

From: [REDACTED]
To: [Hornsea Project Three](#)
Subject: Re: Delivery Status Notification (Failure)
Date: 02 January 2020 16:21:06
Attachments: [image001.png](#)

Hi!

My original email was as follows.

Dear Sirs,

I recently saw the letter dated 31 October 2019 from Gareth Leigh (Head of Energy Infrastructure Planning) to Mr Andrew Guyton (Orsted Hornsea Project Three (UK) Limited) (Ref: EN010080). In respect of the issue of delivering compensation I wonder if the Secretary of State's position is not fully aligned with EU law. I write with specific reference to the issue of kittiwake as a reason for designation of the Flamborough and Filey Coast (FCC) SPA although the issue would apply to other reasons for designation at this and other SPA and other projects/plans.

Natural England's conservation objective supplementary advice (COSA) in relation to Kittiwake at FFC SPA clearly states that "the kittiwake population should be able to freely access both the cliff-face nesting sites and adjacent foraging areas, outside of the SPA boundaries". Whilst the 'functionally linked' concept applied in the UK provides a safeguard for the SPA in so far as it allows plans and projects outside the SPA to be assessed appropriately, it does not appear that this practice can be used to allow an adverse effect of site integrity to be compensated for in accordance with Article 6(4) of the Habitats Directive. The reason for this appear to be as follows:

1. It is recognised in Natural England's COSA that foraging areas outside the SPA boundary are both "important" and necessary for the SPA to attain its conservation objectives.
2. It was established in the case of C-164/17 Grace and Sweetman v An Bord Pleanala that "In particular, it is by providing the protected species with a habitat including a foraging area that the SPA enables that objective to be attained". This aligns with the requirement under Article 4(1) of the EU Birds Directive for Member States to "classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies".
3. On the basis of the foregoing it would stand to reason that an area that was considered "important" and necessary for the SPA to attain its conservation objectives should be included inside the SPA boundary.
4. Where areas that are not designated as an SPA but should have been designated as such, then in accordance with C-374/98 Commission v France, Article 6(4) of the Habitats Directive cannot be applied. In such a case the stricter avoidance provisions of the first sentence of Article 4(4) of the Birds Directive applies, i.e. no derogation can be applied.

I look forward with interest to seeing how the EU nature directives are implemented in 2020 and beyond.

Kind regards,

Tristan Folland

On Thu, 2 Jan 2020 at 10:13, Hornsea Project Three
<HornseaProjectThree@planninginspectorate.gov.uk> wrote:

Dear Mr Folland,

Could I check that we have received you entire submission? It looks like your email

might have been truncated.

If your email isn't complete, I would be grateful if you could resend it to us as soon as possible.

Kind regards

Karl-Jonas Johansson
Swyddog Achos/ Case officer

Cynllunio Seilwaith Cenedlaethol/ National Infrastructure Planning

Yr Arolygiaeth Gynllunio/ The Planning Inspectorate, Temple Quay
House, Temple Quay, Bristol, BS1 6PN

Llinell Gymorth/ Helpline: 0303 444 5000

E-Bost/ Email: HornseaProjectThree@planninginspectorate.gov.uk

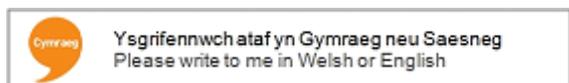
Wê/ Web: <https://infrastructure.planninginspectorate.gov.uk>
(Cynllunio Seilwaith Cenedlaethol/ National Infrastructure Planning)

Wê/ Web: www.gov.uk/government/organisations/planning-inspectorate (Gwaith achos ac apeliadau/ Casework and appeals)

Twitter: [@PINSgov](https://twitter.com/PINSgov)

Nid yw'r cyfartherbiad hwn yn gyfystyr â chyngor cyfreithiol/ This communication does not constitute legal advice.

Edrychwch ar ein [Hysbysiad Preifatrwydd](#) cyn anfon gwybodaeth at yr Arolygiaeth Gynllunio/ Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.



From: TRISTAN FOLLAND <[REDACTED]>
Sent: 31 December 2019 17:28

To: Hornsea Project Three <HornseaProjectThree@planninginspectorate.gov.uk>
Subject: Fwd: Delivery Status Notification (Failure)

----- Forwarded message -----

From: TRISTAN FOLLAND [REDACTED]
To: HornseaProjectThree@planninginspectorate.gov.uk, beiseip@beis.gov.uk,
admin@wildjustice.org.uk
Cc:
Bcc:
Date: Tue, 31 Dec 2019 16:23:18 +0000
Subject: Order granting Development Consent for the proposed Hornsea Project Three Offshore Wind Farm and associated offshore and onshore infrastructure

Dear Sirs,

I recently saw the letter dated 31 October 2019 from Gareth Leigh (Head of Energy Infrastructure Planning) to Mr Andrew Guyton (Orsted Hornsea Project Three (UK) Limited) (Ref: EN010080). In respect of the issue of delivering compensation I wonder if the Secretary of State's position is not fully aligned with EU law. I write with specific reference to the issue of kittiwake as a reason for designation of the Flamborough and Filey Coast (FCC) SPA although the issue would apply to other reasons for designation at this and other SPA and other projects/plans.

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