

# Norfolk Boreas Offshore Wind Farm Implications of the Norfolk Vanguard Decision and Hornsea Three Letter on Norfolk Boreas

Applicant: Norfolk Boreas Limited  
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*Photo: Ormonde Offshore Wind Farm*

## Norfolk Boreas

### Implications of the Norfolk Vanguard decision and Hornsea Three 'minded-to' letter for Norfolk Boreas

#### 1. INTRODUCTION

- 1.1 On 1 July 2020 the Secretary of State (SoS) granted development consent for the Norfolk Vanguard Offshore Wind Farm (Norfolk Vanguard) and published the Secretary of State's decision letter, the Development Consent Order as made by the SoS, the Examining Authority's Recommendation Report and the Habitats Regulation Assessment.
- 1.2 On the same date the SoS issued a minded to grant letter to Orsted Project Three (UK) Limited stating that he was minded to grant development consent for the Hornsea Three Offshore Wind Farm Order (Hornsea Three) subject to the Hornsea Three applicant providing sufficient evidence that compensatory measures have been secured.
- 1.3 This submission by the Applicant considers the extent to which the SoS's decision on Norfolk Vanguard and, to a more limited extent, the SoS's minded to grant letter on Hornsea Three, have implications for decision making by the SoS on the DCO application for Norfolk Boreas Offshore Wind Farm (Norfolk Boreas).
- 1.4 It concludes that both are highly material considerations in decision making on Norfolk Boreas to the extent that, should the SoS decide to depart from, in particular, his decision on Norfolk Vanguard, when making a decision on Norfolk Boreas, he would need to give very clear reasons for doing so in view of the similarities between the projects in terms of the form of development, the location of the development and the relevant policies to be taken into account.

#### 2. PREVIOUS PLANNING DECISIONS AS A MATERIAL CONSIDERATION

- 2.1 The broad principle of materiality of previous planning decisions is that a previous decision is capable of being a material consideration in a subsequent similar or related decision. The principle is based on the reasoning that consistency is important to both developers and development control authorities, as well as securing public confidence in the operation of the development control system.
- 2.2 While the principle does not mean that cases must necessarily be decided alike, since the decision maker must always exercise his or her own judgement, he or she must, before disagreeing with the judgement of another, on a previous, or similar, planning decision, first have regard to the importance of consistency and also give reasons for departing from the previous decision before doing so.
- 2.3 The Court of Appeal<sup>1</sup> have suggested that a previous decision may be a material consideration because, for example:
  - it relates to the same site
  - it relates to the same or a similar form of development on another site to which the same policy of the development plan relates, or
  - it relates to the interpretation or application of a particular policy common to both cases.

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<sup>1</sup> Baroness Cumberledge the Secretary of State for Communities and Local Government (2017) EWHC 2057

- 2.4 A brief summary of case law related to the principle is set out at Appendix 1. The Baroness Cumberledge judgement of the Court of Appeal is included with this submission at Deadline 13 as document [ExA.AS-9.D13.V1].

### **3. THE PRINCIPLE – THE SAME OR A SIMILAR FORM OF DEVELOPMENT**

- 3.1 Norfolk Vanguard and Norfolk Boreas each comprise the construction and operation of an offshore wind farm with a generating capacity of up to 1,800MW with associated offshore and onshore development in the southern North Sea (in the northern half of the former Zone 5 (East Anglia Zone)) and in the County of Norfolk. Norfolk Boreas is the second wind farm proposal being developed in this part of the southern North Sea by Vattenfall Wind Power Limited (the Applicant's parent company).
- 3.2 Each project, as applied for, would comprise construction and operation of up to 158 wind turbine generators; offshore electrical platforms; export cables using HVDC transmission; onshore transmission works at landfall; onshore cable route; accesses and trenchless crossings; an onshore project substation; and an extension to the Necton National Grid substation and overhead line modifications.
- 3.3 Both projects have been planned together such that, in the event that both projects proceed to construction (Scenario 1), the onshore cable ducts for Norfolk Boreas would be constructed by Norfolk Vanguard. In the event that only Norfolk Boreas were to proceed to construction (Scenario 2), the onshore cable ducts would be constructed by Norfolk Boreas. The Interrelationship Report (Document 3.4) explains the relationship between the two projects with regard to project infrastructure and Order Limits. As stated in the Explanatory Memorandum to the Boreas draft DCO:

"4.10 *The interrelationship between the Norfolk Vanguard and Norfolk Boreas infrastructure is described in more detail in the Inter-relationship Report (document reference: 3.4). This document sets out some of the efficiencies and synergies in the event that both projects are delivered by explaining the relationship with respect to the project infrastructure and Order limits. Whilst Scenario 2 envisages that Norfolk Boreas only may be delivered, the Applicant considered it important to explain the interaction that Norfolk Boreas would have with Norfolk Vanguard where both projects proceed to construction, particularly with respect to the onshore project substation area.*"

- 3.4 Norfolk Vanguard and Norfolk Boreas are therefore substantially the same form of development.
- 3.5 Hornsea Three occupies different sites, both offshore and onshore, but its landfall is also in Norfolk; its onshore cable route would cross the Norfolk Vanguard onshore cable route; and construction of the two onshore cable routes could potentially overlap and interact.

