



Department
of Energy &
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Our ref: EN010024

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Dear Mr Grant

**PLANNING ACT 2008
PLANNING CONSENT APPLICATION – PROPOSED NAVITUS BAY WIND
PARK**

1. I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to advise you that consideration has been given to:
 - (a) the report dated 11 June 2015 of the Examining Authority, Ava Wood, Jim Claydon, Peter Braithwaite and Stuart Cowperthwaite ("the ExA"), which conducted an examination ("the Examination") into the application (the "Application") submitted on 10 April 2014 by Navitus Bay Development Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Navitus Bay Wind Park ("the Development"); and
 - (b) representations received by the Secretary of State and not withdrawn in respect of the Application.
2. The Examination of the Application began on 11 September 2014 and was completed on 11 March 2015. The Examination was conducted on the basis of written evidence submitted to the ExA, eight issue-specific hearings, two open floor hearings, a compulsory acquisition hearing and a number of site inspections.
3. The Order, as applied for, sought development consent under the 2008 Act for the construction and operation of an offshore wind farm in the English Channel off the coasts of Dorset (closest point 14.7km) and the Isle of Wight (closest point approximately 17km). The generating station would have a maximum installed electrical capacity of 970MW, which

would be generated by up to 194 wind turbines. The Applicant also sought development consent for three offshore substations, a meteorology mast, electrical connections between the turbines, six export cables to the coast at Taddiford Gap (between Barton-on-sea and Milford-on-sea), onshore connection works including six underground cables to a new electrical sub-station at Three Legged Cross in Dorset (which was also included in the Order) (collectively known as “the Application Development”).

4. The Secretary of State notes that during the Examination, the Applicant submitted a Turbine Area Mitigation Option (“TAMO”) which sought to provide a mechanism for the Secretary of State to “approve a reduced number of turbines should [s]he consider that this is necessary as a matter of planning judgement”. The TAMO proposed a project with a maximum generating capacity of 630MW, a maximum of 105 (6MW) wind turbines and a reduction in area occupied by the turbines to 79km² (down from the original 153km²). The Secretary of State notes that the TAMO would also increase the distance of the wind farm from the closest point on the shoreline from just over 14km to around 19km. However, other major works – principally the electrical connections – would remain the same for both development options.
5. Published alongside this letter is a copy of the ExA’s Report of Findings and Conclusions (“the Report”) as amended by the Errata Sheet (Ref EN 010024) of corrections produced by the Planning Inspectorate and agreed by the ExA. The ExA’s findings and conclusions are set out in chapters 5 to 21 of the Report, and the ExA’s recommendations are at paragraph 24.1.

Summary of the ExA’s Recommendation

6. The ExA recommended that the Secretary of State refuse to grant development consent for either the Application Development or the TAMO.

Summary of the Secretary of State’s Decision

7. The Secretary of State has carefully considered the ExA’s Report and has decided, under section 114(1)(b) of the 2008 Act, to refuse development consent (for both the Application Development and the TAMO). This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116(1)(b) of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“2009 Regulations”).

Secretary of State’s consideration

8. The Secretary of State has considered the Report and all other material considerations, including representations received after the close of the Examination. The Secretary of State’s consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Report (“ER”). (Paragraph

numbers in the Report are quoted below in the form "ER x.xx.xx" as appropriate.)

The Case for Making the Development Consent Order

9. The Secretary of State notes that the ExA sets out in ER 21.2.67 and 21.3.6 that the following matters should not attract significant weight in the decision as to whether to make the Order in favour of the Application Development or the TAMO:
 - Physical processes;
 - Biodiversity, biological environment and ecology;
 - Onshore landscape and visual impacts (except for the New Forest National Park and Green Belt tests);
 - Offshore and onshore archaeology;
 - Recreation (except diving);
 - Commercial fisheries and fishing;
 - Operational and navigational safety;
 - Highways, traffic and transportation;
 - Drainage, flood risk and water quality;
 - Electro-magnetic Fields, air quality and other health considerations; and
 - Noise and vibration.
10. Except where indicated in other sections of the Report, the Secretary of State agrees with the ExA's conclusions in these matters.
11. In addition, the ExA notes (ER 21.2.69 and 21.2.70) that the Application Development would comply with the need case set out in the Overarching National Policy Statement ("NPS") for Energy ("EN-1"). The ExA also notes that there is a presumption in favour of granting development consent for certain types of nationally significant infrastructure energy projects. The relevant provisions in EN-1 provide that given the level and urgency of need for infrastructure of the types covered by the Energy NPSs (which includes NPS EN-3 on renewable energy infrastructure projects) there is a presumption in favour of granting consent to applications for such energy nationally significant infrastructure projects. The presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused (EN-1 4.1.2).
12. Finally, the ExA acknowledges (ER 21.2.71) that the proposed project would be likely to lead to the creation of a large number of job opportunities (up to 1700 full time equivalents for the best case set out in the Applicant's Environmental Statement (ER 12.3.3)) which would be a significant benefit in favour of making the Order.
13. In respect of the TAMO, the ExA states (ER 21.3.17) that this is also supported by Government policy with no dilution of the need case despite its reduced size. In addition, there would still be employment and other benefits to be gained from the construction and operation of the proposed wind farm based on the TAMO.

