



Mr David Scott  
Doggerbank Offshore Windfarm  
1 Waterloo Street  
Glasgow  
G2 6AY

11 November 2024

Dear Mr Scott,

## **PLANNING ACT 2008**

### **PROPOSED NON-MATERIAL CHANGE TO THE DOGGER BANK TEESSIDE A AND B OFFSHORE WIND FARM ORDER 2015 (S.I. 2015/1592)**

1. I am directed by the Secretary of State for Energy Security and Net Zero (“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 3 ProjCo Limited (“the Applicant”) on 19 July 2024 for changes which are not material to be made to the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008. 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 Order was made on 4 August 2015 under the Planning Act 2008 and gave development consent for the construction and operation of up to two offshore wind generating stations, each with an installed capacity of up to 1.2 gigawatts (“GW”) located in the North Sea. The Order was amended by the Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) Order 2019 (S.I. 2019/669) which came into force on 26 March 2019, Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) Order 2020 (S.I. 2020/851) which came into force on 12 August 2020, Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) (No.2) Order 2020 (S.I. 2020/1389) which came into force on 1 December 2020, Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) Order 2021 (S.I. 2021/39) which came into force on 15 January 2021 and Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) (No.2) Order 2021 (S.I. 2021/71) which came into force on 25 January 2021.
3. In the Application, the Applicant is seeking consent for a change to Part 3 (Requirements) of Schedule 1 (Authorised Project) of the Order. The Applicant seeks this change to increase the pin-pile hammer energy for offshore platform foundations permitted by the Order from 1,900 kilojoules (“kJ”) to 3,000 kJ. The Applicant is not seeking to increase the maximum number or dimensions of pin-piles, which will continue to be constrained by the existing Order parameters.

4. The Secretary of State notes that the Applicant seeks this change to ensure “necessary flexibility to respond to technological advances to enable the Project to be constructed in the most efficient and cost-effective manner.”

### **Summary of the Secretary of State’s Decision**

5. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a non-material change (“NMC”) to the Order to authorise the change as detailed in the Application.

### **Secretary of State’s Consideration of the Application**

6. The Secretary of State has considered 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 Order as originally made.
7. 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.
8. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government (“MHCLG”)), the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)<sup>1</sup>, which makes the following points:
  - (a) given the range of infrastructure projects that are consented through the Planning Act 2008, 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;
  - (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:
    - (1) whether an update would be required to the Environmental Statement (“ES”) (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;
    - (2) 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 (“EPS”);
    - (3) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and
    - (4) whether the proposed change would have a potential impact on local people and business (for example, in relation to visual amenity from changes to the size and height

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<sup>1</sup> <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).

- (c) 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.
9. The Secretary of State has considered the change proposed by the Applicant against the four matters set out in (1), (2), (3) and (4) above:
- (a) The Secretary of State notes the information supplied in the NMC Environmental Report and Marine Mammal Technical Report. The Applicant screened in the effects on designated sites, fish and shellfish and marine mammals and found that there would be no new, or materially different, likely significant effects from those assessed in the ES in relation to any of the assessed receptors and that the conclusions of the original ES would not be affected. Considering the analysis supplied by the Applicant and responses to the consultation, the Secretary of State has concluded that no update is required to the ES as a result of the proposed amendments to the Order.
- (b) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied the proposed change does not have the potential to give rise to likely significant effects on any protected sites when considered alone, and in combination with other plans or projects, and that there is therefore no change to the conclusions of the HRA and a new HRA is not required. He is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective than those assessed for the original application.
- (c) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
- (d) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts already assessed in the ES, given the distance of the development from shore.
10. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggest that the changes considered in this letter is a material change.
11. Taking the information contained in the application and responses received from consultees into account, the Secretary of State is therefore satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.

### **Consultation and Responses**

12. On 8 July 2024, under Regulation 7(c) of the 2011 Regulations, the Secretary of State consented to a reduced list of consultees proposed by the Applicant. In accordance with the requirements of Regulation 7 of the 2011 Regulations, parties from this reduced list of

consultees, such as the local planning authority, were notified of the Application on 22 August 2024.

13. The Applicant published a notice of the Application in accordance with Regulation 6 (publicising the application) of the 2011 Regulations (the "Regulation 6 notice") for two consecutive weeks in the local press, the Evening Gazette (daily from 22 August 2024 to 5 September 2024) and Fishing News (weekly from 22 August 2024 to 29 August 2024 and 29 August 2024 to 5 September 2024), and made publicly available on the Planning Inspectorate's ("PINS") website, such that there was an opportunity for anyone not notified to also submit representations to PINS. The deadline for receipt of representations on the Application was 23:59 on 6 October 2024, therefore allowing more than 28 days from the date of publication of the last notice.
14. The Applicant submitted its Consultation and Publicity Report to the Secretary of State as required by Regulation 7A of the 2011 Regulations on 5 November 2024, which states that the Applicant has complied with all necessary steps set out in Regulations 6 and 7 of the 2011 Regulations in respect of stakeholder consultation and its public engagement approach. This was published on the PINS website on 7 November 2024.
15. A total of six responses were received from specified Interested Parties as detailed below.

