



Department for
Business, Energy
& Industrial Strategy

Department for Business,
Energy & Industrial Strategy

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Our Ref: EN010051

Your Ref:

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Dear Ms Gauld-Clark

PLANNING ACT 2008

APPLICATION TO MAKE NON-MATERIAL CHANGES TO THE DOGGER BANK TEESSIDE A & B OFFSHORE WIND FARM ORDER 2015 -SOFIA OFFSHORE WIND FARM

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 Sofia Offshore Wind Farm Limited ("the Applicant") on 15 June 2018 (and as revised on 8 February 2019) for changes which are not material to the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 ("the 2015 Order") 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 28 March 2014. Development consent was granted on 4 August 2015 and came into force on 26 August 2015.
3. The 2015 Order granted development consent to two individual project companies and offshore wind farm projects: Bizco 2 for Project A ("Teesside A") and Bizco 3 for Project B ("Teesside B"). The 2015 Order grants development consent for each project (Teesside A & Teesside B) for an offshore wind farm with a maximum capacity of 1.2 GW comprising up to 200 wind turbine generators

as well as associated onshore and offshore development. Following the grant of the 2015 Order, in August 2017, the Forewind Limited consortium, owning Bizco 2 and Bizco 3 was split. SSE and Statoil now owns 50% each of Dogger Bank Teesside A (“Teesside A”) under a new consortium, Doggerbank Offshore Wind Farm Project 3 Projco Limited (“Project 3 Projco”); and Innogy now owns 100% of Dogger Bank Teesside B (“Teesside B”) under a new subsidiary, the Sofia Offshore Wind Farm Limited (“the Applicant”). The Applicant has renamed Project B/Teesside B as Sofia Offshore Wind Farm and has the benefit of the development consent. It has submitted an application that, if approved, would allow changes to the Sofia Offshore Wind Farm only. The Applicant is not seeking to make changes to the Shared Works (save for changes that would split the requirements between the Project and Teesside A). For the remainder of this letter, the development consented under the 2015 Order, and the proposed changes sought in this change application, will be referred to as “the Project”.

4. The Sofia Offshore Wind Farm site is located 165km east of Teesside and, as indicated above, has consent for up to 200 wind turbines with a total installed capacity of 1.2 GW. The export cable will reach landfall along the Teesside coastline between Redcar and Marske-by-the-Sea.
5. The Application was revised by the Applicant on 8 February 2019 to remove proposed increases in hammer energy. The changes now sought are:
 - for each wind turbine generator to have a maximum rotor of up to 288 metres rather than up to 215 metres;
 - for gravity base, multileg or monopole foundations for offshore platforms with monopile foundations of up to 12 metres diameter;
 - to restrict the combined number of monopile foundations for the wind turbine generators and platform to the existing number of 200; and
 - to increase the maximum generating capacity up to 1.4 GW from 1.2 GW.
6. The Secretary of State understands that the Application would also necessitate consequential variations to the deemed Marine Licences (“dMLs”) that were granted pursuant to schedules 8 to 11 of the 2015 Order. A separate request for variation to the deemed marine licences has been submitted to the Marine Management Organisation (“MMO”) for determination.

Consideration of the materiality of the proposed change

7. 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 development consent order (“DCO”) as originally made.

8. 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.
9. So far as decisions on whether a proposed change is material or non-material, guidance has been 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, 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 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;
 - (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 change has a potential impact on local people and businesses.
10. 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.
11. 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)&(b) The Applicant has undertaken a review of potential environmental impacts resulting from the proposed changes. It concludes that the change to allow for larger diameter turbine blades does not result in any change to the significance of any disturbance or displacement effects predicted on seabirds during construction, operation and decommissioning from those identified within the Environmental Statement ("ES"). In addition, their deployment would decrease the number of collisions for each bird species and designated sites.

The use of monopole foundations for the offshore platforms does not require a change to the scenarios used in the ES to assess the effects on suspended sediment concentrations/sediment deposition from plume and changes in

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

waves and tidal currents because Requirement 5(15) will be retained and a new requirement would limit the total number of monopole foundations to be used for turbines and offshore platforms to a maximum of 200.

