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Your ref: EN010056

7 August 2017

Dear Mr Morrison

**PLANNING ACT 2008  
DEVELOPMENT CONSENT APPLICATION – EAST ANGLIA THREE  
OFFSHORE WIND FARM**

**1. Introduction**

1.1. 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 report dated 28 March 2017 of the panel of four Examining Inspectors (“the Examining Authority”) led by Philip Asquith, on the application dated 15 December 2015 (“the Application”) by East Anglia THREE Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for East Anglia THREE Offshore Wind Farm (“the Development”); and
- representations received by the Secretary of State in respect of the Application.

1.2. The examination of the Application (“the Examination”) began on 28 June 2016 and was completed on 28 December 2016. The Examination was conducted on the basis of written evidence submitted to the Examining Authority, accompanied site inspections on 28 June and 6 September

2016 and hearings on 29 June, 2 September, 8 September, 25 October and 26 October 2016.

1.3. The Order, as applied for, would grant development consent under the 2008 Act for the construction and operation of an offshore wind farm, situated approximately 69km from the coast of Suffolk in Lowestoft at its closest point to land, consisting of up to 172 wind turbine generators and a gross electrical output of up to 1,200MW. The Development would also comprise the following:

- up to one accommodation platform;
- up to two meteorological masts;
- up to twelve buoys;
- a network of inter-array sub-sea cables;
- a sub-sea electrical connection between the proposed Development and the consented East Anglia ONE Offshore Windfarm project;
- up to six offshore electrical stations;
- a sub-sea electrical connection between the offshore electrical stations, and from those electrical stations to a landfall at Bawdsey Cliffs;
- up to four transition bays;
- an underground electrical connection comprising up to four circuits (each with up to three cables) pulled through ducting which would be pre-laid pursuant to the East Anglia ONE Offshore Windfarm Order 2014 (as amended);
- up to two new onshore substations housing electrical equipment located adjacent to the existing National Grid Substation at Bramford; and
- an underground electrical connection comprising up to four circuits pulled through pre-laid ducting or laid directly underground in the location of the proposed onshore substation(s) and the National Grid Substation.

1.4. Published alongside this letter on the Planning Inspectorate's website<sup>1</sup> is a copy of the Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the Report"). The Examining Authority's findings and conclusions are set out in the Report, and the Examining Authority's summary of findings and conclusions is at section 10. All numbered references in this letter in the form "[ER X.X]" are, unless otherwise stated, references to paragraphs of the Report.

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-anglia-three-offshore-wind-farm/>

## **2. Summary of the Examining Authority's Report and Recommendation**

2.1 The Secretary of State notes that the Report included findings and conclusions on the following principal issues:

- nature of development and relationship with 'the East Anglia ONE Offshore Wind Farm Order 2014 (as amended)', and other projects; including aggregate extraction sites and other offshore windfarm development;
- construction impacts;
- ecology – offshore;
- ecology – onshore;
- aviation and Ministry of Defence;
- marine processes (cable burial; marine water and sediment quality);
- navigation and marine;
- fish and fisheries;
- socio-economic impacts;
- visual, landscape and heritage impacts;
- the proposed Development Consent Order ("DCO");
- monitoring, mitigation and management plans; and
- compulsory acquisition.

2.2 The Examining Authority also considered the terms of the draft Order sought. For the reasons set out in the Report, the Examining Authority recommended that the Secretary of State grants development consent for the Development in the form of the Order set out in the Report [ER 10.2.1].

## **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 the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Planning Act 2008 and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations") which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

#### **4. Secretary of State's Consideration of the Application**

- 4.1 The Secretary of State has considered the Report, the representations made in respect of the Application and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs.
- 4.2 The Secretary of State has had regard to the National Policy Statements referred to in paragraph 4.4 below, the Local Impact Reports submitted by Suffolk County Council, Mid Suffolk District Council and Suffolk Coastal District Council, the relevant local plans and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making his decision, the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to the decision.
- 4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the Examining Authority as set out in the Report, and the reasons for the Secretary of State's decision are those given by the Examining Authority in support of its conclusions and recommendation.

#### **Need for the Proposed Development**

- 4.4 In making his decision, the Secretary of State has had regard to the Energy National Policy Statements ("NPS") EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure) which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The case for the Development is considered throughout the Report, and after considering in particular the Examining Authority's conclusions in paragraph ER 4.2.3 and 10.2.1, the Secretary of State is satisfied that the decision to make the Order would be consistent with the Government's policy objectives as set out in EN-1 and EN-3 and that there is a need for the Development.

