



Department
of Energy &
Climate Change

Trevor Baker
Development Manager
Gallopier Wind Farm Ltd
Auckland House
Lydiard Fields
Great Western Way
Swindon
SN5 8ZT

Department of Energy & Climate Change
3 Whitehall Place,
London SW1A 2AW
T: +44 (0)300 068 5770
E: giles.scott@decc.gsi.gov.uk
www.decc.gov.uk

2nd July 2015

Dear Mr Baker

**PLANNING ACT 2008
APPLICATION FOR A NON-MATERIAL CHANGE TO THE GALLOPER
WIND FARM ORDER 2013**

1. I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to advise you that consideration has been given to the application (the "Application") which was made by Gallopier Wind Farm Limited (the "Applicant") on 25 February 2015 for a change which is not material to the Gallopier Wind Farm Order 2013 ("the 2013 Order") under section 153 of, and Schedule 6 to, the Planning Act 2008 (the "2008 Act").
2. The original application for development consent under the Planning Act 2008 was submitted to the Planning Inspectorate by the Applicant on 21 November 2011 and was granted consent on 24 May 2013. Consent was granted for the construction and operation of an offshore wind turbine generating station in the North Sea, a minimum of 27km off the coast of Suffolk, comprising up to 140 wind turbines with a gross electrical capacity of up to 504MW and associated offshore and onshore infrastructure.
3. The Applicant is seeking consent for a change to the 2013 Order to increase the permitted monopile diameter from a maximum of 7.0 metres to a maximum of 7.5 metres.
4. In order for the Applicant to be able to proceed with the construction of the offshore wind farm, it has concluded that it is necessary to increase the monopile foundation diameter to 7.5 m. With a diameter less than 7.5m it

considers that it cannot design a foundation which meets the required harmonic frequency, stiffness and strength limits to satisfy the geotechnical and turbine design limits without exceeding the absolute limitations of mass and steel thickness imposed by the manufacturing and installation processes.

Summary of the Secretary of State's Decision

5. The Secretary of State is satisfied that the change requested by the Applicant is not material and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the 2013 Order so as to authorise the change detailed in the Application. 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) Regulation 2011 (as amended) ("the Change Regulations").

Consideration of the materiality of the proposed change

6. 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.
7. So far as decisions on whether a proposed change is material or non-material, the "Government response to the consultation on making changes to Development Consent Orders" (November 2014)¹ ("the Government response") document makes the following points. *First*, it is not possible to set out precise, comprehensive and exhaustive guidance on whether a change is material or non-material. *Second*, that there are 3 matters which in many instances would provide a good indication of whether a proposed change would be more likely to be a material change, namely (a) whether an update would be required to the Environmental Statement (from that at the time the original development consent order (DCO) was made) to take account of likely significant effects on the environment; (b) whether there would be a need for a Habitats Regulation Assessment (HRA), or a need for a new or additional licence in respect of European Protected Species ("EPS"); and (c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO. *Third*, that although the above matters were capable of being good indicators of the position, none of them (either alone or cumulatively) would be determinative of the material/non-material issue under paragraph 2 of

1

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370425/Govt_response_to_consultation_on_changes_to_Development_Consent_Orders.pdf

Schedule 6. Each case must depend on thorough consideration of its own circumstances.

8. The Secretary of State therefore began her consideration of the materiality of the proposed variation by considering the 3 matters lettered (a), (b) and (c) above:

(a) The Applicant supplied information which compares the proposed parameter change against the worst case scenarios applied in the original Environmental Statement. The conclusion of this analysis was that there would be an impact on only one parameter, an increase in the maximum pile diameter and consequently, the maximum hammer energy applied during construction. This was specifically a concern in relation to the potential for mortality or injury to marine mammal and fish species.

In order to address the question of whether this increase in hammer blow energy increases the potential effect assessed, the Applicant carried out an update on the noise propagation modelling with the increased pile diameter and hammer energy. That concluded that all predicted impact ranges were equal to or less than those presented in the original Environmental Statement.

