



Statement of Case of the Acquiring Authority

The Orsted Hornsea Project Three
(UK) Limited (Ferry Road Hartlepool)
Compulsory Purchase Order 2023

 Orsted

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1. INTRODUCTION

- 1.1 This is the Statement of Case for Orsted Hornsea Project Three (UK) Limited (incorporated in England and Wales with company number 08584210 whose registered office is at 5 Howick Place, London, England, SW1P 1WG) (the "**Acquiring Authority**") in respect of the Orsted Hornsea Project Three (UK) Limited (Ferry Road, Hartlepool) Compulsory Purchase Order 2023 (the "**Order**").
- 1.2 On 28 June 2023, the Acquiring Authority resolved to make the Order. The Order was made on 28 June 2023 and submitted to the Secretary of State for Energy Security and Net Zero (the "**Secretary of State**") for confirmation on 14 August 2023.
- 1.3 On 31 August 2023, the Secretary of State confirmed his intention to cause a local public inquiry to be held into the Order under section 13A(3)(a) of the Acquisition of Land Act 1981.
- 1.4 This Statement of Case has been prepared by the Acquiring Authority in accordance with Rule 7(1)(b) of the Compulsory Purchase (Inquiries Procedure) Rules 2007.
- 1.5 The Acquiring Authority is the holder of an electricity generation licence pursuant to the Electricity Act 1989 and proposes to develop Hornsea Three, a new offshore wind farm project in the North Sea, located approximately 121 kilometres northeast of the north Norfolk coast, and 160 kilometres east of the Yorkshire coast ("**Hornsea Three**"). Hornsea Three will be a 2.8 GW wind farm off the east of England coast which will produce enough green energy to power around 3.2 million homes. As such, Hornsea Three is a vital component in helping the UK achieve its energy security and carbon reduction objectives.
- 1.6 On 31 December 2020, the Acquiring Authority was granted development consent for Hornsea Three through the Hornsea Three Offshore Wind Farm Order 2020 (as amended by The Hornsea Three Offshore Wind Farm (Correction) Order 2021 and The Hornsea Three Offshore Wind Farm (Amendment) Order 2023) (the "**DCO**") pursuant to the Planning Act 2008. On 7 July 2022, Hornsea Three was awarded a contract for difference ("**CfD**") for 2,852MW by the UK Government. The construction of Hornsea Three formally commenced on 3 May 2023. Hornsea Three is due to be commissioned in 2027.
- 1.7 Under Part 1 of Schedule 14 to the DCO, the Acquiring Authority is obliged to submit a Kittiwake Implementation Management Plan (the "**KIMP**") to the Secretary of State for approval. As introduced by The Hornsea Three Offshore Wind Farm (Amendment) Order 2023, paragraph 4 of Part 1 of Schedule 14 to the DCO states that the Acquiring Authority must implement the measures set out in the KIMP and no operation of any turbine forming part of Hornsea Three may commence until three full breeding seasons have elapsed following the implementation of two of the ANS, and two full breeding seasons have elapsed following the implementation of two of the ANS as set out in the KIMP.

Paragraph 8 of Part 1 of Schedule 14 to the DCO requires the KIMP to be in accordance with the principles set out in the kittiwake compensation plan (as defined in the DCO).

- 1.8 The KIMP must include provision for the construction and maintenance of four Alternative Nesting Structures (“**ANS**”) on the English east coast onshore or coastal locations to benefit the eastern Atlantic kittiwake population.
- 1.9 To facilitate the construction and maintenance of the ANS, the Acquiring Authority purchased land lying to the east of Coastwatch Office, Ferry Road, Hartlepool, TS24 0YE (as registered at HM Land Registry under title number CE147445) (the “**Site**”) as shown coloured edged red and coloured yellow on the map referred to in the Order.
- 1.10 Prior to the Acquiring Authority’s acquisition of the Site, the Site was accessed via Ferry Road. However, the owner of Ferry Road, PD Teesport Limited (incorporated in England and Wales with company number 02636007 whose registered office is at 17-27 Queen’s Square, Middlesbrough, TS2 1AH) (“**PD Ports**”), has refused access to the Acquiring Authority.
- 1.11 The Order, if confirmed, would authorise the Acquiring Authority to compulsorily purchase new rights over the Order Land to enable it to access the Site and to lay, use and maintain new utilities required to provide power and other services to the mechanical and electrical equipment on the Site such as CCTV and lighting.
- 1.12 The following terms are used in this Statement of Case:-
 - 1.12.1 the ANS Works: meaning the works as described at paragraph 3;
 - 1.12.2 the Order Land: meaning those parcels of land described at paragraph 4 and shown edged red and coloured blue on the map referred to in the Order;

2. THE ENABLING POWERS

- 2.1 The Order is made pursuant to section 10 of and paragraph 1 of Schedule 3 to the Electricity Act 1989.
- 2.2 Paragraph 1 of Schedule 3 to the Electricity Act 1989 provides that:
 - (1) *Subject to paragraph 2 below, the Secretary of State may authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.*
 - (2) *In this paragraph...“land” includes any right over land...and the power of the Secretary of State under this paragraph includes power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones.*

- 2.3 On 24 January 2017 the Acquiring Authority was granted an electricity generation licence pursuant to section 6(1)(a) of the Electricity Act 1989.
- 2.4 The activity which the Acquiring Authority is authorised by the electricity generation licence to carry out is to generate electricity in Great Britain, the territorial sea adjacent to Great Britain or in a Renewable Energy Zone (as defined in s.84(4) of the Energy Act 2004) for the purpose of giving a supply to any premises or enabling a supply to be so given.
- 2.5 The electricity generation licence granted to the Acquiring Authority incorporates a standard condition which relates to compulsory purchase:

Condition 14. Compulsory acquisition of land etc

The powers and rights conferred by or under the provisions of Schedule 3 to the Act (Compulsory Acquisition of Land etc. by Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:

- (a) *the construction or extension of a generating station;*
- (b) *the operation of a generating station; and/or*
- (c) *the installation, inspection, maintenance, adjustment, repair, alteration, replacement or removal of electric lines, and electrical plant associated with them, and any structures for housing or coverings such lines or plant, connecting a generating station with:*
 - (i) *the national electricity transmission system; or*
 - (ii) *a distribution system-,*

including, for the avoidance of doubt, whether these activities in subparagraph (c) are to be carried out by the licensee or another licence holder.

- 2.6 In Condition 14 the references to "generating station" are to an electricity generating station which:
- 2.6.1 has, or will have when its construction or extension is completed, a capacity of not less than 50 megawatts or such other capacity as may be specified in relation thereto by order of the Secretary of State under section 36(3) of the Act;
 - 2.6.2 is, or will be when its extension or construction is completed, operated by or for the licensee.
- 2.7 The Acquiring Authority may therefore be authorised to purchase compulsorily land or rights over land to enable the Acquiring Authority to carry on the activities authorised by its licence.

- 2.8 Schedule 9 to the Electricity Act 1989 requires the Acquiring Authority to *"have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest"* and *"do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects."*
- 2.9 The new rights set out in the Order are required to facilitate the implementation and maintenance of the ANS Works. The ANS Works form part of the KIMP and must be implemented in order for the Acquiring Authority to operate the Hornsea Three generating station.
- 2.10 The Acquiring Authority therefore considers that the new rights set out in the Order are required to enable the Acquiring Authority, as an Electricity Act 1989 licensee, to carry on the activities authorised by its licence and which relate to the operation of a generating station.

