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Dear Ms Gauld-Clark and Mr Wilson,

PLANNING ACT 2008

APPLICATION BY DOGGERBANK OFFSHORE WIND FARM PROJECT 3 PROJCO LIMITED AND SOFIA OFFSHORE WIND FARM LIMITED FOR A NON-MATERIAL CHANGE TO THE DOGGER BANK TEESSIDE A AND B ORDER 2015

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 jointly by Sofia Offshore Wind Farm Limited and Doggerbank Offshore Wind Farm Project 3 Projco Limited (together "the Applicants") on 13 May 2020 for a change which is 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 by the Forewind consortium on 28 March 2014 and was granted development consent on 4 August 2015. Consent was granted for the construction and operation of two offshore wind farms of up to 1,200MW each with associated offshore infrastructure, on the Dogger Bank in the North Sea and export cables with a landfall at Marske-by-the Sea and associated onshore works to enable export of the electricity generated 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 former Forewind consortium: the Dogger Bank Teesside A project is now operated by Dogger Bank Offshore Wind Farm Project 3 Projco

Limited ("Projco"); and Dogger Bank Teesside B is operated by Sofia Offshore Wind Farm Limited ("Sofia").

4. On 25 March 2019 the Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) Order 2019 increased the permitted generating capacity of the Sofia offshore wind farm to 1.4GW, increased the permitted maximum diameter of the rotor blades and the use of monopole foundations for one of the Works authorised by the 2015 Order.

5. On 11 August 2020 the Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) Order 2020 removed the cap on the generating capacity of the Teesside A offshore wind farm, and increased the permitted maximum diameter of the rotor blades.

6. The Applicants are now seeking consent for changes to:

    i. Certain works to be carried out on a project-specific basis by the relevant undertaker;

    ii. Certain works to be carried out for both projects on a shared basis by one undertaker on behalf of the other;

    iii. Certain works to be carried out on a project specific basis by the relevant undertaker or for both projects on a shared basis by one undertaker on behalf of the other;

    iv. Sharing of onshore project cable corridors in certain identified sections where construction efficiency gains can be realised;

    v. A single chamber to be constructed for both projects at one rail crossing; and

    vi. To allow High Voltage Alternating Current cables to be laid in a trefoil formation to constitute a single cable for the purposes of the original Order.

7. The Applicants have also proposed a number of changes to aid clarity in reading the Order, several drafting corrections to the Order (for instance correcting the wrong date or the reference to "plans" when there is only one relevant plan), as well as adding a stipulation to allow ports to serve the construction of "all or part" of the wind farms. Changes are also proposed to amend two references in the works from High Voltage Direct Current ("HVDC") to High Voltage Alternating Current ("HVAC") cables, which were incorrect in the original Order.

Consideration of the materiality of the proposed change

8. 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 changes on the 2015 Order as originally made and as amended in 2019 and 2020.

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 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], makes the

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

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 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 development consent order; or

(d) whether the proposed change would 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.

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

(a) The Applicants supplied a document entitled 'Environmental Report' to Support Joint Non-Material Change Application: Dogger Bank Teesside A and Sofia Offshore Wind Farms (May 2020) which covers the changes to the onshore cabling works ("the Supporting Statement") and which provides further environmental information. This concludes that the changes proposed will not have any new or materially different likely significant effects from those already assessed in the original Environmental Statement for the 2015 Order. No information was provided in relation to the division of works between the two companies as this has no bearing on the environmental effects of the Project. In the light of the analysis supplied by the Applicants and the responses to the consultation, the Secretary of State concludes that an update to the Environmental Statement is not required.

(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.

The Secretary of State has concluded that, given the nature and impact of the changes proposed and the advice of Natural England, and the Marine Management Organisation, there will be no additional likely significant effects on any Natura 2000 site as a result of the change application. Therefore, the Secretary of State is satisfied that an Appropriate Assessment is not required.

(c) The proposed changes do not entail any new compulsory acquisition of land.

(d) The potential impacts on local people and businesses are no greater than those that arise from the development permitted by the 2015 Order as amended in 2019 and 2020.

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 proposed changes are material changes. He has had regard to the effects of the changes, together with the previous changes made to the 2015 Order through the 2019 and 2020 amendment Orders, and has also considered whether there are any other circumstances in this particular case which would lead him to conclude that the proposed changes are material, but has seen no evidence to that effect.

