

Norfolk Vanguard Offshore Wind Farm

Written summary of

the Applicant's oral

case at the

Compulsory

Acquisition Hearing

Applicant: Norfolk Vanguard Limited
Document Reference: ExA; CAH; 10.D6.11
Deadline 6

Date: April 2019
Author: Womble Bond Dickinson

Photo: Kentish Flats Offshore Wind Farm

Glossary

BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
DCO	Development Consent Order
dDCO	Draft Development Consent Order
ES	Environmental Statement
ExA	Examining Authority
HoTS	Heads of Terms
OCoCP	Outline Code of Construction Practice
NSIP	Nationally Significant Infrastructure Project
PA2008	The Planning Act 2008
Sor	Statement of Reasons
TCE	The Crown Estate
UKPN	UK Power Networks

Written Summary of Oral Submissions: Compulsory Acquisition Hearing

1. Introduction

- 1.1 A Compulsory Acquisition Hearing (**CAH**) for Norfolk Vanguard took place on 28 March 2019 commencing at 15:00 at Blackfriars Hall, The Halls, St Andrew's Plain, Norwich, NR3 1AU.
- 1.2 A list of the Applicant's participants that engaged in the CAH can be located at Appendix 1 of this note.
- 1.3 The broad approach to the CAH followed the form of the agenda published by the Examining Authority (the **ExA**) on 21 March 2019 (the **Agenda**).
- 1.4 The ExA, the Applicant, and stakeholders discussed the Agenda items broadly in turn (aside from Mr Pearce's points which were dealt with after introductions) and these points are outlined below.

	ExA Question / Context for discussion	Applicant's Response
AGENDA ITEM 3 (DCO)		
a)	The ExA asked the Applicant to set out briefly which articles engage compulsory acquisition (CA) and temporary possession powers.	<p>The Applicant stated that the following documents would be relevant during the hearing to deal with matters specific to CA, the:</p> <ul style="list-style-type: none">• dDCO (version 4) (document reference 3.1);• Statement of Reasons (SoR) (document reference 4.1);• Funding Statement (document reference 4.2);• Updated Accounts (year end 31 December 2017) (submitted at Deadline 1 Appendix 22.2 in response to Q22.24 (document reference ExA; WQApp22.2; 10.D1.3));• Environmental Statement (ES) Site Selection and Assessment of Alternatives (Chapter 4, ES (document reference 6.1)); and• ES Project Description (Chapter 5, ES (document reference 6.1)). <p>The principal relevant articles engaging CA powers are set out in Part 5 of the dDCO:</p> <ul style="list-style-type: none">• Article 16 provides a power to survey land onshore compulsorily.

		<ul style="list-style-type: none"> • Articles 18-30 provide the main CA powers, within which Articles 26 and 27 provide powers for temporary possession of land. These articles are based on similar approaches adopted with other offshore wind farms (such as East Anglia THREE). The Articles contain the power to compulsorily acquire freehold land; new permanent rights in land; and to take possession of land temporarily. • The powers interact with one another in a way that is standard to most other DCOs, and are subject to Schedule 6 (New Rights), Schedule 7 (modification of other CA legislation) and Schedule 8 (land of which temporary possession may be taken) of the dDCO. • Articles 22 and 23 apply relevant CA legislation (the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965) to the dDCO with certain modifications to bring them in line, for example, with the 5 year period for expiry of the DCO's powers.
b)	The ExA asked the Applicant to confirm whether the DCO excludes the application of a compensation provision or modifies it beyond what is necessary to enable that provision to be applied.	Schedule 7 uses the dDCO to modify relevant CA legislation in relation to compensation. Schedule 7 is principally in relation to material detriment from new rights over land. It is in a standard form in which it deals with any changes from the Housing & Planning Act 2016 and Neighbourhood Planning Act 2017.
c)	The ExA requested an update on the current position regarding protective provisions and extent to which they are agreed with the relevant parties.	<p>The Applicant updated the ExA on the Protective Provisions with the following undertakers:</p> <ul style="list-style-type: none"> • National Grid and Cadent Gas: Protective Provisions are agreed between the parties. This is captured in updated Statements of Common Ground submitted at Deadline 5 (document reference: Rep2 - SOCG - 9.1 and Rep2 - SOCG - 10.1). • Network Rail: Good progress has been made in negotiations with Network Rail and is anticipated that agreement will be reached with Network Rail prior to the close of the Examination. There are currently two outstanding points: the first is in relation to the list of articles that are subject to Network Rail's consent. The Applicant is considering the applicability of all of the Articles listed in order to understand whether every Article listed should be subject to Network Rail's consent. The second is in relation to the timings for arbitration and appointment of an agreed arbitrator. Network Rail would like this time extended in the event that Network Rail have to satisfy certain regulatory timing requirements. The Applicant has inserted wording within the Protective Provisions to cater for this, and Network Rail are considering this drafting. • UK Power Networks (UKPN): Protective Provisions for UKPN are in an agreed form. • Other relevant undertakers: Will be dealt with by the general protection in the dDCO (Part 1 Schedule 16).