14. The Secretary of State agrees with the ExA's conclusions set out in paragraphs 11 – 13 above and considers that these carry weight in favour of making an Order for either the Application Development or the TAMO.

The Case against making the Development Consent Order

15. The ExA addresses a number of issues that it considers weigh against granting development consent. The Secretary of State notes that the weight attached by the ExA to these issues varies from minor adverse to significant adverse.

(i) seascape, landscape and visual impact

16. The ExA considered that both the Application Development and the TAMO would produce significant and relatively long term (25 years) impacts on sites designated as Areas of Outstanding Natural Beauty (AONB) and on Heritage Coasts during the operation of the project. In particular, the ExA concluded that the scale and location of the project would affect important special qualities of the AONBs over a widespread area of coastline and that this carried significant weight against the grant of consent for the project in both Application Development and TAMO formats.
17. The Secretary of State notes the ExA's conclusion in this matter. The Secretary of State is aware that this was a key topic during the Examination of the Application and in subsequent representations. The Secretary of State also notes that this is a matter which is especially susceptible to subjective analysis. The Secretary of State further notes that some of the representations made either during the examination or in correspondence do not properly reflect the proposed location of the offshore elements of the Development. So, for example, neither the Application Development nor the TAMO would obscure any sightlines between the Dorset coastline and the Isle of Wight, although they would be a noticeable feature on the periphery of those views. It is, though, undoubtedly the case that the wind turbines would be visible when looking out to sea from large stretches of the coast, in particular from Dorset and the Isle of Wight, where AONB and Heritage Coast designations are prevalent. The Secretary of State, therefore, agrees with the ExA's conclusions about potential impacts of the Application Development and the TAMO, while noting the reduction in impact of the latter.
18. During the Examination, the Applicant raised the fact that development consent under the 2008 Act had been granted by the Secretary of State for what it felt was the analogous Rampion Offshore Wind Farm ("Rampion") which would be located a minimum of 13km off the south coast and have impacts on another National Park – the South Downs National Park. The site location for Navitus Bay would be a minimum of 14km from the coast for the Application Development and 19km for the TAMO. The ExA decided that the two wind farms were not comparable as Rampion's location was set against a section of the coast which, while under a national landscape designation, ran parallel to the wind farm and not, as at Navitus, at the apex of a sector which had as its circumference the Dorset and Isle of Wight coastlines. The Secretary of State agrees

with the ExA's conclusion in this matter for both the Application Development and the TAMO.

19. The Secretary of State has considered the matter in some detail and feels that the ExA's assessment that there will be a significant adverse impact on the perception of viewers standing on the coastlines mentioned above is a reasonable one.

(ii) landscape and visual impact onshore

20. Again, this issue was a key topic for consideration during the Examination of the Application Development and the TAMO. The ExA considered that the proposed undergrounding of the electrical cables would be a substantial part of the moderating impacts of the onshore works during their operation and that the Applicant had sought to minimise any harm and provide reasonable mitigation where possible and appropriate. However, the ExA does note that some of the effects of the onshore works, while relatively short term/temporary, would be significant in some cases. Nevertheless, the ExA indicates that the landscape and visual impacts of the onshore elements of the project should not attract significant weight in the decision on whether consent should be granted.
21. The ExA accepted that the Applicant's scope for developing the necessary onshore works in alternative locations was limited. The ExA considered this policy in relation to the proposed siting in a National Park and in land designated as Green Belt where consents for developments can be granted only in exceptional or special circumstances respectively. The ExA concludes that these circumstances would not apply in the current case where it considers that the benefits of the project would not outweigh the significant impacts.