#### **Ecology and Biodiversity**

- a) Habitats Regulations Assessment
- 4.5 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 Development is likely to have a significant effect, either alone or in

combination with other plans and projects, on a European site as defined in the Habitats Regulations. If likely significant effects (LSE) cannot be ruled out, then an Appropriate Assessment (“AA”) must be undertaken by the Secretary of State to address the implications for the site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if the Secretary of State has ascertained that the Development will not, either on its own or in combination with other plans and projects, adversely affect the integrity of a European site, unless there is no alternative solution and imperative reasons of overriding public interest apply.

- 4.6 European sites protected include Special Areas of Conservation (“SACs”) and candidate Special Areas of Conservation (“cSACs”) established under Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna (the “Habitats Directive”) and Special Protection Areas (“SPAs”) established under Council Directive 2009/147/EC on the conservation of wild birds (the “Wild Birds Directive”). As a matter of policy, Government also affords the same degree of protection to potential SPAs (pSPAs) and Ramsar sites designated under the Ramsar Convention.
- 4.7 The Examining Authority’s overall findings and conclusions in relation to the Habitats Regulations are found in section 6 of the Report.
- 4.8 A Habitats Regulations Assessment (HRA) report was submitted with the Application, which assessed the potential impacts of the Development on European Sites. This assessment was updated throughout the Examination to address several matters raised by the Examining Authority and the Interested Parties. In the Secretary of State’s view, the material provided during the Examination contains sufficient information to inform consideration under regulation 61(1) of the Habitats Regulations and regulation 25 of the Offshore Habitats Regulations as to the likely impact on the European sites, or other sites to which the same protection is applied as a matter of policy.
- 4.9 LSEs were identified for the following six sites. Of these, two are also protected under the Ramsar Convention.
  - i. Flamborough and Filey Coast pSPA (FFC pSPA)
  - ii. Flamborough Head and Bempton Cliffs SPA (FHBC SPA)
  - iii. Deben Estuary SPA and Ramsar
  - iv. Outer Thames SPA and pSPA
  - v. Alde-Ore Estuary SPA and Ramsar
  - vi. The Southern North Sea cSAC (SNS cSAC)
- 4.10 Having given consideration to the assessment material submitted during the Examination, the Secretary of State considers that LSEs cannot be excluded (alone and in-combination) due to the potential effects of:

- Bird collision risk
- Bird disturbance and displacement
- Marine mammal disturbance and displacement
- Marine mammal collision risk
- Marine mammal prey impacts.

4.11 The Secretary of State has, therefore, undertaken an AA to assess the implications for the six sites in view of their conservation objectives. The AA has considered the recommendation of the Examining Authority, which found that there would be no adverse effects on the integrity (“AEoI”) of the six European sites as a result of the Development alone and in-combination with other plans or projects. The AA has also taken account of the advice of the Statutory Nature Conservation Body (SNCB), which in this case is Natural England (NE)), and the views of the other Interested Parties.

4.12 The Secretary of State’s findings and AA conclusions are summarised below:

(i) Flamborough and Filey Coast pSPA

A LSE upon the gannet and kittiwake seabird interest features of the FFC pSPA was identified because of the potential for the Development alone and in-combination with other plans or projects to increase the risk of collision mortality during the operational phase. The Applicant undertook collision risk analysis to produce mortality estimates for the project alone and in-combination and discussed the results in the context of various population modelling outputs. On the basis of these projections the Applicant concluded that there would no adverse effects alone and in-combination.

Some of the parameters used in the Applicant’s assessment were disputed by the RSPB and NE including the Applicant’s reference to models used to assess the effect on each population. However, both parties’ overall concerns were reduced when a commitment was made by the Applicant to increase the draught height of 70% of the wind turbine generators by 2 metres. This, combined with the effect of a non-material amendment to the East Anglia ONE DCO (reducing the number of turbines from 240 to a maximum of 150), resulted in a smaller in-combination estimate of annual seabird collision mortalities. For both species, the revised worst case in-combination estimate is now just above that which was previously deemed acceptable for the Hornsea 2 offshore windfarm, a project for which a conclusion of no adverse effect on site integrity was reached. In view of the Development’s revised contribution to the in-combination total, NE stated that, “*while [it is] not de minimis, [it] is so small as to not materially alter the significance or the likelihood of an adverse effect on the integrity of the SPA.*”

The Secretary of State is satisfied that the Development alone and in-combination with other plans and projects will not represent an adverse

effect upon the integrity of the FFC pSPA. For this conclusion he acknowledges the limitations of the population models referred to in the Applicant's assessment, but has regard to their indicative outputs. He places particular weight on the Applicant's decision to raise the draught height of 70% of the wind turbine generators by 2m, together with the secured reduction of turbines at East Anglia ONE.