### **4. THE PRINCIPLE – SIMILAR SITE LOCATION**

- 4.1 Broadly, Norfolk Vanguard and Norfolk Boreas share the same, or adjacent sites.
- 4.2 Offshore, the Norfolk Vanguard and Norfolk Boreas offshore wind farm arrays are on adjacent sites in the southern North Sea. Both projects share the same export cable corridor between Norfolk Vanguard East and the coast at Happisburgh, and the same onshore landfall at Happisburgh.
- 4.3 Onshore, both projects share the same onshore cable corridor between Happisburgh and Necton and have the same grid connection point at the National Grid substation at Necton. They have immediately adjoining onshore substations at Necton and both would require an extension to the National Grid substation.

### **5. THE PRINCIPLE – SAME POLICY**

- 5.1 Norfolk Vanguard, Norfolk Boreas and Hornsea Three are Nationally Significant Infrastructure Projects (NSIPs) as defined in sections 14 and 15 of the Planning Act 2008 and in the first

instance the decision maker needs to consider whether the proposed NSIP accords with the relevant National Policy Statements (NPSs).

- 5.2 National Policy Statement EN-1 (the Overarching Policy Statement for Energy) and EN-3 (the National Policy Statement for Renewable Energy Infrastructure) set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the two projects. NPS EN-1 sets out that the assessment of development consent applications should start with a presumption in favour of granting consent. NPS EN-5 (the National Policy Statement for Electricity Works Infrastructure) sets out the tests applicable to offshore and onshore cables and substations.

## **6. APPROACH TO CONSTRUCTION AND MITIGATION OF PROJECT IMPACTS**

- 6.1 The DCO applications for Norfolk Vanguard and Norfolk Boreas are in similar form. In addition to the documents required by Regulation 5(2) and 6(1) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended), the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, each application was accompanied by the same set of documents.
- 6.2 The documents to be certified under Article 37 of the respective Orders include, for example, an Outline Code of Construction Practice, a Design and Access Statement, an Outline Landscape and Ecological Management Strategy, and Outline Traffic Management Plan, a draft Marine Mammal Mitigation Protocol, an in-principle Southern North Sea SAC Site Integrity Plan and an Outline HHW SAC Site Integrity Plan.
- 6.3 Identical mitigation proposals, as set out in the Schedule of Mitigation, have been incorporated in the Norfolk Boreas proposals to those put forward by Norfolk Vanguard. These include all the mitigation measures noted by the Secretary of State in the Norfolk Vanguard decision letter (NVDL) including:
- Substation mitigation planting (4.26 and 4.30)
  - Substation – siting to take advantage of existing hedgerows and plantations of trees (4.27)
  - Cable route – replacement planting of hedgerows and trees (4.36, 4.37 and 4.41)
  - Cawston construction traffic – highways intervention scheme (4.69, 4.73, 4.74 and 4.79)
  - Contamination – DCO requirements (4.93)
  - Onshore ecology – OLEMS and EMP (4.124)
  - FFC SPA and AOE SPA – additional mitigation commitments post-examination (5.7)
  - HHW SAC – micrositing and decommissioning of cable protection (5.8)

## **7. OVERALL CONCLUSION ON MATERIALITY**

- 7.1 There can be little doubt that the SoS decision on Norfolk Vanguard is highly material to decision making by the SoS on Norfolk Boreas. Applying the tests set out by the Court of Appeal, the form of development is substantially the same; the projects are either adjoining or located on the same site; the primary policies which the decision maker needs to consider are the same; and the approach to both construction and mitigation of project impacts is the same. In addition, the same approach is adopted in presenting documents to be certified as part of the application and in proposing mitigation measures to minimise impacts.

- 7.2 In areas where Norfolk Vanguard and Hornsea Three potentially interact the SoS minded to grant letter on Hornsea Three is also material to decision making on Norfolk Boreas in certain respects.
- 7.3 Applying the broad test and principle outlined by the Court of Appeal, therefore, the Secretary of State, when making a decision on Norfolk Boreas must have regard to the need for a consistent approach to that taken by him on Norfolk Vanguard and, if he were to decide to depart from that approach in decision making on Norfolk Boreas, would need to give very clear reasons for doing so.
- 7.4 The Examining Authority, while not the decision maker on Norfolk Boreas, is required to examine and make a report setting out its findings and conclusions in respect of the Norfolk Boreas application and its recommendations as to the decision to be made under section 74 of the Planning Act 2008. The Examining Authority will make its recommendation based on the evidence presented to it during the Examination. However since Norfolk Vanguard is clearly material to decision making by the Secretary of State on Norfolk Boreas, the Examining Authority will need to address the Norfolk Vanguard decision in its report and consider the extent to which their recommendation accords with or departs from it.
- 7.5 In this respect the Applicant has set out in the attached Appendix 2 the key conclusions in the NVDL (and to a limited extent in the Hornsea Three minded to grant letter) together with the Applicant's comments on the extent to which any different considerations have been raised in the Norfolk Boreas Examination which are relevant to decision making on Norfolk Boreas.

