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Jonathan Wilson
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Your ref:
AU-TPD-PM575-00002-063

20 March 2020

Dear Mr Wilson

PLANNING ACT 2008

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

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 Dogger Bank Offshore Wind Farm Project 1 Projco Limited (“Projco 1”) and Dogger Bank Offshore Wind Farm Project 2 Limited (“Projco 2”) (together “the Applicant”) on 11 October 2019 for a change which is not material to The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 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 Order was subsequently corrected by The Dogger Bank Creyke Beck Offshore Wind Farm (Correction) Order 2015 on 2 October 2015, and amended by The Dogger Bank Creyke Beck Offshore Wind Farm (Amendment) Order 2019 on 10 April 2019 (“the 2019 Amendment Order”) together referred to hereafter as “the 2015 Order”.
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.

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 is seeking consent for a change to remove the maximum generating capacity for each project.

Consideration of the materiality of the proposed change

6. 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 2015 Order.
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 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”)¹, 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 (from that at the time the original development consent order was made) to take account of likely significant effects on the environment;
 - (b) whether there would be a need for a Habitats Regulations Assessment, 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 development consent order; or
 - (d) whether the proposed change have a potential impact on local people and businesses.
9. 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

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

materiality of a change. Each case must depend on thorough consideration of its own circumstances.

10. The Secretary of State began his consideration of the materiality of the proposed variation by considering the 4 matters lettered (a), (b) (c) and (d) above:
 - (a) The Applicant supplied a document entitled 'NMC Supporting Information – Removal of gross electrical output capacity – RE-PM575-RHDHV-00040' ("the Supporting Statement") providing further environmental information which concluded that the removal of the maximum generating capacity cap and any potential increase in generating capacity will not have any environmental effects or materially different effects from those already assessed in the original Environmental Statement that informed the development consent order in 2015 and the supporting environmental report submitted for the 2019 Amendment Order. No changes are being sought for the parameters of the projects (i.e. height and number of turbines, rotor diameter and hammer energy). It is envisaged that the changes in the electrical output capacity will be achieved through the utilisation of more efficient wind turbines within the existing parameters and controls imposed by the 2015 Order. 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 is not required.
 - (b) As set out below, the Secretary of State has concluded that, given the nature and impact of the change proposed and the advice of Natural England, there is not likely to be a significant effect greater than those originally identified. Therefore, the Secretary of State is satisfied that a Habitats Regulations Assessment is not required. The Secretary of State notes that the Application would 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 separate request for variation to the deemed marine licences has been submitted to the Marine Management Organisation ("MMO") for determination.
 - (c) The proposed change does not entail any new compulsory acquisition of land.
 - (d) The potential impacts on local people and businesses are no greater than those that arise from the development permitted by the 2015 Order.
11. The Secretary of State therefore concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggest that this proposed change is a material change. He has also considered whether there are any other circumstances in this particular case which would lead him to conclude that the proposed change is material but has seen no evidence to that effect.
12. 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

13. On 3 September 2019, the Applicant requested the Secretary of State's written consent under regulation 7(3) of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) to not consult persons or parties that would not be directly affected by the proposed change, either because the change proposed would not affect their interests or because their interests relate to a different part of the Development. The Secretary of State gave his written consent to the Applicant's list of parties that would be consulted on the Application on 8 October 2019. The Secretary of State's written consent and the Applicant's consultation list was published on the Planning Inspectorate's website on 17 October 2019.

14. The Applicant publicised this Application in accordance with regulation 6 of the 2011 Regulations and on 17 October 2019 consulted the persons required by regulation 7 of the 2011 Regulations, in the manner prescribed. The deadline for receipt of representations on the Application was 29 November 2019.
15. The Application was made publicly available on the Planning Inspectorate's website on 17 October 2019, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate.
16. Representations were received from Marine Management Organisation, Historic England and The Crown Estate who did not raise an objection to the change being sought.