(ii) Flamborough Head and Bempton Cliffs SPA

A LSE upon the kittiwake feature of the FHBC SPA was identified because of potential for the Project, both alone and in-combination with other plans and projects, to increase the risk of collision mortality during the operational phase. The kittiwake feature of the FHBC SPA is included as a feature in the FFC pSPA and the conservation objectives are the same. NE stated in its relevant representation that its advice on the site is adequately captured through advice on the FFC pSPA. Therefore, on the basis of the analysis and conclusions reached for the FFC pSPA, the Secretary of State is satisfied that the Project, when considered both alone and in-combination with other plans and projects, will not have an adverse effect upon the integrity of the FHBC SPA.

(iii) Alde-Ore Estuary SPA and Ramsar

A LSE upon the lesser black-backed gull interest feature of the Alde-Ore Estuary SPA and Ramsar was identified because of the potential for increased collision risk from the Development alone and in-combination with other plans or projects. The Applicant modelled the potential increase in collisions and assessed this effect on the SPA's annual mortality rate. The Applicant concluded that the contribution of the Development was so small as to not materially alter the overall in-combination mortality figure or the likelihood of an adverse effect on the integrity of the Alde-Ore Estuary SPA and Ramsar site. NE and RSPB both concluded the Development alone and in combination would have no adverse effects on the integrity of the Alde-Ore Estuary SPA and Ramsar site. In view of the changes to draught height and the amended East Anglia ONE Order (as described in 4.12 (i)), the Secretary of State agrees with this conclusion.

(iv) Deben Estuary SPA and Ramsar

A LSE upon the dark-bellied brent goose interest feature of the Deben Estuary SPA and Ramsar was identified because of the potential for construction disturbance along the onshore cable route from the Development alone and in-combination with other plans or projects. However, the Secretary of State is satisfied that mitigation as specified in the Outline Landscape and Ecological Management Strategy and Requirement 21(3) of the DCO, minimises disturbance to such levels that a conclusion of no adverse effect on site integrity can be reached for the Development alone and in-combination with other plans or projects.

(v) Outer Thames SPA and pSPA

A LSE upon the red-throated diver interest feature of the Outer Thames Estuary SPA was identified because of the potential for disturbance from the Project alone and in-combination with other plans or projects to cause displacement of red-throated diver. However, the Secretary of State is satisfied best practice vessel control measures during construction and operation, as secured through conditions in the Deemed Marine Licences (DMLs), minimises disturbance to such levels that a conclusion of no adverse effect on site integrity can be reached for the Development alone and in-combination with other plans or projects.

(vi) Southern North Sea (“SNS”) cSAC

The SNS cSAC has been identified as an area of importance for harbour porpoise. At the time of Examination, the Southern North Sea cSAC had not been submitted to the European Commission for approval to designate. The site received Ministerial clearance on 30 January 2017. The Secretary of State notes that the criteria used for site selection, as assessed by the Applicant, has not changed since the close of Examination. Conservation Objectives have been updated, but final management measures for the site are yet to be published.

The Secretary of State has given consideration to the draft Conservation Objectives presented during the Examination and the updated Conservation Objectives that were made available after the Examination. The Secretary of State is satisfied that the changes made to the draft Conservation Objectives are non-material and, as such, the Secretary of State has determined that further consultation with Interested Parties is not required.

To inform the HRA, the Applicant assessed the potential impacts of underwater noise and collision on harbour porpoise and the impacts on harbour porpoise prey. The Applicant considered the potential for Permanent Threshold Shift (auditory injury) and mortality to occur from underwater piling noise but, in agreement with NE, a LSE was excluded on the basis of secured mitigation. Measures to prevent injury with use of best practice piling guidance, as advised by the relevant SNCB, will be delivered through the Marine Mammal Mitigation Protocol (“MMMP”), which is secured in the DMLs.

