



**NEGOTIATIONS WITH LANDOWNERS**

**ORSTED HORNSEA PROJECT THREE (UK) LIMITED (FERRY ROAD, HARTLEPOOL)  
COMPULSORY PURCHASE ORDER 2023**

**STATEMENT OF EVIDENCE**

**Ian Mckenna  
Head of UK Land & Property Manager  
Orsted**

## 1. QUALIFICATIONS AND EXPERIENCE

- 1.1 I am Ian Mckenna, Head of UK Land & Property for Orsted.
- 1.2 I have a BSc (Hons) degree in Geography and Postgraduate Diploma in Surveying.
- 1.3 I have worked in the utility industry for over 20 years, with experience on many large electricity and gas infrastructure projects in England and Wales. My role on these projects has always centred around site selection and assembly, the negotiation of land agreements and the use of those agreements during construction and reinstatement.

## 2. SCOPE OF EVIDENCE

- 2.1 I led the land elements of the Hornsea Three compensation measures from January 2021 (the start of the project) up to November 2022 and was involved in the search process for a suitable site for an artificial nesting structure ("**ANS**") and the purchase of The Old Yacht Club Site, Hartlepool (the "**Site**").
- 2.2 My scope of evidence is limited to my involvement in the land elements of the site selection process and subsequent discussions and correspondence I have had with PD Teesport Limited ("**PD Ports**") since October 2021 relating to the Site purchase and access rights. The Statement of Evidence of Helen Gray deals with the discussions and correspondence with PD Ports from November 2022 to date.

## 3. APPROACH TO SITE SELECTION (LAND ELEMENT ONLY)

- 3.1 The site search criteria are outlined in the Summary of Site Selection Process for ANS (October 2023) [Appendix 11 to the Acquiring Authority's Statement of Case] and the Site Selection Narrative Report (December 2022) [Appendix 16 to the Acquiring Authority's Statement of Case] and the process followed is detailed in the Statement of Evidence of Eleni Antoniou.
- 3.2 The land search started in January 2021, where initially we used the high-level search areas agreed within the Hornsea Three DCO to identify (using the Land Registry) the largest land holdings along the waters edge within these areas.
- 3.3 We then contacted the landowners to see if they were willing to enter discussions about locating an ANS on their land.
- 3.4 The Hornsea Three ornithologists then prioritised twenty smaller polygons within the high-level search area that would have the greatest chance of success for the ANS to be colonised. Any smaller land parcels within these priority areas that had not been previously land referenced, were then added to the list and contact made with the landowner.

## 4. SITE SELECTION RESULTS

- 4.1 From all the approaches made, only the Site had no significant or moderate planning, engineering or environmental constraints and a landowner that was willing to agree to grant the land rights required to construct an ANS. Included within the Summary of Site Selection Process for ANS (October 2023) [Appendix 11 to the Acquiring Authority's Statement of Case] and the Site Selection Narrative Report (December 2022) [Appendix 16 to the Acquiring Authority's Statement of Case] are all the alternative sites that were considered throughout the entire two-year site selection process.

4.2 The identification of the Site as the most suitable option is unsurprising when you consider:-

4.2.1 One half (Tee's Estuary up to Hartlepool) of the high level North East search area consists of industrial and maritime land use along the water's edge. Any land not constrained by an environmental designation here was either in use or being developed. The area being given a free port designation in 2021 also increased the desirability of waterside property to its owners, making the siting of an ANS in these areas more unfavourable.

4.2.2 The other half (from Hartlepool north to Seaham) is mainly either urban areas or steep cliffs down to the water edge with unfavourable chances of colonisation or obtaining planning consent for an ANS.

## 5. THE OLD YACHT CLUB

5.1 The Site is approximately one acre in size, consisting of the old Coastwatch office building with surrounding hard standing/grassed areas. This provided sufficient space for all aspects of the ANS Works.

5.2 The Site scored very highly in terms of potential colonisation success, due to it being fronted on two sides by the sea and it having an existing Kittiwake colony on the RLNI lifeboat station next door. Further information on the Site's suitability for colonisation can be found in the Statement of Evidence of Robin Ward.

