



Department for
Business, Energy
& Industrial Strategy

1 Victoria Street
London SW1H 0ET

T +44 (0)207 215 5000
E beiseip@beis.gov.uk

www.beis.gov.uk

Jonathan Wilson
Lead Consent Manager
Dogger Bank Offshore Wind Farm Project
Level 4
1 Kingdom Street
London
W2 6BD

11 August 2020

Dear Mr Wilson,

**PLANNING ACT 2008: APPLICATION FOR A NON-MATERIAL CHANGE TO THE
DOGGER BANK TEESSIDE A AND B OFFSHORE WIND FARM ORDER 2015 (SI NO.
2015/1592) AS AMENDED**

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 Dogger Bank Offshore Wind Farm Project 3 Projco Limited (“the Applicant”) on 15 November 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. A Development Consent Order was granted by the Secretary of State to Forewind Limited on 5 August 2015. As granted in 2015, the Order gave development consent for the construction, operation and maintenance of a generating station with a gross electrical output of up to 2,400MW comprising up to 400 wind turbine generators with associated offshore infrastructure (including intra-turbine electrical connection, offshore platforms and subsea electrical connections to a landfall at Marske-by-the-Sea) and onshore works to connect the wind farm to the National Grid electricity transmission system.
3. The Secretary of State notes that since the 2015 Order was granted, the Dogger Bank Teesside A and B project has been reconfigured so that there are now separate wind farm projects operated by different parts of the old Forewind consortium: the Dogger Bank Teesside A project is now operated by Dogger Bank Offshore Wind Farm Project 3 Projco Limited (“the Applicant”); and Dogger Bank Teesside B is now known as Sofia and is operated by Sofia Offshore Wind Farm Limited.

4. An Amendment Order was granted on 25 March 2019 for its Sofia elements by the Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) Order 2019 (SI 2019/699) – “the 2019 Amendment Order”. The 2019 Amendment Order increased the permitted generating capacity of the Sofia project to 1.4GW, altered the diameter of the rotor blades and the use of monopole foundations for one of the Works authorised by the 2015 Order. None of the changes in the 2019 Amendment Order related to the infrastructure that makes up the Dogger Bank Teesside A project.
5. The changes requested in the Application affect the infrastructure that forms part of the Dogger Bank Teesside A development only. In summary, the requested changes are:
 - an increase in the rotor diameter of the turbine blades from 215 metres to a maximum of 280 metres; and
 - the removal of the cap on the electrical generating capacity of the wind farm.

(There are no changes requested to the onshore elements of the Dogger Bank Teesside A wind farm or to any part of the transmission assets.)

6. The Applicant seeks to amend the 2015 Order to take advantage of improvements in wind turbine technology which have allowed turbines with much larger blade diameters and greater generational outputs to become options for deployment. The changes requested would permit the use of bigger but fewer turbines (although the option is retained to utilise the currently consented maximum of 200 turbines with a 167m rotor diameter). The Applicant is not seeking an increase in the total rotor swept area of the turbines – currently 4.35 sq. kilometres – and this will still provide a limit on turbine numbers up to the maximum number specified in the 2015 Order.

Summary of the Secretary of State’s decision

7. The Secretary of State 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 (as set out in paragraph 5 above). This letter is the notification of the Secretary of State’s decision in accordance with regulation 8 of the 2011 Regulations.

Consideration of the materiality of the proposed change

8. The Secretary of State has given consideration as to whether the Application is for a material or non-material change. In doing so, the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the 2008 Act which requires him to consider the effect of the change on the 2015 Order as originally made and as amended in 2019. The Secretary of State notes that the changes relate to the parameters of the offshore elements of the Dogger Bank Teesside A offshore wind farm - an increase in the rotor diameter of the wind turbine blades from those specified for Dogger Bank Teesside A in the 2015 Order and the removal of the cap on generating capacity. The Secretary of State notes that there are no changes requested to the conditions that regulate the effect of the 2015 Order.
9. 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.

10. 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 (now the Ministry of Housing, Communities and Local Government – “MHCLG”), 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. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:

- (a) whether an update would be required to the Environmental Statement (from that at the time the Order was made) to take account of new, or materially different, 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 Order; and
- (d) the potential impact of the proposed changes on local people and business (for example, in relation to visual amenity from changes to the size and height of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).

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 the thorough consideration of its own circumstances.

11. The Secretary of State has considered the changes proposed by the Applicant against the four matters given in (a), (b), (c) and (d) above.