3. DESCRIPTION OF THE SCHEME

- 3.1 The DCO grants the Acquiring Authority development consent for Hornsea Three, a nationally significant infrastructure project. Once complete, Hornsea Three will have up to 231 wind turbines; up to three offshore accommodation platforms; up to twelve offshore transformer substations; up to four offshore HVDC converter substations; subsea inter-array electrical circuits; a marine connection to shore; a foreshore connection and an onshore connection to an onshore substation; and the connection from there to National Grid's existing Norwich Main substation. Hornsea Three will have a total installed capacity in excess of 100MW.
- 3.2 Under Part 1 of Schedule 14 to the DCO, the Acquiring Authority is obliged to submit a KIMP to the Secretary of State for approval. As introduced by The Hornsea Three Offshore Wind Farm (Amendment) Order 2023, paragraph 4 of Part 1 of Schedule 14 to the DCO states that the Acquiring Authority must implement the measures set out in the KIMP and no operation of any turbine forming part of Hornsea Three may commence until three full breeding seasons have elapsed following the implementation of two of the ANS, and two full breeding seasons have elapsed following the implementation of two of the ANS, as set out in the KIMP. Paragraph 8 of Part 1 of Schedule 14 to the DCO requires the KIMP to be in accordance with the principles set out in the kittiwake compensation plan (as defined in the DCO).
- 3.3 Prior to commencing Hornsea Three, and in accordance with paragraph 2 of Part 1 of Schedule 14 to the DCO, the Acquiring Authority had to set up an Offshore Ornithology Engagement Group ("**OOEG**") in order to prepare the KIMP. The OOEG's core membership includes Natural England, the Marine Management Organisation and the Royal Society for the Protection of Birds. Through consultation with the OOEG the Site was identified as being suitable

for the ANS, primarily due to its proximity to the coast and the existing kittiwake colony on the Hartlepool Royal National Lifeboat Institution Lifeboat Station.

- 3.4 The ANS Works consist of the demolition of the existing yacht club building and the construction of two types of ANS for kittiwakes. Both ANS typologies are ecologically driven designs, agreed with the OOEG, which are also responsive to the particular characteristics of the Site and its wider context:
 - 3.4.1 The first of the ANS types is designed to appear similar to fishermen's huts that can often be found in coastal communities, and arranged along the northeast edge of the Site facing towards the existing kittiwake colony. These structures have capacity for 534 nesting spaces on sea-facing nesting shelves. Nesting space will be incorporated along the seaward facing elevations of the huts and will have typical dimensions of 0.4m width, 0.4m height and 0.2m depth.
 - 3.4.2 The second ANS type is of a ten-sided tower design, where multiple external faces provide a variety of nesting aspects with an internal space allowing for a sheltered working conditions for ecologists monitoring the site. The tower is to be located west of the proposed huts in order to provide sea views from six of the ten sides. The tower would have 510 nesting spaces with sea views and 340 without. Nesting space is incorporated on all 10 faces of the tower. Typical dimensions 0.4m width x 0.4m height x 0.2m depth.
- 3.5 Avian predator mitigation is provided for both ANS types through nesting ledge dimensions and overhangs provided by hut and tower roofs respectively. It is not anticipated that the ANS design and location will be susceptible to avian predation issues, but should any issues arise in operation appropriate action can be taken as required.
- 3.6 Temporary portable welfare facilities are also proposed to be located with a car park area which would be for an estimated 6 to 12 months from the start of construction for those visiting the site. The indicative building would measure approximately 8.638m in length by approximately 3.4m in width, with a flat roof height of approximately 2m.
- 3.7 Pursuant to paragraph 3(f) of Part 1 of Schedule 14 of the DCO, whereby the Secretary of State requires certain information once the ANS are in place, but before a colony is established, a period of colonisation monitoring will take place each breeding season. This will include two survey visits made annually where any apparently occupied nests, trace nests, or prospecting birds will be counted. Following discussion with the OOEG, colonisation monitoring may also involve additional systematic monitoring of the ANS to assess the prevalence of prospecting kittiwake and any early nesting attempts.
- 3.8 External lighting is required to support occasional use of the ANS that may occur after dark, directing light only where and when it is required, supporting site security, helping to avoid adverse impacts on site ecology, ensuring low energy

usage and supporting site identity. Only the arrival car park area and paths to the ANS will be lit with lighting triggered using low level motion sensors so lights are only turned on when required. Each luminaire selected will have a warm colour temperature (2200K) and is “dark-skies” and British Standard compliant providing additional measures to control light and provide a high-quality lighting approach for the Site. The lighting furniture will comprise simple cylindrical columns, providing an appropriate fit with the landscape context. Perch mitigation devices will be installed on the top of all columns. The lighting columns will also provide the mounting element for the site CCTV system that comprises two camera types. Cameras for general Site security will be mounted within the columns themselves; cameras for ecological monitoring of nesting space on the huts and tower ANS will be mounted on short arms integrated with the column design. All lighting furniture will have the same silver-grey colour finish as the perimeter fence to provide a recessive and complementary fit with the weathered timber of the ANS and landscape context.

- 3.9 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. The Acquiring Authority understands that electricity was previously supplied to the Site by PD Ports 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 1991 ensuring that access along the route is maintained at all times. 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 8 weeks.
- 3.10 Overall construction of the ANS Works would take approximately 9 months to be completed.

4. DESCRIPTION OF THE ORDER LAND

- 4.1 This section contains a brief description of the Order Land. A more detailed description of each plot is set out in Table 1 and Table 2 of the Order. The land over which new rights are to be compulsorily acquired is shown edged red and coloured blue on the Map referred to in the Order.
- 4.2 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 Acquiring Authority notes that PD Ports has recently placed a temporary concrete barrier across the private section of Ferry Road to prevent vehicular access to the Site (with a gap to allow for access

for non-motorised users). 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.

4.3 **Special Kinds of Land**

Local authority and statutory undertaker land

- 4.3.1 Sections 16 and 17 of and Schedule 3 to the Acquisition of Land Act 1981 apply to the compulsory acquisition of land and rights over certain specified types of land.
- 4.3.2 The Acquiring Authority understands that the Order Land includes land which has been acquired by a statutory undertaker, PD Ports, for the purposes of their undertaking. PD Ports is a harbour authority pursuant to the Tees and Hartlepool Port Authority Act 1969.
- 4.3.3 The Acquiring Authority notes that PD Ports has submitted a representation objecting to the Order, the Order cannot be confirmed by the Secretary of State for Energy Security and Net Zero unless the appropriate Minister, in this case the Secretary of State for Transport, is satisfied that the new rights can be acquired without serious detriment to the carrying on of PD Ports' undertaking and certifies accordingly.
- 4.3.4 The Acquiring Authority considers that the new rights, being rights of access along an existing access road and rights for utilities, can be acquired without serious detriment to PD Ports' undertaking.
- 4.3.5 Section 17(3) of and paragraph 4(3) of Schedule 3 to the Acquisition of Land Act 1981 provides that a compulsory purchase order shall not be subject to special parliamentary procedure where the person acquiring the interest is a statutory undertaker. As the Acquiring Authority holds a generation licence under the Electricity Act 1989, it is a statutory undertaker for the purposes of the Acquisition of Land Act 1981. Accordingly, special parliamentary procedure does not apply to the Order.
- 4.3.6 A number of statutory undertakers are noted in Part 2 of Table 2 as being other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981 in respect of rights for existing water, gas and telecommunications apparatus. The Acquiring Authority is not proposing to interfere with or acquire any rights from those statutory undertakers.

Open space land

- 4.3.7 The Order Land does not include any land that is common land, laid out as a public garden, or used for the purpose of public recreation, or land being a disused burial ground.

Crown land

4.3.8 The Acquiring Authority is aware that the Crown Estate historically had an interest in the Site and surrounding land. The Acquiring Authority understands that mines and minerals in the Order Land are not owned by PD Ports. Ownership of the mines and minerals cannot be confirmed based on the evidence available, however, it is possible that the mines and minerals may still be owned by the Crown Estate. The Acquiring Authority has therefore taken a conservative approach and stated in the Order that the Acquiring Authority is not seeking to interfere with or acquire any interests belonging to the Crown.

Protected Assets

4.3.9 There are no listed buildings, buildings subject to a building preservation notice, buildings which may qualify for inclusion in the statutory list, registered parks or gardens, buildings within a conservation area or scheduled monuments within the Order Land.