Technological advances would allow for an increased maximum rating of a single High Voltage Direct Current (“HDVC”) cable circuit up to 1.4MW and is possible to accommodate an increased generating capacity within the consented parameters described in the 2015 Order.

Overall, the Secretary of State notes that the Applicant concluded there would be no change in the significance of any effect assessed in the ES as a result of the proposed changes and no new or additional impacts would arise. As such an update to the ES is not required. However, further environmental information was required from the Applicant in order for the Secretary of State to undertake the HRA to determine the materiality of the changes sought.

The Secretary of State considers that need for an HRA (and, if necessary, Appropriate Assessment (AA”) and any further environmental information required to carry out that assessment) is not necessarily of itself determinative of whether a change should be considered material.

The Secretary of State’s overall conclusions in the HRA, after considering carefully all the information presented within the non-material change application and the representations made by all stakeholders, are that the assessments made in the 2015 HRA and in the East Anglia THREE Offshore Wind Farm HRA (which considered the current consented Project specifications) are relevant to this change application. The Secretary of State considers that the Project is unlikely to have an effect on the newly designated Southern North Sea Special Area of Conservation (“SAC”) beyond that assessed in the original HRA. However, it is considered that the Project has the potential to have an Likely Significant Effect on the newly designated Flamborough and Filey Coast Special Protection Area (“SPA”) when considered in-combination with other plans or projects. The Secretary of State has therefore undertaken an AA in respect of the SPA’s conservation objectives to determine whether the Project, either alone or in-combination with other plans or projects, will result in an adverse effect on site integrity. The conclusion of his assessment, considering all the information available including consultee responses and the mitigation measures secured through the 2015 Order(as amended) and deemed Marine Licences, is that the changes proposed to the Project do not amount to an adverse effect alone and in combination.

(c) The Secretary of State is satisfied that, as the changes sought relate to offshore works only and will not result in any change to the Order limits of the 2015 Order), there is no requirement for any compulsory acquisition of land or interests over land as a result of the proposed change application.

(d) The Secretary of State is also content that potential impacts on local people and businesses are no greater than those that arise from the development permitted by the 2015 Order.

12. The Secretary of State therefore concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggest that the change proposed is a material change.
13. The Secretary of State is therefore satisfied that the changes proposed in the Application are not material and should be dealt with under the procedures for non-material changes.

Consultation and Consideration of Matters Raised in Representations Received

Publicity

14. The Applicant has publicised this Application in accordance with regulation 6 of the 2011 Regulations and on 15 June 2018 consulted the persons required by regulation 7 of the 2011 Regulations, in the manner prescribed.
15. The Application was also made publicly available on the Planning Inspectorate's website, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

Representations

16. No representations were received from any private individuals.
17. The Secretary of State notes that no objections to the change application were received in the representations from: The Crown Estate; Marine and Coastguard Agency; Redcar & Cleveland Council; National Air Traffic Service; Historic England; Ministry of Defence; and Trinity House.

Representations relating to Habitats and Species

18. 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 European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an AA 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 European site.
19. The Wildlife Trust and Whale and Dolphin Conservation ("WDC") both raised concerns in their representations in relation to the proposed increases in pile diameter and hammer energy and what that underwater noise disturbance impact would be on marine mammals and, in particular,

harbour porpoise and the Southern North Sea SAC. They were of the view that the changes proposed were material and required a new HRA to be carried out by the Secretary of State.