## **8. SECRETARY OF STATE'S CONSIDERATION ON NORFOLK VANGUARD**

- 8.1 The overall consideration by the SoS on Norfolk Vanguard is set out below:

- "7.2 *However, in other respects, [other than potential impacts on habitats and species afforded protection under the Habitats Directive] the ExA concluded that, while there would be impacts arising from the proposed Development across a range of issues (including on local landscape and traffic and transport), those impacts were not of such significance or would be mitigated to such a degree as to be not significant as to outweigh the substantial benefit that would derive from the development of a very large, low carbon, infrastructure project. The ExA notes that, if one set aside the conclusion on Habitats-related issues, then in all other matters, the proposed Development would be in accordance with National Policy Statements and National Policy Objectives. This is subject to some clarification on specific points, including mitigation.*
- 7.3 *As is set out elsewhere in this submission, in light of the ExA's report to the Secretary of State, the Secretary of State consulted a range of parties including the Applicant about the Habitats-related issues and other relevant matters that had been raised in the ExA's Report. On Habitats, further information on potential bird impacts such that the Secretary of State is now able to conclude that, on balance, there would be no Adverse Impact on Integrity for the Flamborough and Fliley Coast Special Protection Area and the Alde-Ore Estuary Special Protection Area.*
- 7.4 *The Secretary of State notes that there were a range of views about the potential impacts of the Development with strong concerns expressed about the impacts on, among other things, the landscape around the substation, traffic and transport impacts and potential contamination effects at the site of the F16 plane crash. However he has had regard to the ExA's consideration of these matters and to the mitigation measures that would be put in place to minimise those impacts wherever possible. The Secretary of State considers that findings in the ExA's report and the conclusions of the HRA together with the strong endorsement of offshore wind electricity generation in NPS EN-1 and NPS EN-3 mean that, on balance, the benefits of the proposed Development outweigh its adverse impacts. He therefore concludes that development consent should be granted in respect of the Development."*

8.2 The approach of the SoS in balancing impacts and benefits and the SoS conclusion that "the benefits of the proposed Development outweigh its adverse impacts" is highly material to his decision making on Norfolk Boreas in view of the fact that:

- Norfolk Vanguard and Norfolk Boreas are on the same, or adjoining sites
- They are the same form of development
- NPS EN-1 and EN-3 in particular apply to both projects
- Similar approaches to construction and mitigation and have been adopted on both projects

8.3 Indeed if the Secretary of State were to decide to take a different approach in his overall consideration on Norfolk Boreas from the approach he has taken in his overall consideration on Norfolk Vanguard, he would, again, need to give very clear reasons for doing so.

## APPENDIX 1

### Previous planning decisions as a material consideration

The broad principle of materiality of previous planning decisions is that a previous decision is capable of being a material consideration in a subsequent similar or related decision. It is based on the reasoning that consistency is important to both developers and development control authorities, as well as securing public confidence in the operation of the development control system. While that does not mean that cases must necessarily be decided alike, since the decision maker must always exercise his or her own judgement, he or she must, before disagreeing with the judgement of another, first have regard to the importance of consistency and also give reasons for departing from the previous decision before doing so.

The Court of Appeal have suggested that a previous decision may be a material consideration because it relates to the same site, or to the same or a similar form of development on another site to which the same policy of the development plan relates, or to the interpretation or application of a particular policy common to both cases.

#### North Wiltshire Council (1993)

The principle was stated by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137 as follows

*"One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency [...] consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system."*

#### Midcounties Co-operative (2017)

More recently, expression has been given to this principle in *R (Midcounties Co-operative Limited) v Forest of Dean District Council* (2017) EWHC 2050. The Co-op challenged the grant of planning permission for an Aldi store on a site outside the town centre. One of the Co-op's grounds of challenge was that the Council had failed to have regard to the importance of consistency in decision making as it had refused to grant Aldi planning permission for a near identical development on the same site the previous year due to adverse retail impacts on the town centre. The Co-op also alleged that if the Council had given consideration to its earlier decision there had been a failure to give reasons as to why it had now reached a different decision and granted planning permission.

Planning permission was quashed by the High Court after it held that the Council had made clearly inconsistent decisions and had failed to provide adequate reasons for doing so. By failing to reference, let alone address, the previous refusal decision, the Council had not explained how the previous concerns relating to adverse retail impacts had been addressed and allayed in the subsequent application.

Singh J confirmed (at paragraph 107) that *"although the authorities demonstrate that a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision making."*

In essence it was open to the Council to reach a different decision but only if it had "grappled with the earlier reason for refusal based on retail impact and harm to the viability of the town centre".

#### Baroness Cumberledge (2017)

In *Baroness Cumberledge v Secretary of State for Communities and Local Government* (2017) EWHC 2057, planning permission granted by the Secretary of State for housing development was quashed after he had failed to take into account a decision taken by his own Department, 10 weeks earlier.

The High Court held that the Secretary of State's decision that a planning policy was out of date, and thus could be given less weight, was inconsistent with the decision of his own Department which was that the policy was up to date.

Howell QC stated (at paragraph 100) that:

*"There is a public interest in securing reasonable consistency in the exercise of administrative discretion that may mean that it is unreasonable for a decision maker not to take into account other decisions that may bear in some respect on the decision to be made. There is no exhaustive list of the matters in respect of which a previous decision may be relevant. This must inevitably depend on the circumstances."*

The Court of Appeal dismissed the appeal and upheld the decision of the High Court. It held that the Secretary of State had erred in law in failing to take into account a recent appeal decision of his own, even though he had not been asked to do so. The Court of Appeal also held that the mistake of fact made by the Secretary of State in treating the appeal site as falling entirely outside the 7km Ashdown Forest SPA and SAC Protection Zone had led him to determine the appeal in breach of Article 6(3) of the Habitats Directive and Regulation 68(3) of the Habitats Regulations.

