

The Secretary of State for Business, Energy and Industrial Strategy
c/o Mr Gareth Leigh
Head of Energy Infrastructure Planning
Department for Business, Energy and Industrial
Strategy
1 Victoria Street
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BY EMAIL ONLY: NorfolkVanguard@planninginspectorate.gov.uk

19 November 2021

Your Reference:
Our Reference: MCK/P5785-2

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Dear Sirs

Norfolk Vanguard & Norfolk Boreas - Consideration for an Independent Design Review of the Substation Complex

Introduction

1. We write on behalf of Mr Ray Pearce, an interested party to both the Norfolk Vanguard and Norfolk Boreas applications for development consent. These representations are made in response to the Secretary of State's letter of 11 October 2021 calling for comments from Interested Parties on the submissions made by the Applicant for development consent for Norfolk Vanguard following the judgment of the High Court in R (Pearce) v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 326 (Admin) ("the Judgment"). We note at the outset that the comments set out in this representation are additional to and not in substitution of all further representations by, or on behalf of Mr Pearce including that dated 20 May 2021 since the first invitation of the Secretary of State to make representations and comments in his letter of 29 April 2021.

Projects should be considered together

2. We underscore that there is no remaining logic for insisting on the separate consideration of the two projects given that they are both before the Secretary of State at the same time and we refer you to our previous correspondence. As Mr Justice Holgate made clear, the Secretary of State's failure to assess cumulative landscape and visual impacts of the two windfarm developments went to the heart of the Secretary of State's assessment of the acceptability of Norfolk Vanguard windfarm. We underscore in making submissions about the necessity for the appointment of an Independent Design Review Panel, that this representation does not in any manner diminish the overarching point that limiting redetermination of the application to matters of Boreas substation design alone, would not correct the unlawfulness and would not be a sound approach.

Independent Design Review

3. As explained in earlier correspondence the task before the Secretary of State is to consider all the elements of both Vanguard and Boreas which are capable of contributing to a proper and lawful cumulative impact assessment, as well as all those elements of the Vanguard application which are capable of being affected by the same. He must also, at least, have regard to relevant new considerations.
4. As we explain above, we consider that would be best achieved by re-opening the examination for both projects together, but it at least needs to be done for Norfolk Vanguard ahead of any consent for Norfolk Boreas.
5. In the course of the Norfolk Boreas examination, the Examining Authority invited the Applicant to consider inclusion of an independent design review panel ("IDRP") at an early stage in the post-consent design process for the substations area, including those for Norfolk Vanguard if appropriate. The Applicant set out its reasons for not involving an independent design review but has committed to amending the DAS to include a design review at an early stage conducted in a local forum [REP13-018]. The Applicant's response giving reasons for rejecting an IDRP was in summary:

"consideration has been given to the use of an independent design review panel such as the Design Council. Ultimately, the onshore project substation converter buildings have specific functional requirements which must be adhered to, in order to fulfil performance, quality and safety standards. These functional requirements limit the scope to explore design alternatives, such that the colour and texture of materials presents the greatest scope to explore alternatives – the choice of colours and materials having an influence on the potential visual impacts of the buildings. This limited scope, in terms of the design of the substation buildings, would limit the potential input of the design review panel." (hereafter "the functional requirement argument")

6. The Applicant also stated in respect of Norfolk Boreas:

"a design review panel may not share the objectives of local council officers and local stakeholders who are keen to ensure the onshore project substation buildings are as discreet as possible. A design review panel may wish to explore options to make the substation buildings a more prominent feature in the local landscape, whereas for Norfolk Boreas, the agreed intention is to ensure that the substation buildings are as discreet as possible." (hereafter the "prominence argument").

7. The Applicant has submitted a *Norfolk Vanguard Offshore Wind Farm Design and Access Statement Final Version 2* dated 2 August 2021 ("Revised DAS") . It is noted that Plate 4 of the Revised DAS (page 21) and the text rules out the inclusion of an IRDP. It is submitted that no sound reasons are offered for this significant omission and it is not clear if the reasons relied upon in respect of Norfolk Boreas (outlined above) are those relied upon in respect of Norfolk Vanguard. Accordingly, in the absence of reasons in case of Norfolk Vanguard it is appropriate to address the reasons given by the Applicant in respect of the Boreas project.
8. Design Council publication *A design-led approach to infrastructure* provides a significant and important signpost to the policy imperatives for an IDRP.¹ The centrality of an independent input is

¹ Design Council publication *A design-led approach to infrastructure* provides may be accessed at the following link: <https://www.designcouncil.org.uk/resources/guide/design-led-approach-infrastructure> . Design Council was established by Winston Churchill's wartime government in December 1944 to support Britain's economic recovery. The Council of Industrial Design had the founding purpose of promoting 'by all practicable means the improvement of design in the products of British industry'. In 2011, Design Council was merged with the Commission for Architecture and the Built Environment. It has successfully contributed to design outcomes for the London 2012 Olympics, as well as those aspects of nationally significant infrastructure projects affecting the community such as ExploreStation commissioned by Network Rail and led by Design Council.

underscored in National Policy Statements including the Overarching National Policy Statement for Energy (EN-1):

“4.5.5 Applicants and the IPC should consider taking independent professional advice on the design aspects of a proposal. In particular, Design Council 51 Overarching National Policy Statement for Energy (EN-1) CABE can be asked to provide design review for nationally significant infrastructure projects and applicants are encouraged to use this service”

9. *A design-led approach to infrastructure* makes the important points that in advance of submission of an NSIP application an IDRPs:

- a. Offers an independent view;
- b. Provides confidence that the project has gone through a rigorous assessment; and
- c. To add an extra layer of expertise.

