



HOUSE OF COMMONS
LONDON SW1A 0AA

Planning Inspectorate
Room 3 O/P
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Wednesday 12th September 2018

Norfolk Vanguard Offshore Wind Farm

I am writing to formally put on record my strong opposition to the application by Norfolk Vanguard Ltd (on behalf of Vattenfall UK) to build the Norfolk Vanguard Offshore Wind Farm.

As you will be aware, under their proposals, Norfolk Vanguard Ltd intend to connect the Norfolk Vanguard project to an onshore substation located at Necton in my constituency – in the vicinity of the existing National Grid substation in the village. Extension works will be required at the existing substation to complete Norfolk Vanguard's connection to the National Grid and the application also looks to obtain consent to carry out some enabling works for Norfolk Vanguard's sister project, Norfolk Boreas, which is being pursued through a separate DCO process and will require another substation.

Prior to the acceptance of the application for a Development Consent Order and the beginning of the current pre-examination stage, I wrote to the Secretary of State for Housing, Communities and Local Government about the application. I have enclosed a copy of that letter, along with its attachments, in which I highlighted a number of specific reasons as to why I believe this particular application should not be allowed to go ahead. I stand by all of those reasons now, and wish for them to be given full consideration.

The local community and their legal representatives have repeatedly made the case that Norfolk Vanguard Ltd/Vattenfall UK's pre-application community consultation was inadequate – and I very much agree with them. Indeed, little, if any, information has been provided as to why this site has been chosen ahead of other sites and when specific queries/concerns about a range of aspects concerning the proposals have been raised by individuals, a generic set of FAQ style answers have, for the most part, been used to answer them. My office and I have received similar such answers from Norfolk Vanguard Ltd/Vattenfall UK and, therefore, can very much sympathise with the view locally that they have disregarded the expressed views and concerns of local Councillors, residents and businesses (as well as my own as the local Member of Parliament) by tailoring these FAQs to



provide vague 'answers' to very open ended questions – in a process that they clearly see as being a mere 'box-checking' exercise. Few people in Necton and the surrounding area believe that they have actually received an answer that adequately addresses the specific question that they have asked, and there remains considerable confusion about the true nature of these proposals and how they will likely impact the surrounding area. Specifically, the community has expressed concerns about the visual and environmental impact of the high vantage site chosen by Vattenfall, without any support from the local community.

All of this was articulated in my letter to Ruari Lean, Project Manager of Norfolk Vanguard, dated 3rd July 2018 – as was the widespread belief that the visual representations being provided by Norfolk Vanguard Ltd/Vattenfall UK were inadequate. Requests from both the community and myself for up to date visual files to be provided have continued to be refused (even after the decision to pursue the HVDC option), despite the grave concerns that Necton and its surrounding communities have about the likely visual impact that the proposed substation will have on the area.

I firmly share the widespread local belief that the application is sited incorrectly – as the site is located on some of the highest land in Norfolk and consultation has been disingenuous. Having visited it several times, spent time in the heart of the village and viewed it from surrounding villages, it is clear that any construction there will be a significant visual blight. As alluded to above, the decision to pursue HVDC will massively compound the problem – with a structure of approximately 25m in height being required at this incredibly prominent location. I have no doubt whatsoever that this would result in the substation being visible, not only to all of Necton, but also to a number of villages within a several mile radius. I have very little faith that even the best mitigation techniques will quell this enormous visual impact on the surrounding area.

As the local community and their legal representatives have also repeatedly made clear, insufficient environmental information has been provided by Norfolk Vanguard Ltd/Vattenfall UK as part of their plans. This has taken on even more importance in recent weeks as I have been made aware by the local community of grave local concerns relating to the crash of an F-16 fighter jet at the location back in 1996. A major military clean-up operation was required at the time, with the land having been contaminated with hazardous fuel and, it is feared, radioactive substances. Farming was not permitted at the location for some time due to the likelihood that traces of the contaminants would still be present, and many locals are concerned that, under the proposals, Norfolk Vanguard's cable corridor will run through the site and disturb any remaining contaminants – posing a serious threat to the surrounding community. Despite Norfolk Vanguard Ltd/Vattenfall UK having been made aware of these circumstances, it appears that they have still not taken steps in response to this information.

While I, as the MP, am not opposed to the proposals for a substation in this part of Mid Norfolk in principle, and have consistently made clear to my constituents and Norfolk Vanguard Ltd/Vattenfall UK my desire to broker an arrangement that all parties can largely support, the applicants refusal to properly consult leaves me with no choice but to forcefully support my constituents and local Councillors in opposing this application for the reasons I have discussed above and in the accompanying correspondence provided. I do not believe the plans put forward are at all acceptable in their current form.



I urge you to insist that specific site consultations be redone, as I have no doubt that otherwise they will be subject to a successful Judicial Review.

I wish to be kept updated with all developments in this matter going forward.

Yours,



George Freeman MP



HOUSE OF COMMONS
LONDON SW1A 0AA

The Rt Hon James Brokenshire MP
Secretary of State for Housing, Communities and Local Government
Ministry of Housing, Communities and Local Government
2 Marsham Street
London
SW1P 4DF

Wednesday 18th July 2018

Dear James,

Norfolk Vanguard Offshore Wind Farm – Application for a Development Consent Order (DCO)

I am writing to you with regards to the above application by Norfolk Vanguard Ltd (on behalf of Vattenfall UK) for a Development Consent Order.

As you will be aware, under their proposals, Norfolk Vanguard Ltd intend to connect the Norfolk Vanguard project to an onshore substation located at Necton in my constituency – in the vicinity of the existing National Grid substation in the village. Extension works will be required at the existing substation to complete Norfolk Vanguard's connection to the National Grid and the application also looks to obtain consent to carry out some enabling works for Norfolk Vanguard's sister project, Norfolk Boreas, which is being pursued through a separate DCO process and will require another substation.

Understandably, as is often the case when a Nationally Significant Infrastructure Project of this scale is being proposed, the application has caused considerable concern in Necton, along with a number of the surrounding villages. It has brought to the fore a number of issues concerning Localism and the NSIP planning process too, as well as the lack of any strategic planning in respect of the connection of offshore wind farms to the National Grid.

You will be aware that I have long been a vocal advocate of the spirit of Localism, and that I have campaigned extensively for the reform and strengthening of the 2011 Localism Act (including, most notably, of the Five Year Housing Land Supply Rules) to further empower local communities that dedicate the time and effort required to put together a comprehensive Neighbourhood Plan.

While I appreciate that, in cases involving NSIPs, the standard planning processes do not apply and applicants must instead submit their applications for a DCO directly to the Planning Inspectorate, I firmly believe that the spirit of Localism must still play a part. It is surely in the interest of all parties that the consideration of NSIP applications takes place within a much broader framework of strategic planning and on the basis of a fair and transparent process that attracts minimal public opposition and which fairly rewards the affected local communities by providing them with a package of community benefits that sufficiently reflects the impact the NSIP has had on them.