5. DESCRIPTION OF THE NEW RIGHTS TO BE COMPULSORILY ACQUIRED

- 5.1 New rights are sought in the Order to facilitate the Acquiring Authority and all persons authorised on its behalf to access the Site for the purposes of carrying out the ANS Works; using, monitoring and maintaining the ANS; and all other purposes in connection with the Site.
- 5.2 The rights required to access the Site referred to as the "**Access Rights**" in the Order. The land over which the acquisition of the Access Rights is being sought is shown edged red and coloured blue on the Map referred to in the Order (referred to as the "**Accessway**" in the Order).
- 5.3 The Access Rights are defined in the Order as:

"Access Rights"	<p>means the rights for the acquiring authority and its successors in title and their respective tenants, licensees and assignees and those authorised by any of them:</p> <ul style="list-style-type: none"> (a) to pass with or without vehicles, plant, machinery and equipment over the Accessway at all times to gain access to and egress from the Site for all purposes connected with the Site, but not for any other purpose; (b) to lay, construct, use, maintain, renew, replace, repair, widen, improve and upgrade an access road on the Accessway, including any works required by any planning, highways or other authority, or otherwise required in order to provide sufficient access to and egress from the Site;
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	<p>(c) of support for the Accessway;</p> <p>(d) to lay, construct, inspect, use, maintain, protect, renew, replace, upgrade and remove electric cables and all associated ancillary equipment (including but not limited to access chambers, manholes and marker posts) and associated works, connections to other electric cables and all ducts, conduits, gutters or pipes for containing them to be laid;</p> <p>(e) to the flow of foul and surface water, gas and electricity through any existing pipes, drains and cables in, under or through the Accessway for all purposes connected with the use of the Site, together with all necessary rights to maintain, protect, renew, replace and remove any such pipes, drains and cables;</p> <p>(f) to enter upon the Accessway as may be reasonably required with or without vehicles, plant, machinery and equipment for the purpose of exercising all or any of the Access Rights; and</p> <p>(g) to remove anything placed, installed or deposited on the Accessway from time to time, which obstructs, or may obstruct, the exercise of the Access Rights and to prevent any works on or uses of the Accessway which may interfere with or damage any pipes, drains and cables.</p> <p>(h) The Access Rights shall be exercised subject to the Diversion Provisions.</p> <p>These rights are for the benefit of the Site.</p>
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5.4 The Access Rights are subject to the Diversion Provisions. The Diversion Provisions are defined in the Order as:

“Diversion Provisions”	<p>The Landowner may divert and alter the position of the Accessway over which the Access Rights are exercised where necessary for the development of the Landowner’s Property, providing always that:</p> <p>(a) the exercise of the Access Rights shall not be materially and unreasonably prejudiced by such diversion and/or alteration of the Accessway and the Accessway when diverted and/or altered shall be no less commodious and no less convenient for the use</p>
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	<p>and enjoyment of the Site and the exercise of the Access Rights;</p> <p>(b) the Landowner has consulted with the acquiring authority in relation to any proposed diversion or alteration of the Accessway as soon as practical, and in any event prior to making any planning application for a development which necessitates the diversion or alteration of the Accessway, and has taken into account any reasonable solutions proposed by the acquiring authority to avoid such diversion and/or alteration;</p> <p>(c) the Landowner has obtained planning permission for the proposed development of the Landowner's Property which necessitates the diversion and/or alteration of the Accessway and has obtained all necessary consents and permissions for the proposed diversion and/or alteration of the Accessway;</p> <p>(d) the Landowner has given the acquiring authority written notice not less than 6 months prior to commencement of any works to divert and/or alter the Accessway, which notice shall be accompanied by a plan showing the proposed route of the diverted and/or altered Accessway;</p> <p>(e) the Landowner has entered into a variation of the Access Rights with the owner of the Site to reflect the diverted and/or altered route of the Accessway; and</p> <p>(f) the Landowner being solely responsible for all costs associated with implementing any such diversion and/or alteration of the Accessway including, if required, all costs associated with relocating any pipes, drains and cables in, under or through the Accessway and connected with the use of the Site.</p>
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5.5 It is anticipated that the Accessway will initially be utilised by the Acquiring Authority for approximately 9 months during construction of the ANS Works. Permanent rights of access along the Accessway will then be required for the monitoring and maintenance of the ANS Works.

Mining Code

- 5.6 The mining code, also known as the minerals code, is set out in Schedule 2 of the Acquisition of Land Act 1981.
- 5.7 The Department for Communities and Local Government's 'Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion' dated October 2015 and last updated July 2019 (the "**CPO Guidance**") states that the mining code should not be incorporated automatically or indiscriminately, as this may lead to the sterilisation of minerals, including coal reserves.
- 5.8 The Acquiring Authority has considered carefully whether to include the mining code in the Order and has had regard to whether the existence of statutory rights of compensation or repair of damage might provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.
- 5.9 As the Order includes rights for the construction of below ground services, the Acquiring Authority considers it is appropriate to include the mining code within the Order.

6. NEED FOR THE SCHEME AND JUSTIFICATION FOR THE USE OF POWERS OF COMPULSORY ACQUISITION

- 6.1 The Acquiring Authority has carried out a detailed site selection process (as recognised in the appeal decision letter dated 13 March 2023 (appeal ref: APP/H0724/W/22/3309272)). In summary:
 - 6.1.1 Two broad search zones were identified along the coasts of East Anglia and North East England. These initial search zones were chosen based on their ecological suitability and in accordance with the Kittiwake Compensation Plan (certified plan pursuant to Article 36 of the DCO) and their likelihood for interchange of birds with the Flamborough and Filey Coast Special Protection Area (**FFC SPA**).
 - 6.1.2 Sections of coast within the search zones were selected which were likely to provide favourable conditions for new colonies of kittiwake.
 - 6.1.3 At the request of the Statutory Nature Conservation Bodies to diversify/spread risk over a number of ecologically distinct sites, areas beyond 100 km from the FFC SPA, namely East Suffolk, were considered even though the likelihood of interchange with the FFC SPA population may be lower.
 - 6.1.4 Initial search zones were refined by focusing on sections of coast which were deemed the most ecologically favourable. Within these coastal areas, sites were then identified where an ANS could potentially be located. The proposed locations were presented to the OOEG and appropriate sites to progress were agreed upon.

- 6.2 The site selection process set out in paragraph 6.1 led to the Site being identified as being an ecologically suitable location for accommodation of the ANS, primarily due to its proximity to the coast and existing kittiwake colony. Other aspects were also considered, including willingness of landowners, and planning and engineering considerations. Further information can be found in the documents listed at Appendix One, for example see the Acquiring Authority's Response to the Secretary of State's Minded to Approve Letter, the Site Selection Narrative Report and the Summary of the Site Selection Process for ANS.
- 6.3 The delivery of the ANS Works is essential to ensure the delivery and operation of the nationally significant Hornsea Three, which will provide green energy to 3.2 million UK homes and support thousands of jobs in the northeast during the construction phase. Any delay to the project as a result of any impediment to the delivery of the ANS Works would have a material impact on the generation of much needed renewable energy, energy security and adversely impact the two-way Contract for Difference awarded for Hornsea Three by the Government. Commissioning of Hornsea Three is planned for 2027.
- 6.4 The ANS Works will provide purpose-built nesting spaces for kittiwake, a globally threatened species identified as vulnerable and at risk of extinction on the UK's Red List for Birds of Conservation Concern. The provision of purpose-built ANS at the Site will help to encourage new breeding pairs to nest on the ANS as opposed to new port buildings and facilities. Although the kittiwake colony in Hartlepool is growing and will continue to do so, the distribution of kittiwake pairs will change as current pairs gradually die off and new nesting pairs favour the purpose-built ANS.
- 6.5 In its appeal decision letter dated 13 March 2023, the Inspector supported Hornsea Three and the ANS works by stating: "*The wider implications for the Hornsea Three project, and its associated benefits, cannot be detached from my considerations. Without the compensation in accordance with the requirements of Part 1 of Schedule 14 of the DCO, the wind farm could not be commissioned and a significant amount of renewable energy could be removed from the UK Government's targets for 50GW of offshore wind capacity by 2030*".
- 6.6 As set out above, there is a national need for Hornsea Three and the ANS and the Acquiring Authority considers that there would be a significant public benefit arising from Hornsea Three.
- 6.7 As set out in section 7 of this Statement of Case, the Acquiring Authority has sought, and continues to seek, acquisition of the rights over the Order Land, by negotiation and agreement wherever possible. However, as at the date of the Order, the Acquiring Authority has not been able to reach agreement with PD Ports. It is therefore necessary to proceed with the Order in order to obtain the necessary rights.
- 6.8 The new rights to be created over the Order Land are the minimum necessary to deliver the ANS Works.