The Secretary of State also noted that Natural England's and the Marine Management Organisation's responses (see below) in respect of the impacts predicted for installation of 7.5m piles. In the light of the analysis supplied by the Applicant and the responses to the consultation, the Secretary of State concludes that an update to the Environmental Statement to take account of likely significant effects on the environment is not required.

(b) In the light of the analysis of the predicted impacts referred to above, because the proposed change does not result in any increase in the environmental impacts of the project, or in any new significant effects, the Secretary of State does not consider that a new HRA or new or additional EPS is required.

(c) The proposed change does not result in any change to the compulsory acquisition provisions of the 2013 Order.

9. The Secretary of State therefore concludes that none of the specific indicators referred to in the Government response suggest that the proposed change is a material change. She has also had regard to the effect of the change and considered whether there are any other circumstances, in this particular case, which would lead her to conclude that the proposed change is material but she has seen no evidence to that effect.

10. The Secretary of State is therefore satisfied that the change proposed in the Application is not material and should be dealt with under the procedures for non-material changes.

Consultation and Responses

11. The Planning Inspectorate on behalf of the Secretary of State publicised this application in accordance with regulation 6 of the Change Regulations and on 25 February 2015 consulted the persons specified in regulation 7 of the Change Regulations in the manner prescribed. The deadline for receipt of representations on the Application was 13 April 2015.
12. The Planning Inspectorate received representations within the deadline for receipt of representations from Natural England, the Marine Management Organisation and Suffolk County Council.

Natural England ("NE")

13. NE initially noted that the proposed change, despite being "a relatively small change", appeared to be outside the parameters of the Rochdale Envelope assessed during the original application and therefore advised caution would be needed in assessing its materiality. However, they agreed that, with the exception of changes to the worst case scenarios for underwater noise, the proposed design and construction method changes were unlikely to lead to environmental impacts which had not already been assessed as part of the original application. Underwater noise was a concern due to its potential to affect marine mammals, such as seals and harbour porpoise, which are EPS.
14. NE advised that the proposed change (once predictions had been adequately justified) could be mitigated for if a further deemed Marine Licence condition was added. Specifically they suggested a condition stating that the applicant agreed to adhere to NE's advice on suitable measures in a Marine Mammal Mitigation Plan (MMMP).
15. NE noted that the Applicant had analysed the consented noise worst case scenario compared to the predicted worst case scenario with the proposed change. However, they considered that the results used different metrics and therefore could not be adequately compared. They suggested that the Applicant revisit the data and make like for like comparisons.
16. In response, the Applicant stated that their noise remodelling used the currently accepted methodology and demonstrated that the increase in pile diameter and maximum hammer blow energy resulted in underwater noise

levels that would have a lesser impact on marine mammals than the worst-case scenario assessed in the original Environmental Statement. The Applicant explained that like for like comparisons were not appropriate as best practice in modelling had moved on since the original application.

17. In reply, NE noted the further information provided by the Applicant suggested that the impacts predicted for installation of 7.5m piles with a hammer energy of 3,000 kJ fall within the impacts assessed in the original application for 7m piles with a hammer energy of 1,100 kJ. On that basis, the modification appeared to fit within the scope of the original Environmental Statement. However, NE considered there remained some uncertainty around the Sound Exposure Levels (“SEL”), by relying on assumptions about piling hammer energy scenarios rather than empirical evidence. For that reason if the Secretary of State was minded to accept that the change was ‘non-material’ on the basis of predicted impacts being within the original Environmental Statement predictions, NE suggested that noise monitoring should be put in place at the commencement of piling operations to validate the modelling and demonstrate compliance with the environmental statement.
18. In response to the concerns that the SEL modelling relied heavily on modelled scenarios with no evidence presented that these are realistic, the Secretary of State asked the Applicant for assurance that the modelled ramp-up scenarios could be relied upon as realistic. The Applicant provided evidence of how the SEL ramp up scenarios were derived, based on analysis of the Greater Gabbard Offshore Wind Farm and Gwynt y Môr Offshore Wind Farm pile records and setting out reasons why they considered their scenarios to be conservative.
19. In response to the recommendation (paragraph 14) for noise monitoring to validate the predictions in the Environmental Statement and to demonstrate compliance, the Secretary of State asked NE whether the existing condition 17 (Marine Mammal Mitigation Protocol) in the deemed Marine Licence (DML) was adequate to address that issue. NE confirmed they were content that condition 17 of the DML was adequate in ensuring that piling noise monitoring would take place during construction and that the Marine Management Organisation has powers to issue a stop notice if underwater noise exceeds agreed levels.