It is clear that the failure to ensure this takes place, and the continued ramshackle approach to NSIP applications (particularly in relation to the offshore wind energy sector), will only serve to greatly undermine public trust in the planning system as a whole, as well as the authorities and political parties that oversee it. (I am sure you are aware of the various other offshore wind farm applications that are currently on the cards here in the East – and the huge furore they are causing within the communities that will be affected by their cable corridors and substations).

Having accommodated the highly controversial National Grid substation that was built a few years ago, residents in Necton have been deeply shocked to learn that they may have now inadvertently paved the way for two further major substations to be constructed in the village. Indeed, the absence of a wider framework of strategic planning in this field does appear to have opened the floodgates to additional applications of this nature in the village – simply because of the fact that Necton has already accepted the existing substation when local opposition in nearby Little Dunham dictated that the substation could not be situated there.

With little explanation having been provided by the applicant as to why Norfolk Vanguard (and Norfolk Boreas) have opted for Necton over alternative locations, and grave concerns about the impact of further substations on the village, a petition opposing the proposals (and which I hold a copy of) was quickly set up by the Necton Substation Action Group and obtained the signatures of 768 individuals within the village. I also received dozens of emails and letters from worried constituents living in Necton and the surrounding villages.

Despite this significant and ongoing local concern however, the Action Group have since engaged with myself and, together with Necton Parish Council, representatives of neighbouring Parish Councils, the local district and county councillors and local landowners, we have regularly met in good faith over recent months to discuss a collective way forward that might possibly bring about a resolution that the village and surrounding communities can live with. Until recently, representatives of Norfolk Vanguard Ltd/Vattenfall UK also engaged in these meetings.

I, myself, am not opposed to the proposals in principle – and I have consistently made clear to my constituents, along with Norfolk Vanguard Ltd/Vattenfall UK, my desire to broker an arrangement that all parties can largely support. In my opinion, the proposed application should be allowed to go ahead provided it is sited at the correct location, with proper environmental, visual, sound and flooding mitigation, and if the local community receives a package of community benefits that offsets the severe disruption and impact that it is likely to experience.



(I know from my extensive conversations in the village that, after these proposals, the number one issue in the area is the incredibly dangerous A47 Necton/Dunham Junction. Over the past year, I have brought Highways England to see the site in person and they have commissioned a study to look at potential options that could be introduced to improve safety – including a roundabout. I believe that a proper solution to this problem should form part of any package of community benefits that may be required should the application prove successful).

As it stands however, I share the widespread local concerns about the application's siting for the proposed substation, which is on some of the highest land in the entire county. Having visited landowners who either own the site or have land neighbouring it, and spent time in the heart of the village, it is clear that any construction there will be a significant visual blight on the entire area – seriously affecting both the landscape itself, and life in the surrounding area too. With the decision that HVDC will now be pursued by Norfolk Vanguard and Norfolk Boreas, this problem will be massively compounded as a structure of approximately 25m high will need to be built at this already prominent location – ensuring the new substation will be visible to communities several miles away. I have very little faith that even the best mitigation techniques will quell this enormous visual impact.

Necton Parish Council, with support from Bradenham Hall Farms, Philip Hayton and Necton Substation Action Group, have sought the advice of leading counsel, Simon Bird QC, and now instructed their solicitors, Richard Buxton Environmental and Public Law, to write to the Planning Inspectorate regarding the inadequacy of the environmental information that has been provided by the applicant. In that letter dated 17th July 2018, they also request that this application for a DCO is not accepted and that no consideration takes place until additional information has been provided.

This letter follows previous correspondence that Richard Buxton Environmental and Public Law, on behalf of the community, have exchanged with Vattenfall UK and their representatives, Womble Bond Dickinson, regarding the belief that Norfolk Vanguard Ltd's pre-application community consultation was inadequate, and which have also been submitted to the Planning Inspectorate. I, myself, have written to the Project Manager of Norfolk Vanguard, Mr Ruari Lean, too in order to voice a number of concerns about matters during the pre-application period, in a letter dated 3rd July 2018. (I have enclosed copies of all of these letters).

While I would still very much prefer to work with all parties to help broker a sensible compromise, I am afraid that, given the proposals that Norfolk Vanguard Ltd have submitted for consideration and the concerns about the pre-application process, I intend to support my constituents and local councillors in opposing this application forcefully. I do not believe the plans put forward are acceptable in their current form.

Given the importance of this issue in my constituency, I would very much appreciate the opportunity to meet with you to discuss the various issues I have highlighted in this letter.

Yours,



George Freeman MP

cc. The Rt Hon Greg Clark MP – Secretary of State for Business, Energy and Industrial Strategy
The Rt Hon Claire Perry MP – Minister of State for Energy and Clean Growth

The Planning Inspectorate
National Infrastructure Directorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

By email to: NIEnquiries@pins.gsi.gov.uk

Our ref: Necton/AC
Email: acopithorne@richardbuxton.co.uk

17 July 2018

Dear Sirs

Norfolk Vanguard Offshore Wind Farm DCO – Vattenfall UK Ltd

We are instructed to write to you on behalf of our clients Necton Parish Council, with support from Bradenham Hall Farms, Philip Hayton and Necton Substation Action Group, regarding the adequacy of the environmental information which has been provided by the applicant Vattenfall UK Ltd in their application for a development consent order for Norfolk Vanguard Offshore Wind Farm (“the Project”).

On 15 June 2018, our firm wrote to Vattenfall UK Ltd (“Vattenfall”) on the basis that the pre-application community consultation carried out by Norfolk Vanguard Ltd was inadequate and set out our reasons for considering this to be the case. On 27 June 2018, Womble Bond Dickinson on behalf of Vattenfall replied to our letter, maintaining that the consultation had been conducted lawfully. Copies of both letters are enclosed with this letter.

We have subsequently sought the advice of leading counsel, Simon Bird QC, on the issues raised in these letters. That advice is also enclosed. Counsel’s view is that the environmental information as put forward in the Environmental Statement is inadequate and fails to comply with the requirement of Regulation 14 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 in that the selection of Necton as the choice of the location for the new substation is not explained, nor is there any description of the alternatives considered and an explanation as to why those alternatives were discarded.

As the Planning Inspectorate will be aware, the location of the new substation (in addition to an extension to the existing substation and a proposed additional further substation extension for the subsequent Norfolk Boreas project) has caused great concern and controversy in Necton. These are extremely large infrastructure developments, measuring up to 25m high and occupying a total footprint of over 14 hectares (excluding the existing substation). They will have a significant impact on the local landscape and residential amenity. It cannot be disputed that local residents

have an interest in understanding the rationale behind the choice of Necton and why any alternatives have been discarded.

We therefore ask that the DCO is not formally accepted by the Inspectorate and no consideration of the application begins until further information addressing the issue has been provided. Local residents, including our clients, must then be given sufficient opportunity to consider this information and comment further.