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

14. The Applicants publicised the application in accordance with regulation 6 of the 2011 Regulations and on 13 May 2020 consulted the persons required by regulation 7 of the 2011 Regulations, in the manner prescribed. The consultation was scheduled to end on 2 July 2020.

15. 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 website, such that there was opportunity for anyone not individually notified to submit representations to the Planning Inspectorate.

16. During the consultation it became clear that the email address given in both the consultation letters and the advertisements for submission of consultation responses to the Planning Inspectorate was no longer active and that emails being sent to that address were being bounced backed. On 29 May 2020 the address was reactivated and a banner was added to the Project's page on the Planning Inspectorate's website requesting the resubmission of any consultation responses already submitted. The deadline for the consultation was not altered.

17. Additionally, the Applicants became aware that some intended consultees had been left off the original consultation. These parties were contacted and were given until 17 July 2020 to respond to the consultation.

18. The Secretary of State is not aware that any parties have been unable to submit responses to the consultation as result of these errors.

19. Representations were received from 16 parties: Chrysaor, the Environment Agency, Historic England (including a response from its North East & Yorkshire office), the Marine Management Organisation, the Scottish Fishermen's Federation, one local resident, Natural England, Natural Resources Wales, the North Yorks Moors National Park Authority, North Yorkshire County Council, Shell, the Coal Authority, The Crown Estate, the Office of Rail and Road, and Trinity House. No objections to the proposed changes were raised by any of these parties. The Environment Agency highlighted the location of an authorised landfill site on or adjacent to the cabling works and asked the Applicant to ensure assessments have been carried to identify potential risks from landfill gas. Chrysaor flagged two potential drafting errors in the draft Order. These have been considered and it appears that they were a result of errors within the updated tracked change copy of the DCO provided by the applicant to assist in considering the amendments. The draft amendment order provided with the application correctly sets out the intended amendments.

20. The Secretary of State has considered the representations received in response to the consultation and does not consider that any further information needs to be provided by the Applicants or that further consultation of those already consulted is necessary.

Environmental Impact Assessment

21. 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 as amended by the 2019 and 2020 amendment Orders.

22. The Secretary of State is satisfied that the Supporting Statement provided by the Applicants is sufficient to allow him to make a determination on the application.

23. 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.

24. As there are no new significant effects or materially different environmental effects as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Habitats

25. 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 Natura 2000 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 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 Natura 2000 site.

26. The Secretary of State has considered the Supporting Statement submitted with the application, alongside the advice of Natural England, Natural Resources Wales and the Marine Management Organisation, and is satisfied that the application will not have a likely significant effect on any Natura 2000 site. The Secretary of State is satisfied that there is sufficient evidence to conclude that the proposals do not alter the conclusions set out in the Environmental Statement and HRA for the 2015 Order, and will not have a likely significant effect upon any Natura 2000 site; and an Appropriate Assessment is therefore not required.

General Considerations

Equality Act 2010

27. 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.

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 this application will affect adversely the achievement of those objectives.

Human Rights Act 1998

29. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. 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

30. 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

31. 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.

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

32. The Secretary of State has considered the nature of the proposed changes, noting that it would have no additional significant environmental effects. He notes that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the 2015 Order as amended by the 2019 and 2020 Orders. 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 Development, the Secretary of State has concluded that it would be appropriate and advantageous to authorise the proposed changes as detailed in the application.

33. 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 Applicants are not a material change to the 2015 Order, and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the 2015 Order so as to authorise the changes detailed in the application.

Modifications to the draft Order proposed by the Applicant

34. Minor drafting changes have been made by the Secretary of State to the draft Order proposed by the Applicants. However, it is considered that the amendment proposed to Article 39 is not necessary, given the changes also made to the definitions in Article 2, and that Article 39 relates to the deemed marine licences issued under the Marine and Coastal Act 2009, rather than the marine licences as subsequently amended. There are also changes to correct cross-references in the draft Order at requirement 18(6) and (9) of Part 3 to Schedule 1 and the removal of the first amendment to requirement 35(1) which is unnecessary. The requirement for survey work in paragraph 35(1) is already described by the stages in the further amendments to that paragraph in the draft Order.

Challenge to decision

35. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

36. The Secretary of State’s decision on this application is being notified as required by regulation 8 of the 2011 Regulations.

Yours sincerely,

[redacted]

Gareth Leigh
Head of Energy Infrastructure Planning

ANNEX

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)