



Department
of Energy &
Climate Change

Eleri Owen
E.ON Climate & Renewables UK Rampion Offshore Wind Limited
Westwood Way
Westwood Business Park
Coventry
CV4 8LG

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

Your ref:
Our ref: 12.04.09.04/270C

16 July 2014

Dear Ms Owen

**PLANNING ACT 2008
APPLICATION FOR THE RAMPION OFFSHORE WIND FARM ORDER**

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:

- a) the report dated 17 April 2014 of the Examining Authority, a panel of three Commissioners led by Lorna Walker ("the ExA"), which conducted an examination into the application (the "Application") dated 1 March 2013 by E.ON Climate and Renewables UK Rampion Offshore Wind Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Rampion Offshore Wind Farm ("the Development"); and,
- b) representations received by the Secretary of State and not withdrawn in respect of the Application.

2 The examination of the Application began on 18 July 2013 and was completed on 18 January 2014. The examination was conducted on the basis of written evidence submitted to the ExA and discussed at hearings held in Brighton on 28 and 29 August 2013, 11 and 12 September 2013, 30 and 31 October 2013, 1, 6, 7 and 27 November 2013 and on 4 and 6 December 2013.

3 The Order, if made, would grant development consent for the construction and operation of an offshore wind turbine generating station in the English Channel approximately 13km off the Sussex coast. The Development would comprise up to 175 wind turbines with a gross electrical capacity of up to 700MW, up to two offshore substations, inter-array cables between the turbines and substations, and export cables to take the electricity generated to a landfall point east of Worthing on the Sussex coast which would connect via transition pits and onshore electrical works consisting of underground cables to a new converter station that would be constructed as part of the Development at Bolney in West Sussex.

4 Enclosed at Annex A to this letter is a copy of the ExA's report ("the Report"). The ExA's findings and conclusions are set out in chapters 4 and 5 of the Report, and the ExA's recommendation is at chapter 9.

Summary of the ExA's Recommendation

5 The ExA recommended that the Order be made, on the basis of the provisions set out in Appendix E to the Report.

Summary of the Secretary of State's Decision

6 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").

Secretary of State's consideration

7 The Secretary of State has carefully considered the Report and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Examination Report ('ER').

8 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of their conclusions and recommendations.

Need and Relevant Policy for the Proposed Development

9 After having regard to the comments of the ExA set out in Chapter 6 of the Report, and in particular the conclusion in paragraphs 6.62 the Secretary of State is satisfied that in the absence of any adverse effects which are

unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy), EN-3 (NPS for Renewable Energy) and EN-5 (NPS Electricity Networks Infrastructure), which set out a national need for development of new nationally significant electricity network infrastructure of the type proposed by the Applicant.

10 In chapter 5 the ExA also considered 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") and the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007 (as amended) ("the Offshore Habitats Regulations") which transpose Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna ("the Habitats Directive") into UK law as far as the 12 nautical mile limit of territorial waters and beyond respectively. The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance and the Birds Directive for the protection of rare and vulnerable birds and for regularly occurring migratory species, called Special Protection Areas ("SPAs") – those sites designated in the United Kingdom are collectively referred to in this letter as "European sites". The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for listing of wetlands of international importance – Ramsar sites. The UK Government policy is to afford Ramsar sites in the United Kingdom the same protection as European sites and in this context, the Secretary of State has taken policies into account in assessing potential adverse impacts.

11 Subject to the qualifications explained in the paragraphs below about drafting modifications to the Order, the Secretary of State agrees with the ExA's conclusions on the matters discussed in chapter 9 of the Report.

Development proposed within, or impacting upon, nationally designated landscapes

12 The Secretary of State notes that the onshore underground cable route is partly within the South Downs National Park ("SDNP") and that the South Downs National Parks Authority has sought refusal of the Application on five grounds including the impact of the wind turbines upon the Sussex Heritage Coast and National Park, the impacts arising from the cable corridor and associated construction works on the landscape character of the National Park and to the enjoyment of users of the National Park and local tourist economy and that there was no section 106 agreement of appropriate scope or value to acceptably mitigate the impacts or enhance the National Park.