Should the DCO be accepted without this taking place, our clients may bring a further challenge on the basis that the EIA Regulations have not been complied with and the consultation on the DCO application is unlawful.

Yours faithfully

Richard Buxton Environmental & Public Law

cc. Womble Bond Dickinson (john.houghton@wbd-uk.com)

IN THE MATTER OF THE NORFOLK VANGUARD DCO APPLICATION

ADVICE

1. Necton Parish Council (“the Parish Council”) and Residents of the village seek my advice on the adequacy of the approach taken by the promoters of the Norfolk Vanguard Offshore Wind Farm DCO to alternatives to the Project, having particular regard to the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the Infrastructure Regs”). They are particularly concerned over the decision to select Necton as the location for a proposed Substation.

Background

2. Norfolk Vanguard is a Nationally Significant Infrastructure Project (“NSIP”) under the Planning Act 2008 (“the Act”), promoted by Norfolk Vanguard Limited (“the Applicant”), an affiliate of Vattenfall Wind Power Limited (“Vattenfall”).
3. In summary, if consented the Project would involve the erection of between 90 and 257 wind turbines on sites in the south North Sea known as Norfolk

Vanguard East and Norfolk Vanguard West. To transmit the generated electricity to the National Grid, subsea cables are proposed to run to a landfall at Happisburgh South where they will be jointed to onshore cables; the onshore connection point (“the OCP”). The cables will then be undergrounded across Norfolk to an onshore project substation (“OPS”) near the existing Necton National Grid substation (“the Substation”).

4. Some modification will be required at the existing substation to effect the ultimate connection to the Grid. This will include the erection of an “extension” to serve the Project which, depending on the technology deployed, will be between 15 and 25m high on a site of approximately 250m x 300m.
5. Vattenfall are also promoting a related NSIP, Norfolk Boreas, which is to be pursued separately through the DCO process. However, the Norfolk Vanguard DCO seeks consent for some enabling works for this “sister project”. These include cable ducting and a further extension at the Substation of capable of accommodating the requirements of the Boreas proposal with some additional overhead line modification.
6. The Applicant consulted on its proposed application between 7 November and 11 December 2017. That consultation was supported by various documents including a Preliminary Environmental Information Report (“PEIR”) in the form of a draft Environmental Statement and a Consultation Summary Document. These documents provided some explanation as to the evolution of the Project.

7. The application for the DCO has now been submitted to PINS supported by an Environmental Statement and its decision on whether the application should be accepted is presently awaited.
8. As far as the Parish Council and residents are concerned I understand that it is the siting and size of the proposed Substation which is their principal concern, although they also object to the disruption which would result from the laying of the cables in the lengthy cable route between the OCP and the Substation. They are not satisfied that the PEIR or Environmental Statement have adequately explained why the location of the Substation at Necton has been chosen. This clearly has implications for the other elements of the Project.
9. These points and others have been made to the Applicant but they have been rejected. This rejection is contained in a letter from Womble Bond Dickinson dated 22 June 2018. In summary, the Applicant contends that the OCP location (including the Substation location) was previously determined by National Grid and Vattenfall and was not part of the agreed scope of the Project. My advice is sought on the correctness of that assertion.

The Infrastructure Regulations

10. Regulation 14 provides:

“(1) An application for an order granting development consent for EIA development must be accompanied by an environmental statement.

(2) *An environmental statement is a statement which includes at least—*

.....

(d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;....”

11. This requirement is supplemented by paragraph 2 to Schedule 4 of the Infrastructure Regulations which details the matters which should be included within an Environmental Statement and which include:

“A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects”.

12. It should be noted that the obligation is to describe the reasonable alternatives studied by the developer and not an obligation to study all reasonable alternatives. Further, it is not a requirement that full reasons are given for selecting the options chosen (and implicitly for rejecting any discarded option); it is sufficient that the Applicant gives *“an indication of the main reasons”* for the selections made.
13. The primary obligation under the Infrastructure Regulations is that an Environmental Statement must accompany *the application* for a DCO (see regulation 14(1)). Without it, the application cannot lawfully be determined. The Preliminary Environmental Information Report, is a precursor to the

Environmental Statement with no prescribed format as to what it needs to contain. Regulation 12 of the Infrastructure Regulations defines Preliminary Environmental Information as:

“information referred to in Regulation 14(2) which –
(a) has been compiled by the applicant; and
(b) is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development)”.

14. PINS Advice Note 7 *“EIA: Process, Preliminary Environmental Information and Environmental Statements”* describes the role of PEIR:

“7.4 There is no prescribed format as to what PEI should comprise and it is not expected to replicate or be a draft of the ES. However, if the Applicant considers this to be appropriate (and more cost-effective) it can be presented in this way. A good PEI document is one that enables consultees (both specialist and non-specialist) to understand the likely environmental effects of the Proposed Development and helps to inform their consultation responses on the Proposed Development during the pre-application stage”.

15. Advice Note 7 also stresses that:

“Applicants are not required to provide PEI when undertaking their formal consultation (although if they do so they must set out how it will be publicised and consulted on as part of this process). However, Applicants are encouraged to provide PEI to enable statutory consultees to understand the environmental effects of the development and to inform the consultation. Provision of PEI may assist in the identification of potential issues, enabling these to be addressed at an earlier stage in the pre-application consultation process.”

16. Given that the definition of *“preliminary environmental information”* is

information which is “*reasonably required ...to develop and informed view of the likely significant effects of the development*”, this advice needs to be treated with some caution. Where the information exists and can be consulted upon in the formal consultation, then in accordance with the well established principles for a lawful consultation, it should be. Consultees would otherwise be deprived of information which can be provided and is necessary to express an informed view.

17. However, whatever the flexibility inherent in PEIR as far as content is concerned, an Environmental Statement submitted to accompany a DCO application, must comply fully with the Infrastructure Regulations. Where at the application stage there remains a deficiency in the handling of reasonable alternatives, this can be raised with PINS at the point of submission or indeed subsequently and further information can be required (see Regulation 15(7) and (8)). In this context, PINS Advice Note 7 advises that:

“The Planning Inspectorate considers that a good ES is one that:

...

- *explains the reasonable alternatives considered and the reasons for the chosen option taking into account the effects of the Proposed Development on the environment”.*

The Project’s Assessment

18. The objective of the requirement in terms of alternatives and reasons is to allow those consulted to form a view on the strength and robustness of the

need for the scheme (including its location and design). For this purpose, the main reasons why the scheme has been advanced and for rejecting any alternatives considered need to be at least “indicated”.