During the Examination, The Wildlife Trusts (“TWT”) and Whale and Dolphin Conservation (“WDC”) expressed concern in relation to the Applicant’s alone and in-combination assessment of harbour porpoise disturbance and displacement from underwater noise. However, it is noted that the Applicant has secured adequate mitigation in the DMLs to be delivered through the Site Integrity Plan (“SIP”). In the event that piling is proposed or used, a SIP must be submitted to the Marine Management Organisation (MMO) and the MMO must satisfy itself that it provides such mitigation as is necessary to avoid adversely affecting the integrity of the

cSAC. A draft SIP submitted by the Applicant puts forward a number of potential mitigation measures such as: a schedule to control piling events; the use of alternative foundation methodologies; and noise mitigation systems. NE considered that the approach set out in this document would allow for a conclusion of no AEol to be reached and both TWT and WDC welcomed the SIP as an approach to deliver mitigation. In the current absence of guidance on management measures from the SNCBs, the Secretary of State considers that the SIP will provide an appropriate framework for approving and securing any mitigation required post consent. On this basis, he concludes that there will not be an adverse effect on the integrity of the site alone and in-combination with other plans and projects.

Both WDC and TWT made a request to be named consultees on the final versions of the marine mammal mitigation documents. In response, the MMO - the discharging authority for such requirements – did not object in principle but considered that it is not necessary to specifically name such bodies within the relevant DMLs. Since the Applicant confirmed that it intends to consult TWT and WDC throughout the drafting process, the Secretary of State does not consider it necessary to provide further securities on the matter.

The Secretary of State is aware that the MMO expressed concern over who would be best placed to regulate scheduled piling across multiple offshore wind farm developments, and suggested that this was a decision to be made by the Secretary of State [REP5-008]. It was the ExA's view, that the MMO, as the regulatory body for marine activities in the seas around England, is the most appropriate body to regulate scheduled piling activities across multiple developments. The Secretary of State agrees with the ExA that the MMO would be the most appropriate body to regulate scheduled piling activities across multiple developments, should this mitigation measure be required.

(b) Effects on other protected Sites and Species

The Secretary of State notes that the Examining Authority considered a number of issues under the above heading. The Secretary of State agrees with the Examining Authority's recommendations, notably that:

- (I) The development will not have an adverse effect on the Orford Inshore recommended Marine Conservation Zone (rMCZ)
- (II) There remain limitations in the understanding and modelling of behavioural change on cetaceans from piling activities, acknowledging that the Applicant's assessment was undertaken to the satisfaction of NE.
- (III) The SIP and MMMP will provide a pathway to ensure appropriate mitigation measures will be in place to prevent significant effects on marine mammals.
- (IV) Cumulative auk displacement is not predicted to have a significant impact.

- (V) Cumulative collision risk to kittiwake, gannet and lesser-black-backed gull is not predicted to be materially different from that which will already be present from consented offshore windfarms in the North Sea.
- (VI) Measures secured in the DMLs are sufficient to conclude that red-throated diver displacement will not have a significant impact.
- (VII) The Development would not have an adverse effect on the Bawdsey Cliffs SSSI, the Flamborough Head SSSI, the Deben Estuary SSSI and the Suffolk Coast and Heaths SSSI.
- (VIII) The Applicant has undertaken sufficient ecological assessment for the onshore elements of the Development and that mitigation provided in the outline Code of Construction Practice and outline Landscape and Ecological Management Strategy is appropriate.

### Compulsory Acquisition Powers

4.13 The Secretary of State has considered the compulsory acquisition (“CA”) powers sought for land, permanent rights over land and powers for temporary possession of land, for the purpose of constructing, operating and maintaining the Development. The Examining Authority sets out their consideration of matters relating to CA in section 8 of the Report.

4.14 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The Examining Authority was satisfied that the statutory tests in section 122 are met [ER 8.16.2 and 8.16.6]. The Secretary of State agrees with the Examining Authority’s conclusions and reasoning on this matter.

4.15 The Examining Authority noted that the Applicant has secured by agreement the majority of the land required for the proposed Development. However, CA powers are sought over the whole Application site due to the number of third party interests [ER 6.2.1]. The Examining Authority also noted that although progress was being made by the Applicant on negotiating private agreements outside the CA process with a number of statutory undertakers, the Applicant requires CA powers to ensure it can deliver the Development if for any reason the interests in the Order land cannot be acquired through private agreements.

### *Adequacy of Funding*

4.16 The Examining Authority notes that the Applicant’s Funding Statement confirms that the Applicant has the financial resources required for the proposed Development, including the cost of acquiring any rights over land and the payment of compensation, and that therefore the Examining Authority was satisfied that the Applicant has the financial resources to

meet such a liability [ER 8.15.16]. The Secretary of State agrees with the conclusions of the Examining Authority and is satisfied that the resource implications in terms of CA and temporary possession obligations have been adequately met, and that the requirements of the 2008 Act and NPS in respect of funding are met.

