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1 Tudor Street  
London  
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30 September 2022

Dear Ms Sibley,

**PLANNING ACT 2008  
APPLICATION FOR A NON-MATERIAL CHANGE TO THE EAST ANGLIA THREE  
(OFFSHORE WIND FARM) ORDER 2017 (SI NO. 2017/826) (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 East Anglia THREE Limited (“the Applicant”) on 18 August 2021 for changes which are not material to be made to the East Anglia THREE Offshore Wind Farm Order 2017 (as amended) (“the 2017 Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008. 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 granted consent on 7 August 2017 and gave development consent for the construction, operation, and maintenance of an offshore wind turbine generating station with a gross electrical output of 1,200 megawatts (“MW”) and up to 172 Wind Turbine Generators (“WTGs”) and associated infrastructure. The East Anglia THREE Offshore Wind Farm (Correction) Order 2018 was subsequently granted on 12 July 2018 to correct certain errors in the 2017 Order.
3. The Applicant submitted an application for a non-material change in 2019 to amend the maximum generating capacity of the East Anglia THREE Offshore Wind Farm from 1,200 MW to 1,400 MW. The East Anglia THREE Offshore Wind Farm (Amendment) Order 2019 was made on 6 June 2019. The Applicant submitted a further application for a non-material change in July 2020, in which amendments to the parameters of the WTGs were sought, including a reduction in the number of WTGs; an increase in the rotor and blade tip height; and a reduction in the number of offshore substations. The East Anglia THREE Offshore Wind Farm (Amendment) Order 2021 was subsequently made on 15 April 2021.

4. The Applicant is seeking consent for a change to the 2017 Order as amended by both the 2019 and 2021 Amendment Orders relating to the WTGs. This non-material change is sought to the 2017 Order to allow:
  - the removal of the stated gross electrical output capacity;
  - an increase in the maximum tip height of the WTGs from 262 m to 282 m (relative to Lowest Astronomic Tide (“LAT”));
  - an increase in the maximum rotor diameter of the WTGs from 230 m to 250 m; and
  - a reduction in the maximum number of WTGs from 121 to 100.

### **Summary of the Secretary of State’s decision**

5. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make non-material changes (“NMCs”) to the 2017 Order, so as to authorise the changes as detailed in the Application as well as to make his own changes to the 2017 Order to replace the postal address currently included in the text of Requirement 33 with the new postal address of the Defence Infrastructure Organisation Head Office that has been relocated and to amend the location of the Remote Radar Head (“RRH”) from Trimingham to Neatishead to reflect the new location of the RRH. This letter is notification of the Secretary of State’s decision in accordance with regulation 8 the 2011 Regulations.
6. The Secretary of State has given consideration as to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the development consent order (“DCO”) as originally made.
7. 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.
8. 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 Department for Levelling Up, Housing and Communities), the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)<sup>1</sup>, which makes the following points:
  - (a) given the range of infrastructure projects that are consented through the Planning Act 2008, 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;
  - (b) however, 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:
    1. whether an update would be required to the Environmental Statement (“ES”) (from that at the time the 2017 Order was made) to take account of new, or materially different, likely significant effects on the environment;

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

2. 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”);
  3. whether the proposed change would entail compulsory acquisition of any land that was not authorised through the 2017 Order; and
  4. whether the proposed change would have a potential impact 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).
- (c) 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.
9. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (a), (b), (c) and (d) above.
- (a) The Secretary of State notes that the information supplied supports the Applicant’s conclusions that there are no new, or materially different, likely significant effects from those assessed in the Environmental Statement. In light of the analysis supplied by the Applicant and responses to the consultation that have raised no outstanding concerns regarding environmental issues, the Secretary of State has, therefore, concluded that no update is required to the Environmental Statement (including the Seascape section of the Environmental Statement) as a result of the proposed amendment to the 2017 Order.
  - (b) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied that there is not likely to be a significant effect on any protected sites either alone or in combination with any other plans or projects as a result of the proposed change and therefore an Appropriate Assessment is not required. He is also satisfied that the proposed change does 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 than those assessed for the original application.
  - (c) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
  - (d) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts in relation to seascape and landscape and visual, commercial fisheries, and shipping and navigation and therefore the proposed amendment will not affect local onshore or offshore stakeholders already assessed in the Environmental Statement.
10. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggests that the changes considered in this letter is a material change.
11. The Secretary of State is therefore satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.
12. The Secretary of State has also considered whether the change sought through this Application will have any potential impacts on European Sites in EU Member States. Noting that there will be no Likely Significant Effects on any National Network Sites. He has concluded that there is no route whereby sites in EU Member States may be impacted by the change.