Danish Fishermen Association ("DFA")

16. DFA responded to the consultation by email on 1 September 2024 to confirm safe receipt of the documents and had no comments to make.

Dogger Bank South Offshore Wind Farms ("DBS")

17. DBS responded to the consultation by email on 29 August 2024 and confirmed they did not have a view on this application but would ensure the mammal team for Dogger Bank South were aware regarding cumulative assessment.

Ørsted

18. Ørsted responded to the consultation by email on 4 October 2024, stating that they have no significant concerns regarding the increase in hammer energy on Hornsea Four, on the assumption that cumulative effects are included within the Site Integrity Plan ("SIP") and that they are notified of the Applicant's intention to submit the SIP 30 business days prior to submission and are consulted on the content of the document.

Royal Society for the Protection of Birds ("RSPB")

19. RSPB responded to the consultation by email on 29 August 2024 to confirm safe receipt of the documents but did not make any other comments.

Sofia Offshore Wind Farm ("SOWF")

20. SOWF responded to the consultation by email on 29 August 2024 to confirm safe receipt of the documents but did not make any other comments.

## Whale and Dolphin Conservation (“WDC”)

21. WDC responded to the consultation by email on 2 September 2024 to confirm safe receipt of the documents and confirmed they would not be engaging on this consultation at this stage.
22. The Secretary of State notes that, in advance of submitting the Application, the Applicant wrote to stakeholders to confirm their wish to be involved in the forthcoming consultation and that email communication was acceptable. Natural England and the Marine Management Organisation both responded confirming they wished to be consulted. The Secretary of State notes that neither responded to the consultation.
23. The Secretary of State has considered the representations received in response to the consultation and does not consider that any further information needs to be provided by the Applicant or that further consultation is necessary.

## **Environmental Impact Assessment**

24. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the effects set out in the ES for the development authorised by the Order.
25. The Secretary of State is satisfied that the information provided by the Applicant in the NMC Environmental Report is sufficient to allow him to determine the Application.
26. The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State agrees with the Applicant’s conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the ES for the development authorised by the Order and as such considers that there is no requirement to update the ES.
27. As there are no new significant environmental impacts as a result of the proposed changes, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

## **The Habitats Regulations**

28. The Secretary of State has considered the relevant requirements as set out in the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The Habitats Regulations require the Secretary of State to consider whether the development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site within the national site network, known as “protected sites”. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to Regulation 63(1) of the Habitats Regulations, “*to make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives*”. The Secretary of State may only agree to the Application (subject to Regulation 64) if he has ascertained that it will not adversely affect the integrity of a protected site.

29. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant's ES and the Secretary of State's HRA for the Order, and therefore a new HRA is not required.

## **General Considerations**

### Transboundary Impacts

30. 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 a European Economic Area ("EEA") State. The Secretary of State has considered whether the changes sought through this Application will have any potential impacts on an EEA State and has concluded that there is no change in the environmental impacts considered within the existing environmental statement for the project. Consequently, the Secretary of State has concluded that there would not be likely significant effects on the environment of any EEA state whether the Application is considered of itself or cumulatively with the environmental effects already considered for the Order.
31. The Secretary of State has also considered whether there may be potential impacts on protected sites in 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 protected sites, the Secretary of State has also concluded that there are no realistic impact pathways whereby transboundary sites may be impacted by this Application.
32. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

### Equality Act 2010

33. 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; sex, sexual orientation, gender reassignment; disability; marriage and civil partnerships;<sup>2</sup> pregnancy and maternity; religion or 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.
34. 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.

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<sup>2</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

### Human Rights Act 1998

35. 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 this Application would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

### Natural Environment and Rural Communities Act 2006

36. 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**

37. The Secretary of State has considered the ongoing need for the development and considers that the development continues to conform with the policy objectives outlined in the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3).
38. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant's request is justified and demonstrates that the proposed changes will not result in changes to the impact conclusions of the ES that accompanied the original Dogger Bank Teesside A and B Offshore Wind Farm application.
39. The Secretary of State has considered the nature of the proposed changes, noting that the proposed change to the development would not result in any further environmental impacts and will remain within the parameters consented by the Order. The Secretary of State notes that this Application necessitates variations to two deemed marine licenses that were granted pursuant to Schedule 8 and Schedule 10 to the DCO.
40. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed change to Part 3 of Schedule 1 of the Order. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the change detailed in the Application.

### **Challenge to Decision**

41. 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**

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

Yours sincerely,



John Wheadon

Head of Energy Infrastructure Planning Delivery



## ANNEX

### **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 Amendment Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

[Dogger Bank Teesside A / Sofia Offshore Wind Farm \(formerly Dogger Bank Teesside B\) - Project previously known as Dogger Bank Teesside A&B - Project information](#)

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)