



Department
of Energy &
Climate Change

Forewind Limited
5th Floor, Davidson House
Forbury Square
Reading
Berkshire RG1 3EU

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

4 August 2015

Dear Sirs

PLANNING ACT 2008

**APPLICATION FOR THE DOGGER BANK TEESSIDE A AND B OFFSHORE
WIND FARM ORDER**

1. Introduction

1.1 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 5 May 2015 of the Examining Authority, a panel of three Inspectors consisting of Rynd Smith, Jeremy Aston and Guy Rigby ("the ExA"), which conducted an examination into the application (the "Application") dated 28 March 2014 by Forewind Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Dogger Bank Teesside A and B Offshore Wind Farms ("the Development"); and
- b) representations received by the Secretary of State after the close of the examination and not withdrawn in respect of the Application.

1.2 The examination of the Application began following completion of the Preliminary Meeting in Redcar on 5 August 2014 and was completed on 5 February 2015. The examination was conducted on the basis of written evidence submitted to the ExA and discussed at an Open-floor hearing held on 11 November 2014, Issue-specific hearings held on 14, 15, 16, 17 October 2014, 11, 12 November 2014 and 2, 3 December 2014, and Compulsory Acquisition hearings held on 13 November 2014, 4 December 2014 and 13 January 2015.

1.3 The Order includes Deemed Marine Licences and Compulsory Acquisition (“CA”) rights and grants development consent under the Planning Act 2008 for the construction and operation of up to two offshore wind generating stations, each with an installed capacity of up to 1.2 GW located in the North Sea between 125 kilometres and 290 kilometres off the UK North East coast. The onshore elements of the Development would be located in the Borough of Redcar and Cleveland. The Development would comprise:

- Up to 400 wind turbine generators (200 in each of two arrays);
- Up to 8 offshore collector platforms;
- Up to 2 convertor stations;
- Up to 4 accommodation or helicopter platforms;
- Up to 10 metrological stations;
- Up to 2 sets of export cables to connect the arrays to a coastal landing point between Redcar and Marske-by-the-Sea in the Borough of Redcar and Cleveland; and
- Onshore associated development, including underground cabling and up to 2 convertor stations.

1.4 Published alongside this letter on the Planning Inspectorate’s website¹ is a copy of the ExA’s Report of findings and conclusions (“the Report”) as amended by the Errata Sheet (Ref EN010051) of corrections produced by the Planning Inspectorate and agreed by the ExA prior to a decision being made. The ExA’s findings and conclusions are set out in chapters 4, 5, 6 and 7 of the Report, and the ExA’s summary of conclusions and recommendation is at chapter 8.

2. Summary of the ExA’s Report and Recommendation

2.1 The ExA assessed and considered the following principal issues during the examination:

- Findings and conclusions in relation to Policy and Factual Issues, including conformity with National Policy Statements and local plan policies;
- Industry and Agriculture;
- Fishing;
- Achieving Grid Connections;
- Good Design;
- Biodiversity, Ecology and the Natural Environment;
- Construction, Operation and Decommissioning at Sea;
- Construction, Operation and Decommissioning on Land;
- Social and Economic Effects at Sea;
- Social and Economic Effects on Land;

¹ <http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/dogger-bank-teesside-ab/>

- The Historic Environment, Seascape, Landscape and Visual Effects;
- Need for the Development;
- Habitats Regulation Assessment Considerations; and
- Compulsory Acquisition and Related Matters.

2.2 The ExA recommended that the Order be made with changes as set out in Appendix A of the Report.

3. Summary of the Secretary of State's Decision

3.1 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 ("the 2009 Regulations").

4. Secretary of State's Consideration of the Application

4.1 The Secretary of State has carefully considered the Report and all other material considerations, including representations received since the close of the ExA's examination of the Application. Except as indicated otherwise below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the Report, and, in such cases, the reasons for her decision are taken to be those given by the ExA in support of its conclusions and recommendations. All numbered references, unless otherwise stated, are to paragraphs of the Report. Unless indicated otherwise, the Secretary of State also considers the representations received since the close of the examination do not raise substantive new issues not already considered by the ExA.