(iii) the World Heritage Site

22. The Secretary of State notes that much of the Dorset coast is designated by UNESCO as a World Heritage Site (the "Dorset and East Devon Coast World Heritage Site") because of its outstanding geomorphological features. The Site extends over 155km of coastline from Old Harry Rocks in Dorset to Orcombe Point in Devon and occupies an area between the mean low water mark and either the back of the beach or the cliff top (as appropriate). The Applicant indicates in figure 13.10b of Chapter 13 of the Environmental Statement ("Seascape, Landscape and Visual") that the wind farm would be visible from vantage points along a 30km section of the eastern edge of the World Heritage Site with the closest point lying on the shore approximately 15km from the edge of the wind turbine layout.
23. However, the Secretary of State also notes that EN-1 sets out at paragraph 5.8.14 that:

"There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost heritage assets cannot be replaced and their loss

has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a grade II listed building park or garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance, including Scheduled Monuments; registered battlefields; grade I and II* listed buildings; grade I and II* registered parks and gardens; and World Heritage Sites, should be wholly exceptional.”

24. The Secretary of State considers that this is a high hurdle for a project to cross where it is engaged. Though the Site is protected for its geology, the protected feature being its “outstanding combination of globally significant geological and geomorphological features”, the ExA considered that the offshore elements of the project would bring about changes in the way the World Heritage Site would be experienced or enjoyed in its surroundings and would have adverse implications for the Site’s significance and its Outstanding Universal Value (“OUV” - the test of “exceptionability” for World Heritage Sites). The ExA considered there was a risk that the Site would be presented and transmitted to future generations in a form significantly different from what was there at the time of inscription until today.
25. The ExA concluded that there is limited scope to mitigate the impacts of the Development on the World Heritage Site and that, even with mitigation measures in place, the harm to the setting, significance and OUV of the Site carries significant weight against a decision to grant consent.
26. Given the strong steer in EN-1 against permitting irreplaceable harm to sites such as World Heritage Sites, the Secretary of State accepts that the ExA’s arguments must carry significant weight as to the potential for harm to the setting of the World Heritage Site.
27. The Secretary of State notes that the Applicant made a late representation on 7 August 2015 in which it indicated (among other things) that the 38th Session of the World Heritage Committee (held from 28 June – 9 July 2015) did not consider in the agenda of the meeting: the Navitus Bay project, the annual report of the International Union of the Conservation of Nature, the questionnaire submitted by the Jurassic Coast Steering Group, the State of Conservation Reports (including properties under threat) for the UK or the Record of Decisions of the Session.
28. However, given that the ExA does not rely on the listing of a World Heritage site as being under threat to draw its conclusion of harm, and neither does EN-1, the Secretary of State does not feel that this issue alters her conclusion on the possibility of significant adverse impacts on use and enjoyment of the World Heritage Site from either the Application Development or the TAMO.
29. In conclusion, the Secretary of State considers that the development, either the Application Development or the TAMO, though not damaging to

the protected feature of the World Heritage Site, would adversely affect the use and enjoyment of that Site. This would have an adverse effect on the use and enjoyment of the Site irrespective of the fact that the effects are essentially temporary. The Secretary of State, given the importance of the Site, and its utility and amenity value, does not consider the adverse effects, even if considered to be of a temporary nature, are acceptable.

(iv) offshore and onshore archaeology and heritage environment

30. While recognising the richness of undiscovered and known remains on the seabed, the ExA notes that suitable provisions could be included in any Order for the Application Development or the TAMO that would provide necessary mitigation for any impacts on archaeological resources.
31. In respect of onshore archaeology, the ExA records that there are a considerable number of designated and non-designated sites in reasonably close proximity to the boundary of the onshore works. However, it also considered that mitigation measures could be put in place to avoid any significant impacts.
32. The direct impacts of the Development on onshore and offshore archaeological assets are deemed by the ExA to carry less than significant weight in the decision-making process. The Secretary of State agrees with this conclusion.
33. However, there are also a number of heritage assets which would be indirectly affected by the offshore elements of the Navitus Bay project:
 - Lower Needles Point Battery Scheduled Monument;
 - Grade II Listed Tennyson's Beacon;
 - Hurst Castle Scheduled Monument;
 - Grade I Listed St Aldhelm's Chapel;
 - Grade II Listed Durlston Castle and Grade II Registered Durlston Historic Landscape; and,
 - Keyhaven Conservation Area.
34. In this matter, the ExA concludes that the settings of these particular assets would be subject to major change from the visual impact of both the Application Development and the TAMO and that such change should be weighed against the public benefits of the proposal. The Secretary of State considers that, on balance, the ExA's conclusion in this matter is acceptable although she believes that, if considered in isolation, the impacts would not be so significant as to support a recommendation to refuse the grant of consent.