5.3 The owners of the Site responded positively to our initial approach. The first site meeting was in April 2021 and the purchase of the Site was completed in December 2021.

5.4 The planning permission for the ANS Works at the Site was granted on appeal, the Inspector determined the site selection process to be robust (see paragraph 41 of the Appeal Decision Letter dated 13 March 2023 [Appendix 7 to the Acquiring Authority's Statement of Case]) and the proposed use of the Site acceptable in the port setting.

5.5 The only outstanding issue preventing the commencement of the construction of the ANS Works on the Site is the dispute over access rights to the Site. Access to the Site is via Ferry Road (the majority of which is adopted), however the last c. 200m up to the Site is unadopted over a private road, which is owned by PD Ports. Further details on this are set out below.

## 6. THE RIGHT OF WAY TO THE SITE

### Existing Right of Way

6.1 The absence of a clear, express right of way to the Site was flagged by the Acquiring Authority's legal advisors in the initial due diligence before the purchase. Highways searches revealed that the public highway did not extend all the way along Ferry Road to the Site.

6.2 The unadopted section of road is owned by the neighbouring landowner, PD Ports.

6.3 At the initial due diligence stage, the historic conveyances for the Site and surrounding area were not available at the Land Registry. It was hoped at the time that these conveyances would be located and the rights to access the Site would be contained within them.

- 6.4 Prior to making the purchase we took legal advice and were made aware of the potential legal solutions available, including compulsory purchase, should the conveyances to prove our right of way not surface or that a commercial agreement could not be reached with the landowner.
- 6.5 In addition to seeking legal advice prior to the purchase, we started further lines of enquiry with the Land Registry, the Crown Estate and the previous owners of the Site. Unfortunately, prior to completing the purchase none of the older conveyances had been located. However, we had built a picture, from discussions with previous landowners, of a pattern of continual use of Ferry Road by the previous owners to access the Site. This use of Ferry Road had been for a variety of uses over a considerable period of time.
- 6.6 In light of the need to deliver the ANS to deliver the nationally significant Hornsea Three project, the decision to proceed with the purchase of the Site, whilst the access rights issue was still unresolved, was taken with the knowledge that:-
- 6.6.1 we hoped to uncover all the conveyances for the Site and surrounding land to prove that a right of way existed;
- 6.6.2 should that not be the case, the discussions with the previous owners on the matter of continued access to the Site, gave weight to the argument that PD Ports would enter into a commercial settlement if appropriate terms were offered; and
- 6.6.3 as a backup, there were a number of legal avenues, including compulsory purchase, that could be used if the two above points failed.
- 6.7 In January 2022 following discussions with the Crown Estate, a number of the old conveyances came to light. None of these showed a clear right of way to the Site. However, the Crown Estate did flag the location of two additional conveyances and potentially some correspondence regarding the access. These were being held by the National Archive. We then submitted a Freedom of Information request to access these files. This was rejected, as the information was considered to be exempt under section 40 (2) (by virtue of section 40 (3A) personal data exemption) of the Freedom of Information Act 2000, meaning that the National Archive could not make the record open to us, or to the public in general.

### **Alternative access**

- 6.8 Two alternative access options were considered.
- 6.8.1 An alternative land-based option around the coastal headland was ruled out due to the degree of civil engineering work required to construct a new access road, possible interface with coastal flood defences, proximity of these works to environmental designations and the fact it still required the Acquiring Authority to cross a small corner of PD Port's estate. Leaving us with a more complex access and still requiring a voluntary agreement with PD Ports.
- 6.8.2 The option of using the sea to access the Site was also explored but ruled out. Further details regarding the issues with this option are set out in the Statement of Evidence of Richard Swann.

## **7. APPROACH TO VOLUNTARY NEGOTIATIONS**

- 7.1 The initial conversation (Oct 2021) with PD Port's property team (Michael Dowson) ahead of purchasing the Site had a positive tone. We had a discussion about our proposed use of the Site which led onto a conversation about shared use of CCTV cameras and possible collaboration on

environmental initiatives. The issue regarding access along the unadopted section of Ferry Road was raised by PD Ports, however at the time I felt that either the rights would be uncovered in the missing conveyances or that we could negotiate a commercial settlement for the necessary access rights with PD Ports.

