

PLANNING ACT 2008

**INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**WRITTEN REPRESENTATIONS REGARDING THE ORSTED
(HORNSEA PROJECT THREE OFFSHORE WIND FARM THREE
PROJECT)**

DEVELOPMENT CONSENT ORDER

PLANNING INSPECTORATE REFERENCE NO EN010080

**WRITTEN STATEMENT OF
NATIONAL FARMERS UNION AND
THE HORNSEA THREE AGENTS**

DATE OF STATEMENT: 2nd November 2018

1 Introduction

1.1 This is the Written Representations of the National Farmers Union (“NFU”) and the Hornsea Three Agents (agents acting for NFU members and their clients on this project.) The agents represented are Savills, Strutt & Parker, Bidwells, Irelands, Brown & Co and Cruso & Wilkin (henceforth known as the Land Interest Group (LIG) to the application for a Development Consent Order by the Secretary of State for Transport identified as the Hornsea Project Three Offshore Wind Farm Project order.

1.2 The objectives of the NFU are to champion farming in England and Wales and to provide professional representation and service to its members.

1.3 The matters raised in this Written Representation are matters not only of concern to the farming owners of agricultural land affected by this DCO, but also of concern to, and raise points of principle that will affect, members of the NFU having farm holdings that may be affected by similar Offshore Wind Farm schemes.

2. Details of Landowners

2.1 As noted above this written representation is made by the NFU and Hornsea Agents on behalf of a considerable number of landowners and occupiers affected by the proposed scheme.

2.2 Details of which landowners and occupiers are represented by which firm of land agents and NFU membership can be provided on request.

2.3 This written representation does though focus on certain key issues which will affect all landowners.

3.0 Consultation and Engagement

3.1 There was a lack of constructive and proactive face to face meetings with Orsted and their agents. Some meetings have been held but the detail required by landowners had not been available. For example details on timings of construction to be able to understand the impact on the cropping rotation of the farm or the commercial shoot over the winter months. Therefore it was not possible to discuss all aspects of the scheme until the end of August/beginning of September 2018.

3.2 Orsted and their agents have been meeting LIG but due to the lack of specific information available earlier in the year progression in negotiations on a voluntary basis has only happened in the last three months.

3.3 It is only now that Heads of Terms are finally being agreed as at 31st October 2018. As yet Heads of Terms have not been sent out for signing.

3.4 Orsted has only recently sent out a draft option and lease to the agents. The NFU had requested to see the documents at numerous meetings. The draft option was sent out on 1st October 2018 and the draft lease on the 15th October 2018. It is imperative that the NFU and agents acting (LIG) see these documents to make sure that the terms are reasonable and reflect the Heads of Terms agreed to date.

3.5 The time period where incentive payments are offered must be long enough for LIG to look at the terms offered in detail and negotiate. Orsted must not force the hand of landowners.

4.0 Compulsory Acquisition and Compelling Case Requirement

4.1 The DCO will contain powers to acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate or is incidental to it.

4.2 Further, the guidance as to negotiations either before or parallel with formal processes may well give rise to a "legitimate expectation" that such will occur, and a failure to conduct such negotiations deprives landowners of the benefit that negotiations may have brought, especially in relation to where different locations and lesser rights might have been achieved.

4.3 The NFU and the land agents LIG believe that meaningful negotiations have only taken place in the last three months alongside the formal procedures for compulsory purchase.

5.0 HVAC v HVDC Cables

5.1 It was made clear at the statutory consultation carried out at the end of November 2017 that Orsted would be applying for a DCO on both HVAC and HVDC cables. This will involve building a booster station or converter substation.

5.2 It has been highlighted that the use of DC technology for offshore windfarms is still maturing and that there are certain risks by only taking forward DC technology. If Orsted could confirm that they were taking forward DC technology

this would greatly reduce the impact on land operations and farm businesses as the easement width required will be less and it is likely that no link boxes will be required. Landowners and their agents have been asking for information from Orsted to confirm why they cannot use DC technology and the only reasons forthcoming have been cost, risk and the length of the scheme. There is confusion out there with landowners as another developer Vattenfall who are also proposing a NSIP project the Norfolk Vanguard and Boreas Cable Project have confirmed that they will be using DC technology.