- 6.9 The Order is also required to ensure that there are no impediments to accessing the Site. For example, there may be unknown rights or restrictions affecting the Accessway which need to be overridden, removed and/or extinguished in order to facilitate the implementation and maintenance of the ANS Works without hindrance.
- 6.10 For the reasons set out in section 11 of this Statement of Case, the Acquiring Authority has concluded on balance that the significant public benefits of Hornsea Three outweigh the effects upon persons with an interest in the Order Land.

7. NEGOTIATIONS WITH LANDOWNERS AND PERSONS WITH AN INTEREST IN LAND

- 7.1 The Acquiring Authority has sought acquisition of the rights over the Order Land by negotiation and agreement wherever possible, and the making of the Order does not prejudice the rights of PD Ports to settle such negotiations by agreement. The Acquiring Authority remains open and willing to engage in such discussions with PD Ports.
- 7.2 The Acquiring Authority has been in discussions with PD Ports since 1 October 2021. A summary of correspondence is set out in the table below:

Date	Correspondence
01 October 2021	Introductory video call between the Acquiring Authority and PD Ports, where the Acquiring Authority provided an overview of the proposals for the Site and tried to address any concerns PD Ports might have.
20 October 2021	Email from PD Ports to the Acquiring Authority raising concerns regarding the planned use for the Site and potential impacts on adjacent land owned by PD Ports. PD Ports confirmed that they would not permit any access along Ferry Road to the Site.
04 November 2021	Email from the Acquiring Authority to PD Ports setting out the view of the Acquiring Authority’s consultant ecologist that the planned use of the Site will not have a determinantal impact on PD Ports’ land. In an effort to give additional comfort, the Acquiring Authority also offered some potential mitigation measures. No response was received from PD Ports.
07 December 2021	Email from the Acquiring Authority to PD Ports confirming that its purchase of the Site was complete and that it wanted to have further discussions with PD Ports in respect of historic access to the Site. The Acquiring Authority offered to discuss how it could make the operational teams at PD Ports more comfortable with the plans and possible opportunities for PD Ports and the Acquiring Authority to develop a wider relationship. No response was received from PD Ports.

Date	Correspondence
13 December 2021	Email from the Acquiring Authority to PD Ports, following up from a phone conversation on the 10/12/2021 stating that the Acquiring Authority wanted to discuss a commercial settlement on the access issue and requesting a dialogue with the appropriate people within their organisation. No response was received from PD Ports.
10 January 2022	Offer letter sent by the Acquiring Authority to PD Ports, along with a report from the Acquiring Authority's Ornithological Consultants outlining their expert view that the proposed use of the Site would not have any adverse impact on PD Ports' land.
12 January 2022	Response from PD Ports to the Acquiring Authority's letter of the 10/01/2021 confirming that PD Ports are not willing to discuss a resolution to the access issue.
23 March 2022 and 29 March 2022	Emails from the Acquiring Authority's EPC Director to PD Ports Property offering an increased commercial settlement and further offers to discuss this matter with them.
30 March 2022	Response from PD Ports again confirming that they are not willing to discuss the access issues.
01 April 2022	Second email from the Acquiring Authority's EPC Director to PD Ports Property team (following a phone conversation earlier that week), offering a further commercial settlement, along with confirmation that if agreement couldn't be reach, the Acquiring Authority would be taking further legal steps to resolve this issue. No response received from PD Ports.
April and May 2022	High level meetings held between Head of Region UK from Orsted & CEO of PD Ports. No resolution to the issues was reached at these meetings.
28 June 2022	The Acquiring Authority sent a Request for Information pursuant to s5A of the Acquisition of Land Act 1981 to PD Ports.
13 July 2022	Letter from PD Ports to the Acquiring Authority responding to the Request for Information. The letter referred the Acquiring Authority to information held by the Land Registry, confirmed the status of Site as operational land of PD Ports in its role as a statutory undertaker and queried the availability of powers under the Electricity Act 1989.
24 April 2023	Email from the Acquiring Authority to PD Ports asking for a call to restart discussions for a voluntary agreement following the grant of planning permission on appeal.

Date	Correspondence
28 April 2023	Email from the Acquiring Authority to PD Ports following up email earlier in the week and advising that a formal offer (on basis of previous offers) will follow ¹ .
04 May 2023	Response from PD Ports confirming that a face-to-face meeting would be useful and requesting availability from the Acquiring Authority. (PD Ports representative also confirmed they would be on annual leave from 05 May 2023).
04 May 2023	Email (x2) from Acquiring Authority to PD Ports agreeing a face to face to meeting at PD Ports office in Middlesbrough and suggesting dates w/c 22 May 2023 or w/c 29 May 2023.
22 May 2023	Email from Acquiring Authority to PD Ports chasing up dates for a meeting.
25 May 2023	Email from Acquiring Authority to PD Ports chasing up dates for a meeting w/c 29 May 2023.
26 May 2023	Email from Acquiring Authority to PD Ports confirming change to annual leave dates meaning w/c 29 May 2023 no longer suitable but offering further dates for a meeting from 14 June 2023 onwards.
19 June 2023	<p>No response received by the Acquiring Authority from PD Ports since the email received from them on 04 May 2023. Multiple phone calls have also been made by the Acquiring Authority since that date but there has been no answer from PD Ports as each call went straight to voicemail.</p> <p>Letter sent by post and email from Acquiring Authority to PD Ports offering a commercial settlement and deadline of 30 days for acceptance, with the offer subject to agreement of acceptable terms and conditions within set timescales. Letter also confirmed the Acquiring Authority's intention to restart CPO proceedings but reiterated the Acquiring Authority's hope and commitment to reaching a voluntary agreement with PD Ports.</p>
30 June 2023	Email received from PD Ports confirming availability for a meeting on 26 July 2023.
26 July 2023	Meeting took place between Acquiring Authority and PD Ports at the PD Ports office in Middlesbrough. During the meeting PD Ports made it clear that they were not prepared to discuss the matter any further and would not be willing to reach a voluntary agreement under any circumstance.

¹ For the avoidance of doubt, the formal offer was not sent at that time as the response received from PD Ports indicated a preference for a face to face meeting.

7.3 A table summarising the current status of negotiations for each plot is set out below.

Landowner / Person with interest in land	Plot Numbers	Status of Negotiations
<p>PD Teesport Limited (CRN: 02636007)</p>	<p>1</p>	<p>The Acquiring Authority’s initial engagement with PD Ports property team was positive. However, having subsequently shared the plans for the Site, it was made clear that the local port operations team had concerns about the proposals and that they weren’t willing to discuss this matter any further. The Acquiring Authority subsequently emailed and wrote to PD Ports offering meetings with senior Orsted representatives to discuss the ways in which they might mitigate their concerns. This approach was rejected by PD Ports.</p> <p>In order to try to resolve the matter, the Head of Region UK from Orsted reached out to the Chief Executive of PD Ports. However, whilst this prompted two additional senior level meetings, no meaningful progress was made. At these meetings Orsted’s Head of Region UK:-</p> <ul style="list-style-type: none"> (a) offered to provide further details on how any perceived impacts on port operations by the appeal proposals could be mitigated; and (b) confirmed that the Acquiring Authority would be willing to enter into a development agreement that would give PD Ports assurances that the Acquiring Authority would cover any potential costs/losses if it could be clearly demonstrated that the ANS directly impacted PD Ports’ operations. <p>Following the grant of planning permission on appeal, the Acquiring Authority has contacted PD Ports on a number of occasions to try to discuss the terms of a voluntary agreement. As no progress had been made with PD Ports, and to ensure the deliverability of the ANS Works, the Acquiring Authority has made the Order. The Acquiring Authority remains willing to discuss and enter into a voluntary agreement with PD Ports.</p>

Landowner / Person with interest in land	Plot Numbers	Status of Negotiations
PD Teesport Limited Unknown	2	As above
PD Teesport Limited (in respect of the subsoil) Hartlepool Borough Council (as highway authority)	3	As above
Royal National Lifeboat Institution (RNLI)	1, 2, 3	Following receipt of the RNLI's objection to the Order, the Acquiring Authority has contacted the RNLI's land agents requesting a meeting with their clients to discuss access arrangements. The Acquiring Authority is waiting to hear back from the RNLI's land agents, who have confirmed they are awaiting their client's instructions.
Teesside Windfarm Limited (TWL)	1, 2, 3	Following receipt of TWL's objection to the Order, the Acquiring Authority has contacted TWL directly and the Acquiring Authority's solicitors have contacted TWL's solicitors to establish the nature and extent of TWL's interest in the Order Land. The Acquiring Authority has not yet received a response. Based on the inquiries undertaken to date, the Acquiring Authority understands that TWL has a lease for an operation and maintenance building within PD Ports' wider land holding however TWL does not have any rights over, and does not use the Order Land, to access this building.