### *Crown Land*

- 4.17 Section 135(1) of the 2008 Act provides that an order granting development consent “may include provision authorising the compulsory acquisition of an interest in Crown land only if (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and (b) the “appropriate Crown authority” consents to the acquisition. In the Application, the Applicant seeks powers to compulsorily acquire 3rd party interests in 5 plots of land which are Crown land [E.R. 8.8.2]. The Examining Authority records that during the examination, the Crown Estate confirmed its consent to the compulsory acquisition of interests in these five plots [8.8.11].
- 4.18 Section 135(2) of the 2008 Act provides that an order granting development consent may include any other provisions applying in relation to Crown land, or rights benefitting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision. The Examining Authority records that during the examination the Crown Estate confirmed its consent in relation to the inclusion of specified provisions within the DCO [E.R. 8.8.12] but the Examining Authority also queried the approach adopted by the Crown Estate in relation to the form of its consent to the inclusion of temporary possession powers and suggested further clarification may be necessary to confirm consent for other articles within the DCO which could potentially apply indirectly in relation to crown land. The Secretary of State has considered the consent provided by the Crown Estate and is satisfied that it is in substance sufficient for the purposes of section 135(2) and that no further express consent is required for the provisions contained within the DCO.

### *Section 132 (Special Category Land)*

- 4.19 The Examining Authority noted plots 1-7 of the Order land where the Applicant is seeking CA powers form part of the beach and foreshore at Bawdsey, and that this land is required to allow the pulling through of cables and for the repair, maintenance, renewal, replacement and removal of the cables once installed. Plots 1-7 are currently used for the purposes of public recreation and therefore fall within the category of “open space” to which section 132 of the 2008 Act applies. This requires the Order to be subject to special parliamentary procedure unless the Secretary of State is satisfied that the exemption applies. The exemption to the special parliamentary procedure for such special category land as set out in section 132(3) of the 2008 Act only applies if the Secretary of State is

satisfied that the relevant land will be no less advantageous than it was before to persons with interests in it and the public.

4.20 The Examining Authority's Report recorded that the owner of Plot 1 did not disagree with the Applicant's assessment which concluded that "...when burdened with these new rights these plots will be no less advantageous to persons in whom they are vested, other persons entitled to rights, and the public" [ER 8.10.3]. The Examining Authority's report also recorded that the owners of Plots 4 to 7 have confirmed that once the proposed works for the Development are completed, they did not anticipate that the 'open space' beach would be any less useful or subject to any more onerous restrictions than it is currently. The Examining Authority also noted that the ownership of Plots 2 and 3 is unknown, and that the Applicant's diligent inquiry had not revealed ownership of these plots [ER 8.10.5].

4.21 The Examining Authority concluded that section 132(2) of the 2008 Act was complied with [ER 8.10.6]. The Secretary of State is satisfied with the Examining Authority's conclusion and confirms that the exemption to the special parliamentary procedures set out in section 132(3) applies in this instance.

#### *Statutory Undertakers' Land*

4.22 The Secretary of State notes that the Order includes powers of compulsory acquisition in respect of statutory undertakers' land. Where a representation is made under section 127 of the 2008 Act and has not been withdrawn, the Secretary of State's power to grant such powers may be exercised only if the Secretary of State is satisfied of specified matters. The Secretary of State notes that the Examining Authority's Report records that at the close of the examination protective provisions had been agreed with all statutory undertakers and that there were no outstanding representations under section 127(1)(b) of the 2008 Act in respect of statutory undertakers' land [E.R. 8.9.6].

## **5. Other Matters**

### Environmental Permit and Abstraction Licences

5.1 In addition to development consent required under the 2008 Act, the operation of the proposed Development would be subject to an environmental permit and abstraction licences from the Environment Agency ("EA") to prevent adverse impacts on the environment and human health. The Secretary of State notes that an application for an environmental permit was submitted by the Applicant to the EA in parallel with the application for the Order, and that the Examining Authority recorded in the Report that no outstanding issues remained at the close of Examination that suggested approval from the EA would not be granted

[ER 4.8.13]. In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit and other licences will not be granted in due course.

### European Protected Species Licenses

5.2 The construction and operation of the Development would also be subject to European Protected Species (“EPS”) licences for marine mammals, great-crested newt and bats. In relation to harbour porpoise, the Examining Authority recorded that the MMO confirmed that “*based on available information and current evidence, the MMO could see no reason why an EPS licence would not be granted upon application*” [ER 5.2.91]. The DCO requires final pre-construction survey work to be undertaken to establish the presence of EPS, including a scheme of protection and mitigation measures if presence is demonstrated. While the need for a licence for other EPS was not raised by any Interested Party, the Examining Authority could not see any reason in principle why a licence would not be granted should one be required [ER 5.3.14; 5.3.21]. The Secretary of State agrees with the Examining Authority’s conclusion.