20. Natural England's initial response indicated, in respect of marine mammal impacts, its view that the proposed changes were material and an updated HRA was required to consider any consented and/or new projects that have since entered the consenting process for the in-combination assessment.
21. The representation from the MMO noted that an application to vary the dMLs had been submitted in parallel to the change application and they were in the process of consulting their advisors, the Centre for Environment, Fisheries and Aquaculture Science ("Cefas") and Natural England. However, unless comments dictated otherwise, the MMO were minded to vary the dMLs pursuant to section 72 of the Marine and Coastal Access Act 2009.
22. In view of the above representations received in respect of habitats, the Secretary of State invited comments from the Applicant on 17 September 2018. Natural England subsequently made a further representation on 25 September 2018 which recognised that, although not changing its advice at that stage, expressing a view on materiality went beyond its remit. It is noted that the Applicant also sent individual letters to The Wildlife Trust, WDC and Natural England on 1 October 2018 setting out in their view as to why the changes were non-material. The Applicant also provided on 1 October 2018 a summary of responses to the Secretary of State on the representations received. Statements of Common Ground ("SoCGs") between the Applicant and Natural England and the Applicant and MMO were also provided.
23. The Secretary of State wrote to the Applicant and Natural England on 2 November 2018, requesting a formal statement from Natural England of its position in relation to impacts on marine mammals and the need for an HRA/AA and noting the judgement of the Court of Justice of the European Union in Case C-323/17 *People over Wind*. The Secretary of State noted that the need for an AA is not necessarily of itself determinative of whether a change should be considered material. Confirmation from Natural England was also sought on whether a generic piling Effective Deterrence Radius of 26km should be applied irrespective of the hammer energy. A SoCG between the Applicant and Natural England was provided on 15 November 2018, which confirmed there were no matters not agreed between parties. However, whilst it agreed no new HRA or AA is required in respect on any of the European Sites considered in the Secretary of State's original HRA and AA for the 2015 Order application, it noted that an assessment of the impacts of the Project (alone and in-combination) on the Southern North Sea SAC would be required as part of BEIS' current Southern North Sea SAC Review of Consents ("Review of Consents"). A

SoCG between the Applicant and MMO was also provided on 20 November 2018. This included agreement that the Marine Mammal Mitigation Plan would address mitigation for noise propagation for the Project and may include noise reduction measures.

24. Following receipt of the above SoCGs, the Secretary of State was concerned about the proposed reliance on mitigation measures to remove the need for an AA of impacts on both marine mammals and fish and considered it necessary to seek further clarification/information on 29 November 2018 from Natural England and MMO on whether full account had been taken of the *People over Wind* judgment and whether their SoCGs needed to be revised. The Applicant was also asked to provide further information to inform the decision on materiality, including possible effects of the consent, if amended, on the Southern North Sea SAC.
25. Following without prejudice discussions with BEIS officials on possible timing of a decision to potentially enable determination before the Review of Consents consultation process is concluded, the Applicant decided to withdraw elements of the change application relating to an increase in hammer energy on 8 February 2019. With the increase in hammer energy withdrawn, and the inclusion of the further requirement detailed below, the Secretary of State is satisfied that the remaining changes sought will not have likely significant effects on the Southern North Sea SAC over those assessed in the 2015 HRA. The Project will still be part of the Review of Consents. Any subsequent increase in hammer energy would need to be subject of a further change application and assessed at that stage.
26. Following further consultation with the Applicant, Natural England and the MMO on 21 February 2019 on a draft requirement and draft HRA, in order to ensure that there will not be likely significant effects on the Southern North Sea SAC, the Secretary of State has decided to insert a new requirement such that offshore works for the Project that may have such an effect cannot be commenced until the conclusion of the Review of Consents.
27. In undertaking the HRA for this change application, the Secretary of State has cross-referenced the HRA published for the 2015 Order². Given the nature of the requested changes to the 2015 Order, it is considered the requested changes have the potential to impact protected sites designated since the publication of the 2015 HRA. This includes the designation of the Flamborough and Filey Coast SPA and the designation of the Southern North Sea SAC. As such, it contains conclusions on the effects of the 2015 Order – including the changes requested within the change application – on protected habitats and species within these two sites.

