



# Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

The Applicant's Comments on Clive Hay-Smith, Paul  
Middleton and Priory Holdings Limited Deadline 6  
Submission

**Revision A**

Deadline 7

July 2023

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## **1 The Applicant's Comments on Clive Hay-Smith, Paul Middleton and Priory Holdings Limited Deadline 6 Submission**

1. This document presents the Applicant's Comments on Clive Hay-Smith, Paul Middleton and Priory Holdings Limited Deadline 6 Submission [REP6-019].

**Table 1-1 Applicant's comments on Clive Hay-Smith, Paul Middleton and Priory Holdings Deadline 6 Submission**

| ID   | Stakeholder Comment  | Applicant Response   |
|--|--|--|
| <b>1. Effects on Rivers and River Based Wildlife (Spring Beck)</b> |  |  |
| 1.1  | As set out in our Client's Deadline 5 Submissions (RESPONSE TO DEADLINE 4 SUBMISSION - 18.2 THE APPLICANT'S COMMENTS ON RESPONSES TO THE EXA'S 2WQ), they remain unpersuaded that the Applicant has satisfactorily assessed or demonstrated that the risk of adverse impacts on Spring Beck will be mitigated.   | Noted.   |
| 1.2  | Our Clients are concerned that the flexibility sought in the Applicant's Development Scenarios could mean two HDD crossings are constructed under Spring Beck (and other environmentally sensitive receptors) with associated additional risk of disturbance or harm (see paragraphs 1.5 to 1.7 of our Client's Deadline 5 Submissions). This prospect has not, to our knowledge, been considered in either the ES, or during the Examination. | <p>The Applicant refers the Respondent to ID 1.4 below for further technical explanation regarding the number of HDD crossings beneath Spring Beck.</p> <p>The Environmental Statement considers the in isolation, sequential and concurrent construction of the projects reflecting the maximum duration of effects (in the sequential scenario) and maximum peak effects (in the concurrent scenario). Each environmental topic identifies the realistic worst-case scenario. The ES considers either the maximum area of disturbance within a catchment area (<b>ES Chapter 18 Water Resources and Flood Risk</b> [APP-104], Table 18-18) or Habitat Area or Length within the DCO Order Limit (<b>ES Chapter 20 Onshore Ecology and Ornithology (Revision C)</b> [REP3-026], Table 20.11). As such, the assessment is not dependant on the number of drills crossing watercourses rather the area or length of habitat/area of disturbance of catchment within the DCO Order Limits at the location of the watercourse crossing.</p> <p>As stated in paragraph 267 of <b>ES Chapter 20 Onshore Ecology and Ornithology (Revision C)</b> [REP3-026]:</p> <p><i>"Trenchless crossing techniques such as HDD are embedded in the scheme design for Main Rivers and IDB watercourses (Section 20.3.3). The cable would be installed at least 2m below the bed of the watercourse and, although ground disturbance would occur at the HDD entry and exit points, there would be no direct disturbance to the watercourses crossed using a trenchless technique. Therefore, there is</i></p> |