### Transboundary Impacts

5.3 Two screening exercises for transboundary impacts were undertaken by the Secretary of State for Communities and Local Government (“SoSCLG”) for the purposes of regulation 24 of the 2009 Regulations, the first following during the pre-application stage, and the second following the submission of the Application.

5.4 Following the first screening, SoSCLG concluded that significant effects were likely on the environment of Belgium, Denmark, France, Germany, Norway and the Netherlands. A notice was placed in the London Gazette on 25 January 2013 and the foregoing EEA states were notified. Netherlands indicated that it wished to participate in the Examination.

5.5 Following the second screening, SoSCLG reconsidered the pre-application transboundary screening decision, and all of the EEA States identified above were re-notified, with Sweden and Ireland additionally notified, and a notice was placed in the London Gazette on 16 March 2016. The Ministry of Infrastructure and Environment of the Netherlands (Rijkswaterstaat) registered to become an interested party to the Examination. Belgium responded in to confirm that it wished to be consulted on the Application, however in July 2016 the Brussels-Capital Region confirmed that it did not wish to participate in the Examination.

5.6 The Secretary of State notes that the Examining Authority took into account the representations made by Rijkswaterstaat during the Examination [ER 3.8.3]. Following the Examination, the Secretary of State received a representation from Prefecture du Nord which he has taken into account (see section 6 below).

## Water Framework Directive

5.7 Issues relating to the Water Framework Directive (“WFD”) were considered during the Examination. In particular, the Secretary of State notes that the Report records the EA’s view that, given the information contained within the Applicant’s WFD Compliance Assessment and the Applicant’s commitment to work with the EA post consent, the Development should comply with the Directive [ER 4.8.14]. The Examining Authority concluded that the water quality and resource issues and compliance with the WFD have been addressed adequately and meet the requirements of EN-1 [ER 7.3.6]. The Secretary of State agrees with the EA and the Examining Authority’s conclusions in these matters.

## Commercial Fisheries

5.8 The Secretary of State notes that a number of concerns relating to impacts of the Development on fishing have been addressed through Statements of Common Ground., He notes that the Examining Authority considered a number of issues including the following concerns:

- the assessment methodology employed by the Applicant did not explicitly account for the ability of fishing activity to co-exist in the vicinity of the Development;
- the cumulative assessment should take into account existing proposals and developments, not just future developments, which could limit fishing;
- the potential for snagging of fishing gear where cables are buried to 0.5m;
- the provision within the DMLs for trawl or drift net surveys should also include an over-trawlability survey to cover areas trawled on the offshore cable route and inter-array cables;
- increased activity on other fishing grounds arising from the cumulative displacement of fleets as a result of other wind farm developments and marine activities;
- the development would make certain areas un-fishable during construction and that these would remain so in its operational phase;
- impacts on fishing techniques and ability to fish safely over cable routes;
- additional restriction of already condensed available fishing grounds because of the provision of renewable energy and other schemes; and

- Mr Paul Lines sought assurances from the Applicant about the passage of the cable route through areas where he fished.

5.9 The Examining Authority noted that Norfolk County Council considered that the Environmental Statement (“ES”) appropriately and satisfactorily addressed issues which could affect Norfolk’s commercial fishing interests [ER 4.13.29], and that the Eastern Inshore Fisheries and Conservation Authority agreed with the methodologies used by the Applicant to assess impact on commercial fisheries and that with the mitigation measures included in the Order there would be no significant effects in Environmental Impact Assessment (“EIA”) terms on commercial fishing activity [ER 4.13.30]. The Examining Authority also recorded and that the MMO was of the view that sufficient surveys and reporting mechanisms would be secured through the dMLs to provide the information required to make informed decisions as to whether it would be safe to fish in a particular area [ER 4.13.31]. The Examining Authority recorded in its report that the Applicant appropriately responded to the concerns raised, and that it is satisfied with the adequacy of the Applicant’s assessment of impacts on commercial fisheries. The Examining Authority concluded that the requirements of NPS EN-3 as well as Governance Policy GOV2 of the East Inshore and East Offshore Marine Plans have been met, and therefore it does not consider there are any outstanding issues and potential impacts in relation to commercial fishing that would weigh against the granting of the Order [EN 4.13.33]. The Secretary of State agrees with the Examining Authority’s conclusion.