## Consultation and responses

### 13. The Applicant:

- a) undertook informal pre-application consultation with the Marine Management Organisation, the Environment Agency, Suffolk County Council, Mid Suffolk Council, East Suffolk Council, the Civil Aviation Authority, The Crown Estate, Historic England, Natural England, Royal Society for the Protection of Birds, Whale and Dolphin Conservation, The Wildlife Trusts, the Maritime Coastguard Agency, the Ministry of Defence, National Air Traffic Services (“NATS”) Safeguarding, the National Federation of Fishermen’s Organisations and Trinity House in order to brief consultees on the nature of the proposed amendments. Only the Environment Agency confirmed it would not require consultation as there will be no change to the impacts previously assessed;
- b) publicised the Application in accordance with regulation 6 of the 2011 Regulations, the Application was also published for two successive weeks in the local press and copies of the regulation 6 notice and the Application were made publicly available on the Planning Inspectorate’s website, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate;
- c) published the Application documents on the ScottishPower Renewables website;
- d) provided access to electronic copies of the Application documents (hard copies were available upon request); and
- e) provided the application to the ScottishPower Renewables nominated Fisheries Liaison Officer for communication to the fishing community.

14. Representations were received from: the Civil Aviation Authority, Ministry of Defence, NATS Safeguarding, Natural England, East Suffolk Council, the Marine Management Organisation, the Maritime Coastguard Agency, Trinity House, the National Federation of Fishermen’s Organisations, Suffolk County Council, Mid Suffolk and Babergh District Councils, Historic England, Martlesham Parish Council, and The Crown Estate. The Civil Aviation Authority, and National Federation of Fishermen’s Organisations had no comments to make in their response. The Royal Society for the Protection of Birds confirmed that due to other commitments, they were unable to comment on the NMC Application. The Secretary of State’s responses to the issues raised by consultees are outlined in the following paragraphs.

#### Natural England

15. Natural England agrees that, as presented, the proposals are unlikely to result in any new or materially different likely significant effects/significant impacts from those described in the original Environmental Statement. Therefore, it has no nature conservation concerns with the proposed NMC. Natural England also welcomed the provision of Appendix A which provides annual collision estimates calculated using the Band (2012) Collision Risk Modelling using parameters for the consented turbine models, and provides outputs based on both Band model option 1 and 2; and the amended DCO/Deemed Marine Licence. The Secretary of State notes Natural England’s response.

#### East Suffolk Council

16. East Suffolk Council (“ESC”) has no objection to the non-material amendment sought by the Applicant and recognises the significant role offshore wind has in helping the UK to achieve the Government’s net zero target on greenhouse gas emissions by 2050. It also welcomes the fact that the Applicant is seeking to remove the maximum stated electrical output capacity of the project and would like to see this output maximised when the project is operational and not reduced. ESC has already had experience of a non-material change in

relation to East Anglia One Offshore Wind Farm, which resulted in a reduction in the capacity of the scheme. Although the electrical output of the East Anglia One scheme was reduced by over one third, this did not result in one third reduction in the size and scale of the onshore infrastructure. Local communities have had to accept the same level of impact for a lower amount of electricity generation. ESC therefore fully supports maximising the electricity generation from the infrastructure consented and would urge the Applicant to ensure the existing connection agreement for the project does not comprise a constraint to this.

17. ESC notes that although the number of offshore turbines has been significantly reduced over the three amendments sought to the East Anglia Three project, there has not been a similar reduction in the size and scale of the onshore infrastructure. It is hoped that alongside the improvements in the efficiency of offshore turbines, the Applicant will seek to maximise any opportunities for improvements in the onshore converter station technology which would reduce the overall scale and size of the development. It is understood that this may be realised through the discharge of requirements process, but this is a matter which will affect the local community and therefore the ESC considers it is important to raise.
18. ESC also notes the Secretary of State's recent decision in relation to the East Anglia ONE Offshore Wind Project NMC, and confirmation that a NMC utilising the originally approved parameters, cannot be used to increase the size or number of turbines. It assumes that the Secretary of State will take the same approach to this NMC.
19. The Secretary of States notes the point raised by ESC and considers that despite the reduction in size proposed in this application, it is not relevant for the Secretary of State to adopt the same approach as he took to the NMC for East Anglia ONE Offshore Wind Farm Project as that non-material change affects a 'built out' windfarm, not one under construction, as is the case here.