8. THE UK PLANNING AND POLICY POSITION

- 8.1 Planning permission is required for the ANS Works. An EIA Screening Request was submitted to Hartlepool Borough Council ("**HBC**") (application reference H/2021/0405) on 23rd August 2021. HBC confirmed on 24th September 2021 that the proposed development does not constitute a Schedule 1 development or Schedule 2 development, as defined by the EIA Regulations, and therefore the development does not need to be screened in line with the 'Regulations', and an EIA is not required.

- 8.2 In January 2022, the Acquiring Authority submitted a planning application under the Town and Country Planning Act 1990 (application reference H/2022/0009) to HBC on for the demolition of existing structures and construction of ANS for kittiwakes and associated infrastructure.
- 8.3 In a report to committee, HBC’s planning officer recommended approval and stated:
- “It is considered by Officers that the proposal in the context of relevant planning policies and material planning considerations is acceptable as set out in the Officer’s Report.”*
- 8.4 However, the planning application was refused at an HBC Committee Meeting held on 22 June 2022 for the following reasons:
- 8.4.1 the proposed development would have the potential to result in a constraining impact on the activities of the adjacent port and the economies of the area, contrary to policies LS1 and EMP4 of the Hartlepool Local Plan (2018);
 - 8.4.2 the applicant has failed to demonstrate that the proposal would not result in an adverse impact on the amenity of neighbouring land users in terms of noise, contrary to policy QP4 of the Hartlepool Local Plan (2018); and
 - 8.4.3 the proposed development would result in an adverse impact on the visual amenities of the area, contrary to policy QP4 of the Hartlepool Local Plan (2018).
- 8.5 The Acquiring Authority appealed this refusal to grant planning permission under section 78 of the Town and Country Planning Act 1990. The planning permission was granted on appeal in an appeal decision letter dated 13 March 2023 (the “**Appeal Decision**”).

9. FINANCE FOR THE SCHEME

- 9.1 The Acquiring Authority was awarded a Contract for Difference (CfD) on 29 July 2022. The CfD is the Government’s main mechanism for supporting low-carbon electricity generation. CfDs incentivise investment in renewable energy by providing developers of projects with high upfront costs and long lifetimes with direct protection from volatile wholesale prices, and they protect consumers from paying increased support costs when electricity prices are high.
- 9.2 Hornsea 1 Offshore Wind Farm and Hornsea 2 Offshore Wind Farm are operational windfarms in the south north sea and were awarded CfDs. This incentivised investment due to the offer of a stable revenue. The divestment of Hornsea 1 and Hornsea 2 took place after construction. It is likely that the same model will be applied to Hornsea Three.
- 9.3 In order to fund construction, the funding organisation for all investments made in relation to Hornsea Three is Ørsted A/S. Ørsted A/S is the ultimate parent

company of the Ørsted Group and is 100% indirect owner of the Acquiring Authority. Ørsted A/S achieves the highest credit rating, as assessed by Dun & Bradstreet, which can be relied upon to prove Ørsted A/S's financial robustness for the purposes of this application. Ørsted A/S is a publicly traded company listed at NASDAQ Copenhagen with a market capitalisation as at 5th May 2023 of approximately DKK 270 billion (GBP 32 billion). The Danish state holds a majority interest of 50.1% in Ørsted A/S. Funding into the Acquiring Authority will be provided via a combination of equity and loans.

- 9.4 For the reasons set out above, the Acquiring Authority will have the necessary funds to meet the capital expenditure for the cost of Hornsea Three, including the ANS Works, and the cost of acquiring the necessary rights over land (whether compulsorily or by agreement) and any compensation otherwise payable as a result of the exercise of the powers in the Order.
- 9.5 The ANS Works need to be completed prior to commissioning of Hornsea Three (anticipated to be in 2027), which will be prior to the expiry of the statutory period to exercise the compulsory acquisition powers in the Order. The necessary funds will be available prior to the commencement of construction of the respective works.
- 9.6 It is not anticipated that any statutory blight claims will arise as a consequence of the Order, although should any claims arise, the costs of meeting claims that are upheld will be met by the Acquiring Authority from the sources of funding described above.
- 9.7 All of Hornsea Three (including the ANS Works) is to be disregarded for the purposes of the assessment of compensation in the "no scheme" world.

10. OTHER CONSENTS AND RELATED APPLICATIONS

- 10.1 The Acquiring Authority has already been granted development consent for Hornsea Three through the DCO and, as discussed at paragraph 8 above, planning permission for the ANS Works.
- 10.2 Where any consents or licences are required other than those already mentioned in this Statement of Case, the necessary applications will be made to the appropriate consenting authority. The Acquiring Authority is not aware of any reasons why such consents or licences would not be granted.

11. HUMAN RIGHTS

- 11.1 The Human Rights Act 1998 incorporated into UK law the European Convention on Human Rights (the "**Convention**"). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.
- 11.2 The following Articles of the Convention are relevant to the Secretary of State's decision as to whether to confirm the Order:

- 11.2.1 Article 1 of the First Protocol: this protects the right of everyone to peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.
- 11.2.2 Article 6: this entitles those affected by the powers sought in the Order to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision-making process.
- 11.2.3 Article 8: this protects private and family life, home and correspondence. No public authority can interfere with these rights except such as in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the country.
- 11.3 The Secretary of State, as the decision maker, is under a duty to consider to what extent the Acquiring Authority's exercise of powers of compulsory purchase would be affected by the rights protected by the Convention.
- 11.4 The Order has the potential to infringe the rights of persons who hold interests in land under Article 1 of the First Protocol. Such an infringement is authorised by law so long as:
 - 11.4.1 the statutory procedures for making the Order are followed and there is a compelling case in the public interest for the powers of compulsory purchase in the Order; and
 - 11.4.2 the interference with the convention right is proportionate.
- 11.5 The Acquiring Authority has considered the potential infringement of the Convention rights in consequence of the compulsory purchase powers within the Order. The Acquiring Authority considers that there would be a significant public benefit arising from Hornsea Three. Hornsea Three can only be delivered if the compulsory purchase powers within the Order are granted to facilitate the ANS Works.
- 11.6 The Acquiring Authority has concluded on balance that the significant public benefits of Hornsea Three outweigh the effects upon persons with interests in the Order Land.
- 11.7 Consultation has been carried out as part of the planning process for the ANS Works. Further opportunities for consultation have been allowed within the planning appeal process. The Acquiring Authority will follow the existing legislative provisions relating to compulsory purchase and this allows for objections to be made and compensation is payable to those affected by the Order in accordance with the statutory Compensation Code.
- 11.8 Should the Order be confirmed, any person aggrieved may challenge the Order in the High Court.

- 11.9 In relation to matters of compensation for land, or rights over land, to be acquired, affected persons have the right to apply to the Upper Tribunal (Lands Chamber), which is an independent judicial body to determine the compensation payable.
- 11.10 For the above reasons, any infringement of the Convention rights of those whose interests are affected by the Order, is proportionate and legitimate and is in accordance with national and European law.
- 11.11 For the reasons set out in this Statement of Case, the Acquiring Authority considers that there is a compelling case in the public interest for the exercise of such powers of compulsory purchase. The Acquiring Authority considers that it would, therefore, be appropriate and proportionate for the Secretary of State to confirm the Order.

12. THE ACQUIRING AUTHORITY'S RESPONSE TO OBJECTIONS RECEIVED TO THE ORDER

- 12.1 Three objections to the Order were received by the Secretary of State. The nature of these objections and the Acquiring Authority's response is set out below.

