLANNING ACT 2008**

**THE DOGGER BANK CREYKE BECK OFFSHORE WIND FARM ORDER 2015:  
APPLICATION FOR A NON-MATERIAL CHANGE**

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 (“the Application”) which was made by Doggerbank Offshore Wind Farm Project 1 Projco Limited and Doggerbank Offshore Wind Farm Project 2 Projco Limited (together “the Applicant”) on 17 December 2021 for changes which are not material to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (“the Creyke Beck 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 by Forewind on 21 August 2013 and was granted development consent by the Secretary of State on 17 February 2015. Consent was granted for two offshore wind farms – Project A and Project B – each with an electrical generating capacity of up to 1,200MW with associated offshore infrastructure, on the Dogger Bank in the North Sea and export

cables with a landfall at Ulrome and associated onshore works (including underground cabling) to enable export of the electricity generated to the National Grid electricity transmission system at Creyke Beck near Cottingham, Hull.

3. The Secretary of State notes that there have been two earlier requests for non-material changes to be made to the Creyke Beck Order – in 2019 and 2020. In both cases the Secretary of State made non-material changes to the Creyke Beck Order: in 2019, to increase the maximum height of the turbine blade to 280 metres and to require that certain activities that may have a significant effect on the Southern North Sea Special Area of Conservation could only commence once a review of existing (other) consents had been completed; and in 2020, to remove the maximum permitted generating capacity for each project and to clarify that the total rotor-swept area for each project would not exceed 4.35 square kilometres.
4. The Non-Material Changes that are requested in the Application are increases in the maximum permitted hammer energy during installation of the wind turbine and electricity substation (platform) structures:
  - (i) from 3,000 kilojoules to 4,000 kilojoules in the case of driven piles forming part of any wind turbine generator foundation structure; and
  - (ii) from 1,900 kilojoules to 3,000 kilojoules in the case of driven piles forming part of any offshore platform foundation structure.
5. The Secretary of State notes that the Applicant explains that “an increase in hammer energy is required as the pile driveability assessment for the for the pin-piles and monopiles has indicated a potential risk of refusal and therefore the increased hammer energy is required to ensure piles can be successfully driven”.

### **Consideration of the Materiality of the Requested Amendments to the Creyke Beck Order**

6. The Secretary of State has considered whether the Application is for material or non-material changes to the Creyke Beck Order. 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 amendments on the Creyke Beck Order as originally made and subsequently amended.
7. There are no statutory definitions of material or non-material changes in the Planning Act 2008 or regulations made under it. DCLG (now DLUHC ) published public guidance in December 2015 on non-exclusive matters that should be considered in deciding whether changes were material or non-material. These can be put as the following four questions:
  - a) would an update be required to the Environmental Assessment (“ES”) (from that at the time that the original development consent order was made) to take account of new, or materially different, likely significant effects on the environment?
  - b) would there be a need for a Habitats Regulations Assessment (“HRA”) or the need for a new or an additional licence in respect of European Protected Species (“EPSs”)?
  - c) would it involve compulsory acquisition of any land that was not authorised through the existing development consent order?

- d) would the proposed changes have an impact on local people and businesses? (The guidance states this will be dependent on the circumstances of a particular case but examples given include those relating to the natural or historic environment and impacts from additional traffic.)

8. The Secretary of State has considered the Applicant's proposals against the above questions:

- a) In respect of the ES, he notes that the Applicant has considered whether the proposed changes would give rise to any environmental effects that:
  - are new significant effects not identified in the ES for the consented Development;  
or
  - are materially different effects when compared with the environmental effects set out in the ES for the consented Development.

The Secretary of State considers that the environmental information supplied with the Application supports the Applicant's conclusions that there are no new, or materially different, likely significant effects. He has, therefore, concluded that no update is required to the ES as a result of the proposed non-material changes to the Creyke Beck Order.

- b) In respect of the need for HRA, having considered the nature and impact of the changes proposed by the Applicant and the advice from the Marine Management Organisation and Natural England (see below), the Secretary of State is satisfied that there will be no new or materially different likely significant effects on any sites that form part of the National Site Network and, therefore, an Appropriate Assessment is not required. He is also satisfied that the proposed changes do not bring about the need for a new or additional licence in respect of EPSs as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective.
- c) The Secretary of State accepts the Applicant's statement that the proposed changes do not require any further compulsory purchase of land.
- d) In respect of impacts on local people and businesses, the Secretary of State accepts the Applicant's statement that no changes are anticipated to the impacts already assessed in the ES.