Need and Relevant Policy for the Proposed Development

4.2 After having regard to the comments of the ExA set out in Chapter 4 of the Report, and in particular the conclusion in paragraph 4.13.8 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 (the Overarching NPS for Energy), EN-3 (the NPS for Renewable Energy) and EN-5 (the NPS for Electricity Networks Infrastructure) and that taken together, these NPSs set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The Secretary of State is content that the Development is needed.

5. Environmental Assessment Report including Habitats Regulation Assessment

5.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (“the Habitats Regulations”) and regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the Offshore Habitats Regulations”) require the Secretary of State to consider whether the proposed Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site or European offshore marine site as defined in the Habitats Regulations and the Offshore Habitats Regulations. If likely significant effects (“LSEs”) cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment (“AA”) addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the Development will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there is no feasible alternative and imperative reasons of overriding public interest apply.

5.2 In the case of the Development, the Secretary of State notes that the ExA considered the potential impact of the Development on 6 European sites where the Applicant’s conclusion of no adverse effect on integrity was disputed by Natural England, the Joint Nature Conservation Committee and the Royal Society for the Protection of Birds (“RSPB”):

- Dogger Bank candidate Special Protection Area (“SPA”) and Site of Community Interest (“SCI”);
- Flamborough Head and Bempton Cliffs SPA;
- Flamborough and Filey Coast proposed SPA;
- Farne Islands SPA;
- Forth Islands SPA; and
- Fowlsheugh SPA.

5.3 The Applicant considered a large number of sites at the LSE (screening) stage of their “Information for Appropriate Assessment Report”. Agreement between the Applicant, Natural England and Scottish Natural Heritage (“SNH”) in relation to LSEs and conclusions of no adverse effects on the integrity of these sites had been reached at an early stage in the Examination. The ExA, therefore, decided that, as there was no disagreement between the parties, and in order to avoid unnecessary duplication of information, these sites were not discussed within the Report on the Implications for European Sites [“RIES”] Proposed Dogger Bank Teesside A&B Offshore Wind Farm carried out by the Planning Inspectorate’s Secretariat, or the Report.

5.4 The Secretary of State notes that the ExA considered evidence supplied by the relevant interested parties and examined it at issue-specific hearings and then concluded that there would not be adverse effects on the integrity of any of the

European sites set out in paragraph 5.2 above either alone or in combination with other plans or projects as a result of the Development, provided that suitable mitigation was put in place. Mitigation measures have been incorporated into the Order and the Deemed Marine Licences.

5.5 Natural England agreed to the conclusion of no adverse effect on all European sites for the Development alone. NE did, however, raise some uncertainty regarding the impacts of the proposed Development in combination with other plans or projects for the Dogger Bank SCI. SNH confirmed that the Development would not cause an adverse effect on integrity alone for the two Scottish SPAs but had concerns regarding cumulative impacts. However they did state that the largest effects would be from the three Forth and Tay windfarms and the effects from the Development are likely to be 'trivial'.

5.6 In order to test the ExA's conclusions, the Secretary of State carried out a Habitats Regulations Assessment ("HRA") (including an AA) in respect of the potential impacts of the proposed Development on the integrity of the sites named above. The Secretary of State has focused on the key concerns in her HRA, given the large number of sites and features. The Applicant provides explanations as to why LSEs were excluded for the other sites and the reasoning behind their conclusions of no adverse effect and the Secretary of State relies on these undisputed findings in her conclusions for those sites. Her conclusions on habitats and wild bird issues have been informed by the Report, the RIES prepared by the Planning Inspectorate, the representations made by Interested Parties, and the Applicant's "Information for Appropriate Assessment Report". The Secretary of State has taken Natural England's and SNH's concerns into account but does not consider that the Development will have an adverse effect on the integrity on any of the European sites, alone or in-combination with other plans or projects.

5.7 The Secretary of State's HRA considers the impact of fishing on the Dogger Bank SCI. However, as fishing activity is ongoing and already affecting the ecology of the site and is not something new, fishing is considered as part of the background impacts on the site.

5.8 The Secretary of State's HRA considers that the effect of the Development on the SCI would be temporary and that adversely affected ecology would recover after decommissioning (subject to removal of all infrastructure), thereby allowing favourable conservation status to be achieved.

5.9 On the basis of the HRA's consideration of the issues raised, the Secretary of State agrees with the ExA's conclusions of no adverse effects on integrity in relation to the European sites listed in paragraph 5.2 above and finds no reason in respect of this issue to not make the Order.