- 7.2 Following the above call, Michael Dowson fed back (Dec 2021) that PD Port's Operations team did not think that our proposed use of the Site was appropriate so close to the port estate and that they wouldn't allow access to the Site across any part of their estate.
- 7.3 In order to address PD Port's concerns about the suitability of our proposal next to the port estate, the Acquiring Authority sent them an advice note from its ecological consultants (see Appendix 1). This stated that in our consultant's opinion our proposal was very unlikely to have a detrimental impact on the port. We also offered face to face meetings to discuss this further, along with possible mitigation measures that could be implemented to address their concerns. No responses were received on the contents of the consultants reports or our offers of meetings.
- 7.4 Below sets out the attempts we made to engage with PD ports and the settlement offers we made, all without success.
- 7.4.1 **13/12/2021** – the Acquiring Authority email 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.
- 7.4.2 **10/01/2022** – Offer letter sent by the Acquiring Authority to PD Ports, along with a report from the Acquiring Authority's Ornithological Consultants outlining our view that the proposed use wouldn't have any adverse impact on their site.
- 7.4.3 **12/01/2022** – Response from PD Ports to the Acquiring Authority's letter of the 10/01/2021 confirming that PD Ports are no willing to discuss a resolution to the access issue.
- 7.4.4 **23/03/2022 & 29/03/2022** – Emails from HOW03 EPC Director to PD Ports Property Team offering an increased commercial settlement and further offers to discuss this matter with them.
- 7.4.5 **30/03/2022** – Response from PD Ports again confirming that they are not willing to discuss the access issues.
- 7.4.6 **01/04/2022** – Second email from HOW03 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.
- 7.4.7 High level meetings held in April and May between Head of Region UK from the Acquiring Authority & CEO of PD Ports. No resolution to the issues was reached at these meetings.
- 7.5 The offers made to PD Ports included a well above market rate payment (twice the value of the Site) for the settlement of the access dispute, and mitigation measure that could be installed across their port estate at the Acquiring Authority's cost to placate any operational concerns from PD Ports.
- 7.6 When the above is balanced against the minimal burden of the access rights, along an existing access, the Acquiring Authority is seeking across their estate, in my view the terms offered by the Acquiring Authority for a voluntary agreement were more than reasonable. As explained in Helen



Gray's evidence, PD Ports has made clear that it does not wish to negotiate, but the Acquiring Authority remains willing to acquire the rights by agreement should that position change.

## **8. DESCRIPTION OF RIGHTS TO BE ACQUIRED**

- 8.1 The rights being sought by the Acquiring Authority are required to construct, use, monitor and maintain the ANS on the Site and include:
  - 8.1.1 Rights to pass with or without vehicles, plant and machinery and equipment over an existing access road to gain access to and egress from the Site.
  - 8.1.2 Rights to lay, construct, use, maintain and upgrade an access road to the Site.
  - 8.1.3 Rights to lay, construct use, maintain, protect and access 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 other conducting media and all the ducts, conduits, gutters or pipes for containing them to be laid.
  - 8.1.4 Rights to existing services.
  - 8.1.5 Rights to remove any obstructions on the access road or prevent works which may interfere with or damage any pipes, drains and cables.
  - 8.1.6 The rights are subject to provisions relating to diversions at the request of PD Ports. This gives PD Ports the flexibility to develop out its site unconstrained by the current route, so long as an alternative access is provided. Maintaining an access to our Site is deemed to be of minimal burden, as PD Ports have other occupiers of their port estate that require access to a similar location.
- 8.2 On the infrastructure projects I have previously worked on, where the landowners are being burdened with third party rights across their sites, a provision for development loss compensation can be agreed. However, in this scenario, with the minimal rights being acquired, a diversion provision for the access rights is considered reasonable, as it gives PD Ports the control over its land to develop as it sees fit.