6. Construction and Funding

6.1 Orsted have stated that they will need at least 8 years to lay all the cables and that this would be carried out in two phases. Orsted first stated that construction works of two phases of two and half years with a three year gap in between would be required and if the project was constructed in one phase with high intensity it has been stated that it would be possible to do this with a minimum duration of three years. Further to negotiations Orsted have now confirmed that they will use reasonable endeavours to complete construction works within a period of 2 years from the date of entry of each phase.

6.2 Two of the reasons given for a two phase programme are constraints in the supply chain and/or the timing of auctions for the Government's Contract for Difference process which offshore wind farms currently rely on to secure a price for the electricity produced by a project. Therefore Orsted are indicating that they do not have the necessary funding to build the project at the present time in one phase. We have grave concerns that Orsted do not have the funding to deliver the second proposed phase of the project and so should not be applying for this phase of the project within this current DCO application.

6.3 Since the outline representation was submitted Orsted have confirmed that if they are certain by having either secured a Contract for Difference (CFD) or funding via an alternative replacement government backed scheme within 12 months of securing a CFD for the first phase that the second phase will go ahead and Orsted will install ducts.

6.4 Landowners and their agents have been asking Orsted to lay the cables in ducts from the start of the project and not to lay the cables in open trenches. LIG has now received verbal confirmation that they will lay all cables in ducts. This is essential as this will greatly reduce the time period for construction and so greatly reduce the impact on farm businesses.

7. Cumulative Impact

7.1 Cumulative Affect Assessment has been addressed in the PIER but the detail is exceedingly broad and no mention of Vattenfall Boreas scheme only Norfolk Vanguard. These are two major schemes affecting landowners and occupiers which are programmed to be constructed at approximately the same time but one is running north to south and the other east to west. Therefore, greatly affecting the number of landowners affected and taking more land out of agricultural production than is necessary.

8. Jointing bays and Link Boxes

8.1 It is understood from other projects that 'Jointing Bays' should be all underground and will not interfere with agricultural operations.

8.2 It is understood that link boxes will be needed if the cables are HVAC cables and they are normally placed at least every 600 to 800 metres on a

cable run near to the jointing bays. No clarification has been received on how many link boxes will be needed at the end of every run. Some link boxes will stand proud above ground level and Orsted have now confirmed that some will be 200mm below surface level. This will allow some machinery to run over the top of the link boxes but they will still greatly interfere with agricultural cultivations and are a hazard to farm machinery. It is extremely important to have further design information on link boxes and the siting of them. This includes any link boxes to be located in a cluster and how will they be marked/identified/fenced. The preference is that all link boxes are located within fence boundaries.

9. Field Drainage

9.1 Land drainage is one of the main issues which landowners and occupiers are concerned about on this scheme and as at 31st October 2018 detail in regard to how land drainage will be dealt with has been agreed in the Heads of Terms.

9.2 There is concern though that this detail is not included in the outline Code of Construction (CoCP) which has been submitted with the DCO application. The NFU and LIG would want to see the wording that has been agreed in the Heads of Terms set out in the Code of Construction as it is our understanding that this document will be binding under the DCO if the DCO is approved. This is important as the Heads of Terms are not binding on either party.

9.2 Presently the only detail incorporated in the outline CoCP is at 6.8.1.6 where it is stated that drainage systems will be maintained.

9.3 It is only in the last few weeks that the draft option and lease documents have been made available to the NFU and LIG. Discussions are ongoing in regard to the wording to be incorporated from the Heads of Terms on field drainage.

10. Soils

10.1 As above the treatment and reinstatement of soil during and after construction is one of the main issues of concern. Limited detail has been provided to landowners and occupiers. LIG would like to see the wording on how soils will be treated in the soil management strategy document and hopes that this will expand on how it has been stated soils will be treated at 6.8.1.1 in the outline CoCP.

10.2 Soil aftercare has been referenced in 6.8.1.1 in the CoCP stating that to enable land to be handed back to the farmer in a suitable condition appropriate soil aftercare will be implemented. There is no detail as to what the soil aftercare may include and no mention of a soil statement/record being recorded of the soil conditions prior to works starting. This statement/record would provide a target to be achieved by the correct soil reinstatement and aftercare. Without the soil statement/record it is impossible to know what measures will need to be carried out to bring the soil back to its condition and quality before works started.