13 The Secretary of State is subject to a statutory duty under s.11A(2) of the National Parks and Access to the Countryside Act 1949 to have regard to the purposes of its designated status, namely conserving and enhancing natural beauty, wildlife and cultural heritage and promoting opportunities for the

understanding and enjoyment of those special qualities. This is reflected in the Overarching National Policy Statement for Energy (EN-1), which states that National Parks have "specific statutory purposes which help ensure their continued protection" and the "conservation of the natural beauty of the landscape and countryside should be given substantial weight" by the decision maker in deciding on applications for development consent in these areas. Nevertheless, the decision maker may grant development consent in these areas "in exceptional circumstances". The development should be demonstrated to be in the public interest and consideration of such applications should include an assessment of:

- the need for the development, including in terms of national considerations, and the impact of consenting or not consenting it upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

14 The duty to have regard to the purposes of the National Park also applies when considering that part of the project which is outside the boundaries of the SDNP but which may have impacts within it.

15 As regards the need for the Development, the Secretary of State's position is set out in paragraphs 9 and 10 above in respect of the national need for such projects as identified by the relevant NPSs. As regards the impact on the local economy, environment, landscape and recreational opportunities the Secretary of State agrees with the ExA's broad endorsement of the Applicant's assessment that after proposed mitigation measures there would be a minor beneficial effect upon employment, the economy and community during construction and operation of the project and minor negative impacts on the environment, tourism and shipping during the project. As to likely impact on the SDNP itself the Secretary of State also agrees with the ExA's conclusion that there would be some impact on tourism as a result of the short term construction impacts and longer term significant landscape, seascape and visual impacts but that with the agreed mitigation measures the impacts would not be so significant as to justify refusal of the Application.

16 In relation to that part of the development which lies within the SDNP, the Secretary of State considers that the factors set out in paragraphs 9 and 15 constitute exceptional circumstances justifying the development, in particular that there is an urgent national need for such projects and that the detrimental impact of the project is significantly mitigated against by the fact that the cables will run underground. In relation to that part of the development lying outside the National Park, the Secretary of State notes that paragraph 5.9.13 of NPS EN-1 states that the fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.

17 The Secretary of State notes that this conclusion and the ExA's recommendations depend in part on the package of mitigation measures secured by the Order and the Unilateral Undertaking (UU) put forward by the Applicant. In relation to the UU, the ExA concluded that the UU was necessary to secure mitigation in the SDNP to make the development acceptable in planning terms (ER 4.57), but that the UU is less than satisfactory in a number of specific respects (ER 4.63). The Secretary of State has taken account of the limitations of the UU identified by the ExA, but agrees with the ExA that the measures proposed in the UU must be assessed in the context of measures provided for within the application as a whole, including the undergrounding of the export cable through the National Park and the structures exclusion zone, and that on balance consent should be granted for the project due to the contribution that the project would make towards meeting the urgent need for renewable low carbon sources of energy.

18 The Secretary of State also notes that the ExA considered the information provided by the Applicant as to its choice of substation location/cable routeing from various options considered and representations from interested parties suggesting alternative connection options. Having considered the evidence available the ExA concluded that none of the alternatives proposed had been sufficiently researched to allow them to be considered seriously as part of the examination. Alongside the conclusion that the potential impacts of the project on the SDNP are not so severe, taking into account the proposed mitigation, as to be unacceptable in planning terms, the Secretary of State is content that there is no need for any further consideration of alternatives.

19 The Secretary of State believes he has carefully considered his responsibilities as regards the approval of development within, and impacting on, designated landscapes and having regard to matters he is required to consider as set out above that there is no reason to justify refusal of the Application.