19. The Project decision making process here was initially summarised in Plate 4.1 of Chapter 4 of the PEIR, with the rest of the chapter fleshing out the reasoning to a greater or lesser extent, depending on the stage in that process.
20. At section 4.5, a number of ‘Project Commitments’ were set out. These were effectively strategic reasons for some of the decisions taken. They included the ruling out of 400kV towers to minimise the visual impact of the scheme, where practicable opting for the shortest cable route to minimise cost, impact and transmission losses and the avoidance of key sensitive features where possible.
21. As to the location of the windfarm itself, the PEIR set out the main reason for it. It lies within one of the Zones identified in Round 3 of the Offshore Energy Strategic Environmental Assessment as an area of opportunity for offshore windfarm projects (4.6.1 (22)) and in the Zonal Development Plan as an area with least environmental and technical constraint (4.6.2 (24), (29)). Sites within the zone were identified using a three step process involving detailed consideration of constraints, technical suitability and cost (4.6.2 (27)), although the differentiating factors were in fact limited to installation costs, energy production and operational offshore and transmission costs. Having regard to these factors, Norfolk Vanguard was the best performing site, with Norfolk Boreas the next best (4.6.2 (28)).

22. The focus of the decision making process for the windfarm was on the Zone and it is clear why the location (in terms of its site) that element of the project was chosen. It performed better than any others assessed against the determining criteria.
23. The narrow scope for alternatives to the windfarm location which was explained, did not constrain the consideration of alternatives for the landfall. For this element (and in consequence the other landward elements of the Project), the scope for meaningful alternatives was greater. Alternatives requiring a cable landfall within an AONB, an SAC, SPA or Ramsar site, an SSSI or National Park were avoided (4.7 (33)), which left three options (4.7 (34)), which are described by reference to a plan (Figure 4.3) and assessed by reference to offshore and onshore constraints 4.7 (35) and (36)). Ranking is provided (Table 4.1).
24. However, what is not clear, because it is not explained, is how far the selection of the landfall was influenced (if at all) by the decision on the Grid connection point at Necton. The picture portrayed by the Womble Bond Dickinson letter, although this is not obviously consistent with the content of the PEIR (or the submitted Environmental Statement), is that the two ends of the Project were effectively fixed before the process of assessment commenced and on that basis, it is argued that their selection does not have to be explained.
25. The identification of the Necton Grid connection point was a joint process

between National Grid and the Applicant, leading to a grid connection agreement. That is in substance a commercial agreement between the two parties. As with the Cable Relay Station, National Grid's Horlock Rules were applied to the selection of the site for it.

26. The weakest part of the reasoning within Chapter 4 of the PEIR undoubtedly related to the selection of Necton as the location of the sub-station. Section 4.12 was directed at where, within a 3km radius of the existing sub-station an "extension" would most appropriately be located. It does not address the question "Why Necton?"
27. That is clearly a fundamental decision in relation to the Project as a whole. To the extent that this is covered at all, the PEIR effectively deferred to the process which led to the connection agreement (4.8). That deference accords with the assertion in Womble Bond Dickinson's letter.
28. Section 4.8 recites National Grid's statutory responsibility to deliver an economic and efficient design and asserts that the process allows for a variety of options to be appraised leading to the identification of a preferred option, but provides no description of the alternatives considered and no reason for selecting Necton over the others (assuming there were some).
29. Whilst the content of the submitted Environmental Statement has been amended and supplemented in the light of the consultation on the PEIR, its substance, in so far as is relevant to this advice, is little different. In Chapter 4, it illustrates the decision making process (Plate 4.1) and summarises the selection of the windfarm location (4.6) and landfall (4.7) in near identical, if

not identical, terms to the PEIR. As to the Grid Connection point location, it is now clear that alternatives were considered by National Grid and Vattenfall (44) and, perhaps in some recognition of the concern expressed on behalf of the Parish Council and residents, a largely new paragraph appears:

“48 A guidance note on the National Grid website explains how the assessment is carried out. The process looks to technical, commercial, regulatory, environmental, planning and deliverability aspects to identify the preferable connection for the consumer. The Electricity Act 1989 required National Grid when formulating proposals, to be efficient, co-ordinated and economical whilst also having regard to the environment. When the development being connected is offshore, the offshore aspects need to be considered in that evaluation too. The assessment process therefore looks to minimise the total capital and operational cost whilst taking into account other key considerations as outlined”.

30. However, all this paragraph does is to explain that there is a process (see National Grid's *The Connection and Infrastructure Options Note (CION) Process Guidance Note Issue 3*), what that process involves and that was undertaken in relation to this Project. However, the output of that process is not set out or summarised. This does not begin to *describe* the alternatives or to indicate why the preferred option was a substation at Necton, when compared with the alternatives. This amounts to a failure to comply with Regulation 14(2).

31. Leaving aside the law, the NSIP application process would be a strangely bizarre one, if a local community peculiarly affected by a large element of the proposed associated infrastructure was entitled to no explanation at all as to why they were expected to have to bear its various burdens.

32. The Womble Bond Dickinson claims that the Project has previously determined end points and which were treated as “settled” and effectively a choice which “does not form part of the Project”. This is supported by the comment:

“This is the approach taken on every other offshore wind farm DCO application to date”.

33. Even if this latter point is correct, it is not a good one. The issue is not what other applicants may have done in the past but rather, what the Infrastructure Regulations require as a matter of law. The requirement is that they provide:

“a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment.”

34. The Project is defined here as including “the Onshore Project Substation”.

Any reasonable alternative to its proposed location which was considered is “relevant to the proposed development” and requires a description. It must also be clear why Necton was preferred over that alternative by reference to a comparison of environmental effects. It is not lawful for National Grid and the Applicant to agree between themselves by way of a connection agreement that this requirement of the Infrastructure Regulations should be excluded.

35. The fact that the two ends of a project may be influenced by the decisions of persons other than the Applicant, does not mean that they are not part of the Project or that alternatives considered in this bipartisan process of selection,

do not need to be explained in a subsequent Environmental Statement.

36. It seems to me that in advancing its argument, Womble Bond Dickinson is seeking to misuse the case law on reasonable alternatives in the context of Strategic Environmental Assessment and planning policy. In cases such as R(oao Friends of the Earth, England, Wales and Northern Ireland Ltd v Welsh Ministers [2016] Env LR 1, the Courts have held that what is or is not a reasonable alternative policy must be judged by reference to the objectives which the policy is intended to meet. If an alternative policy cannot meet the objective, it is not a reasonable one.
37. That approach is not relevant to NSIPs of the kind being promoted here. There is no national or other policy which fixes the two ends of this Project. Those are the product of a design process which has involved the consideration of alternatives. The relevant objective here is securing a grid connection at least cost to users and the environment. Even if Necton has proved to be the only reasonable option on this basis, there still needs to be some indication of why and a summary of the output of the National Grid's CION process is the minimum is required.
38. In reality, the connection agreement is little different to the Crown's process of identifying potential windfarm locations, which effectively determines the other end of the Project, or the decision on the landfall. As I have set out above, the PEIR and Environmental Statement explain the decisions at that end of the Project. The Applicant provides no good reason why the selection of the Substation location should be treated any differently.