## **9. CONCLUSION**

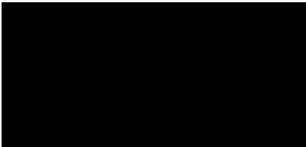
- 9.1 Only the Site had no significant or moderate planning, engineering or environmental constraints and a landowner that was willing to agree to grant the land rights required to construct an ANS.
- 9.2 The Site is within a high priority area for chances of successful colonisation.
- 9.3 Planning permission to build the structure has been granted.
- 9.4 The rights are required to access the Site and install services. The rights are required to facilitate the construction, use, monitoring and maintenance of the ANS on the Site and are no more than are reasonably necessary. These access rights cross PD Port's estate along an existing access. These rights will have minimal, if any impact on PD Port's use of their land holding.
- 9.5 We have offered more that reasonable terms to settle this issue, on multiple occasions, all without success.



9.6 Given the failed attempts to resolve this matter voluntarily, I see no other option than to use the compulsory purchase powers available to the Acquiring Authority.

#### **10. STATEMENT OF TRUTH**

This statement of evidence has been prepared and provided for this inquiry by me and I confirm that the statements and opinions expressed are my true and professional opinions.



Ian Mckenna  
9 January 2024



**APPENDIX 1**

**Assessment of impact from kittiwakes on PD Ports operations from establishment of a kittiwake colony at the old Yacht Club**

# Hornsea Three

## Kittiwake Compensation Measures

Memo on ornithology in the Hartlepool Docks

Date: 7 January 2022

### Assessment of impact from kittiwakes on PD Ports operations from establishment of a kittiwake colony at the old Yacht Club

#### EXECUTIVE SUMMARY

Orsted Hornsea Project Three (UK) Limited propose to construct two artificial nesting structures (ANS) for kittiwake at the old yacht club site, Hartlepool, as a compensation measure for the potential impacts of the Hornsea Project Three Offshore Windfarm. This memo has identified the potential impacts that increasing the existing numbers of kittiwake breeding in the area may have on PD Ports operations. Unlike its two larger sized urban nesting 'cousins' at Hartlepool, the herring gull and lesser black-backed gull, the kittiwake feeds only at sea and do not take human food and rubbish. Kittiwake are not associated with behaviours such as swooping at humans. The existing breeding population of kittiwake are present on Hartlepool Headland solely for the breeding season (March - August), nesting on narrow ledges. Expected occupancy of the ANSs, which will provide nesting cumulatively for approximately 1,000 breeding pairs of kittiwake, is approximately 40%. These occupants will only forage at sea and be expected to be terrestrially restricted to use of the ANSs, adjacent foreshores and lifeboat jetty where a colony already exists. The numbers of breeding kittiwake in Hartlepool is increasing naturally, and without intervention, the number of birds nesting on PD Port infrastructure is likely to increase. The ANSs offer a solution to encourage the new recruits to nest in a location away from PD Port properties where they are unlikely to impact port activities.

## 1 Introduction

Orsted Hornsea Project Three (UK) Limited ("Orsted") propose to construct two artificial nesting structures (ANS) for kittiwake *Rissa tridactyla* at the old yacht club site, Hartlepool, as a compensation measure for the potential impacts of the Hornsea Project Three Offshore Windfarm ("Hornsea Three"). The ANSs will cumulatively provide nesting opportunities for approximately 1,000 breeding pairs of kittiwake. Though the ANSs will provide nesting opportunities for approximately 1,000 breeding pairs of kittiwake, it is unlikely that the maximum capacity will ever be achieved. ANSs generally do not reach full capacity, for example the Gateshead Kittiwake Tower, South Shields, has an occupancy rate of approximately 40%. PD Ports have raised concerns on the potential impacts of increasing the number of kittiwakes in the area on their future operations as a result of the creation of the ANSs. The purpose of this memo is to identify the potential impacts kittiwake may have on PD Ports operations, importantly differentiating where these impacts differ between the three species of urban nesting gulls (confusingly termed 'seagulls'), of which kittiwake is one. The likelihood of impact on the future operations of PD Ports from increasing the number of kittiwakes as a result of the creation of the ANSs, is assessed in the context of current breeding status of kittiwake on Hartlepool Headland and the species ecology and behaviour.