- (a) The Secretary of State considers that the Environmental Information Report and Ornithological Technical Report supplied with the Application supports the Applicant’s conclusions that there are no new, or materially different, likely significant effects. The Secretary of State has, therefore, concluded that no update is required to the ES as a result of the changes requested to the 2015 Order.
- (b) In respect of the HRA, the Secretary of State considers that the need for an HRA (and, if necessary, an Appropriate Assessment (AA”) and any further environmental information required to carry out that assessment) is not necessarily of itself determinative of whether an application to change a development consent order should be considered material. In the case of the Application, the Secretary of State has considered the potential impacts of the Development in its amended format on the Teesmouth and Cleveland Coast Special Protection Area, on the Flamborough and Filey Coast Special Protection Area and on the Southern North Sea Special Area of Conservation.

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

The HRA was undertaken because these sites were either newly designated (in the case of the Southern North Sea Special Area of Conservation) or recently classified (in the case of the Flamborough and Filey Coast Special Protection Area) or had had its boundaries extended (the Teesmouth and Cleveland Coast Special Protection Area). Further information about the Habitats Regulations Assessment is set out in paragraphs 16 to 22 below.

The Secretary of State is also satisfied that the proposed changes do not bring about the need for a new or additional licence in respect of EPSs as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective.

- c) The proposed changes are in offshore areas and do not require any further compulsory purchase of land.
 - d) Given their location, the Secretary of State does not consider that the proposed changes would have any impacts on local people and businesses.
12. In light of his assessment of the matters included in the MHCLG guidance, the Secretary of State concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggests that the changes considered in this letter amount to a material change. He has also had regard to the effect of the changes, together with the previous changes made to the 2015 Order through the 2019 Amendment Order, and considered whether there are any other circumstances in this particular case which would lead him to conclude that the changes considered in this letter are material but has seen no evidence to that effect. The Secretary of State considers, therefore, that the Application should be treated as one for non-material changes under Schedule 6 to the Planning Act 2008.

Consultation and responses

13. In accordance with the requirements of regulations 7(1) to (3) of the Infrastructure Planning (Changes to, and Revocation of Development Consent Orders) Regulations 2011 specified parties were notified of the Application on 27 November 2019 and the consultation closed on 10 January 2020.
14. The Application was also published for two consecutive weeks in the local press and in Fishing News and made publicly available on the Planning Inspectorate's ("PINS") website, such that there was an opportunity for anyone not individually notified to submit representations to PINS as well.
15. The Secretary of State notes that responses to the initial consultation on the Application were received from: Historic England, the Crown Estate, the Maritime and Coastguard Agency, Natural England and the Marine Management Organisation. None of the responses raised any particular issues with the requested changes to the 2015 Order. However, in light of the ongoing Review of Consents and the Applicant's request for confirmation that the Dogger Bank Teesside A project would not fall within the scope of the proposed (at that time) Review of Consents for Special Protection Areas and to ensure consistency with the way BEIS had treated requests for non-material changes to be made to the Dogger Bank Creyke Beck A Order 2015 in respect of the Southern North Sea Special Area of Conservation, the Secretary of State decided to consult with the Applicant and others about these matters.

16. The Secretary of State's consultation letter was issued by PINS on 2 March 2020, accompanied by an HRA which had been undertaken to assess the effect of the Application on European sites. The consultation letter sought views on the HRA and also on the use of a Requirement in any amended development consent order that might be made to ensure there could be no adverse effect on the integrity of the Southern North Sea Special Area of Conservation before the conclusion of the Review of Consents. Further, the consultation letter asked for comments on 'other Natura 2000 sites' in addition to the Southern North Sea Special Area of Conservation and the Flamborough and Filey Coast Special Protection Area.
17. In response, the Applicant (in its letter of 17 March 2020) agreed with the conclusions in the consultation letter but suggested that the wording of the Requirement proposed by the Secretary of State should be amended to specifically link to piling activities. The Applicant provided revised wording for the Requirement to reflect its position.
18. In its response of 17 March 2020, Natural England agreed with the conclusions of the HRA and with the Secretary of State's proposed Requirement in respect of the Southern North Sea Special Area of Conservation. In respect of other Natura 2000 sites, Natural England stated that the boundaries of the Teesmouth and Cleveland Coast Special Protection Area had been re-defined and now overlapped with the landfall part of the export cable route for the Development. However, Natural England did note that the cable route was not affected by the changes requested by the Applicant. Natural England, therefore, did not, on the basis of the information available to it, anticipate any significant effects on the Teesmouth and Cleveland Coast Special Protection Area.
19. The Marine Management Organisation's response (also of 17 March 2020), agreed with the conclusions of the HRA and noted that the Dogger Bank Teesside A project would be included in the Review of Consents in respect of the Southern North Sea Special Area of Conservation was ready for the Development.
20. In light of Natural England's comments about the redefinition of the boundaries of the Teesmouth and Cleveland Coast Special Protection Area and the potential impact of the Application on the SPA, the Secretary of State issued a further consultation letter on 31 March 2020 asking the Applicant to provide further information to allow him to consider the matter properly before taking a decision on the Application.
21. The Applicant responded on 16 April 2020, concluding that the changes requested by the Applicant would not have a likely significant effect on the Teesmouth and Cleveland Coast Special Protection Area. The Secretary of State sought further information from the Applicant which was submitted on 21 April 2020. The information provided satisfied the Secretary of State that there would not be any likely significant effect on the Teesmouth and Cleveland Coast Special Protection Area from the Dogger Bank Teesside A project, including requested changes to the 2015 Order.
22. In conclusion, having considered the responses to the consultation exercises conducted with the Applicant and others, the Secretary of State is satisfied that the changes to the 2015 Order requested by the Applicant:
 - are not likely to have an adverse effect on the Flamborough and Filey Coast Special Protection Area either alone or in combination with other plans or projects;