AGENDA ITEM 4 (Statutory conditions and general principles)		
a)	<p>The ExA asked the Applicant to confirm that in respect of all land for which compulsory acquisition powers are sought the application complies with one or more of the conditions set out in PA 2008 s123.</p>	<p>The Applicant confirmed its approach that the land was included for CA in the application for the most part (s.123(1) of the PS 2008) and/or in respect of the land within the minor change report, the Landowners have consented to the latest changes as outlined in document ExA;ISH1;10.D4.1 (s.123(3) of the PA 2008).</p> <p>The Applicant's Summary of ISH1 (document reference: ExA; ISH; 10.D3.1) provided an explanation and dealt with the position in relation to the landowner consents contained in the original Change Report (document reference Pre-ExA; Change Report; 9.3) and a copy of the consent letters are included in the cover letter for Deadline 2 dated 30 January 2019. The Applicant confirmed that mortgagees were not relevant for these changes as the landowners have consented and, in any event, the interests of the mortgagees are not affected by the proposed changes nor are there any mortgagees in possession of the relevant land.</p>
b)	<p>The Applicant to set out briefly whether the purposes for which the compulsory acquisition powers are sought comply with section 122(2) of the Planning Act 2008;</p>	<p>The Applicant set out from the Statement of Reasons (principally Section 7) how the tests for s122(2)(a) (land required for the development) or s122(2)(b) (land required to facilitate or is incidental to the development) are met.</p> <p>The Applicant confirms that all of the Order land is required for the project to be constructed and used for the purpose of supporting the conveyance of electricity (SoR, section 6.6). All of the onshore land is Associated Development as defined in the Planning Act 2008. This includes The Crown Estate (TCE) land/area, albeit there is a restriction on the right to acquire interests from TCE.</p> <p>The Applicant has a clear need for the powers of compulsory acquisition it seeks and has a clear purpose in its proposed acquisition powers. The Works Plan (Onshore) (document reference 2.4) and description of the authorised development in Schedule 1 of the dDCO (document reference 3.1) demonstrate that the Applicant has a clear idea of what the relevant Order lands are required for.</p>
c)	<p>Whether consideration has been given to all reasonable alternatives to compulsory acquisition and temporary possession.</p>	<p>The Applicant has been in discussions with landowners with a view to agreeing terms for the sale of the necessary rights in land and is hopeful of concluding Heads of Terms (HoTs) with the majority of landowners prior to the close of examination. There remain a small number of landowners who the Applicant is unable to make contact with or who are not responding to contact attempts.</p> <p>The Applicant can confirm that currently 76% of land interests (there are 100 landowners with whom HoTs are being sought) have agreed to HoTs. The Applicant will continue to engage with those outstanding interests who are currently engaging, and continue to chase those who are currently unresponsive. However, for a Nationally Significant Infrastructure Project (NSIP) scheme of this type, it is considered reasonable and appropriate to seek CA powers in order to ensure that the Project can be delivered if not all land interests complete a voluntary agreement. There are a number of other reasons why CA powers are sought, which include protection of the</p>