On the first issue, Lindblom LJ reasoned as follows at paragraph 34:

*"I would accept three general propositions which I think accord with the basic principles referred to by Mann LJ in North Wiltshire District Council and applied since in several decisions of this Court, and which align with the Judge's conclusions in this case (in particular, in paragraphs 100-105 of his judgement). First, because consistency in planning decision making is important, there will be cases in which it would be unreasonable for the Secretary of State not to have regard to a previous appeal decision bearing on the issues in the appeal he is considering. This may sometimes be so even though none of the parties has relied on the previous decision or brought it to the Secretary of State's attention (paragraph 100). And it may be necessary in those circumstances, in the interests of fairness, to give the parties an opportunity to make further representations in the light of the previous decision. Secondly, the Court should not attempt to prescribe or limit the circumstances in which a previous decision can be a material consideration. It may be material, for example, because it relates to the same site, or to the same or a similar form of development on another site to which the same policy of the development plan relates, or to the interpretation or application of a particular policy common to both cases (see paragraph 92 of Holgate J's judgement in St Albans City and District Council)."*

He concluded (at paragraph 58):

*"I therefore agree with the Judge that the Secretary of State erred in the Newick appeal in failing to take into account and distinguish his own decision in the Ringmer appeal. As the Judge said, aptly in my view, "[it] can only undermine public confidence in the operation of the development control system for there to be two decisions of the Secretary of State himself, issued from the same unit of his department...within 10 weeks of each other, reaching a different conclusion on whether or not a development plan policy is up to date without any reference to, or sufficient explanation in the later one [ ] for the difference" (paragraph 122 of the judgement)."*



## APPENDIX 2

### Implications of key NVDL conclusions to Norfolk Boreas

NVDL conclusion	Comments on implications for Norfolk Boreas
<p><b>Need for the development</b></p> <p>"4.4 <i>The Secretary of State considers that the proposed Development is in accordance with the NPS EN-1, NPS EN-3 (and NPS EN-5) and benefits from the presumption in favour of electricity generating stations in general and in favour of offshore wind farm generating stations in particular. In addition, granting development consent for the development would be consistent with Government policy and will contribute to the delivery of low carbon and renewable energy, ensuring a secure, diverse and affordable energy supply in line with legal commitments to "net zero" and the need to address climate change.</i>"</p>	<p>Norfolk Boreas is the same form of development as Norfolk Vanguard; the need for Norfolk Boreas and compliance with Government policy are the same.</p>
<p><b>Consideration of alternatives – Consultation</b></p> <p>"<i>The consultation undertaken by the Applicant was adequate</i>". (4.6)</p>	<p>The same process of consultation was undertaken by the Applicant for Norfolk Boreas.</p> <p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Consideration of alternatives</b></p> <p>"4.9 <i>The ExA notes the Applicant's approach to site selection for the onshore and offshore elements of the projects and the part that was played by National Grid in narrowing down the range of options, particularly in respect of the onshore substation at Necton. The ExA notes [ER 4.4.26] that the consideration of an offshore ring main is a strategic matter which involves many layers of interested organisations and is not, therefore, suitable for consideration by the ExA in a forum which is considering a development consent application for a single site. Similarly the ExA concluded that suggestions about a grid connection swap between the proposed Development and Hornsea Project Three were not matters to be considered during the Examination.</i></p> <p>4.10 <i>In the light of this position, the ExA's conclusion is that the Applicant did undertake a reasonable alternatives process in finalising its site options.</i></p>	<p>The approach to site selection (particularly in respect of the onshore substation at Necton) was the same for Norfolk Boreas as for Norfolk Vanguard.</p> <p>The relevance (or otherwise) of discussions on an offshore transmission network and consideration of an offshore ring main, and suggestions about a grid connection swap is the same.</p> <p>No different considerations have been raised in the Norfolk Boreas Examination.</p>