Environmental Impact Assessment

17. 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 the Environmental Statement for the development authorised by the 2015 Order.
18. The Secretary of State is satisfied that the Supporting Statement provided by the Applicant is sufficient to allow him to make a determination on the Application.
19. The Secretary of State has considered the information provided and the views of consultees. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different significant effects when compared to those set out in the environmental statement for the development authorised by the 2015 Order. There is therefore no requirement to update the Environmental Statement.
20. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects.

Habitats

21. 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 Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a Natura 2000 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 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 Natura 2000 site.
22. The Secretary of State has considered the Supporting Statement submitted with the Application and is satisfied that there is not likely to be a significant effect greater than those originally identified. Effects upon Natura 2000 sites were assessed in the Habitats Regulations Assessment produced for the development consent Order granted in 2015. Following this consent, the Southern North Sea Special Area of Conservation ("SAC") was designated. A "Review of Consents" is currently being undertaken by BEIS to ensure that there will be no adverse effect on the integrity of the SAC from existing energy consents. The Secretary of State considered it appropriate to include a Requirement in the 2019 Amendment Order that no offshore construction works that may have a significant effect on

the Southern North Sea SAC may commence until after the conclusion of the Review of Consents process.

23. The Flamborough and Filey Coast Special Protection Area (“SPA”) was also designated following the grant of development consent in 2015. However, this site was assessed as a potential SPA in the original application in 2015 and was further assessed for the 2019 Amendment Order which concluded in line with the original assessment. Further assessment of this site is not required for the purposes of this Application.
24. The Secretary of State is therefore satisfied that there is sufficient evidence to conclude that allowing the change set out in the Application to the development authorised by the 2015 Order will not lead to any likely significant effects greater than those originally identified and a further Habitats Regulations Assessment is therefore not required.

General Considerations

Transboundary Impacts

25. 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 any European Economic Area (“EEA”) State. In making his decision on whether to grant the 2015 Order, the Secretary of State concluded that there would be no likely significant effects on the environment of any EEA State. The Secretary of State has considered whether the change sought through this Application will have any potential impacts on any 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. 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 2015 Order.
26. The Secretary of State has also considered whether there may be potential impacts on Natura 2000 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 Natura 2000 sites (over and above those already assessed in the Habitats Regulation Assessments for the 2015 Order), the Secretary of State has also concluded that there is no route whereby sites in EU Member states may be impacted by this Application.
27. The Secretary of State therefore concludes there is no need for transboundary consultation with any EEA States.

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; gender; gender reassignment; disability; marriage and civil partnerships;² 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.

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

29. 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

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.

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 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

32. The Secretary of State notes that in order that the Applicant can construct and operate the Development efficiently and effectively, he has concluded that it is appropriate to remove maximum generating capacity cap. The Secretary of State notes that the removal of the maximum generating capacity cap would not result in any greater environmental impacts beyond that of the 2015 Order as the Development must be constructed within the consented parameters of the 2015 Order.
33. The Secretary of State has considered the ongoing need for the development. 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. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 – resulting in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy NPSs continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State considers, therefore, that the ongoing need for the project is established, and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.
34. The Secretary of State has considered the nature of the proposed change, noting that it would have no additional significant environmental effects. He notes that the proposed change to the development would not result in any further environmental impacts and will remain within the parameters consented by the 2015 Order. The Secretary of State concludes that the proposed change is not material. Having considered the effects of any change and the benefits of the change in facilitating the deployment of the development, the Secretary of State has concluded that it would be appropriate and advantageous to authorise the proposed change as detailed in the Application.
35. 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 2015 Order as set out in the Application. The Secretary of State is satisfied that the change requested by the Applicant 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 a non-material change to the 2015 Order so as to authorise the change detailed in the Application.

Modifications to the draft Order proposed by the Applicant

36. Minor drafting improvements have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms of the draft Order.

Challenge to decision

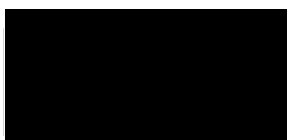
37. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

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

Yours sincerely,

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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=overview>

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)