10. There is no logical or objective reason to suppose that the utility of an IRDP would be lessened or of less use as part of the detailed design than at any earlier stage of the process. An IRDP would have the benefit of rigorously testing the Applicant’s assertion that there are “functionally non-negotiable” elements that are already determined by the co-location decision of the two projects will not be capable of being revisited (see Revised DAS at paragraph 60). In that way, the imposition or requirement of an IDRPs will properly explore the conceptual boundaries areas in which exploration may take place. The Applicant has not suggested that design review is excluded or impossible by reason of “the functional requirement argument”). Likewise, while an IRDP could conceivably recommend a bold design as suggested by the Applicant in its prominence argument, it is highly improbable. In any event, the merits of an IRDP ought not to be dismissed and the IRDP simply rejected on the basis of an assertion that can only be sustained by illogically prejudging the outcome of an IRDP process.

11. Moreover, an IDRPs will provide the following key benefits among other things:

- a. can bring a greater breadth and depth of experience than is available within the project team or planning authority;
- b. offers expert views that take account of a wide range of complex issues, and so helps to achieve sustainable development;
- c. looks at schemes in context, and can challenge the design brief or the assumptions that lie behind the project;
- d. gives planners, developers and their design teams confidence that they have had the best possible independent advice on design quality.²

12. Critically, the limited resources of Breckland District Council and local people that can be applied to the process of design review would be supported by the involvement of an IDRPs, particularly since funding for the IDRPs would be proportionally negligible by reference to the entirety of the Norfolk Vanguard and Norfolk Boreas projects. Design Review Principles and Practice advocates a number of positive outcomes arising from an IDRPs including:

- a. Independent advice from a design review panel can not only provide useful guidance on community consultation, it can provide insights into how designs might impact on community life.

² Further support for benefits may be identified in the Design Council’s publication *Design Review: Principles and Practice* see: <https://www.designcouncil.org.uk/resources/guide/design-review-principles-and-practice>

- b. When a planning authority is fully engaged in the review programme, its confidence in assessing and dealing with design issues grows substantially be exponentially.
13. There will also be positive benefits for the Applicant. For example, in the case of the Thames Tideway Tunnel, Phil Stride Head of London Tideway Tunnels concluded:

“We found the Cabe design review to be a very constructive and open process which added real value to the development of the designs of the proposed Thames Tunnel sites, many of which are in prominent heritage or locally sensitive locations. [...]. It is important that local people have their say on our proposals so that we can then develop and refine these designs in a way that meets the needs of the local communities”.³

14. Taking into account the management of cumulative environment impact has already been the subject of an adverse statutory review process, we suggest that any sensible course in the future would include a requirement for an IDRPs report. not least to restore public confidence and provide a demonstrably impartial input into the requirement of ensuring a continuing consideration of cumulative impacts.

Areas of concern

15. A non-exhaustive survey of potential areas of concern that would benefit from a mandatory IDRPs requirement that might serve to mitigate concerns include the following areas:

- a. *Noise limitations* – leaving aside the dispute over the adequacy of the baseline noise data (from only 2 of 12 monitoring points) the role of landscape design is key: the Daedalus project Audible Noise Assessment document, where proposed earth bunding absorption properties into account conservatively before vegetation and soft landscaping establishes. The Daedalus HVDC converter substation is 1000MW, where at Necton the combined scenario 1 capacity would be 3600MW which illustrates the important of design in respect of this aspect of the development.
- b. *Visualisations* – in respect of Norfolk Boreas the visualisations of viewpoints 3 and 7 are not representative. The short point is that where the 4 converter halls alone of Boreas/Vanguard would be equivalent to 8 Angels of The North then the input of an IDRPs is necessary and would be invaluable in order to manage the impact upon this traditional rural landscape.
- c. *Water attenuation* - Dudgeon substation drains its runoff into the stream that runs through Ivy Todd. Ivy Todd historically floods so it is imperative that the design is properly managed from the outset.
- d. *Cumulative impacts* – since the landscape and so many other cumulative impacts will require fine tuning to minimize their effects, if possible, impacts in the event of consent in respect of a project that will impact Necton for decades to come there is no basis upon which the community’s call for an IRDP should not be supported by the Applicant and required by the Secretary of State.

16. The Norfolk Vanguard Offshore Wind Farm Information from the Norfolk Boreas Examination document dated August 2021 does not properly amount to a full consideration of the cumulative environment effects for the reasons set out in earlier correspondence.

³ Phil Stride, Head of London Tideway Tunnels commentary in response to the Design Council’s review of all 24 sites assessing the public space, the quality of the landscape design, the vent and other amenities: see https://www.designcouncil.org.uk/sites/default/files/asset/document/thames_tunnel_0.pdf and <https://www.designcouncil.org.uk/resources/report/thames-tideway-tunnel-design-review>

Proposed way forward

17. Accordingly:

- a. The procedure that the Secretary of State continues to follow is deficient and would not correct the fundamental errors identified by the Court.
- b. There remains inadequate discharge of the requirement to ensure full consideration of the nature of the cumulative impact, the consequence of that for the decision, alternatives and mitigation measures.
- c. The DCO must require the appointment of an advisory IRDP.

Conclusion

18. We welcome the Secretary of State's further consideration of this matter. However, Mr Pearce maintains that the steps set out above and the steps advocated in earlier correspondence are the minimum necessary to enable the Secretary of State to respond adequately to the quashing of his original decision in respect of Norfolk Vanguard.

If you have any questions please contact the writer, Matt Gilks, on the details provided above.

Please kindly acknowledge safe receipt.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Thrings LLP', is written over a light blue horizontal line.

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