20 The Secretary of State is aware that the South Downs National Park Authority has asked for the Application to be refused on a number of grounds but for the reasons set out above and in the Report the Secretary of State is satisfied these are not so significant to justify refusal of the Application.

Electro-magnetic fields ("EMF") effects and public health

21 The ExA recommended that if the Secretary of State considered it necessary, he should include a requirement in the DCO in relation to EMF [ER 4.305]. The Secretary of State is satisfied on the basis of the commitments made by the Applicant in the Statement of Common Ground submitted to the Examination on 6 August 2013 that the Applicant will take steps to ensure the onshore works comply with the 1998 International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines on exposure to EMFs as implemented by the 1999 EU recommendation. This is consistent with current Government

policy on EMF exposure and as set out in EN-5. In particular, the Applicant has confirmed that it will comply with ICNIRP guidelines relevant to magnetic fields caused by underground cables by ensuring that the 100 microtesla reference level for public exposure to magnetic fields is not exceeded. The Secretary of State therefore considers that it is not necessary to make provision for this in the DCO.

Environmental Report including Habitats Regulation Assessment

European Sites and Protected Species Impacts Flamborough Head and Bempton Cliffs Special Protection Area (SPA)

22 The Secretary of State agrees with the ExA's conclusion in relation to identified habitats and species that a likely significant effect arising from the proposed Development when considered alone cannot be excluded in relation to all European Sites. Furthermore the Secretary of State agrees with the ExA that an appropriate assessment (AA) is required under the Habitat Regulations and the Offshore Habitats Regulations to consider the in-combination effects of this Development alongside other operational, consented and reasonably foreseeable projects (subject to a current planning application) as regards the likely impact upon the breeding population of gannet and kittiwake of the Flamborough Head and Bempton Cliffs SPA.

23 A copy of the Environmental Report, containing the Secretary of State's Habitats Regulation Assessment is attached to this decision letter and has been prepared on the basis of the ExA's report. This included a report on the Implications for European Sites (see Appendix F of the Report). As regards the assessment the Secretary of State agrees with the ExA that the in-combination assessment should consider Tier 1-3 projects (operational, consented and other reasonably foreseeable wind farm projects i.e. those subject to a planning application) and that the avoidance rate used in assessing likely bird mortality in respect of kittiwake should be 98%. However, whereas the ExA recommended that the avoidance rate to be used in assessing likely gannet mortality should be 98%, the Secretary of State judges that on the available evidence, which documents greater avoidance of wind farms by gannets than for many other species, an avoidance rate of 99% is suitable. The assessment concludes that the Development, when considered in-combination with other plans or projects, will not have an adverse effect upon the integrity of the Flamborough Head and Bempton Cliffs SPA.

Transboundary Considerations

24 The proposed Development has the potential to affect species of birds from transboundary sites (France and the Channel Islands). Those bird species (gannets and lesser black-backed gulls) are at increased risk of collision with the turbines. After consideration, the Secretary of State is satisfied that the Development will not have adverse impacts upon these transboundary sites. A

description and evaluation of these impacts are detailed within the attached Environmental Report.

Impacts upon Greater Black-Backed Gulls

25 The proposed Development has the potential to have a significant cumulative impact upon greater black-backed gulls (GBBG) when considered alongside other offshore wind farms. The cumulative effect is an increase in mortality rates through the increased risk of collision with the turbines. Using analysis undertaken by the Applicant, the Secretary of State is satisfied that the additional mortality would not affect the GBBG population in the long term. Further detail is provided within the attached Environmental Report.

Other Matters

26 The Secretary of State notes the suggestion by the ExA in the Report [ER 6.56] regarding the need for a strategic review of the habitats position in relation to ornithology in the Eastern flyway in respect of planned marine projects. He undertook a strategic environmental assessment of offshore energy (OESEA2) in 2011 which concluded that up to 33 GW of offshore wind energy could be deployed in the territorial waters of England and Wales and the Renewable Energy Zone, subject to project-specific mitigation measures. <https://www.gov.uk/offshore-energy-strategic-environmental-assessment-sea-an-overview-of-the-sea-process> This acknowledged the need to continue to improve the marine information base, including details of bird migration patterns and areas used by breeding birds for foraging.