PD Ports (Plots 1, 2 and 3 – Table 1)

- 12.2 In PD Ports' objection letter, it confirms that it is the statutory harbour authority for Teesport and objects to the Order on the grounds that the Order Land is entirely within PD Ports' operational land, and the use of those rights by the Acquiring Authority could potentially adversely affect PD Ports' harbour undertaking and other harbour users.
- 12.3 PD Ports' argues that the rights cannot be acquired compulsorily by the Acquiring Authority for the purposes specified without causing serious detriment to its undertaking. The Acquiring Authority maintains its position that the rights over land to be compulsorily acquired without causing serious detriment to PD Ports undertaking, are no more than is reasonably required to deliver the Scheme and there is a compelling case in the public interest for the exercise of such powers of compulsory acquisition.
- 12.4 The Acquiring Authority has made reasonable attempts to enter into an agreement with PD Ports for the rights necessary and remains willing to enter into such an agreement. However, in the event that PD Ports' objection is not withdrawn, the Acquiring Authority acknowledges that the new rights over land can only be compulsorily acquired if the appropriate Minister (in this case the Secretary of State for Transport) certifies that the new rights can be compulsorily acquired without causing serious detriment to PD Ports' undertaking.
- 12.5 A summary of the grounds of objection from PD Ports and the Acquiring Authority's response is set out in table (i) below:

Table (i)

Ground	Summary of PD Ports' Objection	Acquiring Authority's Response
1.	<p>UNACCEPTABLE IMPACTS ON PDT'S STATUTORY UNDERTAKING</p> <p>The proposed acquisition will be detrimental to the operation of PD Ports' harbour undertaking, including posing a risk to safety and security requirements and other legal obligations.</p>	<p>The Acquiring Authority is seeking to acquire new rights consisting of rights of access and rights for services along Ferry Road only. It is not seeking to acquire the land itself or obtain rights over the wider Port. The Acquiring Authority is already the owner of the Site and has planning permission for the ANS. The impacts referred to by PD Ports in relation to their operational land predominately relate to alleged impacts associated with the ANS as opposed to impacts associated with the specific new rights being sought in the Order.</p> <p>The parameters of such new rights are set out within the Order Schedule. The Acquiring Authority does not consider that the new rights of access or for services (in principle and given the parameters of such rights) along Ferry Road could result in the risks to safety and security requirements or other legal obligations outlined in PD Ports' objection.</p> <p>It is evident that PD Ports do not require exclusive use of Ferry Road given that other third parties also have rights of access over it, including the RNLI and the users of the fisher cabins. It is noted that the RNLI lifeboat station is open to members of the public to visit, via Ferry Road, on a daily basis. The section of Ferry Road from Slake Terrace to the boundary of the Order Land is public highway and there is no security gatehouse or checkpoint in place restricting or controlling access to the Order Land. However, the Acquiring Authority notes that PD Ports has recently placed a temporary concrete barrier across the private section of Ferry Road to prevent vehicular access to the Site</p>

Ground	Summary of PD Ports' Objection	Acquiring Authority's Response
		<p>(with a gap to allow for access for non-motorised users). In addition, there are existing services in, on or under Ferry Road including water, telecommunications and gas apparatus.</p> <p>The Order contains provisions that would enable PD Ports to vary the location of the Accessway on notice thereby providing PD Ports with sufficient flexibility to deal with their operational land in the future.</p>
2.	<p>FAILURE TO UTILISE THE MOST APPROPRIATE POWER</p> <p>The Acquiring Authority should seek to further modify the DCO under the development consent regime to enable the rights to be acquired under the compulsory purchase powers contained therein, instead of seeking to acquire the proposed new rights using powers under the Electricity Act 1989 through the Order.</p>	<p>Choice of powers</p> <p>Whilst the Secretary of State has the power to modify the DCO under the Planning Act 2008, the Secretary of State also has the power to authorise the compulsory acquisition of the new rights under the Electricity Act 1989 through the Order. Where there are overlapping powers available, it is at the Acquiring Authority's discretion to decide which of those powers to seek. This approach to the use of overlapping powers is supported by case law.</p> <p><u>(a) <i>R (on the application of Sharp) v North Essex Magistrates' Court</i> [2017] EWCA Civ 1143</u></p> <p>In this case, the Environment Agency had general compulsory purchase powers ('CPO') under section 154 of the Water Resources Act 1991 and compulsory works orders ('CWO') powers under section 168 of that Act. The Court of Appeal held that it was entirely in the Environment Agency's discretion as to which of its compulsory purchase powers it chooses to rely on.</p> <p>The reasoning provided was that the permissive language of "powers" rather than "duties" entitled the Environment Agency to use the CPO or the CWO powers but did not oblige either. The judgment states at [38]:</p>

Ground	Summary of PD Ports' Objection	Acquiring Authority's Response
		<p><i>"I am not persuaded that the permissive language of ss. 154 and 168 is to be converted into obligatory language requiring the EA to use its CPO or CWO powers in the case of new works."</i></p> <p>For the Acquiring Authority, section 153 and Schedule 6 to the Planning Act 2008 entitles there to be changes to the DCO. Paragraph 2(1) of Schedule 6 provides that: <i>"The Secretary of State <u>may</u> make a change to a development consent order if the Secretary of State is satisfied that the change is not material"</i>, whilst paragraph 2(3) clarifies that: <i>"The <u>power</u> conferred by sub-paragraph (1) includes <u>power</u>..."</i> (our emphasis). Similarly, paragraph 3(1) (relating to material changes) states that <i>"The Secretary of State <u>may</u> by order make a change to...a development consent order"</i>, and paragraph 3(2) also states <i>"The <u>power</u> conferred by sub-paragraph (1) ..."</i> (our emphasis). It is clear from the permissive language used that ability to modify a DCO is permissive and not obligatory.</p> <p>Similarly, as set out at paragraph 2, the enabling powers for the purposes of the Order are under the Electricity Act 1989. Paragraph 1(2) of Schedule 3 of the 1989 Act states: <i>"...the <u>power</u> of the Secretary of State under this paragraph includes <u>power</u> to authorise the acquisition of rights over land by creating <u>new</u> rights as well as acquiring existing ones"</i> (our emphasis). Again, the language used is permissive as it refers to "powers" instead of "duties".</p> <p>The permissive language in the Planning Act 2008 and the Electricity Act 1989 should not be converted into obligatory language to require the Acquiring Authority to seek one of those powers over the other to compulsorily acquire new rights for access and services, as to do so would completely disregard the principles of <i>Sharp</i>. Similarly, it would unjustifiably deny the Secretary of State of its power to grant</p>

Ground	Summary of PD Ports' Objection	Acquiring Authority's Response
		<p>compulsory acquisition rights under the Electricity Act 1989. It therefore remains the Acquiring Authority's position that it is entirely in its own discretion to determine which of the powers to seek.</p> <p><u>(b) <i>Sawkill -v- Highways England Company Ltd</i> [2020] EWHC 801 (Admin)</u></p> <p>In this case, the High Court considered which powers an acquiring authority could use to enter a third party's land to carry out surveys in relation to a development consent order.</p> <p>Comparable to the objection of PD Ports, the claimant in this case argued that the provisions of the Planning Act 2008 should prevent the exercise of powers under another statute for the same purpose (in this case, the Housing and Planning Act 2016) based on the principle of statutory construction in respect of general and specific enactments in different Acts of Parliament. The argument made was that the comprehensive statutory code for DCOs (provided for under the specific provisions of the Planning Act 2008) precluded the use of powers under the 2016 Act in respect of DCOs.</p> <p>However, the High Court dismissed the claim and held that the powers sat alongside each other as overlapping or alternative powers available to an acquiring authority. There was no conflict between the two statutory powers and they were not inconsistent with one another. Where a DCO was being promoted, the acquiring authority could therefore choose or elect which provision to invoke.</p> <p>This supports the Acquiring Authority's position that whilst a power is available under the Planning Act 2008 to modify the DCO (which could include a modification to grant of compulsory acquisition powers over the Order Land), the existence of this power does not preclude the</p>