		<p>Project from vexatious actions in trespass or injunction, and ensuring that appropriate property interests support the long term operation of the Project even where land is in unknown ownership.</p> <p>In relation to alternative locations, the Applicant explained that a detailed site selection process was undertaken pre-application, the details of which are contained in Chapter 4 of the ES Site Selection (document reference: 6.1). With regards to the onshore project substation, the key documents are ES Chapter 4 Appendix 4.8 and 4.9 which set out the process by which the substation site was selected. The Applicant has submitted detailed responses in relation to site selection at WQ2.1 at Deadline 1 (document reference ExA; WQ; 10.D1.3).</p>
d)	Whether the rights to be acquired, including those for temporary possession are necessary and proportionate; and whether, in accordance with PA 2008 s122(3), there is a compelling case in the public interest for the compulsory acquisition, both in relation to the need in the public interest for the project to be carried out and in respect of the private loss to those affected.	The Applicant considers the compelling case and proportionate tests are set out in Section 7 of the SoR (sections 7.28-32). The demand for renewable energy; design of the scheme; funding to take the project forward; the project being in accordance with policy; and acquisitions by agreement demonstrate that the land needed for the scheme is necessary and proportionate.
AGENDA ITEM 5 (Review of CA Schedule)		
a) - b)	The Applicant to summarise outstanding objections and progress with negotiations on alternatives to compulsory acquisition.	<p>Prior to the CAH, the latest schedule for CA was the March 2019 version (document reference: ExA; CA; 10.D1.6 (version 3), with 72 landowners having signed HoTs at that time. At the current time, 76 landowners have now signed HoTs and an updated CA schedule has been submitted for Deadline 6. However, even when HoTs and/or Option Agreements are signed, the Applicant's intention is to retain those interests within the BoR. This allows the Applicant to retain rights for where, in particular, there are unknown or 3rd party interests and/or to guard against the risk that a landowner does not comply with the terms of the Option Agreement.</p> <p>There are 2 interests where the parties are not engaging. One is at the landfall and comprises unregistered land which Thales are believed to be the current owners of, having taken over the company assets of the presumed previous owner Decca Limited (Parcel 01/04). The Applicant has written on numerous occasions to Thales / Decca Limited and the Applicant's land agent has also tried to discuss this matter with the relevant land interests. The other land relates to Michael Clarkson, with a historical address. As part of the diligent enquiry the Applicant has undertaken other investigations; erected site notices; sent recorded delivery letters to potential addresses; and discussed with neighbouring landowners however the Applicant has not been able to progress matters in this respect.</p>

		<p>The Applicant confirmed that it regularly undertakes title refreshes and notifies any new landowners accordingly. An updated Book of Reference will be provided by Deadline 9.</p> <p>The Applicant also noted that there were no landowners raising any objection to the CA of their land present or represented at the hearing.</p>
c)	Update on further proposed changes (if any) to the Order Limits.	<p>The Applicant confirmed that there are no further proposed changes to the Order limits.</p>

AGENDA ITEM 6 (Impacts on farming interests)

a)	<p>The ExA asked the NFU/LIG to update on the outstanding issues and concerns</p>	<p>The Applicant responded to the National Farmer's Union's (NFU's) points in turn:</p> <ul style="list-style-type: none"> • Land use: The Applicant has already provided a response in relation to further written question 18.27 (document reference: ExA; FurtherWQ; 10.D4.6). In relation to landowners that wish to understand what areas of land are to be taken out of use for the full period of construction, the Applicant confirmed that timelines had already been discussed with landowners and/or land agents and the period of occupation for each 150m work-front section is anticipated to be approximately 2 weeks for trenching and ducting works. <p>Link Boxes: The Applicant has already provided a response in relation to further written question 18.29 (document reference: ExA; FurtherWQ; 10.D4.6). In addition, the Applicant confirmed that as there are other parties not represented by NFU/LIG, the Applicant has allowed the flexibility for a cabinet design as well as man-hole covers for link boxes. Furthermore, there are certain engineering considerations that need to be factored in and the final detailed design of the link boxes can only be fixed once a contractor is appointed and detailed design of the Project undertaken. It is therefore the Applicant's position that it is not appropriate to deal with this at this stage in the Project. The Applicant has committed to ongoing dialogue and engagement with landowners and land agents in this respect.</p> <ul style="list-style-type: none"> • Contact: The Applicant confirmed that liaison details are contained within the Option agreement(s). This process is also detailed in response to further written question 22.44 (document reference ExA; FurtherWQ; 10.D4.6). • Compound sites: The Applicant responded by way of further written question 22.45 (document reference ExA; FurtherWQ; 10.D4.6), which sets out what the compound sites/mobilisation areas will be used for. The definition of mobilisation area included in the dDCO provides as follows: "<i>mobilisation area</i>" means an area associated with the onshore transmission works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities
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AGENDA ITEM 7 (Other parties who may be affected)