<p>4.11 <i>While acknowledging the views expressed both during and after the Examination, the Secretary of State notes that NPS EN-3 states "when considering grid connection issues, the IPC should be mindful of the constraints of the regulatory regime for offshore transmission networks [paragraph 2.6.36]. The Secretary of State considers that the offshore transmission proposal for the Development has been brought forward in line with the existing regulatory regime. Whilst discussion are taking place in respect of the future shape of the offshore transmission network, such discussions are at the preliminary stage. The Secretary of State considers that he must assess the Development in line with current policy as set out in the National Policy Statements. He does not consider that the decision should be delayed to await the outcome of the discussions on the offshore transmission network given the urgent need for offshore wind development as identified in the National Policy Statements."</i></p>	
<p><b>Landscape and Visual Assessment</b></p> <p>The NVDL notes a number of points made by the ExA with regard to landscape and visual impact including the substation at Necton (4.24); the extension of the National Grid substation (4.25); viewpoints from Necton (4.29); and cumulative impacts of the two proposed substation developments (4.30).</p> <p>Also noted in the NVDL are the impacts of the onshore cable route on landscape character (4.33); on designated landscapes (4.34); overall impact (4.35); impacts on visual amenity (4.36); cable landfall impacts (4.39); proximity to the Norfolk Coast Area of Outstanding Natural Beauty (4.42); and cumulative effects with the Hornsea Three Offshore Wind Farm (4.43). The cumulative assessment with the Norfolk Boreas onshore substation was specifically not considered by the ExA (4.46).</p> <p>The overall conclusions on landscape character and visual amenity are</p> <p><i>"4.48 In concluding the assessment of the impacts of the proposed development on landscape character, the ExA considers that with mitigation measures enacted, there would be significant local effects in the vicinity of the onshore substations which would lessen over time and affect only a small part of the overall landscape character area. In respect of visual amenity, the ExA notes there would be localised but significant effects during construction along parts of the A47 trunk road and some minor roads. In terms of the onshore cable route and landfall location, there would be local but short term harm to the landscape character which would not be significant. There</i></p>	<p>The SoS adopts the conclusions of the Norfolk Vanguard ExA. The ExA's approach is to consider:</p> <ul style="list-style-type: none"> <li>• Landscape impact of the onshore substations ("significant local effects in the vicinity of the onshore substations which would lessen over time and affect only a small part of the overall landscape character area")</li> <li>• Visual amenity of the substations ("localised but significant effects during construction along parts of the A47 Trunk Road and some minor roads")</li> <li>• Landscape impact of the cable route and landfall location ("local but short term harm to the landscape character which would not be significant. There would be significant but short term and reversible effects along some roads and footpaths")</li> </ul> <p>and whether the development would accord with the policy requirements of NPS-1 (particularly paragraph 5.9.18) and NPS-3 and would cause material harm to the key characteristics of Norfolk County Council's relevant development plans and policy strategies covering the cable route and the cable landfall.</p> <p>The SoS concludes that the impacts of the Development would be "generally acceptable except in respect of harm to visual amenity in relation to the substation works" but "given</p>

<p>would be significant but short term and reversible effects along some roads and footpaths. Considering all these matters in the whole, the ExA finds that the proposed development would accord with the policy requirements of NPS EN-1 and NPS EN-2 (sic) and would not cause material harm to key characteristics of Norfolk County Council's relevant development plans and policy strategies covering the onshore cable route and the cable landfall. The ExA noted that the impacts of the proposed Development would be generally acceptable except in respect of the harm to visual amenity in relation to the substation works. The proposed Development would not, therefore, fully conform to relevant policies in Breckland Council's core strategy documents. However, given the localised nature of the harm that would arise, the ExA gives this matter limited weight in the overall planning balance."</p> <p>4.49 The Secretary of State notes the opposition to the Development's onshore substations at Necton (which has driven calls for an onshore ring main to provide a single infrastructure connection point). The substations are very large and local people in Necton (and their local MP, George Freeman) feel that the scale of development would be completely out of keeping with the local setting. However, the Secretary of State considers that the ExA's analysis of the landscape character and visual amenity impacts is sound and see no reason to disagree with its conclusion."</p>	<p>the localised nature of the harm that would arise, the ExA gives this matter limited weight in the overall balance."</p> <p>Norfolk Boreas is the same form of development and in the same location as Norfolk Vanguard. The approach taken or adopted by the SoS on Norfolk Vanguard of balancing impacts against the benefits of the project (as in NPS-1 paragraph 5.9.18) applies equally to Norfolk Boreas.</p> <p>In the course of the Norfolk Boreas Examination the Design and Access Statement has been further developed to include references to a common design approach across both projects, details of structural components and materials and a Design Guide approach.</p> <p>In Chapter 29 (Landscape and Visual impact assessment) of the Norfolk Boreas Environmental Statement, the conclusions of the cumulative assessment in respect of the onshore project substation and National Grid substation extension are set out at paragraphs 238 – 240. This concludes that any significant cumulative effects will be localised and reduce over time.</p>
<p><b>The Historic Environment</b></p> <p>"4.62 The Secretary of State states (sic) notes the potential impacts on historic environment and that weight is given to those impacts in relation to St Andrew's Church at Bradenham. However he has also had regard to the ExA's overall conclusion in respect of the historic environment [ExA 7.3.10] – "in terms of onshore and offshore heritage assets any impact onshore and on archaeology would be adequately addressed and mitigated through the measures secured in the DCO" – and agrees that the matters set out above carry limited weight in the planning balance".</p>	<p>A Written Scheme of Investigation will also be put in place on Norfolk Boreas to inform the mitigation strategy and there would also be engagement with the National Trust about its Blickling Estate.</p> <p>The Applicant also proposes to avoid offshore heritage features by way of Archaeological Exclusion Zones and micro-siting during detailed design of the Development and this would be set out in an Outline Written Scheme of Investigation (Offshore) for consideration by Historic England and other relevant authorities.</p> <p>No different considerations have been raised in the Norfolk Boreas Examination.</p> <p>In Chapter 28 (Onshore archaeology and cultural heritage) of the ES the cumulative effect on the Church of St Andrew, Bradenham is assessed at paragraph 328. No significant cumulative effects are predicted.</p>

