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Catherine Sibley  
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c/o ScottishPower Renewables (UK) Limited  
320 St. Vincent Street  
Glasgow  
G2 5AD

24 September 2021

Dear Ms Sibley,

**PLANNING ACT 2008**

**APPLICATION FOR A NON-MATERIAL CHANGE TO THE EAST ANGLIA ONE (OFFSHORE WIND FARM) ORDER 2014 (SI NO. 2014/1599)**

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the Application (“the Application”) which was made by East Anglia ONE Limited (“the Applicant”) on 30 March 2021 for changes which are not material to be made to the East Anglia ONE Offshore Wind Farm Order 2014 (as amended) (“the 2014 Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008. 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 Planning Act 2008 was granted on 16 June 2014 by the Secretary of State for Energy and Climate Change and gave development consent for the construction, operation, and maintenance of an offshore wind turbine generating station with a gross electrical output capacity up to 1,200 MW with a High Voltage Direct Current (“HVDC”) transmission system comprising up to 240 Wind Turbine Generators (“WTGs”). The 2014 Order also includes consent for offshore collector/converter stations, a meteorological mast, inter-array cables between the turbines and substations, export cables and onshore electrical works consisting of underground cables to a new converter station that would be constructed to the north west of the existing National Grid Bramford substation (together “the Development”).
3. The East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016 (“the 2016 Amendment Order”) was granted on 24 March 2016. The 2016 Amendment Order corrected errors in the East Anglia ONE Offshore Wind Farm Order 2014 and allowed for the option to construct an offshore wind turbine generating station with a gross electrical output capacity up to 750 MW with a High Voltage Alternating Current (“HVAC”) transmission system comprising up to 150 WTGs. The Applicant has subsequently

constructed the wind farm on the basis of the 2016 HVAC option and as a result the original HVDC option can no longer be relied upon.

4. The Applicant is seeking consent for a change to the 2014 Order to allow:
  - the reduction of the number of WTGs consented for the HVAC option to reflect the number of WTGs installed at East Anglia ONE Offshore Wind Farm (102 instead of 150); and
  - changes to several of the WTG parameters listed in the 2014 Order, including:
    - WTG height, when measured from Lowest Astronomical Tide (“LAT”) to the tip of the vertical blade;
    - the hub height, when measured from LAT to the centreline of the hub;
    - the rotor diameter;
    - the clearance height, when measured from Mean High Water Springs (“MHWS”) to the lowest point of the rotating blade.

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

5. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make non-material changes (“NMCs”) to the 2014 Order, so as to authorise the changes as detailed in the Application as well as to make his own changes to the 2014 Order – see paragraph 36. This letter is notification of the Secretary of State’s decision in accordance with regulation 8 the 2011 Regulations.

### **Consideration of the materiality of the proposed change**

6. The Secretary of State has given consideration as to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the development consent order (“DCO”) 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 Planning Act 2008 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 Levelling Up, Housing and Communities), the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)<sup>1</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 2014 Order was made) to take account of new, or materially different, likely significant effects on the environment;

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<sup>1</sup> <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

2. whether there would be a need for a Habitats Regulations Assessment (“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 2014 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 given in (a), (b), (c) and (d) 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. In light of the analysis supplied by the Applicant and responses to the consultation that have raised no concerns regarding environmental issues, the Secretary of State has, therefore, concluded that no update is required to the ES as a result of the proposed amendment to the 2014 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 not likely to be a significant effect on any protected sites either alone or in combination with any other plans or projects as a result of the proposed change and therefore an Appropriate Assessment is not required. He is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPSs 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, suggests that the changes considered in this letter is a material change.
11. 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. The Applicant:
- (a) publicised the Application in accordance with regulation 6 of the 2011 Regulations, the Application was also published for two successive weeks in the local press and copies of the regulation 6 notice and the Application were made publicly available on

the Planning Inspectorate's website, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate;