9. In light of his assessment of the matters included in the DCLG guidance referred to at paragraph 8 above, the Secretary of State does not consider the changes proposed to be material. He agrees with the Applicant that the context of the proposed changes does not require them to be treated as material, and that there are no other circumstances such that the change should be treated as material. The Secretary of State, therefore, considers that the Application should be treated as one for non-material changes under Schedule 6 to the Planning Act 2008 and should follow the procedures for such applications.

## Consultation

10. In accordance with the requirements of regulation 7(1) and (2) of the Infrastructure Planning (Changes to, and Revocation of Development Consent Orders) Regulations 2011, specified parties were notified of the Application on 17 December 2021.
11. The Application was also published for two consecutive weeks in the local press and in Fishing News and made publicly available on the Planning Inspectorate's (PINS) website and the Applicant's web-site, such that there was an opportunity for anyone not individually notified to submit representations. Consultation ended on 11 February 2022.

## Environmental Report

12. The Secretary of State notes that on 17 December 2021, the Applicant submitted the "*Dogger Bank A & B Non -Material Change application for increase in pin-pile and monopile hammer energy: Environmental Report LF500013-CST-RHD-REP-0002/LF600013-CST-RHD-REP-0002*" ("the Report") as part of the Application. The Report looked at the potential impact of the requested changes in the Application on all the receptors covered in the Environmental Statement and the Habitats Regulations Assessment from the original application for development consent. A screening exercise concluded that, while most of the impacts did not need to be addressed, impacts in relation to designated sites, marine mammals and fish and shellfish needed to be subject to more detailed consideration.
13. Marine Mammals – the Report set out that an assessment of the impacts of the increase in the maximum permitted hammer energy levels demonstrated that there would be no difference in the impact significance assessed under the original and updated assessments. The changes to the maximum hammer energies do not give rise to new or materially different likely significant effects in relation to any of the assessed receptors.
14. Fish and Shellfish – the worst case scenarios would not be altered and there would be no significant difference to the impact range of the new higher maximum hammer energies. Therefore, the Report finds that there would be no new or materially different likely significant effects on fish and shellfish.
15. Designated sites – the Report sets out that there is no potential for changes that form part of the Application to give rise to any likely significant effects on any designated sites including the Southern North Sea Special Area of Conservation.
16. The Report's Conclusions – the Report finds that the proposed changes to the maximum hammer energies in the Application would not give rise to any new or materially different likely significant effects on any receptor and that the conclusions of the original environmental statement and in the original Habitats Regulations Assessment would not be affected and so no new HRA would be needed. The Report also finds that the proposed changes would have no impact on compulsory acquisition or on local people. The Report concludes, therefore, that the Application constitutes a Non-Material Change.

## Environmental Considerations

### Environmental Information Submitted for the Non Varied Development

17. The Secretary of State is satisfied that the environmental information submitted by the Applicant is sufficient to allow him to make a determination on the Application.