5.10 A copy of the Secretary of State's HRA is published alongside this letter on the Planning Inspectorate's website² and has been prepared on the basis of the Report.

² <http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/dogger-bank-teesside-ab/>

Future possible SAC for harbour porpoises in Southern North Sea

5.11 Following close of the Examination, the Secretary of State has been made aware of a list of sites that may be recommended as draft (d)SACs. One such site is located in the southern North Sea and encompasses part of Dogger Bank. These sites have been recommended as there is evidence that they may support qualifying populations of harbour porpoise (*Phocoena phocoena*). The site is still at the early stages of consideration for possible future designation with approvals and formal consultation to follow. The Secretary of State has decided to consider this site within the HRA so as to satisfy herself that a decision granting development consent for the Development would not damage the possibility of future cSAC designation. The Secretary of State has concluded that consent of the Development would not prejudice designation of a future cSAC in this area.

Transboundary Considerations

5.12 The Secretary of State notes that the Planning Inspectorate undertook, on behalf of the Secretary of State, a screening exercise for transboundary impacts under regulation 24 of the 2009 Regulations. The SoS applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation" and took account of information provided by the Applicant before concluding that the proposed Development was likely to have a significant effect on the environment in another European Economic Area ("EEA") state. As a result of the initial screening, Belgium, Denmark, France, Germany, Netherlands, Norway and Sweden were asked to identify whether they wished to participate in the process and, if so, whether they could provide any information on significant impacts on their states. Sweden, Netherlands and Germany initially responded to say they wished to participate in the regulation 24 process. Following acceptance of the Application, Germany and Norway again indicated an intention to participate in the process. Only Germany responded stating that 'no significant impacts on nature conservation concerns in German EEZ can be expected'.

5.13 The ExA assessed the potential impacts in the light of the notifications and considered that there would not be any effects arising from the Development that would adversely affect the environment in another EEA state (ER 4.7.20). The ExA was satisfied that all transboundary matters had been addressed (ER 4.7.21). However, the Secretary of State has also considered the matters raised and considers that the proposed Development has the potential to affect features from transboundary European sites. These features include species of marine mammals and sandbanks which are slightly covered by sea water at all times (in Netherlands, Germany, Denmark, France, Sweden, Norway and Belgium). The marine mammal species (harbour porpoises and grey seals) are at increased risk of injury, disturbance and displacement as a result of construction and piling works. After careful 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 Secretary of State's HRA.

6. Other Matters

Compulsory Acquisition of Land and Rights

6.1 The Secretary of State has carefully considered chapter 6 of the Report on CA. The Secretary of State notes [ER 6.3.5] that the Applicant's CA request relates to the acquisition of:

- freehold title, where permanent control of the land is required, e.g., for the construction and operation of the converter stations; and
- freehold title and permanent rights and restrictive covenants, whereby following construction and reinstatement the freehold can be offered back to the landowner subject to rights and covenants being in place to allow the asset (e.g., the buried cable) to be protected and to be properly operated and maintained; and
- permanent rights of access for construction and maintenance; and
- temporary rights for construction purposes (e.g., construction compounds)

6.2 The Secretary of State notes that onshore element of the Development for which the powers of CA are sought would include separate High Voltage Direct Current cabling from their landfall between Redcar and Marske-by-the-Sea following an underground onshore transmission alignment approximately 7km west to a converter station compound within the Wilton Complex industrial site. From the compound, a short High Voltage Alternating Current alignment would connect the electricity output to the existing National Grid Electricity Transmission substation at Lackenby, where it is proposed the grid connection would be made [ER 1.2.4]. Each offshore windfarm and the associated development necessary to support it would be delivered by separate legal entities, described in the Application as 'Bizcos'. In the event that consent is granted to the Applicant, the Bizcos would exercise CA powers, and lead investment and construction [ER 6.3.11-6.3.18]).