27 The Secretary of State considers that the conclusions of OESEA2 still stand and it would not be appropriate for him to conduct a further strategic review of offshore wind farms at this time as adequate safeguards are already in place. He recognises that further research is imperative and takes an active interest in joint industry and multi-agency initiatives currently underway to improve understanding of bird behaviours, particularly in relation to collision risk.

Representations received after the close of the ExA's examination of the Application

28 Since the close of the examination the Secretary of State has received two representations from groups who said they were not consulted about the Application expressing concerns about likely disruption to business and community activities in the area of Brooklands Park in Worthing arising from the onshore cable installation works. The Secretary of State notes that the Application was subject to public notices and other consultation as required under the 2008 Act so he is satisfied that members of the public were afforded the opportunity to make representations on the Application. Having studied the Report he is also satisfied that the ExA considered the socio-economic impact of the Development adequately, and that the representations received do not

raise significant new issues which would cast doubt on those conclusions; he therefore agrees with the ExA's conclusion that any impact would not be so significant so as to justify refusal of the Application.

Crown Land

29 Section 135(2) of the 2008 Act requires consent from a relevant Crown Authority for inclusion of any provision applying in relation to "Crown Land". The Secretary of State notes that the offshore elements of the Development would be located in areas of seabed owned by The Crown Estate and has sought explicit consent from The Crown Estate Commissioners. The Secretary of State further notes that The Crown Estate Commissioners (as the appropriate "Crown Authority" under section 227(5)(a) of the 2008 Act) have consented by way of a letter dated 12 May 2014 to the inclusion of Section 135(2) provisions in the Order.

Secretary of State's conclusions and decision

30 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Application, given the added contribution that it would make to the production of renewable energy and that the case is not outweighed by the potential adverse local impacts of the Development as mitigated by the proposed terms of the Order, the s.106 agreement entered into with West Sussex County Council and in the UU put forward by the Applicant in respect of the adverse effects of the development on the SDNP.

31 The Secretary of State has therefore decided to accept the ExA's recommendation in chapter 9.11-12 of the Report to make the Order granting development consent and imposing the Requirements as proposed by the ExA, but subject to the modifications described in paragraphs 32-34 below. He confirms that, in reaching this decision, he has had regard to the ExA Report, the local impact reports submitted by the relevant local authorities and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

Modifications to the Order

32 The Secretary of State has amended the requirement in Article 7(3) of the ExA's recommended Order in Annex E of the Report that would require the Applicant to obtain the prior approval of the Marine Management Organisation ("MMO") before the former could transfer the benefit of either Deemed Marine Licence, which form part of the Order, to another party. Instead, the Order as made requires the consent of the Secretary of State following consultation with the MMO. Such a provision would bring the wording into line with that used in

recent Orders made under the Planning Act and would reflect our view that the Secretary of State has the legal powers to grant such consent.

33 The Secretary of State has also made amendments to Requirement 1 (time limits) of Part 1 of Schedule 3 (to remove reference to extension of time by the Secretary of State in writing) and to insert a new paragraph 6 in both Schedule 13 and 14. These amendments are made to ensure that changes made by agreement under the provisions of the Order are limited to appropriate cases, and do not purport to confer authority to make changes which should be made under relevant statutory change or variation processes.

34 In addition to the above, the Secretary of State has decided to make various minor changes to the form of the draft Order as set out in Appendix E to the Report produced by the ExA which, while altering the way in which specific issues are dealt with, do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g. modernisation of language), changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended 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 publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely

A large black rectangular redaction box covers the signature area of the letter.

Giles Scott
Head of National Infrastructure Consents

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The Rampion Offshore Wind Farm 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/rampion-project/>

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)