(v) Recreational diving

35. The Secretary of State notes the ExA's conclusion in respect of the impacts on recreational diving in relative proximity to those works of the construction of the offshore elements of the Development which would require the closure of some dive areas. The Secretary of State also notes

that the Applicant acknowledges that there will be impacts on diving during construction although not for every dive site at the same time and not to a uniform extent across those sites. However, while acknowledging the need to ensure safety of divers during construction activities (which mitigation measures would address), the Secretary of State is not convinced that the ExA's conclusions on the significance of any impacts on diving from noise impacts and increases in ocean turbidity should carry the weight attached to it as suggested by the Panel largely because of the temporary nature of the disturbance. The Secretary of State accepts that impacts are inevitable but that this matter in isolation (where suitable mitigation in respect of diver safety has been included in any proposal) would not lead to a conclusion that an application to grant an Order should be refused.

(vi) Tourism and socio-economic

36. The Secretary of State notes that the potential impact of the Application Development and TAMO (in respect of the onshore and offshore elements) both on tourism in and around Bournemouth and Dorset has been one of the key matters raised by objectors to the proposal. The assessments of impacts undertaken by the Applicant and by objectors groups and local councils show that there will be adverse impacts on tourism in the area, but the magnitude of those impacts is the subject of some contention. A number of other socio-economic impacts flow from the effects of the development(s) on tourism (which does, all parties agree, contribute a significant economic benefit to the region – just over £1 billion across the area (ER 12.2.8)), while others stem from the job creation impact of construction and maintenance activities.
37. The ExA sets out (ER 12.2.60) that a paper prepared by Bournemouth Borough Council indicated that a 20% loss in tourist numbers from visitor figures in 2013 and 2014 would lead to a loss in Bournemouth, Christchurch, Poole and Purbeck of £211 million per year and £6.3 billion over the lifetime of the project. However, the Applicant's position (ER 12.2.67) was that there was no robust empirical evidence that wind farms had socio-economic impacts at local or regional levels – that was not the experience at other coastal towns which were close to offshore wind farms. The Applicant also indicated that the Development in both formats would create jobs locally and bring economic benefits.
38. The ExA considers the varying claims and studies submitted during the examination at length in Section 12 of the Report and sets out its conclusions on tourism impacts in paragraphs 21.2.41 to 21.2.46. It concludes that the Applicant erred in some of its assessments by lessening any negative impacts on tourist-related jobs in the Dorset area. Its overall conclusion is that while the overarching impacts on tourism across the area as a whole are not significant, there will be much greater impacts at a local level, for example, at Purbeck where there would be "significant residual harm to tourism in that area" (ER 12.2.136). The Secretary of State broadly agrees with the ExA's analysis and conclusions on tourism impacts.

39. The ExA also considered other socio-economic impacts deriving from the Application Development and the TAMO, in particular those related to potential job creation (where the Applicant's assessment of possible scenarios ranges from negligible positive to major positive, although the ExA concluded (ER 12.3.29) that a medium positive impact would be a more realistic outcome). The ExA concluded (ER12.3.38) that the Application Development and the TAMO would bring employment and supply chain benefits to the Dorset area and should weigh in favour of the project. The Secretary of State agrees with this view.

(vi) Operational and navigational safety

40. The ExA indicates (ER 21.2.51) that the presence of the wind farm would increase the navigational risk for mariners in and around the wind farm and this should weigh against the proposal but not to a significant extent. However, the Secretary of State notes that the Maritime and Coastguard Agency ("MCA") and Trinity House both accepted that the Applicant's Navigational Risk Assessment (which sets out how potential impacts of offshore renewable energy installations will be mitigated) was acceptable to them.