## 2 Urban nesting gulls: large gulls and kittiwake

Kittiwake is one of three species of urban nesting gulls, the other two being 'large gulls', the herring gull *Larus argentatus* and lesser black-backed gull *Larus fuscus* (Figures 10.1 - 10.3). However, their ecology and behaviour are quite different and breeding places in the urban environment are very different. In consequence, the potential impacts from kittiwake and the two large gull species differ.

## 3 Urban nesting gulls: potential impacts

Urban nesting gulls can cause a variety of problems including:

- Noise nuisance;
- fouling by droppings and regurgitated food can be a nuisance on pathways, cars and property e.g. safety hazard if gull faeces make surface slippery for walking;
- litter and mess from scavenging open litter bins or open skips from which gulls are obtaining food;
- attacks on a person by parent birds;
- physical presence of nest interfering with the intended use of supporting structure
- blockage of gutting, pipes and gas flues caused by droppings and debris from nests; and
- stealing food from people.

## 4 Urban nesting gulls: difference in species and behaviour

**Herring gulls and lesser black-backed gulls** nest on roofs and chimneys, and the former is present in the urban environment, such as Hartlepool Headland, all year round. Both these species are very protective of their offspring in the breeding season. At such time, they will aggressively dive and swoop on people in proximity to the nest or chicks that have fallen out of the nest to the ground. Both large gulls are quick to exploit alternative food sources such as food waste in open skips and litter bins. They will swoop down at or near people from whom they sometimes attempt to take food.

**Kittiwakes** are a small offshore ('pelagic') species of gull that feeds only on marine fish and invertebrates foraged at sea or fish discards from trawlers. Kittiwake do not take human food and rubbish. They are not associated with behaviours such as swooping at humans unless a person is interfering with a nest containing chicks or eggs. Kittiwakes are colonial breeders, with nests in urban environments located on narrow ledges (e.g. window and building ledges) and external lighting fixtures. Birds are present on Hartlepool Headland solely for the breeding season (March - August).

## 5 Kittiwake breeding on Hartlepool Headland

Orsted conducted surveys of kittiwake breeding on Hartlepool Headland during the summer of 2021. The surveys were conducted from vantage points without accessing PD Ports property, so there may be more nesting birds on buildings not visible from outside the dock area. Figure 9.1 shows the locations and number of breeding birds in the

port areas in 2021. There were 310 apparently occupied nests (AONs) recorded in the port area, with trends showing numbers are increasing year on year (Figure 9.2).

## 6 Impact of increasing the number of kittiwakes

Kittiwake have a typical life expectancy of 12 years, generally mate for life and having once established a nest, the pair will use the same location to nest year after year. It is therefore unlikely that placing an artificial nesting site near another colony would diminish the existing population of established breeders. However, establishment of a purpose-built nesting structure at the Old Yacht Club, in close proximity to the existing Hartlepool Headland breeding birds, would become increasingly attractive to first-time breeding birds as the colony develops. The ANS designs have been carefully created to maximise their attractiveness to breeding kittiwake. Moreover, as the nearest ANS is within 40 metres from an existing kittiwake colony on the lifeboat station bridges, the former is a natural extension to an existing colony into which first time breeders seek to be recruited. In addition, Orsted intend to further encourage recruitment of birds to the ANSs by playing kittiwake calls and using decoy birds to attract initial colonists to the ANSs.

The net effect of the ANSs would be to minimise any further expansion of existing clusters of breeding kittiwake on or around PD Ports property, including the establishment of new breeding sites. Given that there is already a small kittiwake colony on the lifeboat station bridges, the increase in noise levels of additional breeding birds is likely to be minimal. A noise assessment has been submitted as part of the planning application, which concluded that the change in bird call noise levels are unlikely to be perceptible >200m from the nesting structures, therefore no adverse impact is anticipated.

Those kittiwakes that become established breeders on the ANSs will be present in the Hartlepool area solely during the breeding season. During this period, they will forage at sea and be expected to be terrestrially restricted to use of the ANSs, adjacent foreshores and lifeboat jetty where a colony already exists. It is therefore reasonable to conclude that the construction of ANSs for kittiwake at the old yacht club site, Hartlepool, is unlikely to be the source of or reason for any existing or future potential impacts attributable to urban nesting gull species, as described above (section 3), on PD Ports property.

