



Alex Tresadern  
Pinsent Masons LLP  
30 Crown Place  
London  
EC2A 4ES

17 July 2024

Dear Mr Tresadern,

**PLANNING ACT 2008**

**PROPOSED NON-MATERIAL CHANGE TO THE HORNSEA FOUR OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER 2023 – (S.I. 2023/800)**

1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the application which was made by Orsted Hornsea Project Four Limited (“the Applicant”) on 2 May 2024 (“the Application”) for changes which are not material to be made to the Hornsea Four Offshore Wind Farm Development Consent Order 2023 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“PA2008”). 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 PA2008 was granted consent on 12 July 2023<sup>1</sup> and gave development consent for the construction and operation of an array of up to 180 wind turbines and associated onshore and offshore infrastructure.
3. The Applicant is seeking consent for changes to paragraphs 3(d) and 4 of Part 2 of Schedule 16 of the Order. These sections of the Order require the Applicant to construct an artificial nesting structure (“ANS”) for kittiwake as compensation for the potential impacts of the Development on the Flamborough and Filey Coast Special Protection Area, and further requires that the ANS must be in place for four full breeding seasons before the Development becomes operational. The Applicant is seeking to amend the Order to reduce the length of time the ANS needs to be in place before operation, from four full breeding seasons to two full breeding seasons.
4. The Applicant considers this is required to allow time for the construction of the ANS without impacting the programme for the operation of the Development and avoiding

---

<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010098/EN010098-002330-DCO%20Hornsea%204%20OWF%20signed.pdf>

unnecessarily delay in provision of renewable energy to the national grid. The Applicant considers shortening the length of time the ANS needs to be in place will provide the necessary contingency in the Development's programme to deliver the ANS. The Applicant states that the proposed changes will not require additional compulsory acquisition of land, nor does it consider the amendments would have new or different effects on local residents or businesses, or any additional implications in respect of habitats regulation assessment ("HRA"). Further, the Applicant considers the Application will not result in any materially new or materially different environmental effects, given that the changes proposed are technical and would not result in any development beyond that already consented through the Order, which has already been subject to Environmental Impact Assessment ("EIA").

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

5. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to PA2008 to make non-material changes ("NMCs") to the Order to authorise the changes as detailed in the Application. This letter is notification of the Secretary of State's decision in accordance with Regulation 8 of the 2011 Regulations.
6. The Secretary of State has given consideration to whether the Application is for a material or non-material change. In doing so, the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the PA2008 which requires the Secretary of State to consider the effect of the change on the Order 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 PA2008 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 Housing, Communities and Local Government), the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")<sup>2</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 Order was made) to take account of new, or materially different, likely significant effects on the environment;

---

<sup>2</sup> <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

- (2) whether there would be a need for a 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 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 set out in (1), (2), (3) and (4) 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 ES. Considering the analysis supplied by the Applicant and responses to the consultation, the Secretary of State has concluded that no update is required to the ES as a result of the proposed amendments to the 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 no change to the conclusions of the HRA as a result of the proposed amendments and therefore a new HRA is not required. The Secretary of State considers the Applicant has provided updated detailed population modelling in the Application which shows that reducing the length of time the ANS needs to be in place before operation, from four full breeding seasons to two full breeding seasons, will still be effective in offsetting the loss of 43 birds per year over the lifetime of the Development, even despite an initial mortality debt. The Secretary of State agrees this mortality debt would still occur maintaining four full breeding seasons prior to the Development’s operation, and so reducing the number of breeding seasons will not alter the outcome of the HRA and its conclusion of fully compensating the loss of breeding birds from the Flamborough and Filey Coast Special Protection Area kittiwake population over the lifetime of the Development. See paragraph 22 onwards for further detail. The Secretary of State is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPS 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 already assessed in the ES.

10. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggest that the changes considered in this letter constitute a material change.
11. Taking the information contained in the application and responses received from consultees into account, 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.

## Consultation and responses

12. In accordance with the requirements of Regulation 7 of the 2011 Regulations specified parties, the Secretary of State agreed to a reduced consultee list. The parties consulted were: the Marine Management Organisation (“MMO”), Natural England (“NE”), the Royal Society for the Protection of Birds (“RSPB”), The Crown Estate (“TCE”), the Joint Nature Conservation Committee (“JNCC”), and the Wildlife Trusts (“WT”).
13. The Applicant published a notice of the Application in accordance with Regulation 6 (publicising the application) of the 2011 Regulations (the “Regulation 6 notice”) for two consecutive weeks in the local press (the Yorkshire Post, the London Gazette, the Lloyd’s List and the Fishing News) on 2 May 2024 and 9 May 2024 and made publicly available on the Planning Inspectorate’s (“PINS”) website, such that there was an opportunity for anyone not notified to also submit representations to PINS. The Applicant also published the Regulation 6 notice on the project’s own website on 2 May 2024, and sent the Regulation 6 notice to consultees on 2 May 2024. The deadline for receipt of representations on the Application was 10 June 2024.
14. Responses were received from the MMO<sup>3</sup> and NE<sup>4</sup>. Neither response raised any objections to the Application. NE’s response stated that “in all scenarios a significant amount of time is required to achieve the required level of compensation, and a delay in installation is likely to lead to an equivalent delay in full compensation delivery, although it is still predicted to be achieved over the project lifetime”. Further, NE concludes that “the non-material change will not significantly impair the effectiveness of the DCO in securing appropriate compensatory measures”. NE also state that: “We wish to highlight that Section 2.2.1.2 of the Applicant’s Environmental and HRA report has omitted the following text from Section 12.1 of the Secretary of State’s HRA conclusion: *“The Secretary of State concludes that compensation should be provided via a **new offshore** artificial nesting structure, and this should be delivered in accordance with the principles set out in the Kittiwake Compensation Plan”* (our emphasis). We consider this to provide important additional context to the NMC application”.
15. No comments were received from RSPB, TCE, JNCC, or WT.