- are not likely to have a significant effect on the Teesmouth and Cleveland Coast Special Protection Area either alone or in combination with other plans or projects;
- and, subject to the inclusion of the Secretary of State's proposed Requirement to protect the Southern North Sea Special Area of Conservation, would not have an adverse effect on the integrity of that site either alone or in combination with other plans or projects.

General Considerations

Environmental Impact Assessment

23. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in the Environmental Statement for the development authorised by the 2015 Order.
24. 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.
25. 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 2015 Order and as such considers that there is no requirement to update the Environmental Statement.
26. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

The Equality Act 2010

27. The Equality Act 2010 includes a public sector equality duty. The duty 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.
28. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010 and is satisfied that there is no evidence that granting the Application would adversely affect the achievement of those objectives.

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

Human Rights Act 1998

29. The Secretary of State has also considered whether the Development in its amended form has the potential to infringe human rights in relation to the European Convention on Human Rights. The Secretary of State considers that the grant of an amended development consent order would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

30. In accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, the Secretary of State 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 considers that biodiversity has been considered sufficiently in the Application and the proposed amendment accords with this duty.

Habitats Regulations

31. 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") and the Conservation of Offshore Marine Habitats and Species Regulations 2017 ("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 those Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations and regulation 28 of the Offshore Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if he has ascertained that it will not adversely affect the integrity of a Natura 2000 site.
32. As indicated above, the Secretary of State undertook an HRA which considered the potential impacts of the Application on Natura 2000 sites – the Teesmouth and Cleveland Coast Special Protection Area, the Flamborough and Filey Coast Special Protection Area and the Southern North Sea Special Area of Conservation. The conclusion of the HRA is that the Development resulting from a decision to approve the changes to the 2015 Order requested in the Application would not have a likely significant on any Natura 2000 site and therefore no Appropriate Assessment is needed.

Modifications to the Amendment Order

33. In addition to the modifications to the draft Order submitted by the Applicant, the Secretary of State has included the Requirement that is designed to limit the impact of the Teesside A project on the interest features of the Southern North Sea Special Area of Conservation (Harbour porpoise). While the Applicant sought to limit the activities covered by the Requirement, so that only piling would be caught, the Secretary of State takes the view that any offshore activity has the potential to have an Adverse Effect on the Integrity of the Southern North Sea Special Area of Conservation and the provision should not, therefore, be limited to piling. The

wording proposed by the Secretary of State is consistent with the wording used in other Orders when agreeing amendment orders for other offshore wind farm projects.

Secretary of State's conclusions and decision

34. 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 for the UK to meet its energy and climate change objectives, there is a continuing need for the new electricity generating plants of the proposed by the Applicant given the contribution it will make to securing energy supply. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.
35. The Secretary of State has considered the nature of the proposed changes, noting that they would not result in any further environmental impacts and will remain within the parameters consented by the 2015 Order. He concludes that the proposed changes are not material. Having considered the effects of any change and the benefits of the change in facilitating the deployment of the authorised development, the Secretary of State has concluded that it would be appropriate to authorise the proposed changes as detailed in the Application.

Challenge to the Secretary of State's Decision

36. 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.

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 Amendment 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/?ipcsection=docs&stage=7&filter1=Non-Material+Change&filter2=NMC+application+for+Teesside+A>

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)