<p><b>Traffic and Transport - Cawston</b></p> <p>"4.73 The ExA notes that Norfolk County Council was of the view that an acceptable mitigation scheme could come forward from the Applicant. The ExA concludes that it disagrees with the Applicant and Norfolk County Council and believes that material revisions would be need (sic) to the mitigation measures to make the scheme acceptable. Accordingly, the ExA recommends to the Secretary of State that the Applicant should be made to secure a revised mitigation scheme "which considers each project in combination and the overall scheme context". [ER 4.7.72]</p> <p>4.74 The Secretary of State consulted on this matter on 6 December 2019 seeking views on the inclusion of a provision in the Development Consent Order that would provide additional mitigation for traffic impacts that might arise at Cawston in the event that both the proposed Development and the proposed Hornsea Project 3 Offshore Wind Farms were granted development consent. In light of the responses received, the Secretary of State considers that amendments should be made to the Development Consent Order to require further mitigation measures to be agreed between the Applicant and relevant local authorities should the Hornsea Project 3 and Norfolk Boras projects be granted consent."</p> <p>The NVDL concludes:</p> <p>"4.80 The Secretary of State acknowledges that the impacts of traffic and transport measures from the proposed Development on local people and their villages and ability to move around the local area are of concern to many parties potentially affected by them. It should also be noted that the impacts at any given location will be spread over many months. However in light of the ExA's conclusions, the responses to the Secretary of State's consultation and the inclusion of suitable wording in the Development Consent Order, the Secretary of State considers there is no reason why traffic and transport impacts should stop the grant of consent for the proposed Development."</p>	<p>At the conclusion of the Hornsea Three and Norfolk Vanguard Examinations there were recommendations from the initial Road Safety Assessment which needed to be addressed, and this was an unresolved matter with Norfolk County Council (NCC). It was therefore agreed with Norfolk Vanguard and Hornsea Three that the Applicant would take forward and further develop the scheme. As such, a number of revisions were made to the original HIS to address the concerns and recommendations and ensure it will effectively mitigate cumulative impacts.</p> <p>The revised HIS was then subject to another RSA and changes captured in the updated OTMP together with measures to address potential driver compliance.</p> <p>As a result of the revisions to the HIS and further engagement with NCC, a Joint Position Statement with NCC on the HIS [REP 11-016] was submitted at Deadline 11 which confirms agreement with NCC that the HIS is sufficient to mitigate against the traffic impact arising from the project on Link 34 (Cawston) alone, and with other projects.</p> <p>A similar requirement to Requirement 21(4) in the Norfolk Vanguard DCO is included in the draft Norfolk Boreas DCO.</p>
<p><b>Socio-economic impacts</b></p> <p>"4.83 North Norfolk District Council made strong representations during the Examination about the potential harm that the proposed Development would have on the local tourist</p>	<p>No further "authoritative information that there would be an actual or perceived impact on tourism" has been produced in the course of the Norfolk Boreas Examination.</p>

<p>sector. The Council sought the inclusion of a requirement in any Development Consent Order that might be made to require the Applicant to contribute to organisations that aimed to boost local tourism to increase tourist footfall across the area. The Applicant disputed the rationale for such a requirement arguing that it was unnecessary and unlawful. [ER 4.8.25 et seq].</p> <p>4.84 In considering the various issues raised under the socio-economic heading, the ExA notes that the wording of the Council's proposed Requirement was not justified in light of the absence of any authoritative information that there would be an actual or perceived impact on tourism and the case has not, therefore, been made for its inclusion in a Development Consent Order. In respect of the other socio-economic matters mentioned above, the ExA concluded that the jobs and skills package proposed by the Applicant would be capable of supporting the region's aspirations and achieving sustainable economic growth.</p> <p>4.85 The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter."</p> <p>The same approach is adopted in the Hornsea Three minded to grant letter which concludes</p> <p>"16.3 The Secretary of State also notes that NNDC and NCC suggested that a Community Benefit Fund should be established by the Applicant and secured through the Order to identify how small businesses can be compensated to avoid closure and to compensate businesses and communities affected by construction works. The Applicant's response was that any Community Benefit Fund should be voluntary and not secured through the Order. Given there was no clear evidence of significant impact on tourism, the ExA agrees and has not given any weight to a voluntary fund, as there was no planning obligation or Order drafting before them [ER 15.4.17 – ER 15.4.19]."</p>	
<p><b>Contamination and ground conditions</b></p> <p>"4.93 Overall, the ExA concludes that any adverse impacts would be mitigated by conditions in the Development Consent Order. There would be no significant adverse impact. These matters were satisfactorily considered during the Examination. The ExA considers, therefore that the proposed development would accord with</p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p> <p>Similar conditions are contained in the Norfolk Boreas Development Consent Order.</p>

<p>NPS EN-1 and with the National Planning Policy Framework [ER4.9.32].</p> <p>4.94 <i>The Secretary of State acknowledges that the question of possible contamination at the [Royal Danish Air Force F-16] crash site has generated strong feeling among people living in proximity to the site. However the ExA's analysis of the issue is robust and mitigation would be put in place in the event any contamination was discovered. The Secretary of State sees no reason to disagree, therefore, with the ExA's conclusion in this matter."</i></p>	
<p><b>Coastal Change</b></p> <p>"4.97 <i>The ExA concludes [ER 4.10.19] that the cable landfall as proposed would neither exacerbate coastal erosion nor be affected by it. The proposed Development would be in accordance with the relevant EN-1.</i></p> <p>4.98 <i>The Secretary of State sees no reason to disagree with the ExA's conclusion in this matter."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Flood risk and water resources</b></p> <p>"4.103<i>The ExA concludes that, taking account of all relevant issues, it was unlikely the proposed Development would cause any significant impacts on flood risk or water resources. It continues that the proposed Development would accord with the requirements of NPS EN-1 and that this matter should not weigh against the Development Consent Order being made. [ER 4.11.26]. The Secretary of State sees no reason to disagree with the ExA's position."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Noise and vibration</b></p> <p>"4.108<i>The ExA notes the range of concerns that have been expressed about the noise and vibration impacts of the Development and acknowledges the adverse impacts that excessive noise and vibration can have on human health. However, the ExA also notes the extensive mitigation measures that would be put in place by the Applicant requiring approval from the relevant planning authorities to limit those impacts and considers that these measures will provide adequate safeguards for residents and others potentially affected by the construction and operation of the proposed Development. While there would be some minor adverse effects, the ExA concludes that impacts would be minimised and mitigated in accordance with the provisions of NPS EN-1 and, therefore, attract limited weight in the planning balance. [ER 4.12.31] Notwithstanding the ExA's general</i></p>	<p>The same amended wording has been included in the draft Norfolk Boreas DCO.</p> <p>No different considerations have been raised in the Norfolk Boreas Examination.</p>