6.3 The Secretary of State notes that there were a number of shared concerns raised by affected CA parties. The shared themes raised have been summarised by the ExA [ER 6.3.28] as follows:

- that the most efficient alignments for the A and B cables has not been chosen, and that other possible routes would be more efficient;
- the amount of land sought by the Applicant is too great and that there ought to be a more efficient manner of using land to make cable connections;
- in seeking freeholds, the Applicant is seeking to take a greater interest in land than it needs, as it could develop the proposed cable alignments onshore using lease or other arrangements less onerous than a freehold interest;
- the proposed cable routes would unduly disrupt farming and equestrian operations, field drainage and access; and
- the constructed cable route would operate as an undue constraint on the future use and development of individual plots of land with development potential.

6.4 The Secretary of State has carefully considered the ExA's findings in respect of the above shared concerns affected parties have raised and sees no reason to disagree with the ExA's consideration of those concerns or the conclusions they have reached on them [ER 6.3.27 – 6.3.42 and 6.4.160 – 6.4.173]. In addition, there were a number of individual concerns raised [ER 6.4] that she has considered.

6.5 The Secretary of State also agrees that a clear case has been made for CA of land and rights over land in relation to the cable alignments from landfall to the proposed point of grid connection, including convertor stations and the public benefit outweighs the individual harm occasioned by CA [ER 6.11.4]. In forming this view, the Secretary of State has taken into account a late representation made after the close of the examination on behalf of Michael and Patricia Scaife in respect of the proposed cable route under their land. The Secretary of State notes the representation indicates that the Applicant has recently written to landowners to confirm that the proposed Dogger Bank Teesside C and D offshore wind farm project is no longer to be pursued and this would, in their view, leave space for an alternative cable route to the north of their land. The Secretary of State is content that the ExA's consideration of the acceptability of the proposed cable route and land sought was only in relation to the Development, i.e., the cables for the Dogger Bank Teesside A and B offshore wind farm project (and not also for the cables for the Dogger Bank Teesside C and D wind farm project). The Secretary of State also notes the alignment and land constraints identified in respect of shared concerns [ER 6.3.39-6.3.33] and this individual objection [ER 6.4.66 – 6.4.69]. In the circumstances, the Secretary of State sees no reason to disagree with the ExA's consideration of the concerns raised in respect of the cable route alignment and land sought and the conclusions reached [ER 6.4.70 – 6.4.72 and 6.4.161 – 6.4.162].

6.6 In respect of the case for CA of land and rights over land inside the Wilton Complex for cable alignments, the Secretary of State agrees with the ExA's conclusion that a case has been made and is content that the protective provisions recommended by the ExA will have the effect of ensuring that the rights and existing and planned activities of the owners, tenants and operators at Wilton are not unduly disrupted [ER 6.11.5].

Commencement Period, including representations received from interested parties after the close of the ExA's examination of the Application

6.7 The Secretary of State accepts the Applicant's reasons for seeking a seven-year commencement of development period [ER 6.3.19]. In particular, the Secretary of State notes that the ExA considers that the complexity of the delivery of the cable arrangements in the Wilton Complex justify the seven-year commencement period.

6.8 The Applicant also submitted a further representation after the close of the examination to the ExA dated 27 March 2015, enclosing document "Further Representation Consent Time Limits and Time Limits for the Exercise of Authority to Acquire Land Compulsorily March 2015". The Secretary of State notes that the Rt. Hon. Charles Hendry also wrote to the Permanent Secretary of the Department on 28 April 2015, enclosing a letter from the Applicant to the Permanent Secretary dated 15 April 2015 but which had not been received by the Department. The letters set

out their support for the Development, the need for a seven-year commencement period, and requested a meeting with the Secretary of State. The Permanent Secretary's reply to Mr Hendry made clear he should write directly to the Secretary of State or another member of the Ministerial team regarding a meeting but that it would not be appropriate to meet until after the Application had been determined. The Secretary of State has reviewed the documents received after the close of the ExA's examination and consider they largely rehearse arguments already consider by the ExA in the Report [ER 6.3.19 – 6.3.26].

Crown Land

6.9 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 Crown granted conditional consent to the content of the Order relating to Crown interests in its latest [draft] form, but that unconditional consent is needed before her decision is taken [ER 6.11.8]. The Secretary of State has therefore 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 23 June 2015 to the inclusion of provisions in the Order to take account of the requirements of Section 135(2) (see article 41 of the Order).