39. My overall conclusion, therefore, is that there is a material weakness in the PEIR, which, is repeated in the Environmental Statement, and which amounts to a failure to comply with the Infrastructure Regulations.
40. I would advise the Parish Council and the Residents to write to PINS pointing out the deficiency and asking that no consideration of the application begins until further information addressing the issue has been provided and they have had an opportunity to consider its implications for the justification of the need.

SIMON BIRD QC
16 July 2018

Francis Taylor Building
Inner Temple
London
EC4Y 7BY

DX: 402 4DE

**IN THE MATTER OF THE NORFOLK
VANGAURD DCO APPLICATION**

ADVICE

Richard Buxton
Environmental & Public Law
19B Victoria Street
Cambridge CB1 1JP



HOUSE OF COMMONS
LONDON SW1A 0AA

Mr Ruari Lean
Vattenfall Project Manager
Vattenfall UK
1 Tudor Street
London
EC4 YOAH

Tuesday 3rd July 2018

Dear Mr Lean,

Norfolk Vanguard Offshore Windfarm

I am writing further to our previous communications regarding Vattenfall's proposals to locate the substation and connection point for the Norfolk Vanguard Offshore Windfarm (and, later, the Norfolk Boreas Offshore Windfarm) at the village of Necton in my constituency.

Firstly, I wish to reiterate my disappointment that Vattenfall chose not to attend the meeting I convened with Necton Parish Council, local landowners, Necton Substation Action Group and others in Necton and the surrounding villages on Friday 20th April. As yourselves at Vattenfall are well aware, there is considerable concern in the Necton area about the shape and design of your plans, as well as of the likely impact that they will have locally.

I can inform you that those from the local community who did attend the meeting were not surprised to hear that Vattenfall had chosen not to participate in the meeting – given Vattenfall's previous conduct when undertaking the work required to apply for a Development Consent Order. The decision was also considered very disrespectful.

Indeed, in the letter sent to me on your behalf by Dr Catrin Jones on Tuesday 17th April 2018, you explained that, due to the need to keep discussions about the shape and design of a project separate from discussions about community benefits, Vattenfall would not be attending. In your own words, you explained that "there is no guidance from UK Government in relation to community benefits and offshore windfarms" and so your decision was based on "Scottish Government guidance in relation to community benefits and offshore windfarms" and "UK Government...guidance relevant to onshore wind and industry best practice". This reasoning was seen to be incredibly tenuous and an

act of bad faith. Given the strength of local concerns, it was felt that, at the very least, Vattenfall could have offered to send someone to discuss questions that only concerned the shape and design of your plans.

As you will recall, my office contacted you on 25th April 2018 to once again highlight local concerns about the likely visual impact of Vattenfall's plans and to pass on the request for up to date visual files to be provided which could then be circulated to those concerned in the local community. This has been, of course, a notable area of concern throughout the consultation process so far, and has taken on even more importance since Vattenfall's decision to pursue the HVDC option (which will require a far bigger construction to house the substation).

With the widespread view that Vattenfall's visual representations, to date, have been inadequate, the provision of such files (or similar) would have been, in the wider context also, an act of good faith – and would have perhaps helped improve Vattenfall's reputation locally (especially as, I believe, these visuals would have been very easy for Vattenfall to generate). I was, therefore, very disappointed that no such representations were provided – although I now understand, from a local parish councillor, that Vattenfall have become more open to providing updated visuals for the local community to view. I would appreciate any news that you can provide me on this.

Finally, I have been repeatedly approached by constituents dissatisfied with the standard of responses provided by yourselves at Vattenfall. Having myself raised correspondence with yourself and your team on behalf of my constituents, I too am aware of the generic FAQ style answers that are provided when queries (including those asking for information about very specific matters) are raised and I can understand why so many people have been left frustrated. Certainly, there is a feeling locally that Vattenfall have disregarded the concerns of residents and businesses by tailoring the FAQs to provide vague 'answers' to very open ended questions – in a process that Vattenfall appears to see as a mere 'box-checking' exercise. Few people in Necton and the surrounding villages believe that they have received an answer from Vattenfall that adequately addresses the specific questions they originally raised. I must, therefore, highlight how poorly I believe this reflects on Vattenfall and your team.

I am informed that you are aware of, and have responded to, the letter from the representatives of Necton Parish Council, and the stance that the community are now taking. Throughout my communication with you over recent months, I have pointed to the severe risk Vattenfall's behaviour posed in relation to generating significant local opposition – and I am afraid that my warnings have come to pass.

I reiterate that I am not opposed, in principle, to the substation in my constituency, and remain keen to try and broker a sensible siting plan that the community can largely support. Without proper engagement from the community however, that is impossible. I would, therefore, request that you contact my office to arrange another meeting.



Yours,



George Freeman MP

22 June 2018

Adrienne Copithorne
Richard Buxton
19B Victoria Street
Cambridge
CB1 1JP

Womble Bond Dickinson (UK) LLP

3 Temple Quay
Temple Back East
Bristol
BS1 6DZ

Tel: 0345 415 0000
Fax: 0345 415 6900
DX: 200561 Bristol Temple Meads

john.houghton@wbd-uk.com
Direct: +44 (0)117 989 6870

Our ref:
VJR2/JEH1/47583.46
Your ref:
NCC1-001/AC

Dear Sirs

**Norfolk Vanguard Offshore Wind Farm (The Project)
Proposed Application for a Development Consent Order (DCO) pursuant to the Planning Act 2008**

We act for Vattenfall UK and Norfolk Vanguard Limited (**Vanguard**) in connection with the above proposed DCO application. We have been passed a copy of your letter to them dated 15 June.

Your letter seeks to suggest that Vanguard is currently unable to discharge its duties under section 49 of the 2008 Act due to the manner in which its pre-application community consultation has been undertaken. The alleged defects relate to:

1. The non-inclusion in the PEIR of alternative Onshore Connection Points (OCP) (other than near Necton); and
2. The reasons given for the focus on Zone 1 east north east of Necton for the location of the onshore substation.

You request confirmation that Vanguard will re-consult on these matters prior to submitting the DCO application. We confirm on behalf of our clients that there is no requirement for Vanguard to carry out any further re-consultation prior to submitting the DCO. None of the matters raised in your letter give rise to any grounds for such a re-consultation. This is because:

- (i) The Project is to connect to a previously determined OCP near Necton;
- (ii) The agreed scope of the Project consultation did not include OCPs other than near Necton;
- (iii) The OCP near Necton had already been separately fixed by National Grid (with input from Vattenfall) under a separate process;
- (iv) The reasons for focus on Zone 1 east north east of Necton were fully set out in the PEIR and other consultation communications and information; and
- (v) There has been no prejudice to your clients in responding to consultation on the Project.