| ID  | Stakeholder Comment   | Applicant Response  |
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|     |   | <p><i>no direct mechanism for impacts to occur to the geomorphology, hydrology and physical habitats of these watercourses”.</i></p> <p>In addition to the assessment of the realistic worst case, the Applicant would like to reiterate the following mitigation which is secured within the DCO application:</p> <ul style="list-style-type: none"> <li>- Plans within the <b>Outline Code of Construction Practice (Revision F)</b> [document reference 9.17], including Construction Method Statements, Invasive Non-Native Species Management Plan and Watercourse crossing schemes will be submitted to the Local Planning Authority (an independent body), prior to the commencement of development. This is secured under Requirement 19 of the <b>draft DCO (Revision J)</b> [document Reference 3.1]</li> <li>- Further ecology surveys will be carried out prior to construction, in accordance with the <b>Outline Ecological Management Plan (Revision D)</b> [document reference 9.19] and as required by Requirement 13 of the <b>draft DCO (Revision J)</b> [document Reference 3.1]. The Ecological Management Plan will also set out any further mitigation required subsequent to the pre-construction surveys.</li> <li>- Further landscape surveys and details of proposed landscape management and mitigation will be set out in the Landscape Management Plan which is secured by Requirement 11 of the <b>draft DCO (Revision J)</b> [document reference 3.1].</li> </ul> |
| 1.3 | We note that the Applicant’s Deadline 5 Submission refers to “The design of the HDD crossing” (not crossings) inferring there will only be one such crossing.       | Noted. See ID 1.4 for clarification.  |
| 1.4 | Our Clients consider urgent clarification is required from the Applicant as to whether, and in which circumstances, two HDD crossings would be used at Spring Beck? | <p>The Applicant provides clarification below:</p> <p><b>Concurrent Construction</b> (Construction and installation of both projects at the same time): During detailed design the HDD drill profile will be determined as either trefoil (one drill housing three ducts) or single drills (one drill per duct). Therefore trefoil equates to two drills for both projects and single drills equates to six drills for both projects.</p>   |

| ID  | Stakeholder Comment  | Applicant Response   |
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|   |  | <p><b>Sequential Construction</b> (Construction and installation of SEP and DEP in two separate phases): The same would apply as for concurrent construction.</p> <p><b>Isolation</b> (Construction and installation of only one project): During detailed design the HDD drill profile will be determined as either trefoil (one drill housing three ducts) or single drills (one drill per duct). Therefore trefoil equates to one drill for one project and single drills equates to three drills for one project.</p>  |
| 1.5   | <p>Notwithstanding the comments above our Client's welcome that the Applicant is committed to continuing to work constructively with them. In that spirit our Clients seek a commitment that the Applicant will consult with them on the design of the HDD crossing, having reasonable regard to their consultation responses.</p> | <p>The Applicant confirms they are committed to working constructively with the Respondent and will keep the Respondent updated on the HDD design. The HDD design will be developed at detail design stage post consent, so the Applicant would like to manage the Respondent's expectation on the level of consultation prior to the end of examination on this topic.</p>  |
| <p><b>2. Removal of Existing Trees and Hedgerows, Replanting and Management (ACC05)</b></p> |  |  |
| 2.1   | <p>The Applicant's response at ID18 appears to confirm they were not aware of the existence of the hedgerows located at the Main Works Access ACC05.</p>   | <p>The Applicant can confirm that it is aware of the existence of hedgerows located at the Main Works Access ACC05. Its response in ID18 of <a href="#">The Applicant's comments on Mr Clive Hay-Smith, Mr Paul Middleton and Priory Holdings Limited Deadline 4 Submission [REP5-052]</a> acknowledges that the hedgerow in this location was among the 10% of habitat not surveyed by the <a href="#">Phase One Habitat Survey [APP-124]</a>. However, a data search with the Norfolk Biodiversity Information Service (NBIS) obtained habitat classifications for the un-surveyed areas via the Norfolk Living Map; this data has been used to classify inaccessible and un-surveyed parts of the Order Limits.</p> <p>As per ID18, the <a href="#">Outline Ecological Management Plan (Revision D)</a> [document reference 9.19] details the pre-construction ecological surveys of the Order Limits which will be undertaken. This would include Extended UK Habitat Classification Surveys and protected species survey, as required in this location.</p> |