10.3 Discussions are ongoing in regard to the carrying out of a soil statement and soil aftercare plan and the wording of such to be included in the option and lease. LIG would like to see that the Soil Management Plan should include as a minimum the following:

- A schedule of aftercare maintenance will be agreed between the undertaker and landowner and (if relevant) the occupier for each landholding. The schedule of aftercare maintenance will define a target specification to include soil condition, soil nutrient levels and organic content.
- Soil testing, appropriate to the target specification, will be undertaken for a period of up to five years following the completion of the construction work until the target specification is met. The target specification will be informed by the pre-entry record of condition for each farm holding along with information received from the landowners or tenants on cropping yields. If the target specification is met within the 5 years then the aftercare will be completed and signed off by a final report to determine the final handover.
- If the target specification is not met within 5 years a further period will be agreed. The schedule of aftercare maintenance will highlight what action will be undertaken by the landowner or occupier to mitigate any loss and to improve the soils, at the cost of Orsted where appropriate.

11. Water Supplies

11.1 Presently it is stated in the outline CoCP at 6.8.1.6 that water supplies will be maintained and reinstated wherever reasonably practicable during the construction process. It is imperative that an alternative supply of water for the period which it is affected must be supplied and the cost of this provision met during construction. Further a permanent water supply must be provided by the end of the construction period. The water supply may be for livestock or irrigation of crops. This must be detailed in the final CoCP.

11.2 Discussions are ongoing to agree this wording in regard to water supplies in the option and lease.

12. Flood Issues

12.1 No details have been provided to landowners and occupiers on how any increase in surface run off of water from the haul road or the construction compounds will be dealt with during construction. Therefore there is concern that retained land may flood during the construction works.

13. Dust/Irrigation

13.1 Clarification is needed on how practical issues like dust will be controlled during construction and how can the effect on irrigation be minimised?

14. Access routes to the Order Limits

14.1 At the present time it has been agreed with Orsted that a right of access over the Landowners land from the nearest public highway or any adjoining landholding to the Order Limits will be agreed from time to time. Landowners would like more certainty and would like Orsted to agree the routes of access now needed for construction purposes to lay the cables. These routes also need to be stated and confirmed in the CoCP. Landowners would like to see the routes highlighted and agreed on plans.

15. Access to land and the Haul Road

15.1 Insufficient detail has been provided as to how landowners and occupiers are to access land severed by the construction works and as to whether landowners will be able to access the haul road during construction. It has been stated in the outline CoCP at 6.8.1.4 and 6.8.1.5 that farm

accesses will be maintained, wherever reasonably practicable between fields within a farm holding. Further accesses across individual fields will be maintained. General details of how accesses will be maintained for every day agricultural operations needs to be provided.

16. Restrictive Rights

16.1 Concerns have been raised to Orsted over restrictive rights included in the Option and Lease. In the Option the restrictions are applied to within the Option Site. Clarification is required as to the area within the Option Site but LIG would expect this to be no wider than the working area needed to lay the cables. The restrictions should not apply to the Landlords Estate.

16.2 The restrictions highlighted in the Option at 3.9.1. and 3.9.2 and within the Lease at 4.2 and 4.3 should all be without prejudice to the ability of the Landlord and any occupier to carry out normal agricultural operations. At the present time it is stated that nothing can be planted which would mean a landowner having to request permission from Orsted every time a new arable crop was to be drilled.

16.3 Further as agreed in the Heads of Terms it has been agreed that a landowner can install a hardcore access track or road with a maximum depth of 300mm within the final lease area subject to notification to Orsted. This wording needs to be agreed with the Option and Lease.

16.4 LIG would expect to see this wording for restrictive rights agreed within the DCO.

17.0 Request to Attend Hearings and make Representations

17.1 LIG requests to make oral representations at the compulsory acquisition hearing or any other hearings which may be held.

17.2 LIG represents 50 clients who own or lease land affected by the DCO. A full list of names and addresses are available if requested. Each landowner or occupier has submitted a written representation highlighting specific issues to their business if applicable and has made reference to this written representation which highlights the main issues of all landowners concerned.

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