<p><i>position, the Secretary of State did consult about how mitigation measures in this matter might be given effect and suggested amended wording for the Order to do this. In light of responses received, the Secretary of State has incorporated his suggested wording into the Order and agrees with the ExA's overall conclusion in this matter."</i></p>	
<p><b>Air Quality</b></p> <p><i>"4.113 While noting concerns about adverse air quality impacts arising from the proposed Development, the ExA was satisfied that the Applicant had appropriately addressed air quality matters and that suitable mitigation would be put in place to limit any air quality impacts arising from the proposed Development. The ExA concludes that local air quality objectives would not be breached and predicted pollution levels would be below air quality objectives for all receptors. There would also be adequate mitigation for dust emissions. The ExA concludes that the proposed Development would be in accordance with NPS EN-1 and that air quality matters should not weigh against the Development Consent Order being made. [ER 4.13.17 et seq]. The Secretary of State has no reason to disagree with the ExA's conclusions in this matter."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Human health</b></p> <p><i>"4.120 The ExA assessed the information provided by the Applicant and other parties. It concluded that the electromagnetic fields produced by the cabling for the proposed Development would be within the ICNIRP Guidelines and the in-combination effects at the crossing point for the Hornsea Project Three cabling would also meet those tests. In its conclusion, the ExA sets out that the electromagnetic fields would be within the levels of the ICNIRP Guidelines: the proposed development would, therefore meet the requirement of NPS EN-5. Overall, the ExA also concluded that the proposed Development would not give rise to any significant mental or physical health impacts and would, therefore, comply with NPS EN-1. Health impacts should not therefore, weigh against a Development Consent Order being granted [ER 4.4.19 et seq]. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Onshore ecology and ornithology</b></p> <p><i>"4.125 The ExA concludes that the mitigations proposed by the Applicant in its pre-Application consideration of alternative routes/locations for</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>

<p><i>the Development's onshore works and any post-consent development consent order would avoid significant harm to onshore ecological interests. There would be some adverse impacts on bats through hedgerow loss, but these would be short term in nature. In general, relevant policy considerations have been met and the Assessment Principles set out in NPS EN-1 have been followed. [ER 4.15.46 et seq]."</i></p>	
<p><b>Land use</b></p> <p><i>"4.131 The ExA's overall conclusion is that land use impacts would be appropriately mitigated and any loss of good quality agricultural land would be justified by the benefits of the proposed development. The Secretary of State sees no reason to disagree with the ExA's conclusion in this matter."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Commercial fisheries</b></p> <p><i>"4.136 In conclusion, the ExA notes that at the close of the Examination there was still disagreement between the NFFO and VisNed (the Dutch fishing representative organisation) about whether fishing would be possible in the array. The ExA concludes that while some commercial fishing would be possible, there would be an impact from the Development combined with closure of areas to fishing activities. The ExA considers that the requirements of NPS EN-1 and NPS EN-3 have been met. The Secretary of State has no reason to disagree with the ExA on this matter."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Shipping and Navigation</b></p> <p><i>"4.140 The Secretary of State consulted on the proposed amendment to the notification period for seabed cable exposure. In response, the Applicant, the Marine Management Organisation ("MMO") and the Maritime and Coastguard Agency indicated they had reached agreement that three days was an acceptable period of time from the time when the exposure was discovered. Wording for a development consent order was provided and this has been included in the DCO. In relation to the trigger for the notification to mariners and the timeframe for sending copies of notices to the MMO and MCA. Agreement has been reached on all these matters. The Secretary of State agrees with the ExA's overall conclusion in respect of this matter."</i></p>	<p>The same wording has been included in the draft Norfolk Boreas DCO.</p> <p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Aviation</b></p> <p><i>"4.144 The ExA was satisfied that subject to suitable wording being included in any Development</i></p>	<p>The same wording has been included in the draft Norfolk Boreas DCO.</p>