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| 2.2 | <p>The Applicant does not challenge the conclusion in our Deadline 4 Submissions, that the width of the access (including Root Protection Zones – ‘RPZ’) will be limited to 3 metres. The Applicant also does not address the fundamental issue raised, which is that the limited width of the access means that the hedgerows are at a high risk of being damaged by construction of the developments, being immediately adjacent to a main construction route.</p> | <p>The Applicant refers the Respondent to its Deadline 5 submission <b>The Applicant's comments on Mr Clive Hay-Smith, Mr Paul Middleton and Priory Holdings Limited Deadline 4 Submission</b> [REP5-052], specifically ID20 which states:</p> <p><i>“The Applicant notes the Respondent’s comment and reiterates its commitment to undertaking a full Arboricultural Survey of the Order Limits pre-construction. An Arboricultural Method Statement and Tree Protection Plan will be produced, as detailed in the <b>Arboricultural Survey Report</b> [APP-228, Section 6.5], and in accordance with BS5837.</i></p> <p><i>Requirement 11 of the <b>draft DCO (Revision H)</b> [document reference 3.1] will facilitate the production of an Arboricultural Method Statement and Tree Protection Plans following a full tree survey which will consolidate tree and hedgerow protection measures prior to construction commencing, this would include any specific mitigation measures if deemed necessary at ACC05. The Arboricultural Method Statement and Tree Protection Plans will be submitted to the local planning authority for approval prior to construction commencement”.</i></p> <p>ID 17 also states:</p> <p><i>“As per the <b>Outline Ecological Management Plan (Revision C)</b> [REP3-068], the Applicant has committed to undertake pre-construction ecological surveys of the Order Limits, this would include Extended UK Habitat Classification Surveys and protected species survey, as required.</i></p> <p><i>The <b>Outline Ecological Management Plan (Revision C)</b> [REP3-068, Section 2.3.2] also details mitigation measures to avoid impacts to breeding birds, which may use the hedgerows. Should vegetation clearance be required, for example removing this or last year’s growth by flailing the hedge, this would be undertaken outside of the main bird nesting season which typically runs between March to August but is subject to weather and temperature conditions”.</i></p> |



| ID  | Stakeholder Comment  | Applicant Response  |
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| 2.3   | Undertaking an Arboricultural Method Statement and Tree Protection Plans will therefore not change the fundamental unsuitability of this route.  | The Applicant considers the current proposed access at ACC05 suitable for the purposes required for construction and in line with the rights sought in the dDCO. Notwithstanding this, the Applicant will continue to engage with the Respondent on the access route.   |
| 2.4   | This risk of damage is avoidable by entering into an agreement for an access running parallel ACC05 as proposed by our client. This could be a stand-alone agreement or as part of a wider lands agreement.  |   |
| 2.5   | This would have the further advantage of separating construction and farm traffic.   |   |
| 2.6   | Our Client's therefore welcome the Applicant's assertion that it continues to work with our Client to address the working arrangements that are required and is willing to progress discussions in response for our proposal for an alternative access route in this location.   |   |
| 2.7   | We look forward to hearing from the Applicant to progress those discussions.   |   |
| <b>3. Blight for landowners affected by Temporary Possession</b>  |  |   |
| We comment as follows in relation to the Applicant's responses to the ExA's Third Written Question 3.8.2.2. |  |   |
| 3.1   | The Applicant acknowledges concerns about the flexibility sought in relation to the 'Development Scenarios'. While its preferred construction scenario is an integrated one where both projects are built concurrently, the Applicant nevertheless seeks flexibility for Scenarios which have the potential for materially greater adverse impacts on the environment and on landowners during construction. | The Applicant has set out its full justification for the flexibility sought throughout the examination. As set out in the response to ID1.2, the Environmental Statement considers the in isolation, sequential and concurrent construction of the projects reflecting the maximum duration of effects (in the sequential scenario) and maximum peak effects (in the concurrent scenario). Each environmental topic identifies the realistic worst-case scenario. Further information is set out in <a href="#">Scenarios Statement [APP-314]</a> , <a href="#">Procedural Deadline A Submission – Supplementary Figures to Scenarios Statement [PDA-005]</a> and <a href="#">Supplementary Information to the Scenarios Statement [REP3-074]</a> . |
| 3.2   | As set out in our Deadline 5 Submission, the potential for SEP and DEP to be constructed separately also creates risk of an extended period of Temporary Possession (potentially in two phases) and  | As set out in ID3.2 of <a href="#">The Applicant's comments on Mr Clive-Hay Smith, Mr Paul Middleton and Priory Holdings Limited's Deadline 5 Submission [REP6-019]</a> , SEL and/or DEL are only able to take  |