#### Suffolk Coast and Heaths Area of Outstanding Natural Beauty

5.10 EN-1 recognises the special status of Areas of Outstanding Natural Beauty and states that development consent can only be granted if the proposed development can be demonstrated to be in the public interest and consideration is given to:

- the need for the proposed development and impact on the local economy;
- cost and scope of alternative locations; and
- effects on the environment, landscape and recreational opportunities and the extent to which any detrimental effect could be moderated.

5.11 The Secretary of State notes that one third of the onshore cable corridor route passes through the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (“AONB”) which has been designated for its landscape and recreational value.

5.12 As discussed in paragraph 4.4 above, the Secretary of State agrees that there is a need for the Development and that it is consistent with the policy objectives set out in EN-1 and EN3. The Examining Authority also noted

that the onshore electrical transmission works were driven by two factors: 1) the agreed National Grid connection at Bramford; and 2) the intention that the cable route would utilise ducting provided as part of the consented East Anglia ONE project. The Examining Authority concluded that against this background it considered the Applicant's approach to alternatives to be a reasonable one. The Examining Authority also noted that no representations to suggest that the recreational attributes of the AONB would be materially affected [ER 4.11.3], and that any material impacts of the cable-laying operations would be short-lived and any residual impacts would be highly localised and small scale [ER 4.3.45]. The Secretary of State is satisfied with the Examining Authority's conclusion that there are no outstanding issues that would weigh against the Order being granted [ER 4.3.45].

### Onshore Heritage Assets

5.13 The Secretary of State notes that at the close of the Examination, there were outstanding objections from Suffolk Preservation Society ("SPS") relating to the visual impact of the proposed substation(s) on Tye Farm, Canes Farm and Bullenhall Farm heritage sites, as the proposed substation(s) would be visible from some of the views from these sites.

5.14 In weighing this impact, the Examining Authority considered whether the public benefit of the development in terms of renewable energy generation would outweigh the less than substantial harm to the significance of the heritage assets in line with the criteria set out in paragraph 5.1.14 of EN-1 and paragraph 134 of the National Planning Policy Framework. The Examining Authority concluded that the public benefit of production of energy from a renewable source did outweigh the less than significant harm to the settings of these heritage assets, and that therefore there are no matters in relation to onshore archaeological or cultural heritage that would weigh against the DCO being made [ER 4.4.20]. The Secretary of State agrees with the Examining Authority's conclusion on this matter.

### Socio-Economic Impacts

5.15 The Secretary of State notes that a range of issues related to socio-economic impacts were examined by the Examining Authority during its consideration of the Application.

5.16 The Examining Authority examined the disagreement on the skills content from the socio-economic assessment. The Examining Authority noted that by the end of the Examination, the Applicant and Interested Parties had reached agreement that a specific requirement in the proposed Order for the submission for a Skills Strategy for the Development was not necessary, as both the Applicant and Suffolk County Council would work in partnership to ensure that full benefits can be realised from the skills agenda for East Anglia projects in the local area [4.6.16].

- 5.17 The Secretary of State also notes that the Examining Authority considered the outstanding issue of an environmental fund raised by Suffolk Preservation Society and Little Bealings Parish Council. The Examining Authority considered that the East Anglia ONE project had not required an environmental fund, and that given the reduced nature of onshore works for the Development in comparison with the East Anglia ONE project and the significant environmental mitigation proposed through the use of underground cabling, an instigation of an environmental fund was not necessary [ER 4.6.18].
- 5.18 The Examining Authority therefore concluded that the Development complies with EN-1 in that any negative socio-economic impacts would not be significant enough as to weigh against granting the DCO [ER 4.6.20]. The Secretary of State agrees with the Examining Authority's conclusions in this matter.

## **6. Representations Received After the Close of the Examination**

- 6.1 The Secretary of State also received following correspondence after the close of the examination:
- an email dated 18 January 2017 addressed to the Planning Inspectorate from Suffolk County Council confirming that the discharged requirement documents for the East Anglia One project are available online;
  - a letter from Bond Dickinson LLP dated 16 March 2017 sent on behalf of East Anglia THREE Limited to the Planning Inspectorate proposing changes to the proposed Order so that it is consistent with amendments to legislation in the Housing and Planning Act 2016 to ensure the Order is consistent with current law; and
  - a letter dated 17 February 2017 addressed to the Planning Inspectorate from Prefecture du Nord which provided a summary of their public consultation which took place between 16 November 2016 and 16 December 2016. Prefecture du Nord confirmed the favourable opinion of the French authorities and made the following general comments:
    - that mitigation measures to protect bird and marine mammal species are included;
    - that communication with fishermen and the organisations that represent them should be maintained during the operational phase of the wind farm ;
    - that the cumulative impacts of activities in the North Sea should be taken into account; and

- that the impact of frequency interference on civil and military radars during the operation of the Development should be limited as much as possible.