Ground	Summary of PD Ports' Objection	Acquiring Authority's Response
		<p>Acquiring Authority from choosing to pursue the similar alternative power of compulsory purchase of new rights which is available to it under the Electricity Act 1989.</p> <p>The Acquiring Authority notes that similar protections for statutory undertakers apply under the Planning Act 2008 regime (s127 of the Planning Act 2008) and a CPO promoted under the Electricity Act 1989 (via s16 of the Acquisition of Land Act 1981) and in both cases compulsory acquisition powers can only be granted in the Secretary of State, or appropriate Minister, certifies that the new rights can be acquired without causing serious detriment to the statutory undertaker's undertaking.</p>
3.	<p>FAILURE TO CONSIDER ALTERNATIVES</p> <p>It is not clear from the Statement of Reasons prepared by Orsted in support of the Order that alternatives for the ANS Works have been fully considered.</p>	<p>Prior to the DCO being made, the Acquiring Authority provided a response to the Secretary of State's minded to approve letter, '<i>Kittiwake Artificial Nest Provisioning: Site Selection and the Pathway to Securement</i>' (September 2020). This provided an account of and rationale for the site selection and consideration of alternatives in relation the ANS Works, along with a summary of the legal considerations for securing the necessary land, seabed and consenting rights for the development of any ANS to be used to compensate for the impact on black-legged kittiwake by Hornsea Three.</p> <p>The report sets out that the site selection process was based on the available ecological evidence around kittiwake and existing ANS, as well as expert professional judgement. It was developed in consultation with Natural England as the relevant statutory nature conservation body. The site selection process focused on the English southern North Sea coast in response to stakeholder feedback.</p> <p>The DCO was subsequently made in December 2020.</p>

Ground	Summary of PD Ports' Objection	Acquiring Authority's Response
		<p>In December 2022, the Acquiring Authority submitted the KIMP to the Secretary of State for approval. A copy of the Site Selection Narrative Report referred to in the KIMP was also provided.</p> <p>In relation to the planning application process for the ANS Works, in paragraph 41 of the Appeal Decision the Inspector stated that it was satisfied that the Acquiring Authority had carried out a detailed site selection process and that <i>“the approach to the final selection of Hartlepool has been robustly carried out in accordance with the Kittiwake Implementation and Monitoring Plan”</i>.</p> <p>Following receipt of a request for information from PD Ports, the Acquiring Authority responded under the Environmental Information Regulations 2004 and provided a Summary of the Site Selection Process for ANS. This document set out the work that was undertaken both before and after purchase of the Site and the reasons for selecting the Site as the preferred option for the onshore ANS.</p> <p>The Acquiring Authority therefore considers that it has considered reasonable alternatives including carrying out a detailed site selection process for the ANS.</p>
4.	<p>FURTHER CONCERNS</p> <p>(a) Site purchase. PD Ports suggests that the Acquiring Authority is seeking to ‘make good on a bad deal’ in respect of the purchase of the Site, which</p>	<p>(a) Site purchase</p> <p>As set out at paragraph 1.6 to 1.11 of this Statement of Case, the DCO contains an obligation to submit the KIMP. This must include provision for the construction and maintenance of four ANS. To facilitate the construction and maintenance of the ANS and following a detailed site selection process as set out in the Acquiring</p>

Ground	Summary of PD Ports' Objection	Acquiring Authority's Response
	<p>was acquired despite no access rights being in place.</p> <p>(b) Planning permission. PD Ports refers to the Local Planning Committee's decision to reject the planning permission for the ANS Works and cites the lack of local support.</p>	<p>Authority's response to PD Ports' ground 3 above, the Acquiring Authority purchased the Site.</p> <p>Prior to the Acquiring Authority's acquisition of the Site, the Site was accessed via Ferry Road. However, PD Ports has since refused access to the Acquiring Authority for the ANS Works. In light of this and notwithstanding that the Acquiring Authority remains willing to reach a voluntary agreement with PD Ports, the Acquiring Authority is seeking to compulsorily acquire the new access and services rights in order to deliver Hornsea Three in accordance with the DCO and pursuant to its electricity generation licence.</p> <p>(b) Planning permission</p> <p>As explained at paragraph 8, the Acquiring Authority obtained planning permission for the ANS Works on appeal (APP/H0724/W/22/3309272) on 13 March 2023. PD Ports' concerns regarding the ANS Works were taken into account by the Inspector (see paragraph 12 of the Appeal Decision) along with concerns raised by local residents (see paragraph 19 of the Appeal Decision). However, for the reasons set out in the Appeal Decision, planning permission was granted for the ANS Works.</p> <p>The Applicant notes that PD Ports did not apply for permission to judicially challenge the Appeal Decision.</p> <p>The Applicant therefore considers that PD Ports is seeking to use its objection to the Order to reiterate its planning related concerns which have already been taken into account in the planning process.</p>

Teesside Windfarm Limited ("TWL") (Plot 1 – Table 2)

- 12.6 TWL are included in Table 2 of the Order Schedule under other qualifying persons in accordance with section 12(2A)(b) of the Acquisition of Land Act 1981.
- 12.7 In its objection letter, TWL states that the Acquiring Authority is seeking compulsory powers for the acquisition of new rights over land in which TWL has an interest and that the acquisition and use of those rights by Orsted could potentially adversely affect TWL's use of the relevant land.
- 12.8 A summary of the grounds of objection and the Acquiring Authority's response is set out in table (ii) below:

Table (ii)

Ground	Summary of Objection	Acquiring Authority's Response
1.	<p>INSUFFICIENT ATTEMPTS TO NEGOTIATE ACQUISITION BY AGREEMENT</p> <p>Orsted has made no attempt to negotiate with TWL and this clearly falls well below the requirement to demonstrate meaningful attempts to acquire the rights by agreement.</p>	<p>TWL was included in Table 2 of the Order Schedule on a precautionary basis due to it having the benefit of a unilateral notice on PD Port's title (who are the registered freehold owner of plot 1).</p> <p>However, upon further investigations, the plan filed with the unilateral notice shows the building leased by TWL (to which the unilateral notice relates) as being some distance from Ferry Road and Ferry Road does not appear to be used to access it.</p> <p>The Acquiring Authority has asked TWL to provide further details regarding the nature and extent of its interest in the Order Land but as at the date of this Statement of Case no such information has been provided.</p> <p>Notwithstanding (and without prejudice to) this, paragraph 17 of the CPO Guidance regarding meaningful attempts at negotiation applies in relation to "landowners" and other relevant paragraphs refer to negotiating the "purchase of land".</p> <p>Whilst land is to generally be construed as including new rights over land, we do not consider such paragraphs to stretch to those with the benefit of a unilateral notice (i.e. a Table 2 interest). Such persons, after all, would not be entitled to a notice to treat.</p> <p>Based on the information available to the Acquiring Authority, TWL is not a landowner (or lessee, tenant or occupier) of any of the plots subject to the Order, therefore the Acquiring</p>

Ground	Summary of Objection	Acquiring Authority's Response
		<p>Authority does not consider the requirements in the CPO Guidance to negotiate to be directly applicable to TWL. The new rights of access sought over Ferry Road will be exercisable in common with current users. As at the date of this Statement of Case, TWL has not provided any evidence to explain why it considers that a voluntary property agreement is necessary with TWL.</p> <p>In any event, the Acquiring Authority considers that the new rights over the Order Land being sought in the Order would be capable of being exercised in common with any rights held by TWL and the Acquiring Authority is not proposing to extinguish, override or interfere with any rights of access belonging to TWL.</p>
2.	<p>FAILURE TO UTILISE THE MOST APPROPRIATE POWER</p> <p>Seeking a modification to the DCO to extend the compulsory acquisition powers contained therein, is the appropriate course of action as opposed to seeking the confirmation of the Order to utilise general powers of acquisition under the Electricity Act 1989.</p> <p>Further, by limiting the scheme to which the Order relates to the acquisition of access rights to the Site for the ANS Works, Orsted has sought entirely inappropriately to circumvent the consideration of the wider scheme and the ANS Works on affected parties as part of the process of the confirmation of the Order.</p>	<p>Please see the response set out in Table 1 regarding a similar objection raised by PD Ports.</p>