---

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010098/EN010098-002383-Marine%20Management%20Organisation.pdf>

<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010098/EN010098-002382-Natural%20England.pdf>

16. The Applicant submitted its Consultation and Publicity Report as required by Regulation 7A of the 2011 Regulations on 28 June 2024, which states that the Applicant has complied with all necessary steps set out in Regulations 6 and 7 of the 2011 Regulations in respect of stakeholder consultation and its public engagement approach. This was published on the PINS website on 4 July 2024.
17. The Secretary of State has considered the representations received in response to the consultation and does not consider that any further information is required nor that further consultation is necessary.

### **Environmental Impact Assessment**

18. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the effects set out in the ES for the development authorised by the Order.
19. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow the Secretary of State to make a determination on the Application.
20. 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 ES for the development authorised by the Order and as such considers that there is no requirement to update the ES.
21. 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.

### **The Habitats Regulations**

22. The Secretary of State has considered the relevant requirements 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 any site within the national site network, known as "protected sites". 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 (subject to Regulation 64) if the Secretary of State has ascertained that it will not adversely affect the integrity of a protected site.
23. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant's ES and the Secretary of State's HRA for the Order, and therefore a new HRA is not required.
24. The Secretary of State considers that the Applicant's supporting information in Appendix 2 and 3 'Growth Scenarios Technical Report' is sufficient and presents a range of scenarios

which are appropriately precautionary and demonstrates that a delay in the delivery of an ANS is likely to lead to an equivalent delay in compensation delivery, although this is still predicted to be achieved over the Development's lifetime. The Secretary of State notes that, whilst the modelling predicts that the ANS will not fully compensate the loss of kittiwake until several years after it is colonised and a mortality debt may accrue, regardless of how many breeding seasons occur prior to operation, the ANS will nonetheless become effective at adding to the size of the Flamborough and Filey Coast Special Protection Area population over the lifetime of the Development and is predicted to offset the cumulative loss of 43 birds per year throughout operation. The Secretary of State notes that the input parameters used by the Applicant in modelling are derived from observations and population trajectories at two kittiwake colonies on the East Coast, and a logistic growth model. The Secretary of State considers that this supporting evidence and modelling considers a range of appropriate scenarios and is applicable to both an offshore or an onshore ANS. The proposed location of any ANS will be relevant to the consideration by the Secretary of State of any subsequent application to approve the Kittiwake Compensation Implementation and Monitoring Plan.

## **General Considerations**

### Transboundary Impacts

25. Under Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), the Secretary of State has considered whether the Application is likely to have a significant effect on the environment in a European Economic Area ("EEA") State. The Secretary of State has considered whether the change sought through this Application will have any potential impacts on an EEA State and has concluded that there is no change in the environmental impacts considered within the existing environmental statement for the project. Consequently, the Secretary of State has concluded that there would not be likely significant effects on the environment of any EEA state whether the Application is considered of itself or cumulatively with the environmental effects already considered for the 2022 Order.
26. The Secretary of State has also considered whether there may be potential impacts on protected sites in EU Member States, known as transboundary sites, from this Application. Noting that the Secretary of State has reached a conclusion that there will be no likely significant effects on protected sites, the Secretary of State has also concluded that there are no realistic impact pathways whereby transboundary sites may be impacted by this Application.
27. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

### Equality Act 2010

28. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant

protected characteristic (e.g. age; sex, sexual orientation, gender reassignment; disability; marriage and civil partnerships;<sup>5</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.

29. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

#### Human Rights Act 1998

30. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

#### Natural Environment and Rural Communities Act 2006

31. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006, and considers the application consistent with furthering that objective whilst having also had regard 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 biodiversity has been considered sufficiently in this application for an amendment to accord with this duty.

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

32. The Secretary of State has considered the ongoing need for the Development and considers that it continues to conform with the policy objectives outlined in the Overarching National Policy Statement (NPS) for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3). The Secretary of State considers this conformity applies to both 2011 and 2024 iterations, the latter of which is now in force following the recently concluded review of the energy NPS. The need for the Development remains as set out in the Secretary of State’s letter of 12 July 2023<sup>6</sup>, and the Secretary of State does not consider that there is anything contained within the 2024 versions that would lead the Secretary of State to reach a different decision.

33. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant’s request is justified and demonstrates that the proposed changes will not result in changes to the impact conclusions of the ES that accompanied the original Hornsea Four Offshore Wind Farm application.

---

<sup>5</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

<sup>6</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010098/EN010098-002326-Copy%20of%20SOS%20Decision%20Letter.pdf>

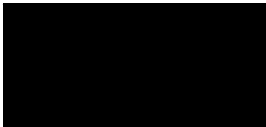
34. The Secretary of State has considered the nature of the Application, and notes that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the Order.

35. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to paragraphs 3(d) and 4 of Part 2 of Schedule 16 of the Order. The Secretary of State is satisfied that the changes requested by the Applicant are not material changes to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the changes detailed in the Application.

**Challenge to decision**

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

Yours sincerely,



John Wheadon

Head of Energy Infrastructure Planning Delivery



## 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 Amendment Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010098>

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)