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1. The Project

- 1.1 The Project which forms the basis of the consultation was clearly and consistently defined. It has previously determined fixed end points, being the offshore array and the OCP near Necton. This was made clear at the outset, and is recorded at paragraph 2.5 in the Secretary of State's Scoping Opinion which summarises Vanguard's description of the Project as follows:

"The onshore grid connection would be from the point at which the offshore cables come ashore ('the landfall') around Bacton, Norfolk, to the existing Necton 400kV National Grid Substation, approximately 50km west-southwest. The key onshore components would be the following:

-
- Onshore substation in proximity to the grid connection location at the existing Necton 400kV National Grid Substation;...."

- 1.2 It is also made clear in all of the consultation documents including in Chapter 5 of the PEIR (Project Description). Paragraph 20 of Chapter 5 states, *"the offshore cable corridor would link the OWF sites with the cable landfall location at Happisburgh. The onshore cable corridor would then link the landfall with the grid connection point at Necton."*

- 1.3 Paragraph 28 states:

"The key onshore components of the proposed project would comprise...

- *An onshore project substation*
- *Extension works at the Necton National Grid station..."*

- 1.4 Paragraph 394 states, *"Only one onshore project substation (HVAC or HVDC) would be required for Norfolk Vanguard. The location of the onshore project station is shown in Figure 5.5, with dimensions as detailed below. A detailed site selection process (described in Chapter 4 Site Selection and Assessment of Alternatives) has been undertaken to determine suitable locations"*.

- 1.5 Paragraph 424 states, *"The existing Necton National Grid substation would require an extension to accommodate the Norfolk Vanguard and Norfolk Boreas connection points."*

- 1.6 Figure 4.15 shows the substation search area. Figure 4.16 shows the refined substation search area. Figure 4.17 shows the onshore project substation footprint options. Figure 4.18 shows the onshore project substation location.

- 1.7 Likewise, your clients can have been in no doubt that the Project on which consultation was undertaken was for an offshore wind farm with a grid connection point near Necton. Other potential OCPs do not form part of the Project description and likewise were not within the scope of the Project consultation.

2. Scope of the Project consultation

- 2.1 It is clear from DCLG guidance on pre-application consultation that it is not necessary to consult on every aspect of the Project. Paragraph 55 of the guidance states:

"Applicants must set out clearly what is being consulted on. They must be careful to make it clear to local communities what is settled and why, and what remains to be decided, so that expectations of local communities are properly managed. Applicants could prepare a short document specifically for local communities, summarising the project proposals and outlining the matters on which the view of the local community is sought."

- 2.2 The Project which forms the basis of the consultation is described in the Statement of Community Consultation (**SoCC**), which provides information about the proposed strategy for consultation with local communities under section 47 of the 2008 Act and has been consulted on with the relevant local councils.

2.3 Section 5 of the SoCC describes the Project, and that:

"onshore, buried cables and associated infrastructure will be installed which will transmit power from the wind farm to the existing 400kV National Grid substation near Necton Norfolk."

2.4 Section 8 of the SoCC describes who are being consulted and where:

"Through the EIA and consultation process the focus of the project has narrowed to a refined area within which the onshore infrastructure is likely to be sited, sometimes known as a "red line boundary" or "Order limits".

Correspondingly levels of interest have become more focussed. This focussed area is the Primary Consultation Zone which is an area within which we will keep households and businesses directly and proactively informed about the project... The PCZ will be 1km around the Project's indicative cable corridor, where impacts could be experienced during the construction phase... around where we are seeking to locate permanent visible onshore infrastructure (if required), namely close to the CRS zone, landfall, and close to the substation zone we will engage more widely and follow relevant parish and town council boundaries to delineate the PCZ."

2.5 Section 8.2.5 refers to consultation documents/materials including an information hub, a slide pack, a 3D virtual model, exhibition materials, the PEIR, and consultation packs.

2.6 Section 8.3.1 sets out the key topics for consultation. These include, *"potential mitigation for project impacts. This might include a review of the potential impact of key onshore infrastructure such as the CRS (if required) and the project substation, as well as modifications to the National Grid substation and overhead line. Different types of mitigating schemes will be considered and consulted upon"*.

2.7 It can be seen from the above that the Project had a fixed connection point near Necton and there was no requirement for any consultation on potential connection points to the National Grid other than near Necton.

3. Onshore Connection Point (OCP)

3.1 The process of establishing the OCP (**the OCP process**) is quite separate from the process of consulting on the location of permanent onshore visible infrastructure for the Project. The choice of OCP does not form part of the Project.

3.2 The OCP process is referred to in Chapter 4 of the PEIR at section 4.8. The identification of a connection point to the National Grid for the Project is undertaken through a joint process between a developer and National Grid. It facilitates an appraisal of a variety of options under a range of criteria and identifies a connection point which then results in a grid connection offer being made to the developer. Whilst a developer inputs into this process, the final offer is determined by National Grid. The PEIR states:

"46. A grid offer was made by National Grid at Necton in July 2016 and accepted by Norfolk Vanguard Limited in November 2016. The National Grid offer allowed the Norfolk Vanguard scoping process to commence and allowed the onshore scoping area to be defined. The onshore scoping area allowed **search areas for the onshore infrastructure** i.e. the onshore project substation, CRS and onshore cable corridor to be identified as well as the landfall search area." (our emphasis)

3.3 There was no requirement under Regulation 14(2) for the PEIR to describe alternative OCPs since the OCP location had already been fixed under a separate process to determine National Grid's grid connection offer and did not form part of the Project. It was those alternatives for siting the Project's onshore substation in relation to National Grid's existing substation near Necton which did form part of the Project and which were consulted on (see paragraphs 91 and 92 of Chapter 4 of the PEIR). This is the approach taken on every other offshore wind farm DCO application to date.

4. Focus on Zone 1

- 4.1 There is no absolute requirement as to the level of detail to be contained in the PEIR. In particular, DLCCG Guidance on pre-application consultation advises, at paragraph 93, that "... *sufficient preliminary environmental information to enable consultees to develop an informed view of the project*" is included. The Guidance goes on to note that, "*The information required may be different for different types and sizes of projects. It may also vary depending on the audience of a particular consultation. The preliminary environmental information is not expected to replicate or be a draft of the environmental statement....The key issue is that the information presented must provide clarity to all consultees.*"
- 4.2 Notwithstanding this, full details of the reasons for focussing on Zone 1 as the final substation location are set out in paragraphs 90-100 of Chapter 4 including in particular:
- 4.2.1 Paragraph 98 (Specific design principles/requirements used in identifying preferred location options);
- 4.2.2 Paragraph 99 (Potential co-location of onshore project substations); and
- 4.2.3 Paragraph 100 (Constraints mapping, technical constraints and information gathered at site visits and consultation events).
- 4.3 There can be no doubt that for the purpose of the PEIR and the consultation as a whole, section 4.12 of Chapter 4 provides "*a full description of the reasonable alternatives studied by the Applicant which are relevant to the proposed development and its specific characteristics and an indication of the reasons for the option chosen, taking into account the effects of the development on the environment*" under Regulation 14(2).
- 4.4 In addition the PEIR is not the sole vehicle for the purpose of pre-application consultation as set out in the Statement of Community Consultation and as will be demonstrated in Vanguard's Consultation Report submitted with the DCO application. In accordance with DCLG's pre-application guidance, full and clear information was provided for the purposes of pre-application consultation.