Special Category Land

6.10 The Order authorises the CA of rights over land forming part of an open space. Section 132 of the 2008 Act provides that such an order should be subject to special parliamentary procedure unless the Secretary of State is satisfied *inter alia* that, once burdened with the right, the land will be no less advantageous to the persons in whom it is vested, other persons entitled to rights of common or other rights and the public (the "section 132(3) test").

6.11 The Secretary of State notes that the only special category land rights to be acquired are in relation to a beach-public open space between the coast road and the foreshore landfall site (plot 1 in respect of Northumbrian Water Limited and plots 2A, 2B in respect of Redcar and Cleveland Borough Council). The Secretary of State also notes that there are no objections to the effect of the Development works on this land, which would be temporary in nature, after which full public access would be restored. There are no proposals or requests for replacement land. The ExA considered that the section 132(3) test was satisfied in respect of the land due to the temporary nature of the use sought and the situation of the affected plots within an extensive open foreshore context, of which it only forms a small part [ER 6.7.1 - 6.7.6]. The Secretary of State accepts the ExA's conclusion and considers the special parliamentary procedure is not necessary.

6.12 The Secretary of State has carefully considered all other CA related matters and sees no reason to disagree with the ExA's conclusions [ER.6.4 and 6.11.6 - 6.11.11]. Her consideration of Human Rights is set out separately below.

7. Modifications to the Order by the Secretary of State

7.1 In considering the draft Order submitted with the Report, the Secretary of State identified a number of issues in respect of which modifications to the DCO have been made. The amendments are considered below:

Definition of "undertaker" in article 2 (interpretation)

Article 3 (development consent, etc. granted by Order)

7.2 The Secretary of State has amended the term "undertaker" in article 2 to provide greater clarity and certainty and to ensure that the term always has a meaning in the Order. Article 3 is also amended to provide greater clarity about which undertaker development consent is granted to.

Article 8 (Consent to transfer benefit of Order)

7.3 The Secretary of State has removed the provision such that the consent of the Secretary of State is not needed for the transfer of benefit after the period for compensation claims in respect of the acquisition of land or effects on land have expired. Having considered the provision, the Secretary of State does not consider that the determination of provisions in relation to land acquisition or effects should remove the need for consent from the Secretary of State or the consultation of the MMO before an offshore asset can be transferred. The Secretary of State, however, does consider that there is no need for consent from the Secretary of State where the transfer is between persons holding a licence under the Electricity Act 1989.

Article 10 (power to make agreements)

7.4 The Secretary of State has removed paragraphs (1), (2) and (7) of article 10. These paragraphs, which relate to Bizco 2 and Bizco 3's powers to make agreements, seem unnecessary, given the powers available to companies incorporated under the Companies Act 2006. Article 10 has a new heading to reflect the contents of the remaining provisions.

Article 11 (disapplication and modification of legislative provisions)

7.5 The Secretary of State has removed article 11(2), the effect of which would have been to disapply section 6 of the Party Wall etc. Act 1996, which provides for the underpinning of adjoining buildings when excavation work is to be undertaken. The Secretary of State disagrees with the ExA's conclusion [ER 7.2.58] that the limited harm caused by the disapplication of the provision is justified by the public benefit to be derived from the Development in the absence of evidence that the Development would be jeopardised if section 6 were not disappplied.

Article 12 (abatement of works abandoned or decayed)

7.6 The Secretary of State has amended article 12 to give her the power to require the restoration of the site not only when offshore works are abandoned or allowed to fall into decay, but when they are removed in other circumstances.

Article 25 (compulsory acquisition of rights)

Article 31 (statutory undertakers)

Article 34 (special category land)

7.7 The Secretary of State has amended article 25 to make it clear that the CA powers in the Order are limited to the power to acquire new rights in respect of all the plots referred to in Schedule 5 (and the division of Schedule 5 into separate Parts is eliminated).

7.8 Article 25 (2) is amended to make it clear that the power to acquire new rights is a power to acquire rights as described in the book of reference. A similar amendment is also made to article 31.

7.9 Article 25 is also amended to provide that, where new rights are acquired, these extinguish existing rights, but only to the extent that they are inconsistent with the new rights. A similar amendment is also made to article 34.

Requirement 2 (time limits) (in Part 3 of Schedule 1)

7.10 The Secretary of State's ability to extend the 7-year period before which the Development must be commenced is removed. The Secretary of State considers that any request for such an extension should be the subject of an application to amend the Order under the relevant provisions of the 2008 Act.

