



Department for
Energy Security
& Net Zero

By email: Claire.Brodrick@pinsentmasons.com

Claire Brodrick
Legal Director
Pinsent Masons LLP
30 Crown Place,
London,
EC2A 4ES

**Department for Energy Security and
Net Zero**
Energy Infrastructure Planning
3-8 Whitehall Place
London,
SW1A 2JP

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Dear Claire,

**ELECTRICITY ACT 1989 AND ACQUISITION OF LAND ACT 1981 - ØRSTED
HORNSEA PROJECT THREE (UK) LIMITED (FERRY ROAD, HARTLEPOOL)
COMPULSORY PURCHASE ORDER 2023**

Your client: Ørsted Hornsea Project Three (UK) Limited.

The Compulsory Purchase Order and background:

1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to refer to the Ørsted Hornsea Project Three (UK) Limited (Ferry Road, Hartlepool) Compulsory Purchase Order 2023 (the “Order”), which was submitted to the Secretary of State by Pinsent Masons LLP representing Ørsted Hornsea Project Three (UK) Limited (the “Acquiring Authority), for consideration under section 10 of, and paragraph 1 of Schedule 3 to, the Electricity Act 1989 (“the 1989 Act”) and Part 2 of the Acquisition of Land Act 1981 (“the 1981 Act”).
2. The Acquiring Authority (AA) has made the Ørsted Hornsea Project Three (UK) Limited (Ferry Road, Hartlepool) Compulsory Purchase Order 2023 (the “Order”). The Order is required for the Hornsea Project Three Offshore Wind Farm.
3. The Secretary of State notes that the on 24 January 2017, the AA was granted an electricity generation licence pursuant to section 6(1)(a) of the Electricity Act 1989. The AA is developing a new offshore wind farm project in the North Sea, some 121 kilometres northeast of the north Norfolk coast and

160 kilometres east of the Yorkshire coast, called Hornsea Three. In December 2020, the AA was granted a Development Consent Order¹ (DCO) for the 2.8GW windfarm. The construction of Hornsea Three formally commenced in May 2023 and is due to be commissioned in 2027.

4. Part 1 of Schedule 14 to the DCO requires the AA to submit a Kittiwake Implementation Management Plan (KIMP) to the Secretary of State for approval. An amendment to the DCO which came into force on 18 April 2023 required that two ANS be in place for three breeding seasons, and two ANS be in place for two seasons, prior to the operation of any Hornsea Three turbines. Three ANS were commissioned in June 2023, thereby partially meeting these requirements, and a non-material change to allow for the fourth ANS to be delivered prior to final commissioning has been submitted but has not yet been determined. The delivery of this ANS at the Site is integral to Hornsea Three, which cannot operate until the ANS is delivered.
5. Works are therefore required to install, use and maintain services in connection with the ANS. The services include an electrical supply to power the mechanical and electrical equipment on the site such as CCTV and lighting. The works will include the installation of a new 300WNE 3c electrical cable in the verge of Ferry Road, together with double ducting at all road crossing points. A new electrical cable is required as the site does not currently have an electrical connection.
6. The AA states that electricity was previously supplied to the site by PD Teesport Limited who are no longer doing so. Any new utility installation will be undertaken in accordance with the requirements set out in the New Roads and Street Works Act 1991² ensuring that access along the route is maintained at all times.
7. The majority of the works will be in the verge or edge of the carriageway and will not affect the day-to-day use of the road. Where any existing access points are crossed, temporary works will be introduced to maintain access. Installation of a new electrical connection is expected to take approximately eight weeks.
8. Two ANS structures are proposed on the site. One would be similar to fisherman's huts, face towards the sea, and have capacity for 534 nesting spaces. The other would be of ten-sided design to provide a variety of nesting aspects, 510 with sea views and 340 without, and with internal space for monitoring by ecologists. Overall construction of the ANS works would take approximately 9 months to be completed.
9. The Order relates to land access rights required to facilitate the construction and maintenance of the ANS and rights to install, use and maintain services in connection with the ANS for the purposes of kittiwake compensation

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-003680-Decision%20holding%20doc.pdf>

² <https://www.legislation.gov.uk/ukpga/1991/22/contents>

measures at Part 1 of Schedule 14 to The Hornsea Three Offshore Wind Farm DCO 2020.