#### Suffolk County Council

20. Suffolk County Council ("SCC") confirmed that having given particular consideration to the findings of Suffolk Seascape sensitivity to offshore wind farms (October 2020) and the OESA Review and Update of Seascape and Visual Buffer study for Offshore Wind farms (March 2020), both prepared by White Consultants, that it is satisfied that, given the separation between the Suffolk Coast and Heaths Area of Outstanding Natural Beauty and the project, the proposed amendments will have no significant adverse effects on the AONB or the landscape of the Suffolk coast more widely. SCC deferred to Natural England in regard to ecology. The Secretary of State notes SCC's comments.

#### Mid Suffolk and Babergh District Council

21. The Mid Suffolk and Babergh District Council confirmed that they are satisfied that the proposed changes are unlikely to materially affect the extent of the development within the Mid Suffolk district or Mid Suffolk communities directly.

#### Martlesham Parish Council

22. Martlesham Parish Council notes the non-material amendments but wishes any approval of works should not lead to additional or further disturbance to Martlesham residents, particularly those close to the onshore cable routes. The Secretary of State notes the Parish Council's comments.

#### NATS Safeguarding

23. In its consultation response dated 14 October 2021 NATS objected to the NMC application as it considered that the East Anglia Three turbines would be visible on its radar on occasion and would cause *"an unacceptable degradation to [NATS'] ability to provide a safe and expeditious air traffic service in the airspace above the windfarm."*

24. On 13 June 2022, NATS wrote to the Planning Inspectorate stating that suitable planning requirements and the implementation of an identified and defined mitigation solution had been agreed between the Applicant and NATS. As such, NATS were prepared to withdraw their previous objection to the Application on the condition that the following Requirement be included in the Development Consent Order:

*“38 - (1) No erection of any wind turbine generator forming part of the authorised development may commence until the Secretary of State, having consulted with NATS, has confirmed satisfaction in writing that appropriate mitigation will be implemented and maintained for the required period and that arrangements have been put in place with NATS to ensure that the approved mitigation is implemented and in operation prior to erection of the wind turbine generators.”*

The Secretary of State has included the Requirement in the 2017 Order and consequently is satisfied that NATS concerns regarding interruption of its radar systems have been resolved.

#### The Crown Estate

25. As the changes relate to increase in tip height and rotor diameter of wind turbine generators, a reduction in maximum number of turbines and removal of stated gross electrical output capacity, The Crown Estate does not have any objection to the proposed changes to the 2017 Order. The Secretary of State notes The Crown Estate's comments.

#### Trinity House

26. Trinity House confirmed that it has no objection to the NMC application.

#### Historic England

27. Historic England considered that as the proposed changes have been assessed in reference to potential environmental impacts, and that it has been determined that there will be no change in the significance of any effects, as included within the Environmental Statement prepared in support of the original DCO application, that it has no further comment to offer. The Secretary of State notes Historic England's comments.

#### Ministry of Defence

28. MOD confirmed it maintains no safeguarding objection to this non-material amendment application subject to the retention of Requirements 32 and 33 in any amended Order that may be issued for this development. Since 2017 Order was last revised the Defence Infrastructure Organisation Head Office has been relocated, and it has been requested that all references to the “Defence Infrastructure Organisation Safeguarding” included in the 2017 Order should be amended to replace the postal address currently included in the text of Requirement 33 with the new postal address provided. The Secretary of State notes MOD's comments regarding the retention of Requirements 32 and 33 in any amended Order and will amend the 2017 Order to show the new postal address.

#### Marine Management Organisation (MMO)

29. The MMO had no major objections to the proposed non-material changes provided that the Applicant reviewed MMO's comments to the consultation and provided additional supporting information regarding the impacts of potential increased electromagnetic field (EMF) emissions in relation to the effects EMF may have on the benthos (and other receptors) that has not been considered in the supporting documents. The MMO also highlighted concerns that the removal of the wording ‘with a gross electrical output of up to 1,400 MW’ suggests potential significant increases in the maximum output and subsequent implications for EMF emissions. The Secretary of State notes the comments of the MMO and that the Applicant met with the MMO to discuss these concerns and it was agreed a summary of the discussion was included in the Applicant's consultation response report. The Secretary of State is satisfied that the MMO's concerns have been addressed by the Applicant in regard to these matters.