Requirement 40 (amendments to plans, etc.)

7.11 The Secretary of State has amended Requirement 40 to make it clear that when amendments to all plans approved under the Requirements may be made only where the amendments are unlikely to give rise to any materially new or different environmental effects from those assessed in the Environmental Statement.

Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)

7.12 The Secretary of State has included a new Schedule 6 to the Order. This includes certain standard provisions modifying compensation enactments to make them apply where CA relates to newly created rights over land.

Marine Mammal Mitigation Protocol

7.13 The Secretary of State has amended condition 16(e) of Deemed Marine Licences 1 and 2 and condition 13(e) of Deemed Marine Licences 3 and 4, the effect of which is that the marine mammal mitigation protocol must be approved before licensed activities commence is not limited to preventing injury to marine mammals, and specifically includes disturbance.

7.14 The Secretary of State has further amended the provision so that the protocol must have the intention of preventing adverse effects on "European sites" and "European offshore marine sites", so far as marine mammals are a protected feature of those sites.

Amendments to Plans Approved Under Marine Licences

7.15 The Secretary of State has added a condition to each Deemed Marine Licence providing that plans that are required to be approved by the Marine Management Organisation (“MMO”) under the Licence include amendments subsequently approved by the MMO.

Other Drafting Changes

7.16 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

8. General Considerations

Equality Act 2010

8.1 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. This matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

Human Rights Act 1998

8.2 The Secretary of State notes that the ExA concludes that the human rights protected by Human Rights Act 1998 are engaged, but the purposes of the Application are sufficient to justify interference with these through the proposed CA powers [ER 6.11.9]. The Secretary of State agrees with the ExA’s rationale for reaching its conclusion, as set out in the Report (ER 6.10).

Section 40(1) of the Natural Environment and Rural Communities Act 2006

8.3 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 Report considers biodiversity sufficiently to accord with this duty.

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

Marine Licences

8.4 The Order deems Marine Licences to have been issued under Part 4 of the Marine and Coastal Access Act 2009. In accordance with regulation 3A of the Infrastructure Planning (Decision) Regulations 2010, the Secretary of State has had regard to the need to protect the environment, the need to protect human health and the need to prevent interference with legitimate uses of the sea.

9. Secretary of State's conclusions and decision

9.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent, given the national need for the proposed Development and that case is not outweighed by its potential adverse local impacts, as mitigated by the proposed terms of the Order.

9.2 The Secretary of State has also considered the requests for powers to compulsorily acquire land and rights, which formed part of the Application. The Secretary of State agrees with the ExA's conclusion that CA powers should be granted subject to suitable protective provisions, which also include those for the protection of owners and operators at Wilton in relation to rights and land relating to the Development.

9.3 The Secretary of State considers granting consent would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy), EN-3 (NPS for Renewable Energy Infrastructure) and EN-5 (NPS for Electricity Networks Infrastructure), which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed.

9.4 Having carried out a Habitats Regulations Assessment containing an AA, which is attached to this letter, the Secretary of State considers that there will be no adverse effects on the integrity of: the Dogger Bank candidate Special Area of Conservation ("cSAC") and Site of Community Interest ("SCI"); Flamborough Head and Bempton Cliffs SPA; Flamborough and Filey Coast proposed SPA; Farne Islands SPA; Forth Islands SPA; and Fowlsheugh SPA either alone or in combination with other plans and projects.

9.5 The Secretary of State has therefore decided to accept the ExA's recommendation at ER 8.2 to make the Order granting development consent. The Secretary of State confirms that, in reaching this decision, regard has been given to the Report, as amended by the Errata sheet referred to in paragraph 1.4 above, the local impact report submitted by the relevant local authority and to all other matters important and relevant to her decision as required by section 104 of the 2008 Act, including (as set out in paragraph 4.2 above) the need for the Development as set out in the National Policy Statements. The Secretary of State confirms also for the purposes of regulation 3(2) of the 2009 Regulations that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

10. Challenge to decision

10.1 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.

11. Publicity for decision

11.1 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 2009 Regulations.

Yours faithfully



Ian McKenzie

Energy Development Unit

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 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 beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/dogger-bank-teesside-ab/>

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)