5. Prejudice

- 5.1 It is clear that there has been no prejudice to your clients in submitting their consultation responses on the choice of substation location near Necton. A description of the reasonable alternatives has been set out in the PEIR together with an indication of the reasons given for the option chosen. Your clients have been free to comment on those alternatives. Indeed it is open to your clients to make further representations at the Section 56 stage on site selection and alternatives (or any other matter relevant to the application) if they so choose. These representations can be fully considered during the examination phase of the DCO application.
- 5.2 No suggestion has been made by any of the affected local authorities in responding to the consultation that, in the light of the SoCC, the consultation was defective in the way you suggest. It is those local authorities who will be consulted by the Planning Inspectorate when they come to consider acceptance of the DCO application in conjunction with the SoCC and the consultation report provided by our clients as part of that application.
- 5.3 We reserve the right to provide a copy of this response to relevant local authorities. We also reserve the right to bring this letter to the attention of the Planning Inspectorate.

Yours faithfully



Womble Bond Dickinson (UK) LLP

Copy to

1. George Freeman MP
2. Jon Berry, Head of Development Management, Breckland Council
3. The Rt. Hon James Brokenshire MP, Secretary of State for Housing, Communities & Local Government

RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

19B Victoria Street
Cambridge CB1 1JP

Tel: (01223) 328933

Fax: (01223) 301308

www.richardbuxton.co.uk

law@richardbuxton.co.uk

Mr Ruari Lean
Vattenfall Project Manager
Vattenfall UK
1 Tudor Street
London EC4 Y0AH
United Kingdom

Our ref: NCC1-001/AC
Your ref: New matter
Email: acopithorne@richardbuxton.co.uk

15 June 2018

Dear Mr Lean

**Norfolk Vanguard Offshore Wind Farm (the Project)
Proposed Application for a Development Consent Order (DCO) pursuant to the
Planning Act 2008**

I am writing on behalf of my client, Necton Parish Council, with support from Bradenham Hall Farms, Philip Hayton and Necton Substation Action Group. For the reasons I will explain below, I have advised my client that the pre-application community consultation carried out by Norfolk Vanguard Ltd (Vanguard) pursuant to s. 47 of the Planning Act 2008 (the 2008 Act) in respect of the above Project is legally flawed and potentially open to challenge.

I have also advised my client that in these circumstances, Vanguard is not able to discharge its duties under s. 49 of the 2008 Act, and that as a result any application to the Secretary of State for a development consent order for the Project would itself be unlawful.

I should be grateful if you would confirm that Vanguard will reconsult on the matters outlined below, and will not submit its DCO application before the results of such consultation have been considered.

My client reserves its rights to bring the contents of this letter to the attention of the Planning Inspectorate.

Background

I understand that Norfolk Vanguard Ltd (Vanguard) is a special purpose vehicle established by Vattenfall to secure consent for and deliver the Norfolk Vanguard Offshore Wind Farm, a nationally significant infrastructure project (an NSIP), on Vattenfall's behalf. The project comprises a 257 turbine (1.8GW) windfarm located off the Norfolk coast, an offshore export cable between the windfarm and a point south of Happisburgh where it makes landfall, and a buried onshore cable between Happisburgh and a new project substation at Necton, where the project will connect into the national grid.

Vattenfall is also promoting a sister windfarm project called Norfolk Boreas (Boreas). Boreas will share a grid connection location and much of the onshore and offshore cable corridors with Norfolk Vanguard. The current Project therefore includes some enabling works for Boreas including modifications and Boreas-specific extension works at the Necton national Grid Substation.

Legal and Procedural Background

As you are aware, as an NSIP, the Project will be authorised by way of a development consent order. The DCO consenting process is governed by the Planning Act 2008 (the 2008 Act), the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the Infrastructure Regulations) and government guidance, contained in particular in national policy statements.

Section 47 of the 2008 Act requires Vanguard as applicant to prepare a statement of community consultation (in consultation with relevant local authorities) and to consult on its proposals for Project in accordance with that statement in advance of submitting the DCO to the Secretary of State for approval. Having carried out that consultation, section 49 of the 2008 Act then requires the Vanguard to have regard to any responses received within the specified deadline in "deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application".

Where (as in this case) the proposed project is EIA Development, Regulation 12 of the Infrastructure Regulations also requires the SoCC to explain how Vanguard as applicant intends to publicise and consult on the preliminary environmental information (i.e. the PEIR).

Under Regulation 12 (2) the PEIR must contain the "information referred to in regulation 14(2) which:

- (a) has been compiled by the applicant; and
- (b) is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development)."

Regulation 14 (2) requires the PEIR to include (amongst other requirements) "a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the reasons for the option chosen, taking into account the effects of the development on the environment".

With particular regard to 'alternatives', guidance contained in the Government's *Overarching National Policy Statement for Energy (EN-1)* states at paragraph 4.4.12 that:

"... applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility."

The purpose of this consultation is explained in the government's guidance document 'Planning Act 2008, Guidance on the pre-application process: Consultation' (January 2013), which explains that "effective pre-application consultation will lead to applications which are better developed and better understood by the public, and in which the important issues have been articulated and considered as far as possible in advance of submission to the Secretary of State" (at paragraph 10).

In order for any consultation to be effective, the courts held in the case of *R v Brent London Borough Council, ex parte Gunning*¹ that (amongst other requirements), sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response.

The Project Substation

Vattenfall proposes to connect the new windfarm to the GB Transmission System at Necton by way of a new substation located on a site to the south-east of the existing Necton National Grid substation which was recently developed to connect the Dudgeon windfarm to the national grid. The plans contained in the PEIR also suggest that a similar sized compound to accommodate a further substation for Boreas will be located to the immediate east of the new Vanguard substation.

The site of the proposed new Vanguard substation is approximately one kilometre from the existing Necton substation, 150m from Necton Wood and approximately 600m from the Great Wood (both of which are designated Ancient Woodland and Country Wildlife Sites). The area as a whole is described in paragraph 123 of Chapter 29 to Vanguard's Preliminary Environmental Information Report (PEIR) as "open and exposed valley landform" and one of the most elevated character areas within Breckland with the potential for distant views.

This element of the Project will be substantial. We understand that the maximum land requirement for the proposed new substation will be 250m x 300m and the height of the tallest structure will be either 15m or 25m depending on whether the Project is delivered as an AC or DC facility (I understand that DC is currently the preferred option).

The Project will also require an extension to the existing Necton National Grid substation (including ground works to accommodate Boreas), resulting in a total extended area for the existing substation of up to 145m x 470m with maximum structure heights of 15m. During the construction phase there would be also be substantial additional construction compounds.