<p><i>Consent Order that might be granted by the Secretary of State, aviation impacts would be satisfactorily addressed and thus meet the policy tests in NPS EN-1. In light of the withdrawal of the objection from NATS, the Secretary of State sees no reason to disagree with the ExA's conclusions in this matter."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Marine physical processes</b></p> <p><i>"4.148 The Applicant considers the practicality (for any industry) of sampling all dredged sediment and areas within the disposal site in order to determine 95% similarity is unfeasible. There would be limitations in the extensive sampling of dredged sediment. The Applicant understands that both Natural England and the MMO share these concerns. The Applicant further noted that the disposal principles in the Site Integrity Plan ensure appropriate sediment disposal must be agreed with the MMO in consultation with Natural England and so a 95% condition is not considered necessary, or achievable.</i></p> <p><i>4.149 While the ExA concludes that, subject to the inclusion of the "particle condition" in any Development Consent Order that might be made, there would be no reason to withhold consent, the Secretary of State considers that the Applicant's position as set out above is acceptable."</i></p>	<p>No such condition has been included in the draft Norfolk Boreas DCO.</p> <p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Other considerations</b></p> <p><i>4.150 The ExA notes [ER 4.21.2 et seq] that representations were received from Interested Parties who were concerned that the onshore substations might be the target of terrorism or be a fire risk. The ExA considered these matters and concluded that there was little evidence that a terrorist attack is foreseeable and that the design of the substations would meet health, safety and other regulatory matters. The ExA concluded that these were not matters that weigh against consent being granted. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter."</i></p>	<p>No different considerations have been raised in the Norfolk Boreas Examination.</p>
<p><b>Offshore Biodiversity, Biological Environment and Ecology</b></p> <p><i>"4.153A significant cumulative effect on these populations would weigh against the Order being made as it would not conform with NPS-1. However in view of the Development's small contribution to the cumulative numbers, the Secretary of State believes that on balance, this issue should not prevent the granting of a</i></p>	<p>The approach taken by the Secretary of State on Norfolk Vanguard is material to Norfolk Boreas due to their close proximity and consequently similar levels of seabird activity recorded at the site.</p> <p>The assessment specifically includes and specifically references headroom.</p>

<p><i>Development Consent Order in respect of proposed Development. The Secretary of State has considered the precautionary nature of the RSPB and NE positions. The Secretary of State has also considered the Habitats Regulations Assessment – specific mitigation that has been secured post-examination, which will go further to reduce the cumulative effect for some species. Furthermore, the Secretary of State is also aware of the potential lower numbers of predicted seabird mortalities than previously calculated based on built scenarios as opposed to the assessed or consented scenarios ("headroom")."</i></p>	<p>Norfolk Boreas makes a similarly small contribution to the cumulative total; a similar conclusion is therefore appropriate for Norfolk Boreas.</p>
<p><b>Offshore ecology and requirements of the Habitats Regulations – FFC SPA and OEA SPA</b></p> <p><i>"5.7 However the Secretary of State considers that a robust in-combination assessment [with Hornsea Three] has been made in view of additional survey data provided by Hornsea Three. Furthermore, due to additional mitigation commitments made by the Applicant during the post-examination period, the Secretary of State considers that the potential loss of a relatively small number of birds through collision impacts has not contributed in a significant way to the total number of birds predicted to be impacted in-combination ("de minimis"). On this basis the Secretary of State concludes that the proposed development will not have an adverse effect on the above SPA sites and, therefore, developmental (sic) consent should not be refused on Habitats Regulations grounds."</i></p>	<p>The additional mitigation commitments made during the post-Examination period on Norfolk Vanguard have also been made on Norfolk Boreas.</p> <p>The approach taken by the Secretary of State on Norfolk Vanguard is material to Norfolk Boreas due to their close proximity and consequently similar levels of seabird activity recorded at the site.</p> <p>Norfolk Boreas makes a similarly small contribution to the cumulative total; a similar conclusion on AEol is therefore appropriate for Norfolk Boreas.</p>
<p><b>Offshore ecology and requirements of the Habitats Regulations – HHW SAC</b></p> <p><i>"5.8 The SAC is designated for Annex 1 Sandbanks which are slightly covered by seawater all the time and Annex 1 Reefs (Sabellaria spinulosa). The ExA recommended that a conclusion of no AEol can be achieved on the basis of the information submitted during the Examination. Having reviewed all representations received during and after Examination, the Secretary of State agrees with a conclusion of no AEol as the Applicant has demonstrated that the area of the site affected will be relatively small (in the case of reef, kept to a minimum through micrositing), any affected features are able to recover, and all cable protection will be removed at the time of decommissioning. In relation to the last point, the Secretary of State notes that the decommissioning of cable</i></p>	<p>The decommissioning of cable protection has been secured in the Norfolk Boreas DCO.</p> <p>The approach of the SoS in considering whether there would be an adverse effect on integrity is to consider the size of the area of the site affected, and to take into account recoverability of affected features and removal of cable protection at the time of decommissioning. This approach is material to decision making on Norfolk Boreas since the area of the site affected is similarly small.</p>

<p><i>protection will be secured in the DCO to ensure that any effects are lasting (for the duration of the project) but temporary (repairable effect)."</i></p>	
<p><b>Compulsory acquisition</b></p> <p>The NVDL concludes</p> <p><i>"6.15 The Secretary of State considers that relevant legislation and guidance relating to compulsory acquisition and temporary possession have been followed by the Applicant and that, given his overall consideration that development consent for the proposed Development should be granted, there is a compelling case in the public interest to grant compulsory acquisition and temporary possession powers to facilitate the Development."</i></p>	<p>The approach of the Secretary of State is material to decision making on Norfolk Boreas who have taken the same approach to relevant legislation and guidance relating to compulsory acquisition and temporary possession.</p>