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|   | significant complexities for affected parties claiming compensation for loss or damage under dDCO Article 26.  | <p>temporary possession of land for their NSIP within the 7 year period authorised by Article 19(2) of the draft DCO (Revision I) [document reference 3.1]. It is acknowledged that SEL and/or DEL are then able to remain in temporary possession of that land for a longer period but after 7 years from the date the Order is made neither SEL or DEL may take temporary possession for the construction of the projects of any new land not previously occupied within that 7 year period.</p> <p>The Applicant also notes that conversely, if the two NSIPs had been brought forward under separate DCOs, the start date for their 7 year periods could have been different. This would likely have resulted in greater complexities and a longer period of uncertainty for landowners than bringing forward the two NSIPs under one DCO as the Applicant has done.</p>   |
| 3.3   | If the ExA concludes there is a compelling case in the public interest to recommend consent is granted for all the dDCO Development Scenarios, a minimum and proportionate mitigation would be for the Applicant to provide a comprehensive Alternative Dispute Resolution (ADR) mechanism for any compensation disputes, in accordance with Government Guidance | As set out in ID3.12 of <b>The Applicant's comments on Mr Clive-Hay Smith, Mr Paul Middleton and Priory Holdings Limited's Deadline 5 Submission</b> [REP6-019], <i>"as stated previously, the Applicant is willing to consider the use of ADR where appropriate in relation to the compulsory acquisition process. This would include in relation to any claims for compensation under Article 26(5) or 27(6) of the draft DCO (Revision I) [document reference 3.1]. As stated in Article 26(6) and 27(7) any dispute as to that compensation is to be dealt with under Part 1 of the Land Compensation Act 1961, which provides that if compensation cannot be agreed between the parties then a reference can be made to the Upper Tribunal (Lands Chamber) for determination. The Applicant notes that ADR is encouraged by the Tribunal as an alternative to a reference being made and would be willing to consider that process if appropriate in the individual circumstances."</i> |
| 3.4   | The RICS provides ADR for compulsory purchase disputes, and a link is provided below:  | Noted.   |
| a) The applicability of the Notice to Treat for up to three years for the CA and TP of land under this Order (if the Order was made); |  |  |

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| 3.5 | We believe it likely the Applicant's response to this question is either confusing, or conflating 'Statutory Blight' with 'general blight' caused by the impact or uncertainty of compulsory purchase.  | With regards to the questions raised by the ExA and as confirmed at Compulsory Acquisition Hearing 2 (see <a href="#">Written Summary of the Applicant's Oral Submissions at Compulsory Acquisition hearing 2</a> [document reference 21.4], the Applicant's responses have been in the context of statutory blight. However, given that Q3.8.2.2(a) specifically refers to Notice to Treat and CA the Applicant considers that its response to this question within <a href="#">The Applicant's response to the Examining Authority's Third Written Questions</a> [REP5-049] is relevant in the context raised.   |
| 3.6 | Statutory Blight is a mechanism under the Town and Country Planning Act 1990, where claimants (meeting specific qualifying criteria and circumstances), can serve a 'blight notice' in advance of receipt of compulsory purchase notices. A 'blight notice' is a 'deemed notice to treat', compelling the acquiring authority to purchase qualifying property in advance of their requirements.   | Noted.   |
| 3.7 | The ExA's Q3.8.2.2. relates to 'Blight for landowners affected by Temporary Possession' and on our understanding of the question, 'Statutory Blight' is not relevant to this. Not least Blight Notices cannot be served to require the Applicant to take advance Temporary Possession. Rather the ExA is focusing on the impact of uncertainty on affected landowners and businesses by the potentially extended Temporary Possession period. | <p>As stated above at ID3.5, the Applicant considers that its responses in relation to statutory blight are relevant responses to Q3.8.2.2 as raised by the ExA.</p> <p>With regards to general blight and concerns raised, as set out at Compulsory Acquisition Hearing 2 (see <a href="#">Written Summary of the Applicant's Oral Submissions at Compulsory Acquisition hearing 2</a> [document reference 21.4], the Applicant considers that it has already addressed concerns raised in previous oral and written submissions. To summarise:</p> <ul style="list-style-type: none"> <li>As set out in <a href="#">The Applicant's response to the Examining Authority's Third Written Questions</a> [REP5-049], there is a commitment to implement a stakeholder communication plan which is secured through Requirement 19 and the <a href="#">Outline Code of Construction Practice (Revision F)</a> [document reference 9.17]. Through that, SEL and DEL would provide as much information as possible to affected parties in terms of the construction scenario that would be progressed, as well as likely timings for construction. The intention of this</li> </ul> |