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010051/EN010051-000215-6.1%20ES%20Chapter%201%20Introduction.pdf>

28. The Secretary of State's overall conclusions in the HRA, after considering carefully all the information presented within the non-material change application and the representations made by all stakeholders, are that the assessments made in the 2015 HRA and in the East Anglia THREE Offshore Wind Farm HRA (which considered the current consented Project specifications) are relevant to this change application. The Secretary of State considers that the Project is unlikely to have an effect on the Southern North Sea SAC beyond that assessed in the original HRA. However, it is considered that the Project has the potential to have a Likely Significant Effect on the Flamborough and Filey Coast SPA when considered in-combination with other plans or projects. The Secretary of State has therefore undertaken an AA in respect of the SPA's conservation objectives to determine whether the Project, either alone or in-combination with other plans or projects, will result in an adverse effect on site integrity. The conclusion of the assessment, considering all the information available including consultee responses and the mitigation measures secured through the 2015 Order and dMLs, is that the changes proposed to the Project do not amount to an adverse effect alone and in combination.
29. The Secretary of State considers that his conclusion of the Project having no adverse effect alone or in combination with other plans or projects on the Flamborough and Filey Coast SPA removes the necessity to assess the Project alone in any future review of consents for this site.
30. The Secretary of State has considered the representations received in response to the consultation and the information provided and does not consider that any further information needs to be provided by the Applicant or that any further consultation of those already consulted is necessary.

General Considerations

Transboundary Impacts

31. Under Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), the Secretary of State has considered whether the Project is likely to have a significant effect on the environment in another European Economic Area ("EEA") State. In the application for the 2015 Order, the Secretary of State was satisfied that there would not be any effect arising from the development of the Dogger Bank Teesside A and B Offshore Wind Farm that would adversely affect the environment in another EEA state. However, the Secretary of State concluded that it had the potential to affect features from transboundary European sites. After careful consideration, the Secretary of State was satisfied there would be no adverse impacts upon transboundary sites.
32. The Secretary of State is satisfied the proposed changes to the 2015 Order would not adversely affect the environment in another EEA state. He is also satisfied there would be no adverse impacts upon transboundary European sites.

33. The Secretary of State therefore concludes there is no need for transboundary consultation with other EEA States.

Equality Act 2010

34. 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;³ 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.
35. 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 change application will affect adversely the achievement of those objectives.

Human Rights Act 1998

36. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amendments sought to the 2015 Order. 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

37. 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

38. The Secretary of State notes that since the grant of the 2015 Order, there have been advancements in technology that would make the projects more efficient and cost effective. These advances are based on the size of wind turbine generators that are available or likely to be available during the course of the construction development programme. Changes to the consented wind turbine rotor diameter, monopile diameter and generating capacity have therefore been sought.

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

39. The Secretary of State has considered the ongoing need for the Project. 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. The Secretary of State considers, therefore, that the ongoing need for the project is established.
40. The Secretary of State has considered the nature of the proposed change, noting that it would have no adverse environmental effects. He concludes that the proposed changes are not material. Having considered the effects of any change and the benefits of the changes in facilitating the deployment of the Project, the Secretary of State has concluded that it would be appropriate and advantageous to authorise the proposed changes as detailed in the amended Application.
41. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the 2015 Order as set out in the Application. The Secretary of State is satisfied that the changes requested by the Applicant do not constitute a material change to the 2015 Order and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes to the 2015 Order so as to authorise the changes detailed in the Application.

Modifications to the draft Order proposed by the Applicant

42. To ensure there can be no likely significant effects on the protected features of the Southern North Sea SAC before the conclusion of the Review of Consents, the Secretary of State has included an additional requirement to ensure that offshore works for the Project which may have such an effect cannot commence until the Review of Consents has been completed and the Secretary of State has affirmed, modified or revoked the decision in respect of the offshore works for the Project under regulation 33(4) of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I 2017/1013). The Secretary of State considers, with the requirement and the HRA as drafted, that the current application does not affect or prejudice the Review of Consents.
43. Minor drafting improvements have been made by the Secretary of State to the revised draft Amending Order proposed by the Applicant on 8 February 2018. These changes do not materially alter the terms of the draft Amending Order.

Challenge to decision

44. 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

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

Yours sincerely,

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-teesside-a-sofia-offshore-wind-farm-formerly-dogger-bank-teesside-b-project-previously-known-as-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)