Oulton,
Norfolk

18th May 2021

The Rt. Hon. Kwasi Kwarteng
Secretary of State
The Department for Business, Energy and Industrial Strategy

Dear Mr. Kwarteng,

Re: The re-determination of the DCO for the Norfolk Vanguard offshore wind farm

In response to your letter of 29th April 2021, I am writing to you today on behalf of 31 Parish Councils in Norfolk.

In his judgment in the Judicial Review case (Pearce v. Secretary of State), Mr. Justice Holgate states at para 133:

"If the cumulative impacts in the Necton area had been evaluated when considering the application for the Vanguard DCO, one possible outcome is that they would have been found to be unacceptable."

Had these cumulative effects been properly considered, it might have made a material difference to the outcome in one of two ways:

(1) It might have tipped the planning balance of aggregated harms sufficient to cause the ExA to recommend refusal of the proposal not only on the one ground of disturbance to seabirds, but also on *the aggregated harms of the onshore impacts overall.*

The Secretary of State might have endorsed that recommendation and refused the application.

Such an outcome would have made a material difference to the lives and livelihoods of people throughout Norfolk, over a period of many years.

OR

(2) It might have caused the ExA to decide that the harmful effects of the Vanguard substation, when considered together with the cumulative effects of the Boreas substation, were so severe that it would recommend to the SoS that the substation could only be made acceptable if the full range of mitigations requested by Necton Parish Council be included in the DCO. This might have included re-siting the substation on lower ground and/or sinking the infrastructure into a 15m hole, constructing a 15m high bund around it, and planting trees on that.

Such an outcome would have made a material and *permanent* difference to the lives of the people of Necton and many villages in the surrounding area.

At para 135 Mr. Justice Holgate goes on to elaborate the implications as follows:

"The Defendant has decided that the cumulative impacts at Necton should be assessed solely in the Boreas examination and decision and not also in the Vanguard process, despite (1) the availability of information to enable him to make an evaluation of those impacts and (2) the Court of Appeal's judgment in *Larkfleet.* The Defendant's approach has had the effect, absent consideration of those cumulative effects, of making it *easier to obtain consent for Vanguard*, and providing a "foot in the door" making it *easier to obtain consent for Boreas*. Although there is no evidence that NVL sought those outcomes, the Vanguard DCO decision has had a "*precedent effect*" for decision-making in relation to Boreas upon which, understandably, NVL *has relied heavily in the Boreas examination*." (our emphasis)

In other words, the absence of consideration of these cumulative effects has *severely distorted* the examinations and the decision-making processes of both Norfolk Vanguard and Norfolk Boreas, such that both examinations now need to be rewound to the beginning and re-examined, in the interests of transparency and procedural fairness. Nothing less will satisfy the sense of grievance of the Interested Parties affected.

Mr Justice Holgate himself stated (para 174):

"It is not too difficult to think of a fundamental error affecting the application process from the outset, which would therefore require the matter to be rewound to the beginning, notwithstanding rule 20 of the 2010 Rules."

The consideration, separately and sequentially, of Vattenfall's project <u>as if it were two projects</u> has been an act of artifice. This fact, when compounded by the unlawful failure to consider the cumulative impacts of the substations at Necton has had such far-reaching implications and repercussions for both the decision-making process of Vanguard, and the examination of Boreas, that it constitutes *just such a fundamental error.*

These projects should always have been submitted *together* for consideration by an ExA. The only reason that this was not suggested by many IPs, including Parish Councils, at the outset of the examination for Vanguard is because most IPs are lay people – and novices in the complex procedures of the NSIP process. It was only during the examination itself that many people began to question among themselves the distorting, disguising and minimising effect that separate consideration of the two projects would be likely to have on a proper consideration of the cumulative impacts. But they bowed to the professional planners' superior knowledge and assumed that a challenge would be inappropriate.

In terms of the *scope* of the redetermination process, with regard to Rule 20 of the 2010 Rules, paras 171 & 172 of the judgment state:

"…it has been well-established for many years that procedural rules such as the 2010 Rules are generally *not* exhaustive of the requirements of procedural fairness or other public law requirements… Rule 20 imposes *minimum* procedural requirements." (the judge's emphasis)

In addition therefore, to the need to rewind these two examinations to the beginning, and consider them as one, is the need to expand the scope of the re-examination to

consider new material, since there has been a substantive and material change in circumstances since the decision on Norfolk Vanguard on July 1st 2020.

On July 14th 2020 the Secretary of State announced the Offshore Transmission Network Review and charged it to proceed as a matter of urgency.

The webinars presented on December 17th 2020 by both the Department for BEIS and by NGESO presented the compelling arguments for the urgent planning and implementation of an offshore transmission network to join all offshore wind farms in the southern North Sea to the grid.

The Norfolk Vanguard and Boreas proposals, with their current point-to-point onshore grid connections would maroon these wind farms from such a network and would result in both *a sub-optimal use of their energy output* for the next 40 years and *an unjustifiable extra cost to the consumer* in terms of unnecessary constraint payments.

In light of all of the above, we wish to state our serious concerns as to the limited scope of the Secretary of State's redetermination procedure, as outlined in the letter of 29th April 2021.

We request that the redetermination process should instead proceed as follows:

1. The application process for the Norfolk Vanguard and Norfolk Boreas projects should be rewound to the beginning and a single application for the whole should replace them;

2. Serious consideration should be given to an alternative method of connecting these projects to the national grid offshore, in light of the fast-moving work of the Offshore Transmission Network Review.

Thank you for your consideration of this critical matter.

Yours sincerely,

Alison Shaw

Oulton Parish Councillor

- and also on behalf of the 30 Norfolk Parish Councils listed below:

Edgefield PC
Corpusty and Saxthorpe PC
Wood Dalling PC
Cawston PC
Salle PC
Heydon Parish Meeting
Kelling PC
High Kelling PC
Weston Longville PC
Barford with Wramplingham PC
Mulbarton PC
Swardeston PC

Happisburgh PC
Ingworth PC
Bradenham PC
Holme Hale PC
Necton PC
Weybourne PC
Blickling PC
Aylsham Town Council
Fransham PC
East Ruston PC
Swannington, with Alderford & Lt. Witchingham PC
Garvestone, Reymerston and Thuxton PC
Great Melton PC
Brandiston Parish Meeting
Plumstead PC
Brampton with Oxnead PC
Beeston Regis PC
Morston PC
