



Department for  
Energy Security  
& Net Zero

3-8 Whitehall Place  
London  
SW1A 2AW  
+44 020 7215 5000  
[energyinfrastructureplanning@energysecurity.gov.uk](mailto:energyinfrastructureplanning@energysecurity.gov.uk)  
[www.gov.uk/desnz](http://www.gov.uk/desnz)

Ref: EIA/2023/00017

Ørsted Burbo Bank Offshore Windfarm  
Ramsey Way  
LA14 2GR Barrow-in-Furness, Cumbria  
United Kingdom

08 April 2024

Dear Richard Green,

## **SECTION 36C OF THE ELECTRICITY ACT 1989**

### **THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS) (ENGLAND AND WALES) REGULATIONS 2013**

#### **PROPOSED VARIATION TO THE SECTION 36 CONSENT TO CONSTRUCT AND OPERATE BURBO BANK OFFSHORE WIND FARM**

##### **1. Introduction**

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to refer to the application dated 26 July 2023 (“the Variation Application”) on behalf of Ørsted Burbo (UK) Limited (“the Applicant”) to vary the consent granted by the Secretary of State under section 36 of the Electricity Act 1989 on 9 July 2003 (“the Section 36 Consent”) to construct and operate a 90MW offshore wind farm generating station (“Burbo Bank”) in Liverpool Bay on the west coast of the UK in the Irish Sea. The Section 36 Consent was varied on 17 October 2005 to increase the maximum tip height parameter from 130m to 137m. The Section 36 Consent was further varied on 19 July 2011 to extend the latest date for commencement of development to 27 August 2015.
- 1.2. This Variation Application is to amend paragraph 8a of the Section 36 Consent to permit the making of improvement works by installing aerodynamic tip extenders to boost the efficiency of the turbines in the wind farm array.
- 1.3. The Variation Application notes that the proposed works involve the modification of the wind turbine blades at Burbo Bank to improve the project’s operational efficiency. As explained by the Applicant in section three of their application document titled “Burbo Bank Offshore Wind Farm – Installation of Aerodynamic Tip Booster”, tip boosters will be installed at the ends of the existing and operational blade tips. This will increase performance by controlling the stream tube around the blade and reducing the tip drag, breaking down the main tip vortex into smaller vortices. This will enable higher loading to be maintained efficiently to the tip booster outer structure and will result in the generation of more power. The increase in

generation will be achieved solely by the addition of the tip boosters to the blades of each turbine.

- 1.4. The Variation Application also stated that no increase in traffic, air emissions, noise or any other matter assessed in the Environmental Impact Assessment will arise as a result of the modification of the wind turbines. Therefore, the significance of the environmental effects are not expected to differ from those assessed for the original Section 36 Consent. The Applicant contends that the increase in efficient use of energy is beneficial to the environment in that more electricity will be produced from the same turbines thus reducing the need for electricity generation from other sources including fossil fuels. The Secretary of State notes that no consultees offered any views contrary to those set out by the Applicant.

## **2. Suitability of the section 36 variation procedure for permitting the proposed variation**

- 2.1. The guidance issued in 2013, 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales ("the Guidance Note")', states:  
*"Changes in the design of generating stations which have been consented but not constructed which would allow them to generate an amount of power that would be inconsistent with the original consent are likely to be appropriate subject matter for a variation application, provided there are no major changes in the environmental impact of the plant. Similar changes to an existing plant could be appropriate subject matter for a variation application only if they did not involve physical extension of the generating station, relocation of generating plant, or the installation of new equipment that would amount to the construction of a new generating station".*
- 2.2. The section 36C variation procedure is not intended to authorise a material change to an existing consent that would result in a development that would be fundamentally different in character or scale from what is authorised by the existing consent. Any such changes would need to be the subject of a fresh application for consent.
- 2.3. The Secretary of State notes that the Applicant concluded there would be no significant additional environmental impacts arising from the varied development when compared to those arising from the consented development.
- 2.4. The Secretary of State considers that the varied development would not be fundamentally different in character or scale from the consented development and that the proposed change is in keeping with those referred to in the Guidance Note as being able to be appropriately dealt with under the section 36C variation procedure. The Secretary of State considers that it is appropriate for this Variation Application to be considered under the section 36 variation procedure.
- 2.5. The Variation Application was published in accordance with the Electricity Generating Stations (Variation of Consent) (England and Wales) Regulations 2013 ("the Variation Regulations") and served on Wirral Council, who are the "relevant planning authority" as provided for by the Variation Regulations.
- 2.6. The Variation Application was subject to public consultation between 2 September 2023 and 13 October 2023.

