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All Interested Parties, Statutory Parties and
any Other Person invited to the Preliminary
Meeting

Your Ref:

Our Ref: EN010115

Date: 22 October 2024

Dear Sir/ Madam

Planning Act 2008 – Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9

Application by Five Estuaries Offshore Wind Farm Limited for an order granting development consent for the Five Estuaries Offshore Wind Farm project

Procedural Decision by the Examining Authority (ExA) concerning the Applicant's request to make 10 changes to the submitted Application

Background

On 10 October 2024 the Applicant formally submitted a request to change the submitted application [[AS-014](#)]. That request being made further to the Applicant giving notice of its intention to submit such a request on 9 September 2024 [[PD4-009](#)].

The changes included in the formal change request are explained in the Applicant's Report on Proposed Changes [[AS-057](#)] and in summary are as follows:

Proposed Change 1

Reduction to the proposed offshore array boundary. This change concerns the boundary between proposed offshore Work Numbers 1 and 2 and would remove an overlap between the Crown Estate lease areas for the proposed Five Estuaries Offshore Windfarm and the Galloper Wind Farm.

Proposed Change 2

Revisions to the extent of Work Numbers 2A and 3 at the transition between the proposed offshore and onshore works arising from a recent periodic review by the Ordnance Survey of the Mean Low and High Water Springs water levels. The making of this change would alter the areas subject to compulsory acquisition (CA) for Land Plots 01-007, 01-008 and 02-001 and introduce a new plot 02-001A subject to CA powers.



Proposed Change 3

Minor reductions to the Order Limits affecting Land Plots 08-024 and 17-025. Under this change request it is proposed that land erroneously included in the Order Limits because of drawing errors would be removed.

Proposed Change 4

Minor additions to the Order Limits for some onshore haul roads. Change request 4 seeks to increase the extent of the haul route subject to Work Numbers 7E by approximately 1,716 square metres (m²) and 9C by approximately 7,800 m². Change request 4 respectively concerns Land Plots 05-008 and 07-002. Under this proposed change there would be an increase in the area of land subject to CA.

Proposed Change 5

Changes to the Order Limits in Bentley Road. To correct discrepancies between the proposed Order Limits and the Ordnance Survey map base, under Change 5 it is proposed that the extent of the works subject to Work Numbers 13 and 13A would be increased in four locations. The largest of those increases would be approximately 0.24 m². Under this proposed change there would be an increase in the area of land subject to CA in respect of Land Plots 14-035, 14-036, 15-002 and 15-010.

Under Change 5 it is further proposed that there would be a reduction in the Order Limits of approximately 32 m² at the junction between the A120 and Bentley Road and concerning Land Plot 15-013.

Proposed Change 6

The provision of an additional construction access for Work Number 15D to the south of Ardleigh Road. To accommodate this additional access there would be an increase in the area of land subject to CA of approximately 10 m² relating to Land Plot 17-008.

Proposed Change 7

This change concerns proposals for additional temporary speed reductions affecting Bentley Road, Golden Lane, Thorpe Road, Clacton Road and Ardleigh Road.

Proposed Change 8

Under Change 8 additional powers affecting trees in the vicinity of Stones Green Road subject to existing Tree Preservation Orders (TPO) are being sought.

Proposed Change 9

Changes to the Order Limits in relation to the proposed Lesser Black Backed Gull (LBBG) compensation area at Orford Ness. Under this change the Applicant is seeking to amend the extent of the LBBG compensation area subject to Work Number 18B. The proposed amendments would remove from the Order Limits: 1) the Norfolk Projects/Scottish Power

Renewables LBBG compensation area to avoid severing access to parts of Orford Ness and impeding the delivery of ongoing compensatory measures; and 2) the shingle bank on the eastern edge of Orford Ness which would either be unsuitable as LBBG habitat or for installing predator proof fencing. The revised LBBG compensation area under Change 9 would have an area of approximately 6.0 hectares.

The revisions to the proposed compensatory habitat area also includes the addition of what would be a new Land Plot involving the seeking of new CA powers. However, this additional Land Plot does not appear to have been allocated either a new Land Plot number on the revised Land Plans [AS-019] or included in the revised Book of Reference submitted with the Change Request [AS-035]. Those omissions will need to be addressed by the Applicant if it intends to progress this aspect of Change 9.