10. The Order Land is an existing private road which adjoins the site and continues for approximately 175 metres along Ferry Road until it meets the existing publicly adopted highway. In addition to providing access to the site, Ferry Road provides access to the RNLI Hartlepool Lifeboat Station, industrial land, six fisher cabins and to Middleton Jetty. The Order Land surface varies from a hard surface with tarmacadam to unmade with a loose gravel surface, with utility chambers, surface drainage, streetlights and other street furniture throughout. There are narrow verges of naturally occurring vegetation and fences on both sides of Ferry Road.
11. The Secretary of State is required to seek consent from the Gas and Electricity Markets Authority (“GEMA”) where any land subject to compulsory acquisition, including rights over land, belongs to another licence holder. By virtue of paragraph 2(1) of Schedule 3 to the 1989 Act, no order may be made which authorises the compulsory purchase of land (or rights in land) belonging to another 1989 Act licence holder, unless and until consent to the making of the order has been obtained from GEMA.
12. However, as no land is owned or occupied by another electricity licence holder, GEMA consent was not required for this Order.
13. The process for making and confirming the Order commenced on 28 June 2023. The objection period ran from 13 July 2023 until 4 August 2023. During this period, the Secretary of State received three objections, these were from: Teesside Windfarm Limited; PD Teesport Limited and The Royal National Lifeboat Institution (RNLI).
14. As per Rule 3(3) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 (SI 2007 No 3617), amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018 (SI 2018 No 248) the Secretary of State decided it was appropriate to hold a public local inquiry into the abovementioned Order. Notification was sent to all interested parties, via email, on 31 August 2023. For the purpose of Rule 3(3), 31 August 2023 became the ‘relevant date’.
15. The Secretary of State wrote to the Planning Inspectorate, via email, on 7 September 2023 to request that an Inspector be appointed to oversee the inquiry. Mr Patrick Hanna was appointed as the Inspector.
16. The Secretary of State confirmed the date of the inquiry and the venue, via email, to all interested parties on 18 October 2023, confirming that the inquiry would commence on Tuesday 30 January 2024 to Friday 2 February 2024.
17. The Inspector provided a pre-inquiry note to all interested parties on 24 November 2023.

18. Teesside Windfarm Limited withdrew their objection on 11 December 2023. The inquiry begun on 30 January 2024, however on this same date, the Secretary of State was informed by RNLI's representatives that they were withdrawing their objection as they had received further information on the construction works proposed and the impact on both Ferry Road and the operational Lifeboat Station. RNLI stated they were satisfied that the proposed works would not impact the continued access to and operation of the lifeboat station and that were formally withdrawing their objection.
19. On 31 January 2024, the Secretary of State was informed by PD Teesport Limited's representatives that, notwithstanding their concerns set out in their objection, sufficient negotiations have now taken place between the AA and PD Teesport to address those concerns satisfactorily, and on this basis their objection was withdrawn.
20. Due to the fact the inquiry had officially begun, the Secretary of State confirmed that a report from the Inspector should still be provided with a recommendation. It is noted that the inquiry formally concluded on 31 January 2024.

Inspector's report:

21. The Department for Levelling Up, Housing and Communities, issued updated Guidance on compulsory purchase process and the Crichel Down rules in July 2019 for compulsory purchase in England and the Welsh Government have published equivalent guidance, Compulsory Purchase in Wales and the Crichel Down Rules (Wales Version, 2020) (Circular 003/2019) henceforth referred to as 'the relevant guidance'.
22. The Inspector submitted his report to the Secretary of State on 13 February 2024. Paragraph 22 of the Inspector's report states the tests the Inspector considered, these being: that necessary resources are likely to be available within a reasonable time-scale; whether there are any impediments to implementation; whether the Order is a last resort and reasonable steps have been taken to acquire the rights by agreement; that any interference with rights under the Human Rights Act is justified; and, finally, whether or not there is a compelling case in the public interest.
23. The Secretary of State notes the following in the Inspector's report:
24. Paragraph 6 of the Inspector's report states the following "As currently worded, the Order would prevent diversion of the access road with less than six months' notice. The proposed modifications to the Order would reduce the notice period for any permanent diversion of rights to one month for general diversion, or three months where services were involved, as well as remove the test of necessity and clarify costs liabilities. A further provision for temporary diversions is also introduced, with a 12-hour notice period, and

