



Department for
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Your ref: BRYBR

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Dear Ms Byrne

PLANNING ACT 2008

APPLICATION FOR A NON-MATERIAL CHANGE TO THE HORNSEA ONE OFFSHORE WIND FARM ORDER 2014

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 Dong Energy Power (UK) Limited (the "Applicant") on 20 July 2016 for a change which is not material to the Hornsea One Offshore Wind Farm Order 2014 ("the 2014 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 30 July 2013 and was granted development consent on 10 December 2014. Consent was granted for the construction and operation of an offshore wind turbine generating station in the North Sea approximately 103km off

the coast of East Riding of Yorkshire, comprising up to 240 wind turbines with a gross electrical capacity of up to 1200MW and associated offshore and onshore infrastructure. The 2014 Order was subsequently corrected by the Hornsea One Offshore Wind Farm (Correction) Order 2015 (SI 2015/1280) and amended by the Hornsea One Offshore Wind Farm (Amendment) Order 2016 (SI2016/471). The 2014 Order as corrected by the Hornsea One Offshore Wind Farm (Correction) Order 2015 and amended by the Hornsea One Offshore Wind Farm (Amendment) Order 2016 is referred to hereafter as the Hornsea One Order.

3. The Applicant is seeking consent for a change to the Hornsea One Order to increase the name plate capacity of the Development from 1,200MW to up to 1,218MW to compensate for array cable losses between the wind turbines and the substation, and an amendment to the limits of deviation for Wind Farm Areas 1, 2 and 3 to alter their internal boundaries to reflect the final design layout of the three wind farms that comprise the Development.

Summary of the Secretary of State's Decision

4. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the Hornsea One Order, and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the Hornsea One Order so as to authorise the changes 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) Regulations 2011 (as amended) ("the 2011 Regulations").

Consideration of the materiality of the proposed change

5. 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. Paragraph 2(2) of Schedule 6 to the 2008 Act requires the Secretary of State, when deciding whether a change is material, to have regard to the effect of the change, together with any previous changes made under that paragraph, on the development consent order as originally made.
6. 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, the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)¹, which 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 (“DCO”) was made) to take account of likely significant effects on the environment; b) 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”); c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO; or d) whether the proposed changes have a potential impact on local people and businesses. 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 materiality of a change. Each case must depend on thorough consideration of its own circumstances.

7. The Secretary of State therefore 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 ‘HOW01- Name Plate Capacity and Limit of Deviation Work Area DCO Amendments - Supporting Statement’ (“the Supporting Statement”) which provided information which compared the environmental topics and the potential effects and impacts that were identified within the Hornsea Project One Environmental Statement with the proposed changes.

The information provided demonstrates that the potential impacts associated with the proposed changes are of no greater significance than those identified in the original Hornsea Project One Environmental Statement. The name plate capacity of the wind farm is not referred to in the worst case assessment undertaken within the original ES. Rather, the impacts identified are caused by the number, physical presence and installation of the wind turbine

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

generators and their associated infrastructure. All turbine scenarios are within the consented case in terms of the number of wind turbine generators and their physical footprint. In addition installation methods will remain as consented. With regards to the internal Wind Farm Area boundary, changes will not result in a change to any assessed environmental parameter. This is because altered Wind Farm Areas available for each wind farm do not prevent the construction of any permutation of infrastructure which was assessed within the ES.

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) The Secretary of State has had regard to the advice of Natural England that the proposed changes would not result in any likely significant effects on designated sites or protected species.

The Secretary of State has concluded that given the nature and impact of the changes now proposed and the advice of Natural England there will not be a likely significant effect on any European site. The Secretary of State is satisfied that an Appropriate Assessment is therefore not required. In addition the Secretary of State considers that no additional EPS licence is required.

- (c) The proposed changes do not result in any change to the compulsory acquisition provisions of the Hornsea One Order.
- (d) The potential impacts on local people and businesses are no greater than those that arise from the development permitted by the Hornsea One Order.

8. 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 had regard to the effect of the change, together with the previous changes made to the Hornsea One Order by the Hornsea One Offshore Wind Farm (Amendment) Order 2016, and 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.
9. 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

10. The Applicant publicised this Application in accordance with regulation 6 of the 2011 Regulations and on 20 July 2016 consulted the persons specified in regulation 7 of the 2011 Regulations in the manner prescribed. The deadline for receipt of representations on the Application was 1 September 2016.
11. The Planning Inspectorate received representations within the deadline for receipt of representations from the Marine Management Organisation, The Crown Estate and Lincolnshire County Council. Following receipt of the responses to the consultation, the Secretary of State contacted Natural England, who did not respond to the consultation, to request their views on the Application.

Marine Management Organisation (“MMO”)

12. The MMO had no comments to make on the proposed amendment as it did not consider it will have any bearing on its interests.

The Crown Estate

13. The Crown Estate had no comments to make on the proposed amendment as it did not consider it will have any bearing on its interests.

Lincolnshire County Council (“LCC”)

14. LCC responded to say that it had no comments to make on the proposed amendment.

Natural England

15. Natural England confirmed that in their view the proposed changes represent a non-material change and would not result in any likely significant effects on any protected species and designated sites, including the Southern North Sea pSAC.

Environmental Impact Assessment

16. 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 Hornsea One Order.

17. 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.
18. 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 likely significant effects when compared to the effects set out in the environmental statement for the development authorised by the Hornsea One Order and as such considers that there is no requirement to update the Environmental Statement.
19. 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.

Habitats

20. The Secretary of State has 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") and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended) ("the Offshore Habitats Regulations"), which transpose the Habitats Directive (92/43/EC) into UK law. The Habitats Regulations and the Offshore 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 he has ascertained that it will not adversely affect the integrity of a European site.
21. The Secretary of State has considered the Supporting Statement submitted with the Application, alongside the advice of Natural England 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 Assessment for the original application (May 2014). The Secretary of State considers that the changes requested to not have the potential to impact on proposed designated sites. 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 Hornsea One Order will not have a likely significant effect upon any European sites; and a further Appropriate Assessment is therefore not required.

General Considerations

Deemed Marine Licence

22. The Secretary of State notes that the changes to the Hornsea One Order being sought by the Applicant 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. The Secretary of State also wishes to confirm that the amendments requested do not change details related to the permitted construction methods, including those methods, such as piling energies, which are a matter for the MMO under the deemed Marine Licence.

Equality Act 2010

23. 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.
24. 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

25. 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

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

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

26. 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

27. The Secretary of State notes that no person has disputed the acceptability of the proposed change to the development authorised by the Hornsea One 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 change the limits of deviations for wind farm areas 1, 2 and 3 detailed within the Hornsea One Order to reflect the final design of the three wind farms, and to increase the name plate capacity to up to 1,218MW.
28. 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 Infrastructure (EN-3) both set out that electricity generation from offshore wind farms is expected to contribute a significant proportion of renewable energy generation. The Secretary of State considers, therefore, that the ongoing need for the project is established.
29. The Secretary of State has considered the nature of the proposed changes, noting that they would have no significant environmental effects, and the benefits of the changes in facilitating the deployment of the Development. He concludes that the proposed changes are not material and that it would be appropriate and advantageous to authorise the proposed changes as detailed in the Application.
30. 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

Hornsea One Order as set out in the Application. The Secretary of State is therefore today making the amending Order requested by the Applicant.

Modifications to the draft Order proposed by the Applicant

31. 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

32. 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

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

Yours sincerely

Giles Scott

Giles Scott

Head of Energy Infrastructure Planning and Coal Liabilities

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.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/hornsea-offshore-wind-farm-zone-4-project-one/?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)