Proposed Change 10

Changes to the operational access for the Proposed Development. Change 10 would involve:

- In Swan Road, removing the originally proposed access connecting Work Number 10 with the public highway (occupying Land Plot 09-023) and replacing it with an alternative access to the south. Making this change would require land within a new Land Plot numbered 09-023.
- In Clacton Road replacing a new access between Work Number 12 to the public highway with an established access negating the need for Land Plot 13-021.
- In respect of providing access to proposed Work Number 12 via Work Number 17 the proposed access has been removed allowing Land Plots 13-024 and 14-002 to be removed from the Proposed Development.
- A revision to the access between Work Number 11 and the Colchester Road is proposed to ensure this access would reach the public highway via Work Number 17. The making of this change would increase the CA powers sought in respect of Land Plot 12-005 by approximately 0.035 m².

The ExA's reasoning and Procedural Decision

The ExA has assessed the Applicant's change requests in line with paragraphs 109 to 115 of the Government's Guidance "Planning Act 2008: examination of applications for development consent" (2015) (the Guidance) and the Planning Inspectorate's advice concerning the making of changes to accepted applications (the Advice)¹. The Guidance and Advice both recognise that applicants may need to change elements of a proposal after an application has been accepted.

The ExA has had regard to the nature and scale of the proposed changes and the information provided by the Applicant in the proposed change documentation. The ExA notes that the proposed changes have not altered the majority of the conclusions reached

¹ [Nationally Significant Infrastructure Projects: Changes to an application after it has been accepted for examination](#) (August 2024)

by the Applicant in the Environmental Statement (ES) that accompanied the originally submitted Application and that there is no intention to prepare and submit supplementary environmental information. Given the scale and nature of the proposed changes the ExA considers the Applicant's assessment of the implications for the submitted ES to be reasonable. The ExA further notes that with respect to Change request 9 (LBBG compensatory habitat) the Applicant intends to update the Environmental Impact Assessment for the proposed compensatory habitat [APP-225] to take account of the availability of ongoing survey data, with the Applicant considering the conclusions within this part of the ES would be unaffected by changing the extent of the proposed compensatory habitat.

With respect to the Applicant's proposed changes, the ExA considers the nature and scale of Changes 1 to 10 either individually or collectively would not be so substantial as to constitute a materially new project.

Additionally, in considering whether or not the proposed changes would be material, the ExA notes that the making of Changes 2, 4, 5, 6, 9 and 10 would engage the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations). The acceptance of Changes 2, 4, 5, 6, 9 and 10 might require the holding of additional hearings should any of the owners and/or occupiers of the land subject to the additional requests for compulsory acquisition, referred to as a "Proposed Provision" under the CA Regulations, object to the inclusion of one or more of the Proposed Provisions. Notwithstanding the potential for additional hearings being needed the ExA considers that there would be sufficient time remaining within the Examination period to enable any such hearings to be held.

The ExA is therefore content to accept Changes 1 to 10 inclusive into the Examination provided that issues of fairness can be satisfactorily addressed. The ExA recognises that in considering whether or not to accept the proposed Changes 1 to 10 it needs to act reasonably and in accordance with the principles of natural justice. The ExA has had regard to the Guidance and Advice and is satisfied that prior to the Examination's close any party affected by Changes 1 to 10 inclusive would have fair opportunities to make their views on the changes known and to have their views properly taken into account.

With some variations to the extant Examination Timetable the ExA considers that there would be sufficient time remaining within the Examination for Changes 1 to 10 inclusive to be accommodated as part of the Planning Act 2008 Examination process, most particularly to enable Interested Parties and Affected Persons to make comments on Changes 1 to 10 within the Examination should they so wish.

Having regard to the above-mentioned considerations the ExA has made the procedural decision to accept Changes 1 to 10 inclusive for Examination. Under Regulations 7 and 8 of the CA Regulations the Applicant must give notice and publicise the ExA's acceptance of the Proposed Provisions so that any party that may be affected by them can submit representations (which for the purposes of the CA Regulations are to be treated as Relevant Representations) about the changes to the Application to the ExA during a period of not less than 28 days.

Prior to giving notice of and publicising the acceptance of the changes to the Application the Applicant must address the omissions to the Land Plans and Book of Reference referred to above in respect of Change 9.

Following the receipt of any representations relating to the Proposed Provisions the ExA will make an initial assessment of the issues arising in those representations. Thereafter the ExA will give consideration to and make procedural decisions about how the Proposed Provisions are to be examined, including making any changes to the Examination Timetable as necessary.

Yours faithfully

Grahame Gould

Lead Member of the Examining Authority

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