## Maritime Coastguard Agency (MCA)

30. The MCA raised no concerns with regards to the proposed NMC, however, the MCA did confirm that the change in the turbine layout design (as agreed with the Applicant in February 2021) will need to be discussed and agreed with the MCA. In its consultation report response, the Applicant indicated that it will continue to engage with the MCA as the design progresses to ensure any changes to the WTG layout design are discussed and agreed with the MCA. The Applicant also acknowledges that updates to the Emergency Response Cooperation Plan (“ERCoP”) will be made where appropriate once a decision has been made with respect to the non-material change Application. The Secretary of State notes the proposed actions to address the Applicant’s ongoing engagement with the MCA.

## **Environmental Impact Assessment**

31. 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 2017 Order.
32. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow him to make a determination on the Application.
33. The Secretary of State has considered all relevant information provided and the comments 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 2017 Order and as such considers that there is no requirement to update the Environmental Statement.
34. 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.

## **Habitats**

35. 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”). 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 protected 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 the protected sites within the National Site Network.
36. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposals do not alter the conclusions set out in the Environmental Statement and Habitats Regulations Assessment for the 2017 Order and the Application will not have a likely significant effect on any protected sites within the National Site Network and no Appropriate Assessment is therefore required.

## **General Considerations**

### Equality Act 2010

37. 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 unlawful 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; sex and sexual orientation; gender reassignment; disability; marriage and civil partnership;<sup>2</sup> pregnancy and maternity; religion or 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.

38. 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 changes considered in this letter will affect adversely the achievement of those objectives.

#### Human Rights Act 1998

39. The Secretary of State has considered the potential for the proposed changes to the Development to infringe upon human rights in relation to the European Convention on Human Rights. The Secretary of State considers that the grant of the changes considered in this letter would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

#### Natural Environment and Rural Communities Act 2006

40. 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 Application considers biodiversity sufficiently to accord with this duty.

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

41. 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 (EN-3) both set out that for the UK to meet its energy and climate change objectives, there is continuing need for new electricity generating plants of the type proposed by the Applicant. The Secretary of State considers, therefore, that the ongoing need for the project is established 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). Additionally, the British Energy Security Strategy published on 7 April 2022 states that the UK Government intend to deliver up to 50GW of new offshore wind by 2030.
42. 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 Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. 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. The Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) which were ratified by Parliament in 2011 still carry a presumption in favour of offshore wind and this presumption has been carried into the draft

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

National Policy Statements which were issued for consultation in September 2021. The Secretary of State considers that the existing and draft National Policy Statements and the support in the British Energy Security Strategy provide a strong basis for determining that the Application should be granted.

43. The Secretary of State has considered the point raised by ESC regarding his recent decision in relation to the East Anglia ONE Offshore Wind Project NMC, and confirmation that a NMC utilising the originally approved parameters, cannot be used to increase the size or number of turbines. ESC had assumed that the Secretary of State will take the same approach to this NMC. The Secretary of State has noted the point raised by ESC and considers that despite the reduction in size proposed in this application, it is not relevant for the Secretary of State to adopt the same approach here as to the NMC for East Anglia ONE Offshore Wind Farm Project as that non-material change relates to a 'built out' windfarm development, not one under construction as is the case here.
44. The Secretary of State has considered the nature of the proposed change, noting that the proposed change to the Development would not result in any further environmental impacts and will remain within the parameters consented by the 2017 Order.
45. For the reasons given in this letter, the Secretary of State considers that the benefits of the Development continue to outweigh any adverse effects and there is a compelling case for authorising the proposed change to the 2017 Order with the amendments set out below. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the 2017 Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the 2017 Order so as to authorise the change detailed in the Application.

#### **Modifications to the draft Order proposed by the Applicant**

46. In addition to the modifications to the draft Order submitted by the Applicant, the Secretary of State has made his own modification to the Order to reflect the fact that since the Order was last amended, the Defence Infrastructure Organisation Head Office has been relocated and all references to the "Defence Infrastructure Organisation Safeguarding" included in the Order have therefore been amended to replace the postal address currently included in the text of Requirement 33 with the new postal address provided.
47. The Secretary of State made a further modification to articles 33(1) and 33(2)(a) of the Order to amend the location of the RRH from Trimingham to Neatishead to reflect the new location of the RRH. The Secretary of State received confirmation from the Defence Infrastructure Organisation on 21 September 2022 and confirmation from the Applicant on 29 September 2022 that there were no objections to this amendment.

#### **Challenge to decision**

48. 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**

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

Yours sincerely,



Gareth Leigh

## **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/eastern/east-anglia-three-offshore-wind-farm/?ipcsection=docs&stage=7&filter1=Non-Material+Change&filter2=NMC+3>

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)