Ground	Summary of Objection	Acquiring Authority's Response
3.	<p>FAILURE TO CONSIDER ALTERNATIVES</p> <p>It is not clear from the Statement of Reasons prepared by Orsted in support of the Order that alternatives for the ANS Works have been fully considered.</p>	<p>Please see the response set out in Table 1 regarding a similar objection raised by PD Ports.</p>

Royal National Lifeboat Institution ("RNLI") (Plots 1, 2 and 3 – Table 2)

- 12.9 RNLI are included in Table 2 of the Order Schedule under other qualifying persons in accordance with section 12(2A)(b) of the Acquisition of Land Act 1981.
- 12.10 In its objection letter, RNLI state that the RNLI has occupied the Hartlepool lifeboat station since 1994 under a lease from PD Ports and requires access 24 hours a day, 7 days a week, 365 days a year. Vehicular access from the public highway is across the privately owned port area, primarily via Ferry Road. RNLI state that its *"primary focus is to ensure operational continuity for the lifeboat station"*.
- 12.11 A summary of the grounds of objection and the Acquiring Authority's response is set out in table (iii) below:

Table (iii)

Ground	Summary of Objection	Acquiring Authority's Response
1.	<p>RNLI has no certainty that the required 24/7/365 access to the lifeboat station for its crew and maintenance team will be maintained during the construction phase of work or following completion of the construction phase of work.</p>	<p>The Acquiring Authority is seeking to acquire new rights – rights of access and for services along Ferry Road only. It is not seeking to acquire the land itself.</p> <p>The terms of such new rights are set out within the Order Schedule. The rights are to be exercised in common with any other persons with rights over the Order Land. The Acquiring Authority will not interfere with or prevent others from using Ferry Road.</p> <p>Whilst the Order would give the Acquiring Authority the ability to override/extinguish (as relevant) other peoples’ access rights, it can only do so if those other access rights are incompatible with the new rights the Acquiring Authority is seeking to acquire, which they are not.</p> <p>As set out in paragraph 3.9 above, any new utility installation will be undertaken in accordance with the requirements set out in the New Roads and Street Works Act 1991 ensuring that access along the route is maintained at all times. 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 8 weeks.</p> <p>It is therefore the case that RNLI’s rights of access along Ferry Road will remain in place and be unaffected during the construction phase of the ANS Works.</p>

2.	The RNLI cannot be certain of the impact of the planned works on the use and operation of its vital work at the existing lifeboat station.	For the reasons set out above, the exercise of the new rights sought in the Order will not have any impact on the use or operation of the existing lifeboat station.
3.	The current information within the Order does not appear to indicate that the Order will have any impact on the access for lifeboats to the sea and wider sea area, either during construction works or once they have been completed. RNLI requires certainty that access to the sea and wider sea area will be maintained during construction and following completion of construction.	<p>The Order Land does not include any of the land (including the slipway) that RNLI use to access the sea. The Order Land is limited to that part of Ferry Road edged red and shaded blue on the Order Map.</p> <p>As above, the new rights that the Acquiring Authority is seeking to acquire will provide access and services along Ferry Road to the Site where the ANS will be constructed.</p> <p>It is therefore the case that neither the acquisition/use of the new rights (to which this Order relates) nor the construction and maintenance of the ANS (to which this Order does not relate but is linked) would prevent or interfere with RNLI's access to the sea or wider sea area.</p>
4.	RNLI has not been contacted by the promoter or their agent in advance of the Order notices received, despite best practice guidance in providing information and reassurance to affected parties.	<p>As per our response on this ground to TWL above, paragraph 17 of the CPO Guidance regarding meaningful attempts at negotiation applies in relation to "landowners" and other relevant paragraphs refer to negotiating for the "purchase of land".</p> <p>Whilst land is to generally be construed as including new rights over land, we do not consider such paragraphs to stretch to those with the benefit of rights of access that will not be extinguished or interfered with. Such persons, after all, would not be entitled to a notice to treat.</p> <p>However, the Acquiring Authority has offered to meet with the RNLI to discuss its concerns and provide assurances that access will be maintained throughout the construction of the ANS Works. As at the date of this Statement of Case, the Acquiring Authority is waiting for a response from the RNLI.</p>

13. CONCLUSION

- 13.1 The new rights set out in the Order are required to facilitate the implementation, use, monitoring and maintenance of the ANS. The ANS Works form part of the KIMP and must be implemented in order for the Acquiring Authority to operate the Hornsea Three generating station.
- 13.2 The Acquiring Authority therefore considers that the new rights set out in the Order are required to enable the Acquiring Authority, as an Electricity Act 1989 licensee, to carry on the activities authorised by its licence and which relate to the operation of a generating station.
- 13.3 The new rights are no more than are reasonably necessary and will not result in any serious detriment to the carrying on of PD Ports' undertaking. Furthermore, there is a compelling case in the public interest for the rights over land to be acquired given the positive benefits that Hornsea Three will generate particularly in view of current UK policy in relation to renewable energy.
- 13.4 In addition:
- 13.4.1 Reasonable alternatives to compulsory purchase have been explored;
 - 13.4.2 It has been demonstrated that the interference with rights is for a legitimate purpose, is necessary and is proportionate;
 - 13.4.3 A description of the intended use of the land or rights to be acquired compulsorily has been provided;
 - 13.4.4 Commercial negotiations have been attempted;
 - 13.4.5 An explanation has been provided as to how it is expected that Hornsea Three, including the ANS Works, and the acquisition of the rights over the Order Land will be funded, as well as compensation in respect of the exercise of powers of compulsory purchase, which demonstrates that there is a reasonable prospect of the requisite funds being available; and
 - 13.4.6 Article 1 of the First Protocol to the ECHR and Article 8 of the ECHR have been considered.
- 13.5 It is therefore submitted that the Order be confirmed.

14. AVAILABILITY OF DOCUMENTS

- 14.1 The Acquiring Authority intends to rely on the documents set out in Appendix One to this Statement of Case.
- 14.2 The documents listed in Appendix One are available to download, free of charge, on the Acquiring Authority's website at <https://hornseaproject3.co.uk/hornsea-three-compulsory-purchase-order>.

- 14.3 Hard copies of the documents listed in Appendix One are also available, free of charge, on request by contacting the Acquiring Authority at HornseaProjectThree@orsted.com.
- 14.4 A copy of the documents submitted as part of the planning application for the ANS Works can be found on the Hartlepool Borough Council website using application reference number H/2022/0009 at: https://www.hartlepool.gov.uk/info/20222/planning/380/search_for_a_planning_application/1

Dated 12 October 2023

APPENDIX ONE

List of documents²

1. Written Resolution of the Board of Directors of Orsted Hornsea Project Three (UK) Limited made on 28 June 2023
2. Order and map referred to in the Order
3. Electricity generation licence dated 24 January 2017
4. Statement of Reasons for the Order
5. General certificate in support of the order submission (Section 13 of the CPO Guidance) dated 14 August 2023
6. Nil return Protected Assets Certificate relating to listed buildings and conservation areas (Section 22 of the CPO Guidance) dated 14 August 2023
7. Appeal Decision letter from the Planning Inspectorate (**APP/H0724/W/22/3309272**) dated 13 March 2023
8. Hornsea Project Three Offshore Wind Farm, Response to the Secretary of State's Minded to Approve Letter – Annex 3 to Appendix 2: Kittiwake Artificial Nest Provisioning: Site Selection and the Pathway to Securement, September 2020
9. *Sawkill -v- Highways England Company Ltd* [2020] EWHC 801 (Admin)
10. *R (on the application of Sharp) v North Essex Magistrates' Court* [2017] EWCA Civ 1143
11. Summary of Site Selection Process for ANS (October 2023)
12. Kittiwake Implementation and Monitoring Plan (December 2022)
13. The Hornsea Three Offshore Wind Farm Order 2020 and correction and amendment orders
14. Hartlepool Borough Council Committee Report dated 27 January 2022
15. Refusal of Planning Permission (H/2022/0009) dated 28 June 2022
16. Site Selection Narrative Report (December 2022)

² The documents listed in this Appendix are available on the Acquiring Authority's website at: <https://hornseaproject3.co.uk/hornsea-three-compulsory-purchase-order>