| ID  | Stakeholder Comment   | Applicant Response  |
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|   |   | <p>communication would be to reduce uncertainty for land interests as much as possible.</p> <ul style="list-style-type: none"> <li>As noted above at ID3.3, the Applicant is willing to use ADR as appropriate in accordance with guidance.</li> <li>The Applicant has set out the need for flexibility and the scenarios included in the draft DCO as referred to at ID 3.1 above.</li> <li>The Applicant is unable to comment on what has happened with other schemes and highlights that it has undertaken a robust assessment and included relevant requirements in the draft DCO to control how SEP and DEP will be constructed which also now includes a collaboration requirement (see Requirement 33 of the <b>draft DCO (Revision J)</b> [document reference 3.1]).</li> </ul> |
| 3.8   | <p>In respect of permanent acquisition powers, and as previously explained, there is no requirement for an acquiring authority to take possession of land following service of a Notice to Treat which would expire after 3 years, so the period of associated 'general blight' is up to 10 years, which is a significant period of uncertainty.</p>    | <p>The Applicant notes that whilst the draft DCO allows for service of a Notice to Treat (NTT), it also provides for CA powers to be exercised using a General Vesting Declaration (GVD) and where a GVD is used, the GVD must specify the vesting date (i.e. the date the ownership of the land automatically vests in the acquiring authority and from which possession of the land may be taken). It is much more common for the GVD process to be relied upon by an acquiring authority. Even where a NTT is used, it is general good practice (although not mandatory) for a Notice to Enter to be served at the same time or very soon after which will specify the date of entry and thus possession of the land in order to reduce uncertainty for landowners.</p>              |
| <p>b) How effect on business and the concern relating to blight would be considered and compensated for in the sequential construction scenario</p> |   |   |
| 3.9   | <p>The Applicant states: "<i>The maximum duration assessed for onshore construction works for the onshore cable ducting and installation in a sequential scenario is anticipated to be six years, which accounts for a gap of up to two years between the completion of the first project and the start of construction of the second project.</i>"</p> | <p>There is no contradiction between these two statements because they are looking at two different situations. The first statement is talking about the gap between <u>completion</u> of the first project and <u>commencement</u> of the second. The second statement refers to the gap</p>   |