## **3. The Secretary of State's consideration of the environmental information**

- 3.1. The Applicant submitted a screening request asking the Secretary of State to determine if an environmental impact assessment was required as part of the variation application and provided supporting documentation (April 2023). The supporting documentation included details relating to; the original consent for Burbo Bank; the legislative and local and national

planning policy issues related to the Variation Application; the existing Development and the surrounding area; details of the tip booster installations; the status of existing planning permissions and discharge submissions; and the consultation undertaken in developing the Variation Application.

- 3.2. A request for a screening opinion to determine if the development would qualify as an EIA development was made by the Applicant in April 2023. Following a consultation with local LPA's and the MMO, the Secretary of State concluded on 15 June 2023 that the proposed modification to the wind turbines did not require an updated environmental impact assessment.

#### **4. The Secretary of State's consideration of possible effects on designated sites**

- 4.1. The Secretary of State is prohibited from granting a variation to a section 36 consent unless it can be demonstrated that any proposed change will not adversely affect the integrity of any Special Areas of Conservation ("SACs") and Special Protection Areas ("SPAs") that form part of the National Site Network designated under the Conservation of Habitats and Species Regulations 2017, or in the case that any proposed change were to adversely affect the integrity of these sites, that there are no feasible alternatives which would be less damaging to the sites, there are imperative reasons of overriding public interest, and sufficient compensation is provided to offset damage which could be caused to the sites.
- 4.2. Based on the information provided and in the absence of any views to the contrary from consultees, the Secretary of State considers that the Varied Development will not have any likely significant effects on any sites designated as part of the National Site Network or other protected sites either alone or in-combination with other plans or projects.

#### **5. Issues raised during pre-application consultation**

- 5.1. The Applicant undertook pre-application consultation with Natural England ("NE") in August 2022. NE suggested performing Collision Risk Modelling ("CRM") to qualify the risk from the increased blade length to offshore ornithology, which the Applicant provided in April 2023. The CRM report identified six species of bird as being of potential collision risk: kittiwake, common gull, great black-backed gull, herring gull, lesser black-backed gull and gannet. The CRM report considered that the addition of the tip boosters would increase rotor radius by 0.4m and thereby reduce the air gap between the lowest rotor swept area and the sea surface that birds may fly through. Following the collision modelling for the three design scenarios of Burbo Bank (the consented design, the as-built design, and the as-built design plus tip boosters), the report concluded that, with the addition of tip boosters to the existent wind turbines, the number of collisions per annum remains significantly lower than in the worst-case scenario of the consented design.
- 5.2. In April 2023, the Applicant submitted a request for a screening opinion to the Secretary of State. A consultation was launched to the following LPAs, local councils, organisations and government agencies and departments: The Crown Estate, The Royal Society for the Protection of Birds ("RSPB"), Natural England ("NE"), Wildlife Trust, Historic England, the Ministry of Defence ("MoD"), National Air Traffic Services ("NATS"), Local Inshore Fisheries and Conservation Agency (West), Maritime and Coastguard Agency, Trinity House, Royal Yachting Association, The Marine Management Organisation, Chester and West Chester Council, Flintshire Council, Liverpool Council, Denbighshire Council and Lancashire County Council – all of which confirmed they had no objection or did not respond. The MoD had questions about the geographical positioning of each turbine to ensure that the tip extensions would not interfere with radar capabilities: Upon review of information on the positioning of the array and individual turbines provided to it by the Applicant, the MoD confirmed that they had no further comments and were content.

- 5.3. NE had further comments on the revised CRM: NE noted that the Applicant did not have the necessary data from the Burbo Bank Environment Statement (“ES”) itself and therefore used densities from the Burbo Bank Extension, which NE considered was appropriate. The Applicant had however, scaled down the densities based on the smaller array area of Burbo Bank compared to the parameters of the extension, which NE considered was not appropriate. NE highlighted that bird density is independent of area and the reduced size of the array is accounted for in the stochastic Collision Risk Model (“sCRM”) by the number of turbines input, not by changing the density inputs. Since the applicant decreased the input densities by ~75%, if done correctly without reduction, NE would expect the predicted number of collisions to be 4 times as many as shown in this report. NE noted that this may be a minimal increase but advised the Applicant to present the correct figures in the report, and the Applicant updated the report accordingly. Nine further seabird species were assessed for collision risk in the Burbo Bank Extension ES but were ruled out since a conclusion of ‘no change’ was reached in the original modelling.
- 5.4. Despite its comments on the revised CRM NE had no objection to the Variation Application.

#### Public notice consultation

- 5.5. As stated above in 2.6, a consultation via public notice was served between 2<sup>nd</sup> September and 13<sup>th</sup> October. Responses acknowledged the Variation Application but there were no objections.