- (b) notified 26 Parish councils with an interest in the Application;
  - (c) published the Application documents on the ScottishPower Renewables website;
  - (d) provided access to electronic copies of the Application documents (hard copies were available upon request);
  - (e) located a hard copy at the OrbisEnergy Building in Lowestoft for public review upon appointment; and
  - (f) provided the application to the ScottishPower Renewables nominated Fisheries Liaison Officer for communication to the fishing community.
13. Representations were received from: Natural England, East Suffolk Council, Mid Suffolk District Council, the Marine Management Organisation, Trinity House and Suffolk County Council. No comments were received from Trinity House, the Marine Management Organisation and Mid-Suffolk and Babergh District Councils. No formal objections were received; however Natural England raised several issues regarding the legal certainty required to rely on the as-built parameters of the Development for the purposes of an HRA. The Secretary of State's responses to the issues raised by consultees are outlined in the following paragraphs.

#### Natural England Response

14. Natural England has advised the Secretary of State that the proposed amendments should be considered as an NMC, as they are fully within the consented Rochdale Envelope and the adverse impacts will be no worse than those assessed in the ES and HRA for East Anglia ONE Offshore Wind Farm. The Secretary of State has reviewed the information supplied by the Applicant and agrees with Natural England's position on the materiality of the proposals.
15. As there is no legal time limit on when applications for NMCs to DCOs can be made, Natural England has expressed concern that there would be nothing to prevent the developer from making a further NMC application to increase the number and size of turbines specified for this windfarm within the Rochdale Envelope parameters set out in the 2014 Order (the "2014 parameters").
16. Natural England requested the following clarifications on the Collision Risk Modelling Update ("CRM") included as Appendix A within the Applicant's supporting statement:
- (a) further clarity on the methodology used to calculate the site-specific proportion of birds at collision height;
  - (b) that outputs from both Option 1 and Option 2 for all species<sup>2</sup> are presented; and
  - (c) in line with general guidance provided by Natural England, the Applicant should provide Option 2 outputs to demonstrate that the chosen methodology was the most suitable.
  - (d) clarity on the different reference points for the turbine parameters (i.e. mean high water spring ("MHWS") vs mean sea level ("MSL") in terms of draught height), as uses of these terms appear inconsistent across the supporting statement and the CRM.

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<sup>2</sup> Option 1 - Basic model, assumes a uniform distribution of bird flights between the lowest and the highest levels of the rotors, and uses bird flight height data from a site survey.

•Option 2 - Basic model, also assumes a uniform distribution of flight heights, but uses generic flight heights data.

17. The Applicant responded to the issues raised by Natural England on the 24 August 2021, including in relation to the clarifications it sought on the CRM. The Secretary of State is content that the Applicant has provided further clarity on the methodology used to calculate the site-specific proportion of birds at collision height. Additionally, he believes that requests (b), (c) and (d) are not a consideration for this NMC application and is content that, overall, the changes to the turbine parameters would result in a reduction in bird mortalities from collision.
18. The Applicant also responded to the issue raised by Natural England in relation to whether it would be possible for the Applicant to submit a further NMC to increase the size or number of turbines at the East Anglia ONE development. The Secretary of State considers that the change to the size and number of turbines as set out in the Amendment Order will create a new baseline for the assessment of cumulative effects for all subsequent applications. No further amendment to the 2014 Order in respect of an increase in the size or number of turbines would be possible without a further assessment of the cumulative effects of that change against the new baseline, taking into account any subsequent consents. The Secretary of State therefore considers that the size or number of turbines of the East Anglia ONE could not be increased without a full and proper assessment being undertaken. However, to provide complete certainty on this point, the Secretary of State has included provisions to the Amendment Order designed to confirm that an NMC, utilising the 2014 parameters, cannot be used to increase the size or number of turbines and to confirm that the as-built parameters should be used in the assessment of subsequent applications.