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| 3.10 | <p>This contradicts previous statements made by the Applicant in its comments on Post-Hearing submissions (submitted at Deadline 4):</p> <p><i>“In the sequential scenario, there could be a gap between the first project commencing and the second project commencing of up to four years. Each project will take approximately two years to construct.”</i></p>             | <p>between <u>commencement</u> of the first project and <u>commencement</u> of the second project.</p>  |
| 3.11 | <p>The Applicant’s apparent uncertainty on this point is concerning</p>  |   |
| 3.12 | <p>In addition to the construction period itself, the dDCO provides up to 7 years before Temporary Possession is triggered, and (in accordance with the draft dDCO) up to 1 year following completion of works. Assuming the projects do not over-run, this gives up to 16 years of uncertainty and ‘general blight’ for affected parties subject to Temporary Possession.</p> | <p>The Applicant is unclear how up to a 16 year period of uncertainty and general blight has been calculated given both SEL and DEL must commence construction within 7 years of the date of the Order under Requirement 1 of the <b>draft DCO (Revision J)</b> [document reference 3.1].</p> <p>The draft DCO does not allow for the first project to commence construction just before the expiry of the 7 year period for commencement and for the second project to then subsequently under a sequential construction scenario commence at some point later after the expiry of that 7 year period.</p> <p>For both projects to be able to commence development sequentially within the 7 year period with up to a 4 year gap between commencement dates, the first project must commence no later than 3 years after the date the Order comes into force so that the second project could come forward up to 4 years later before expiry of the 7 year commencement period. If the first project starts any later than 3 years after the date the order comes into force, the gap between commencement of each project in a sequential scenario is automatically shortened.</p> <p>In the sequential scenario, based on the requirement to commence construction of both projects within 7 years and to exercise CA or TP powers within 7 years of the date the Order comes into force, the Applicant considers that ‘general blight’ would be up to a maximum of 10 years. This allows for the second project to commence development just before expiry of the 7 year period plus a 2 year construction period plus 1 year following completion of works for the second project.</p> |

| ID  | Stakeholder Comment  | Applicant Response   |
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|   |  | Moreover, arguably general blight doesn't exist after 7 years because by 7 years there has to be certainty over timings for commencement of both projects and exercise of CA and TP powers due to the time limits already contained within Requirement 1 and Article 19 of the <b>draft DCO (Revision J)</b> [document reference 3.1].   |
| 3.13  | The Applicant's reference to 'Statutory Blight' is very unlikely to mitigate this impact for several reasons, but most notably that a Blight Notice cannot be served to bring forward Temporary Possession, only permanent acquisition.  | The Applicant notes that once a GVD or Notice to Treat has been served for a plot of land within the Order limits, temporary possession powers can no longer be exercised over that plot (see Article 26(1)(a)(ii) of <b>draft DCO (Revision J)</b> [document reference 3.1]. Therefore, if a blight notice were served to bring forward compulsory acquisition powers over a plot of land this would also have the effect of preventing the exercise of temporary possession powers over that same area of land.  |
| 3.14  | The uncertainty and general blight could be mitigated by:<br>i. A certain 'long stop date' for expiration of Temporary Possession powers.<br>ii. Offering full access to alternative dispute resolution in accordance with government guidance. This would assist with the resolution of claims for loss associated with the threat of Temporary Possession powers being exercised (and therefore mitigate the impact of blight) as well as claims more generally. | i. For the reasons set out above, in <b>The Applicant's response to the Examining Authority's Third Written Questions</b> [REP5-049] and in <b>The Applicant's response to the ExA's commentary on proposed schedule of changes to the draft DCO</b> [REP5-051], the Applicant does not consider that there is any basis for imposing a 'long stop date' for expiration of temporary possession powers or any further restrictions on the exercise of temporary possession powers.<br><br>ii. The Applicant has already confirmed at ID 3.3 above that it is willing to consider using ADR in relation to compensation claims. |
| c) Explain with reference to relevant drafting in the dDCO, particularly Article 26(3) and Article 27(4), how have you provided that TP would be temporary. |  |  |
| 3.15  | We refer to our Client's Deadline 5 Submission 'Response to Deadline 4 Submission – 18.4 The Applicant's Comments on Post-Hearing Submissions' at paragraphs 3.1 to 3.9.   | The Applicant refers to <b>The Applicant's comments on Mr Clive Hay-Smith, Mr Paul Middleton and Priory Holdings Limited's Deadline 5 Submission</b> [REP6-019].   |