a) – d)	The ExA asked whether there were any Affected Persons or Interested Parties who have notified a wish to make oral representations; and the ExA	In response to Mr Ray Pearce's comments regarding their holiday let business near to the crossing point with Hornsea Project Three, the Applicant noted that the land in question is outside of the Order limits for the Applicant's project - no land is being acquired from Mr Pearce nor are any land rights affected.
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	asked the Applicant to respond to any submissions.	The Applicant notes the representation made regarding the construction period for the Project and (potential) impact on the holiday let business. The Applicant's position is that there are no Part 1 claims and compensation will not be payable in Mr Pearce's circumstances as Part 1 claims only relate to the operation of the project rather than construction. Notwithstanding, the Applicant is willing to discuss matters with Mr Pearce outside of the hearing.
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AGENDA ITEM 8 (Impacts on other land and interests)

a) – c)	<p>The ExA asked the Applicant to provide an update on the position in relation to Crown Land, and the National Trust.</p> <p>In relation to Crown Land, the Applicant confirmed that the Applicant is in advanced discussions with The Crown Estate (TCE) in relation to the s135 consent. The Applicant is liaising with TCE to allow that consent to be issued. The consent is expected to be in place before the end of Examination. The Applicant has provided an update at Deadline 6 (document reference ExA; CA; 10.D1.6 (version 3)).</p> <p>With regards to National Trust, the Applicant welcomes that National Trust does not object to the principle of the cable passing through 4.5km of the Estate albeit recognising that the land is inalienable. National Trust has agreed to HoTS (although signed copies have yet to be received) on the condition that suitable provision is made for archaeological finds, and that the Applicant will not use CA powers in respect of National Trust land. The Applicant has agreed to these two conditions. The Applicant welcomes National Trust's desire to proceed with the Option Agreement and the Applicant also notes that National Trust is seeking to put in place the governance to secure the necessary approvals. The Applicant expects to meet with National Trust in the coming weeks to finalise the Option Agreement.</p>
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AGENDA ITEM 9 (Alternatives and design flexibility)

a) – c)	Footprint of Project substation, crossing, and number of phases for cable pulling.	Matters relating to the onshore project substation and cable pulling have been dealt with in Agenda Item 4. The Applicant notes that the ExA confirmed that Agenda Item 9b) had been included in error.
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AGENDA ITEM 10 (Funding)