maximum duration of three months. The modifications would give greater operational flexibility to PDT, as statutory harbour authority, whilst ensuring that the AA remain able to access, construct and maintain the ANS on the Site.” The Secretary of State notes the modifications to the Order which are recorded from page 11 of the Inspector’s report.

25. The Secretary notes the Inspector’s comments in paragraphs 7 and 8 regarding the need for the Order and the impact on the DCO, which has been covered earlier in this decision letter.
26. The Secretary of State notes paragraph 26 in relation to alternatives and agrees with the Inspector’s comments and conclusion.
27. The Secretary of State notes paragraph 28 in relation to resources/finance; the Secretary of State also notes Section 9 (specifically 9.3), of the AA’s Statement of Reasons and has no further comments on this matter.
28. Regarding Human Rights, the Secretary of State notes the comments made by the Inspector in paragraphs 31 and 32 of their report; the Secretary of State covers these matters within the considerations section of this decision letter.
29. The Secretary of State notes the recommendation of the Inspector in paragraph 35, which states “I recommend that the Orsted Hornsea Project Three (UK) Limited (Ferry Road, Hartlepool) Compulsory Purchase Order 2023 be confirmed subject to the modifications set out in the attached Schedule.”

Consideration of the Compulsory Purchase Order:

30. Paragraph 5(1) of Schedule 3, to the 1989 Act applies the 1981 Act to a compulsory purchase by a licence holder. DLUHC issued updated Guidance on Compulsory purchase process and the Crichel Down Rules in July 2019 which is applicable to all compulsory purchase orders to which the Acquisition of Land Act 1981 applies. The Secretary of State has framed their conclusions on the principles of this guidance, including: the need for the Order; the public interest; the compelling case; resources and procedural requirements and other consents.
31. In consideration of the Order, the Secretary of State has weighed up the relevant impacts of the proposed project and has considered whether the rights over the Order land that are sought interfere with the human rights of those with an interest in the affected land. The Secretary of State has also considered whether, in accordance with the relevant guidance, a compelling case for compulsory purchase in the public interest is made out, and whether any interference with the human rights of those affected is sufficiently justified and proportionate in light of the purposes for which the compulsory purchase

order would be made in this instance. The Secretary of State notes that there are no outstanding objections from any owners, lessees, tenants or occupiers of any of the land to be acquired.

32. In considering whether a compelling case for compulsory purchase in the public interest, the Secretary of State notes the rationale set out in the AA's Statement of Reasons and the conclusions within the Inspector's report. Particularly, the Secretary of State notes Section 1 (specifically 1.1 to 1.8) of the Statement of Reasons and paragraph 33 of the Inspector's report.
33. The Secretary of State considers that rights over the land sought by the AA will interfere with the convention rights of those with an interest in the land affected, particularly rights protected by Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. However, the Secretary of State is satisfied that the AA has sought to keep interference to a minimum in respect of the rights sought over the Order land and considers that any interference is necessary and proportionate. The Secretary of State also considers that any interference strikes a fair balance with the public benefit of delivering an important scheme that will help to guarantee the UK's future energy security.
34. The Secretary of State has therefore concluded that there would not be an unlawful interference with convention rights under Article 1 of the First Protocol or in the case of a dwelling, Article 8 of the European Convention on Human Rights and that in confirming the Order there would not be a disproportionate or unjustified interference with convention rights so as to conflict with the provisions of the Human Rights Act 1998.
35. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to the need to:
 - eliminate discrimination, harassment and victimisation;
 - advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and
 - foster good relations between people who share a relevant protected characteristic and those who do not.
36. The Secretary of State has considered the potential impacts of granting the Order in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the relevant protected characteristics.
37. The Secretary of State notes "the general biodiversity objective" to conserve and enhance biodiversity in England, in section 40(A1) of the Natural Environment and Rural Act 2006, and considers the application consistent with furthering that objective, having had regard to the United Nations

Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State has also had regard to the requirements of the Habitats Directive, as applied by the Conservation of Habitats and Species Regulations 2017, under regulation 9(3) of those Regulations, so far as they may potentially be affected by her confirmation of the Order. The Secretary of State is of the view that the Application considers biodiversity, environmental impacts and protected sites to accord with this duty.

Secretary of State’s decision on the Compulsory Purchase Order:

38. Energy security is one of this government’s greatest priorities. Our Powering Up Britain³ policy paper launched in March 2023 made clear how important the planning system is to deliver the government’s commitments on energy security, net zero and energy prices. We need lots of new low carbon infrastructure: including generation, network connections, and storage.
39. To that end, in February 2023, Government published its Action Plan for reforming Nationally Significant Infrastructure planning. In July 2023, we published our consultation on operational reforms to the Nationally Significant Infrastructure Projects (NSIP) consenting process, which sets out the detailed proposals that the government intends to make to reform the end-to-end process. This included a commitment to reform our National Policy Statements (NPSs) across sectors, including energy.
40. Following two rounds of public consultation, on 17 January 2024 DESNZ designated five revised energy National Policy Statements⁴. They covered EN-1 – the overarching NPS for energy - and four technology-specific NPSs covering electricity networks, gas fired generation, renewable generation, gas and oil pipelines, and storage. They have been strengthened to emphasise the need for new low carbon energy infrastructure, to meet our energy security and Net Zero objectives.
41. The updated National Policy Statements define low carbon infrastructure as a “Critical National Priority” – this improves how decisions will be made on low carbon infrastructure projects and highlights the urgent priority for this infrastructure.
42. The Secretary of State has carefully considered the AA’s Statement of Reasons which sets out a justification for the making of the Order. The Secretary of State also considers that the provision of an efficient and reliable supply of electricity is necessary to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area and so, The Secretary of State concludes that there is a compelling, proportionate and justifiable case in the public interest for the acquisition of the Order land.

³ <https://www.gov.uk/government/publications/powering-up-britain>

⁴ <https://www.gov.uk/government/collections/national-policy-statements-for-energy-infrastructure>

43. **The Secretary of State has decided to confirm the Order with modifications to the Order.** The proposed modifications were agreed between the AA and PD Teesport Limited and these modifications allowed PD Teesport Limited to withdraw their objection. These modifications are primarily around access to the Order land and are for both the AA and PD Teesport Limited to adhere to.
44. The Secretary of State notes that the Order was necessary for the Hornsea 3 DCO to be fully implemented, and that the rights being obtained via the Order are both necessary and proportionate and that there are no live objections to the Order.
45. The confirmed Order is enclosed together with the plans referred to in that Order. The Order and plans are authorised on behalf of the Secretary of State.
46. Your attention is drawn to the notice obligations in section 15 of the 1981 Act, including that relating to publishing a confirmation notice in one or more local newspapers circulated in the locality of the land subject to the compulsory purchase order. The Order will become operative on the date which Notice of Confirmation is first published. It is important you advise the Secretary of State of this date. We should be grateful if you would in due course, send to the Secretary of State a copy of the pages from the local newspaper containing the Notice of Confirmation of the Order. The page should identify at the head thereof the name of the newspaper and the date of publication.
47. Section 15(6) of the 1981 Act provides that a confirmation notice shall be a local land charge and requires it to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the Acquiring Authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.
48. The validity of the Secretary of State's decision may be challenged by making an application to the Planning Court. Such application must be made not later than six weeks from the date on which notice of the confirmation or making of the Order is first published in accordance with section 15 of the 1981 Act.

Yours sincerely,

John McKenna
Head of Network Planning team
Energy Infrastructure Planning Delivery Team
Energy Development Directorate