18. In addition to the environmental information submitted with the Application, the Secretary of State has considered the comments made by the consultees.
19. Representations were received from four parties: the Marine Management Organisation (“MMO”), Natural England (“NE”), The Crown Estate, and Trinity House. The Crown Estate and Trinity House raised no concerns about the Application.
20. Natural England was content that the proposed increased hammer energies would not result in any difference to the disturbance assessment for the Southern North Sea Special Area of Conservation as the same 26km and 15km Effective Deterrent Ranges for monopile and pin pile respectively would still be applied regardless of the increased hammer energies. Natural England was also content that the new hammer energies were within those used for the assessment in the Review of Consents undertaken by BEIS. Natural England stated that it was not happy with the strategic in-combination mechanism regulators currently use to manage underwater noise from piling but was content with the requested Non Material Change.
21. The MMO said that, in respect of underwater noise impacts, it was reasonable for the Applicant to conclude that there were no new or materially different significant effects in relation to marine mammals between using the proposed maximum hammer energy of 3,000 kJ for OSP pin-piles and 4,000 kJ for monopiles compared to the currently consented maximum hammer energy of 1,900 kJ for OSP pin-piles and 3,000 kJ for monopile.
22. In respect of fish receptors, the MMO outlined a number of concerns with the data presented by the Applicant and would welcome additional discussions with them regarding the information presented.
23. Finally, the MMO indicated it was also aware that a variation would be required to the Deemed Marine Licences (“DMLs”) should the Application be approved. The MMO has reviewed the proposed changes to the DMLs that have been requested by the Applicant by a separate application running in parallel with its Application to the Secretary of State and considers them to be appropriate. The MMO is currently processing the DML application and PINS will be made aware of any changes made to the DMLs.
24. Following the receipt of the representations from the MMO and Natural England (and The Crown Estate and Trinity House), on 22 February 2022, the Secretary of State asked the Applicant to provide comments on the representations. The Applicant provided a response on 8 March 2022 which provided answers to the MMO’s queries and concerns (about the potential impacts on larval fish). On 15 March 2022, the Secretary of State asked the MMO and Natural England to comment on the Applicant’s response of 8 March 2022. No further comments were received from Natural England but the MMO confirmed that, in light of the Applicant’s comments, it had no further concerns with the Application.
25. The Secretary of State has assessed the comments made by the MMO and Natural England and concludes that the requested changes to the Creyke Beck Order will not lead to materially different effects than those assessed in the original HRA for the 2015 Order. The Secretary of State noted that the Applicant’s Southern North Sea Special Area of Conservation Site Integrity Plan would need to be updated and approved by the MMO in the event that the Application was approved. The Marine Mammal Mitigation Protocol will also need to be updated for approval by the MMO to reflect any increase in hammer energy that can be used during the installation of the monopiles and pin piles. The Secretary of State is content,

therefore, that the requested changes are acceptable and will not lead to likely significant effects on any sites and species designated under the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the Offshore Habitats Regulations). He, therefore, considers that an Appropriate Assessment is not necessary and finds no reason for refusing the Application on the grounds of adverse effects on the integrity of a site designated under the Offshore Habitats Regulations.

### Cumulative Impacts

26. The Secretary of State is satisfied that because the changes being sought through the Application do not result in impacts greater than those identified for the original consent (as amended in 2019 and 2020), the varied development does not call into question the cumulative assessments undertaken for the original development and assessed in the decision to grant the Creyke Beck Order.

### Conclusion

27. The Secretary of State considers that the environmental impacts of the varied development are not greater than those assessed for the Dogger Bank Creyke Beck Offshore Wind Farm as originally consented. There will be no significant increase in effect compared to the assessment within the original ES on any receptors as a result of the increased hammer energy. There are, therefore, no environmental grounds to not grant the Application.

## **General Considerations**

### Equality Act 2010

28. 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; sexual orientation; gender; gender reassignment; disability; marriage and civil partnerships;<sup>1</sup> 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.
29. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 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

30. 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.

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<sup>1</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

### Natural Environment and Rural Communities Act 2006

31. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must 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 the Application for an amendment to accord with this duty.

### **Secretary of State's conclusions and decision**

#### Climate Change Act 2008 and the Net Zero Target

32. On 2 May 2019, the Climate Change Committee recommended that the UK reduce greenhouse gas emissions to net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.
33. The British Energy Security Strategy which was published by the Government on 7 April 2022 sets out an ambition to deliver up to 50GW of offshore wind by 2030. The Secretary of State considers that the Dogger Bank A and B Offshore Wind Farms will contribute to meeting the need for supplies of carbon-free electricity and that approving this variation application is in accordance with the Climate Change Act net zero target and the ambitions in the British Energy Security Strategy.
34. The Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) which were ratified by Parliament in 2011 still carry a presumption in favour of offshore wind and this presumption has been carried into the draft National Policy Statements which were issued for consultation in September 2021.
35. The Secretary of State considers that the existing and draft National Policy Statements and the support in the British Energy Security Strategy provide a strong basis for determining that the Application should be granted, noting that there will be no significant increase in effect compared to the assessment within the original ES on any receptors as a result of the increased hammer energy.
36. 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 Creyke Beck Order as set out in the Application. The Secretary of State is satisfied that the changes requested by the Applicant are not material changes to the Creyke Beck Order and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes to the Creyke Beck Order so as to authorise the changes detailed in the Application.

### **Modifications to the draft Order proposed by the Applicant**

37. The Secretary of State has decided that no substantive changes needed to be made to the draft Order proposed by the Applicant but has made some minor drafting improvements which do not materially alter the terms of the draft Order.

**Challenge to decision**

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

**Publicity for decision**

39. 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 Delivery



## **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/>

**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).**