Marine Management Organisation (“MMO”)

20. The MMO noted uncertainties in the noise modelling and assessment but was content that existing mitigation was sufficient to ensure that the proposed increase in pile diameter would not have a significantly greater

impact on the marine environment. It deferred to NE in respect of the impacts of underwater noise on marine mammals.

Suffolk County Council (“SCC”)

21. Suffolk County Council had no comments to make on the proposed amendment as it did not consider it will have any bearing on its interests.

Environmental Impact Assessment

22. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in Environmental Statement for the development authorised by the 2013 Order.

23. The Secretary of State is satisfied that the ‘Supporting Environmental information’ provided is sufficient to allow her to make a determination on the Application.

24. As there are no new significant environmental impacts as a result of this proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects.

Habitats

25. The Secretary of State considered the relevant and important policies in respect of the United Kingdom’s international obligations as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) (“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 development 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 Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 61(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if she has ascertained that it will not adversely affect the integrity of a European site.

26. The Secretary of State has considered the ‘Supporting Environmental Information’ submitted with the Application and is satisfied that the Application will not have a likely significant effect on any European site over and above that already assessed in the Appropriate Assessment² for the

² <http://infrastructure.independent.gov.uk/document/1814936>

original application (May 2013). The Secretary of State is satisfied that there is sufficient evidence to conclude that allowing the change set out in the Application to the development authorised by the 2013 Order will not have a likely significant effect upon any European sites; and a further Appropriate Assessment is therefore not required.

Underwater Noise

27. Having concluded that the Application is a non-material change, the Secretary of State has carefully considered the Application, the responses to the consultation on the Application and all other relevant and important matters. She has concluded that the only likely adverse impact of the proposed change is in respect of underwater noise and its possible impact on marine mammals. However, for the reasons set out above, she is satisfied that there will be no increase in such impacts above those previously assessed and found to be acceptable.

General Considerations

Deemed Marine Licence

28. The Secretary of State notes that the changes to the 2013 Order being sought by Application apply equally to the deemed Marine Licence (“dML”). Consequently, the Applicant has made an application to the MMO to make similar changes to the dML.

Equality Act 2010

29. The Equality Act 2010 introduced a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships³; pregnancy and maternity; religion and belief; and race. The Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to this Application.

³ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

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 Development. The Secretary of State considers that the grant of consent to the non-material change would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Section 40(1) of the 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, 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 development consent. The Secretary of State is of the view that the Application considers biodiversity sufficiently to accord with this duty.

Secretary of State's conclusions and decision

32. The Secretary of State noted that no person has disputed the acceptability of the proposed change to the development authorised by the 2013 Order. The Secretary of State notes that in order that the Applicant can proceed with the construction of the offshore wind farm, it has concluded that it is necessary to increase the monopole foundation diameter to 7.5 m.

33. The Secretary of State considers that the change proposed is small when considered in context of the development authorised by the 2013 Order and for the reasons set out above that it is appropriate and advantageous to authorise the proposed change as detailed in the Application.

34. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed change to the 2013 Order as set out in the Application. The Secretary of State is therefore today making the amending Order requested by the Applicant subject to a number of minor modifications which do not materially alter its effect.

Challenge to decision

35. 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

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

Yours sincerely

Giles Scott
Head of National Infrastructure Consents and Coal Liabilities

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

<http://infrastructure.planningportal.gov.uk/projects/eastern/galloper-offshore-wind-farm/>

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)