Given the scale of the new substation and the extension to the existing substation together with the exposed location, it is unsurprising that the PEIR assesses the impact of this part of the development as 'significant' in respect of the removal of hedgerows and hedge trees, in terms of the effect on the landscape character, and in respect of the visual impact from the assessed viewpoints (PEIR, Chapter 29 at section 29.7.3.4).

Evolution of the Substation Proposals

You will appreciate that the point at which any windfarm will connect into the UK National grid (the onshore connection point (the OCP)) is a critical and determinative element of the project. In a Vattenfall paper entitled 'Alternative NSAG Connection Site, Norfolk Vanguard – project background and current status' (the Alternative Connection Site Paper), Vattenfall states:

"In order for the wind farm project to proceed towards gaining the necessary consents, it is vital to establish clarity at an early stage about the location of the OCP. The party responsible for design and consenting of the offshore transmission system – usually the wind farm developer – can then proceed on the basis of a defined 'end

¹ (1985) 84 LGR 168 at 169 as approved by the Court of Appeal in the case of *R v. North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213 at [108]. This and the related principles are known as the 'Gunning Principles'.

point' and National Grid ... can plan and execute any necessary extensions or reinforcements to their system ... For the reasons outlined above, determining the OCP for an offshore windfarm project is the first key decision that is taken when a developer such as Vattenfall submits a formal application for connection to the GB Transmission System."

The decision to connect into the national grid at Necton was taken by Vattenfall in consultation with National Grid early in the development of the Project proposals. The Alternative Connection Site Paper confirms that a "range of alternative connection solutions" were considered and goes on to state:

"In the case of the Norfolk Vanguard and Boreas projects, the assessment of options was carried out over a period of several months in late 2015 and early 2016, with the active participation of both National Grid and Vattenfall. The assessment led to the decision to select Necton as the OCP, with an underground cable solution being used to transmit power from a landfall to the south of Bacton".

The paper explains that having established the location of the OCP at Necton, Vattenfall defined a 3km radius circular zone centred on the existing Necton Substation within which to locate the new substation, and goes on to confirm that the original 3km radius was subsequently refined down to a 1km radius circle around the 400kV substation together with a wedge-shaped area to the east extending to the 3km limit of the original scoping area and that a number of alternative siting options within this redefined area were considered.

Consultation

Vanguard carried out its statutory community consultation on the Project between 7 November 2017 and 11 December 2017 on the basis of a statement of community consultation (the SoCC) and the PEIR both of which were published in October 2017.

The site selection process and assessment of alternatives is summarised in Chapter 4 of the PEIR. Notably, there is no explanation of the "range of alternative connection solutions" referred to in the Alternative Connection Site Paper. Section 4.8 of Chapter 4 of the PEIR merely states that:

"The identification of a connection point to the national grid for the project is undertaken through a joint process between a developer and National Grid. This results in a grid connection offer being made by National Grid to the developer (at paragraph 43).

... A grid offer was made by National Grid at Necton in July 2016 and accepted by Norfolk Vanguard Ltd in November 2016" (at paragraph 46).

Section 4.12 of Chapter 4 to the PEIR deals with the Onshore Project Substation location, describing how the search area was initially limited to a 3km radius centred on the existing Necton National Grid substation, which was divided into five search zones which were then considered in the light of National Grid's Horlock Rules.

Of these, the PEIR notes that Zone 1 to the east of the existing Necton substation contained some existing natural screening, while Zone 5 (centred on the existing substation itself) had the advantage of keeping the electrical infrastructure as close as possible to the existing substation, with the advantage that this "not only reduces transmission losses but also keeps intrusion of electrical infrastructure into surrounding areas to a reasonably practical minimum" (at paragraph 95). Paragraph 100 notes that "following the initial constraints

mapping exercise, as well as consideration of technical constraints and information “gathered at site visits and consultation events, four sites were identified for further investigation”. All four sites are in Zone 1 and of these, Option 2 is the preferred option (paragraph 107). There is no explanation in the PEIR as to why Zone 5 in particular was rejected, notwithstanding the merits reported in the PEIR.

Discussion

The Project comprises the windfarm itself, the offshore and onshore cables and the new substation and extension to the existing substation at Necton. Of all these elements, the location of the windfarm and the location of the OCP are particularly key, being the start and end point of the Project, and as a result effectively dictating the route of the on- and off-shore cables.

It is clear from the Alternative Connection Site Paper that the final location of the OCP was decided on with the “active participation” of Vattenfall and that a number of options were studied and discarded. In these circumstances, Regulation 14(2) of the Infrastructure Regulations requires these alternatives and the reasons for discarding them and preferring Necton to be described in the PEIR. That information is not included in the PEIR notwithstanding the centrality of this decision to the Project as a whole.

In addition, having decided on the OCP, the PEIR confirms that Vanguard identified five potential search zones within which it could locate the new substation. Zone 5 had the benefit of being closest to the existing substation, thereby minimising the “intrusion of electrical infrastructure into surrounding areas”. Zone 5 was clearly a location option that was considered as part of the project development. Nonetheless, no reasons are given in the PEIR for why this zone was rejected as the location for the new substation, again, notwithstanding the requirements of Regulation 14(2) of the Infrastructure Regulations.

By omitting any details of the alternatives actually considered for the location of such a key element of the Project as the OCP, the PEIR is fundamentally flawed. In so far as the PEIR is inadequate, Vanguard have failed to properly consult in accordance with its own SoCC, in accordance with Regulation 12 of the Infrastructure Regulations and in accordance with Section 47 of the 2008 Act.

In addition, by omitting the information required by Regulation 14(2), the consultation fails to meet the requirements of the *Gunning* Principles, in that it fails to contain sufficient reasons for the proposal to allow for intelligent consideration and response by the public. It goes without saying, that for the same reasons the consultation fails to meet the Government’s ambitions as set out in its 2013 guidance. For these reasons, the pre-application consultation process as it currently stands is fundamentally flawed.

Moreover, the failure to properly consult means that the applicant is unable to discharge its duty under s. 49 of the 2008 Act. It follows that unless the errors in the s. 47 consultation process are corrected, any application to the Secretary of State for a DCO for the Project would itself be unlawful, and any decision by the Secretary of State to accept that application for determination would be open to a legal challenge.

I should be grateful if you would confirm at your earliest convenience that the missing information described above will be published for consultation, that the results of that consultation will be taken into account by Vanguard in deciding on the final form of its application and that the DCO application will not be submitted to the Secretary of State before such further consultation exercise has been carried out and its results considered.

Please may we have your response to this letter within 14 days.

Yours sincerely



Adrienne Copithorne

Cc: George Freeman MP
Jon Berry, Head of Development Management, Breckland Council
The Rt. Hon James Brokenshire MP, Secretary of State for Housing, Communities &
Local Government