### **6. Secretary of State’s decision on the holding of a public inquiry**

- 6.1. Regulation 8 of the Variation Regulations gives the Secretary of State discretion to hold a public inquiry into a variation application. In considering whether to hold a public inquiry, the Secretary of State should consider any representations which have been made to her by a relevant planning authority or any other person, where those representations are not withdrawn, and all other material considerations.
- 6.2. Representations made in respect of the Application were received from Chester and West Chester Council, Denbighshire Council, NATS, MoD, RSPB, Historic England and Trinity House and the Environment Agency. None of the representations raised any objection to the Application being granted and did not raise any other matters material to the Secretary of State’s decision on whether to hold a public inquiry into the Application. The Secretary of State received no representations save for those from the organisations named above.

#### Conclusion

- 6.3. The Secretary of State has carefully considered the views of the relevant planning authorities and statutory advisers and all other material considerations. She notes that there were no requests for a public inquiry to be held and that no substantive comments were submitted to her in respect of any matters arising from the Application. The Secretary of State is, therefore, of the view that she requires no further information to enable her to take a decision on the Application and that it would not, therefore, be appropriate to cause a discretionary public inquiry to be held into the Application.

### **7. Other matters**

- 7.1. The Secretary of State has considered the ongoing need for the Development. The Secretary of State notes the revised 2024 Overarching National Policy Statement for Energy (EN-1) reinforces the policy objectives, originally designated in 2011, that for the UK to meet its energy and climate change objectives there is a continuing need for new electricity generating plants of the type proposed by the Applicant given the contribution it will make to securing energy supply.

- 7.2. 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 and are important and material matters in considering applications to vary section 36 consents.
- 7.3. The new NPS suite came into force on 17 January 2024 after being approved by Parliament. The transitional guidance in the new NPS EN-1 makes clear that the assessment of any decision-making about NSIP applications in progress should continue to be made with reference to the currently designated NPS suite which remains in force and therefore forms the basis of the Secretary of State’s consideration of the Application. The Secretary of State considers the new NPSs to be important and relevant when in considering applications for variations of section 36 consents. As such, she has had regard to the new energy National Policy Statements in deciding the Application but does not consider that there is anything within them that would lead her to reach a different decision on the Application.
- 7.4. The Secretary of State notes that the National Policy Statement for Renewable Energy Infrastructure (EN-3) states “As set out in the British Energy Security Strategy, the Government expects that offshore wind (including floating wind) will play a significant role in meeting demand and decarbonising the energy system. The ambition is to deploy up to 50GW of offshore wind capacity (including up to 5GW floating wind) by 2030, with an expectation that there will be a need for substantially more installed offshore capacity beyond this to achieve net zero carbon emissions by 2050.”
- 7.5. In conclusion, the Secretary of State considers that the ongoing need for the Varied Development is established and that granting the requested variation would not be incompatible with the amended Climate Change Act 2008 nor the National Policy Statements and the published Powering Up Britain 2023.

## **8. Equality Act 2010**

- 8.1. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:
- the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited by or under the Act;
  - the advancement of equality of opportunity between people who share a relevant protected characteristic (e.g. age; sex and sexual orientation; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion or belief; and race.) and persons who do not share it; and
  - the fostering of good relations between persons who share a relevant protected characteristic and those who do not share it.
- 8.2. The Secretary of State has considered the potential impacts of granting or refusing the Application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on persons sharing any of the protected characteristics and sees no evidence which suggests that such differential impacts are likely in the present case.
- 8.3. The Secretary of State does not, therefore, consider that either the grant or refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

## **9. Human Rights Act 1998**

9.1. The Secretary of State has also considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Varied Development. She considers that the grant of a consent in respect of the Varied Development would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

## **10. Natural Environment and Rural Communities Act 2006**

10.1. 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 Communities Act 2006 and considers the application is consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.

## **11. Secretary of State's decision on the variation application**

11.1. The Secretary of State notes that a small amount of construction is required as part of these Variation proposals. She also notes that there have been no significant changes in the environmental and other impacts identified in relation to the Varied Development. The Secretary of State is therefore of the view that the Varied Development does not result in a development that is fundamentally different in character or scale to that originally consented. The Secretary of State is of the view that the Varied Development is appropriate and necessary and is satisfied that the changes are of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.

11.2. The Secretary of State has considered the information submitted by the Applicant along with submissions made by consultees and takes the view that there are no matters that would require her to refuse the Variation Application.

11.3. The Secretary of State, having regard to the matters specified above, has decided to make a variation to the Section 36 Consent for the Development pursuant to section 36C of the Electricity Act 1989. The Section 36 Consent as varied is annexed to the variation decision and subject to the conditions set out in the varied consent.

11.4. I accordingly enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989.

Yours sincerely,



John Wheadon

Head of Energy Infrastructure Planning Delivery