41. While noting the ExA's comments, therefore, the Secretary of State considers that that, given the views of the MCA and Trinity House, no more weight should be given to this matter than is the case in any other offshore installation where suitable mitigation has been offered and can be secured through provisions in any Order that might be granted.

(vii) Noise and vibration

42. While accepting the ExA's general conclusions in this matter, namely that no significant weight should be accorded to it, the Secretary of State considers that the Panel's statement (ER 21.2.61) that "unmitigated noise levels during operation could exceed threshold levels at the nearest coastal locations during certain atmospheric conditions" would apply only in exceptional circumstances. The Secretary of State's view on this matter is based on the minimum distance of 14km from the closest turbine to the closest point on shore.

(viii) Good design

43. The Secretary of State notes and accepts the ExA's conclusions (ER 21.2.65) that the Application Development would not contribute to the quality of the area but would cause significant harm to it.

Other Matters

Representations Received After the Close of the Examination

44. The Department and other Government Departments (including 10 Downing Street) received a significant number of representations after the close of the Examination both for and against the Development. The

Secretary of State has considered these representations but does not feel that they raise any issues that have not been the subject of examination by the ExA.

45. The Secretary of State notes that many representations make reference to the number of other correspondents sharing their views. The Secretary of State has considered the matters raised in those representations so far as they are material considerations.
46. The Secretary of State notes that an Adjournment Debate on the subject of the "Navitus Bay Wind Farm" was held in the House of Commons on 15 June 2015. The Secretary of State considers that the matters raised during the debate were examined in detail by the ExA and are covered in its conclusions and recommendations.

Consideration of Impacts on European Sites

47. The Secretary of State, as the competent authority, has undertaken an appropriate assessment of the potential impact of the Application Development, were it to be given consent, on sites designated under the Habitats and Birds Directives. This concluded that no adverse effects on the integrity of these sites would be expected to arise from the Project either alone or in-combination with other plans and projects if development consent was granted with the inclusion of those mitigation measures considered in the application.

Equality Act 2010

48. The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships¹; pregnancy and maternity; religion and belief; and race. The Secretary of State does not consider that a decision to refuse would have significant differential impacts on any of the protected characteristics.

National Environment and Rural Communities Act 2006

49. 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 making a decision on whether to grant development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to allow the duty in section 40(1) to be discharged.

¹ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only

Transboundary Impacts

50. The Secretary of State notes that, as a result of concerns raised by Natural England on the potential in-combination impacts of the Application Development on designated seabird sites in the Channel Islands, the ExA invited the State of Alderney (SoA), which is a Crown Dependency, to participate in the examination of the first round of written questions on 22 September 2014. The SoA and the Applicant reached an agreement for a condition in the Deemed Marine Licence, if it was made, for post installation monitoring of gannet. Details of this are found in the appropriate assessment. The Secretary of State agrees with the outcome of these discussions.

Human Rights Act

51. The Secretary of State has taken into account the potential engagement of any "Convention right" listed in section 1 of the Human Rights Act 1998 in relation to the exercise of her functions when deciding this application. The Secretary of State does not consider that refusing development consent would be incompatible with any Convention right.

Secretary of State's conclusions and decision

52. In reaching a decision in this matter, the Secretary of State has considered the strategic need case for the Application Development and the TAMO as well as their potential benefits and impacts and all other relevant matters, including representations made after the close of the ExA's Examination of the Application. The Secretary of State accepts that the need for the development of the kind represented by the Application Development and the TAMO is in accordance with the policy set out in the relevant NPSs (EN-1 and EN-3) but she considers that, in this case, the potential impacts of the Application Development or the TAMO are of such a scale that they outweigh the policy imperatives set out in those Statements. Accordingly, the Secretary of State does not consider that the Applicant has made a sufficiently robust case for granting development consent for either the Application Development or the TAMO and has decided, therefore, to refuse development consent.

Challenge to decision

53. 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

54. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the

Infrastructure Planning (Environmental Impact Assessment) Regulations
2009.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Giles Scott', written in a cursive style.

Giles Scott

Head of National Infrastructure Consents and Coal Liabilities

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, refusal of development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, 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 Secretary of State's Statement of Reasons (the decision letter) is published on the Planning Inspectorate's website at the following address:

<http://infrastructure.planninginspectorate.gov.uk/projects/south-east/navitus-bay-wind-park/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to refuse 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)