6.2 The Secretary of State is satisfied that the matters referred to in the letter from Prefecture du Nord have all been appropriately addressed because:

- the Applicant has agreed in a number of Statement of Common Grounds with organisations representing the interests of fishermen, including the Comite Régional des Pêches Maritimes, that it will aim to maintain ongoing communication with all relevant sectors of the fishing industry during all stages of the Development including the operational stage;
- the ExA considered primary biodiversity issues and the potential impacts on marine mammals and offshore ornithology during the Examination. The Secretary of States agrees with the Examining Authority’s conclusion that the Development would not adversely affect any European sites, species or habitats [ER 10.1.1 (4)];
- cumulative impacts were considered as part of the EIA and HRA process, and the Secretary of State considers that the mitigation measures in the DMLs and provisions within the Order would mitigate against any significant environmental effects; and
- the Applicant conducted a Transboundary Impact Assessment in relation to Aviation and did not identify France as an EU Member State that would be affected by the Development. The Examining Authority concluded that the application adequately addressed civil and military aviation and defence interests in accordance with section 5.4 of NPS EN-1 [ER 4.16.11] and the Secretary of State agrees with this conclusion.

## **7. General Considerations**

### Equality Act 2010

7.1 The Equality Act 2010 includes 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 partnerships<sup>2</sup>; pregnancy and maternity; religion and belief; and race. The Secretary of State does not consider that the decision to grant consent would have significant differential impacts on any of the protected characteristics.

#### Human Rights Act 1998

7.2 The Secretary of State has considered the possible interference with human rights protected by the Human Rights Act 1998 by the Development and CA powers. The Secretary of State notes that the Examining Authority concluded that the proposed interference with human rights would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent. The Secretary of State agrees with the Examining Authority's rationale for reaching its conclusion, as set out in ER 8.15.1-8.15.4. The Secretary of State therefore considers that the grant of development consent would not violate any human rights protected by the Human Rights Act 1998.

#### Natural Environment and Rural Communities Act 2006

7.3 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 Examining Authority's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

### **8. Secretary of State's conclusions and decision**

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

8.2 The Secretary of State has therefore decided to accept the Examining Authority's recommendation in paragraph 10.2.1 of the Report to make the Order granting development consent and to impose the requirements recommended by the Examining Authority, but subject to the modifications described below.

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

## **9. Modifications to the Order**

9.1 In considering the recommended Order submitted with the Examining Authority's report, the Secretary of State has decided to make modifications to the Order. The principal modifications, and the reasons for them, are set out below:

- The definition of "maintain" in Article 2(1) has been amended to reflect the Examining Authority's intent, set out at ER 9.4.2, that the terms "remove, reconstruct and replace" should be limited to the parts of the authorised project specified in the definition. The Secretary of State considers that the definition recommended by the Examining Authority did not achieve this effect as it was drafted in inclusive terms.
- Article 19 and Schedule 6 have been amended to reflect post examination changes to compulsory purchase legislation brought about by the Housing and Planning Act 2016.
- Article 34 has been amended to remove the provision deeming requirements 11 to 31 and 36 to be imposed as if they were planning conditions under section 72 of the Town and Country Planning Act 1990. The Secretary of State considers it appropriate that those requirements are subject to the enforcement regime in the Planning Act 2008 and he does not consider that the deeming provision is necessary for the appeal mechanism applied by that Article to be effective.
- Condition 13(2) of the dMLs contained in Schedules 10 to 13 has been updated to reflect the change in status of the Southern North Sea cSAC since the end of the Examination and condition 13(3) has been removed. The Secretary of State considers that condition 13(3) is no longer necessary as the Southern North Sea cSAC now falls within the definition of a "relevant site" contained within the dMLs.

9.2 In addition to the above, the Secretary of State has made various changes to the recommended Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language); the removal of unnecessary material; changes in the interests of clarity and consistency; the correction of erroneous references and changes to ensure that the Order and the marine licences have the intended effect.

## **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 in Annex A 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.

11.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,

*Giles Scott*

Giles Scott, Head of Energy Infrastructure Planning and Coal Liabilities

## LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 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 Planning Court during the period of 6 weeks beginning with the day after the date when the Order is published (or, if later, the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published). The East Anglia THREE Offshore Wind Farm Order 2017 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/eastern/east-anglia-three-offshore-wind-farm/>

**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).**