#### East Suffolk Council

19. East Suffolk Council did not raise any objections to the proposed change but acknowledged that the proposed amendments would not alter the constructed East Anglia ONE project parameters. East Suffolk Council also raised the point that, although not relevant to the current application, the previous NMC granted in 2016 resulted in the electrical output of the scheme being reduced by a third but this did not result in a one third reduction in the size and scale of the onshore infrastructure. The local communities and onshore environment have therefore had to accept the same level of impact for a lower amount of electricity generation. The Secretary of States notes the point raised by East Suffolk Council and agrees this is not relevant to the current application. However, he also considers that despite the reduction in size, the East Anglia ONE development is making a significant contribution to meeting the need for low-carbon energy production, as identified in the National Policy Statements (EN-1) Overarching National Policy Statement for Energy) and (EN-3) National Policy Statement for Renewable Energy Infrastructure.

#### Suffolk County Council

20. Suffolk County Council did not raise any objections to the proposed change but stated that if future proposals were made to increase the number of turbines, they would expect that a fresh application to be submitted and would include proposals to reduce the detrimental impacts - specifically, the negative impacts on the environment and local communities caused by the installation of onshore transmission connections. As set out in paragraph 18, the Secretary of State considers that the size or number of turbines of the East Anglia ONE could not be increased without a full and proper assessment being undertaken.

## **Environmental Impact Assessment**

21. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in the ES for the development authorised by the 2014 Order.
22. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow him to make a determination on the Application.
23. 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 2014 Order and as such considers that there is no requirement to update the ES.
24. 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.

## **Habitats**

25. The Secretary of State has considered the relevant and important policies in respect of the United Kingdom's obligations 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 a protected site, as defined in the Habitats Regulations. 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 if he has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network.
26. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposals do not alter the conclusions set out in the ES and HRA for the 2014 Order and the Application will not have a likely significant effect on any protected sites within the National Site Network and no Appropriate Assessment is therefore required.

## **General Considerations**

### Equality Act 2010

27. 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 unlawful 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 and sexual orientation; gender reassignment; disability; marriage and civil partnership;<sup>3</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.
28. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010 and is satisfied that there is no evidence that granting the changes considered in this letter will affect adversely the achievement of those objectives.

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<sup>3</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

## Human Rights Act 1998

29. The Secretary of State has considered the potential for the proposed changes to the Development to infringe upon human rights in relation to the European Convention on Human Rights. The Secretary of State considers that the grant of the changes considered in this letter would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

## Natural Environment and Rural Communities Act 2006

30. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular 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 the Application considers biodiversity sufficiently to accord with this duty.

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

31. The Secretary of State has considered the ongoing need for the development. The Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3) both set out that for the UK to meet its energy and climate change objectives, there is continuing need for new electricity generating plants of the type proposed by the Applicant. The Secretary of State considers, therefore, that the ongoing need for the project is established given the contribution it will make to securing energy supply. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.
32. The Secretary of State has considered the point raised by Natural England concerning the possibility of a future NMC which would allow the Applicant to increase the number or size of the installed turbines at the East Anglia ONE development, if the increase was within the 2014 parameters. As set out in paragraph 18, the Secretary of State considers that the size or number of turbines of the East Anglia ONE could not be increased without a full and proper assessment being undertaken. However, to provide complete certainty on this point, the Secretary of State has included provisions to the Amendment Order designed to confirm that an NMC, utilising the 2014 parameters, cannot be used to increase the size or number of turbines and to confirm that the as-built parameters should be used in the assessment of subsequent applications.
33. The Secretary of State has considered the nature of the proposed change, noting that the proposed change to the Development would not result in any further environmental impacts and will remain within the parameters consented by the 2014 Order.
34. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed change to the 2014 Order with the amendments set out

below. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the 2014 Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the 2014 Order so as to authorise the change detailed in the Application.

### **Modifications to the draft Order proposed by the Applicant**

35. In addition to the modifications to the draft Order submitted by the Applicant, the Secretary of State has included provisions to the Amendment Order designed to confirm that an NMC, utilising the 2014 parameters, cannot be used to increase the size or number of turbines and to confirm that the as-built parameters should be used in the assessment of subsequent applications.

### **Challenge to decision**

36. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

### **Publicity for decision**

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

Yours sincerely,

Gareth Leigh  
Head of Energy Infrastructure Planning

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

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-anglia-one-offshore-windfarm/>

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)