a) – d)	<p>The ExA asked the Applicant to set out its approach to funding referring to the Funding Statement and relationship between the Applicant and the Company; and to note submission of latest Accounts for Vattenfall Wind Power Limited 2017-2018 and Applicant to</p> <p>These agenda items were taken together. The Applicant confirmed that the Funding Statement sets out the financial status of the Applicant and the parent company. In terms of fixed assets, as at the end of 2016 the parent company had £270m and on 31 December 2017 had £267m. The 31 December 2018 accounts are not yet available. The Applicant has since been able to confirm, in response to Compulsory Acquisition Hearing Action Point 4 published on 1 April 2019, that the 2018 set of accounts will not be available until after the close of the examination – anticipated in Q3 2019. Notwithstanding, the 2017 accounts show that there are liquid funds in the bank of £18m.</p> <p>The approach taken for funding is that there is provision for a Funding Agreement to be entered into between the Applicant and its Parent Company; this has not yet been entered into. This will allow for 3rd parties to draw down money in the event that there is any failure by the Applicant to settle any compensation claim. Specific provisions</p>
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	<p>highlight material changes (if any) to its funding capabilities; and whether there was any potential for claims under Part 1 of the Land Compensation Act 1973.</p>	<p>in paragraph 5 of the Funding Agreement apply for 3rd parties. There is a total limit on that funding and a limit on the ability for the Applicant to draw down. In the event that there is failure on the part of the Applicant, parties can go direct to the parent company. In this scenario, the parent company would pay 100% of the claim to the 3rd party.</p> <p>The Applicant does not consider that any Part 1 claims would arise. As such there is no provision included in the estimate of compensation for this. The Applicant has further reviewed this and does not anticipate that there would be any successful Part 1 claims. No landowners have been scheduled within the Book of Reference as falling into this category. In terms of the costs included in the funding total, a contingency has been applied to the total land compensation figure and the final number reflects a worst case scenario in a number of aspects. Therefore should a claim ever arise it would likely be a) very minor in value and b) covered within the compensation estimate included in the Property Cost Estimate. That total would also assume all interests are acquired using CA powers. As the Applicant has previously confirmed, 76% of landowners have now signed HoTs.</p>
AGENDA ITEM 11 (Statutory Undertakers)		
a) – c)	<p>The Applicant to set out the current position in respect of representations made and whether there are any remaining which have not been withdrawn.</p>	<p>The Applicant covered this agenda item in Agenda Item 3c) above.</p>
AGENDA ITEM 12 (Public Open Space)		
	<p>The ExA questioned whether the requirements of PA 2008 s132(3) are met or, failing that, the requirements of one of subsections (4) to (5) of s132 are met.</p>	<p>The Applicant confirmed that there are 2 areas where section 132 of the PA 2008 is engaged. Paragraph 8.5 of the Statement of Reasons sets out the position in relation to landfall, and the crossing of the Marriot's Way. There is no surface work in relation to these areas as the Applicant has committed to trenchless crossing.</p> <p>Paragraph 8.16 of the Statement of Reasons sets out the Applicant's position in relation to Open Space Land – the land will not be any less advantageous and there are no impacts on this land – section 132(3) of the Planning Act 2008 is therefore engaged.</p>
AGENDA ITEM 13 (Human Rights)		

a) – f)	The ExA explained the duties and rights under the ECHR.	The Applicant set out that consideration of Human Rights is set out in section 9 of the Statement of Reasons. In relation to the Public Sector Equality Duty the Applicant confirmed that as part of its diligent enquiry exercise no protected interests have been established.
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APPENDIX 1: THE APPLICANT'S LIST OF APPEARANCES

LIST OF APPEARANCES

1. Jonathan Bower, Partner, Womble Bond Dickinson; and Victoria Redman, Partner, Womble Bond Dickinson

Speaking on behalf of Norfolk Vanguard Limited:

- In response to the Examining Authority's questions and for general advocacy

2. Peter Gibbard, Director & Land Consultant, Ardent

Speaking on behalf of Norfolk Vanguard Limited on:

- Land use
- Update on discussion between Applicant and landowners
- Compulsory Acquisition Schedule

3. Pete Gettinby, Land Manager, Vattenfall

Speaking on behalf of Norfolk Vanguard Limited on:

- Land use
- Update on discussion between Applicant and landowners
- National Trust

4. Jon Allen, Principal Environmental Consultant, RHDHV

Speaking on behalf of Norfolk Vanguard Limited on:

- Alternatives and design flexibility
- Environmental considerations

5. Chris Jones, Technical Leader Engineering Consultant, GHD

Speaking on behalf of Norfolk Vanguard Limited on:

- Alternatives and design flexibility
- Construction impacts
- Hornsea Project THREE crossing point
- Onshore phases

6. Rebecca Sherwood, Consents Manager, Vattenfall

Speaking on behalf of Norfolk Vanguard Limited on:

- Any other matters including project update if necessary.