## 7 Future breeding attempts on PD Ports property

Though it is unlikely that the ANS's will exacerbate any increase in the numbers of breeding kittiwake on PD Ports property, if issues do arise Orsted are willing to discuss potential mitigation measures on PD Ports property. However, it would be helpful to further understand the nature of PD Ports concerns regarding the increasing numbers of kittiwake. If deterring kittiwake from nesting on PD Port structures was deemed necessary; efforts to discourage birds from breeding on buildings might be more effective with the presence of the ANSs as they would provide additional alternative nesting sites within the local area.

## 8 Deterrence of breeding kittiwake from PD Ports property

Kittiwake are protected under the Wildlife and Countryside Act 1981, making it an offence to intentionally disturb, damage or destroy the nest of any wild bird while it is in use or being built.

There is no Licence permitting legal removal of active nests of kittiwake during the breeding season. In practice, this means that excluding the birds by proofing measures (e.g. bird exclusion netting, repellent gel and spikes), installed before nesting begins are the only legal means for controlling kittiwakes nesting. Their strong nest site fidelity can

often mean kittiwakes will ignore deterrents such as bird spikes and other preventative measures to nest in the same place. However, if birds are successfully excluded from a nesting area they are likely to find another nesting place in close proximity to their original site.

## 9 Conclusion

In conclusion, the numbers of breeding kittiwake in Hartlepool is increasing naturally, and without intervention, the number of birds nesting on PD Port infrastructure is likely to increase. The ANSs offer a solution to encourage birds to nest in a location away from PD Port properties where they are unlikely to impact port activities.



Figure 9.1, Map showing nesting locations of kittiwake and counts of apparently occupied nests on 18 June 2021. Note, building locations are approximations from vantage points outside PD Ports land. Kittiwakes were observed nesting on buildings on most light fittings, on crane supports, on drainage pipes and ledges above doorways and on the side of a pontoon, as well as on the bridges by the lifeboat station and some residential streets. The orange circle shows an area where a colony of large gulls were observed nesting- on the top of the roof of some the JDR buildings (-a rough estimate of 54 herring gull and 7 lesser-black backed gulls were seen but this was a casual observation not a full census count).

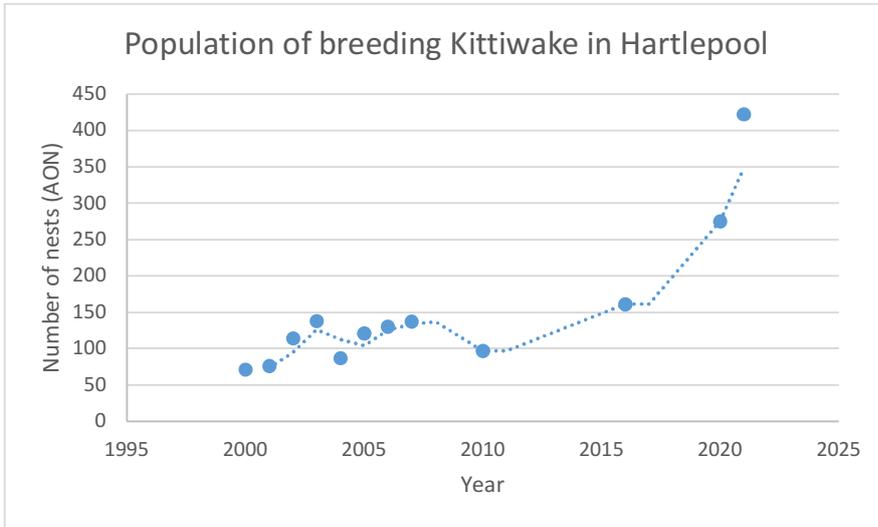


Figure 9.2. Graph showing the population trend of breeding kittiwakes in Hartlepool (including; the Headland, Dock areas and Steetley pier)

## 10 Photographs of urban gull species



Figure 10.1 Kittiwake, breeding adults at nest (R.M.Ward)



Figure 10.2 Lesser black-backed gull, breeding adult at nest (NIRAS)



Figure 10.3 Herring Gull, adult (NIRAS)

