

Rt Hon Ed Miliband MP
Secretary of State for Energy Security and
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Date: 22 June 2026

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cc.
Secretary of State DEFRA
Secretary of State MHCLG

BY EMAIL

Dear Secretary of State,

The Decision Letter accompanying the Order granting Development Consent for the North Falls Offshore Wind Farm

I am writing to you on behalf of Suffolk County Council, and the people of Suffolk, to express the Council's concern and disappointment regarding the contents of the decision letter, issued on 14 May 2026, for the granting of Development Consent for the North Falls Offshore Wind Farm.

Although this project's connection to the National Grid transmission network makes landfall in north Essex, the adverse impact of the offshore arrays will be experienced by the people of Suffolk and will affect the Nationally Designated Landscape of the Suffolk and Essex Coast and Heaths Area of Outstanding Natural Beauty.

This is a designated landscape that has already suffered the adverse impacts of multiple consented, energy related, Nationally Significant Infrastructure Projects, and appears likely to experience more of this harm in the future.

Having reviewed the decision letter, the Council's officers, in collaboration with its legal advisors, have identified significant concerns I believe it is appropriate to raise with you.

These concerns are set out in detail in the appendix to this letter. In summary, they are as follows:

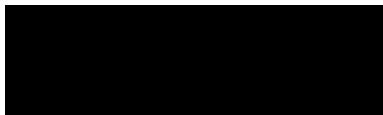
Despite recognition that the residual harm on the SECHNL requires the duty to be discharged, the SoS considers that bespoke enhancement measures are not needed on the basis that embedded mitigation measures suffice. However, this is a legal and logical non sequitur, which involves flawed and inadequate reasoning, because the level of residual harm was calculated **after** the implementation of those embedded

mitigation measures and so they cannot reduce the level of residual harm in any way. There are, therefore, no measures identified by the Secretary of State which can seek to conserve the National Landscape's natural beauty, or which could serve to offset the residual harm. In addition, the Secretary of State's reasoning is internally inconsistent and contradictory because the acceptance of residual harm necessarily means that the 'continued conservation' of the National Landscape will not be achieved (as wrongly concluded by the Secretary of State). As a result, the duty appears to have lost all its strength in protecting and improving outcomes for Protected Landscapes.

Future projects in Suffolk, and elsewhere, will doubtless impact on Nationally Designated Landscapes, and require active consideration of the duty to *conserve and enhance*, and to *further the purposes* of these designations. Therefore, on behalf of Suffolk County Council, and the people of Suffolk, I wanted to draw this matter to your attention. I would welcome clarification of this issue and change to the Order using the power conferred by Section 153 of and Schedule 6 to the Planning Act 2008.

I ask for a response to this letter by no later than 6 July 2026.

Yours sincerely



Cllr Tristan Gale

Cabinet Member for Planning, Devolution and The Fire Service
Suffolk County Council

Appendix

North Falls Offshore Wind Farm the Secretary of State (SoS)'s decision letter dated 14 May 2026.

1. SCC made a Relevant Representation [RR-318], submitted a Local Impact Report [REP1-074], and made successive representations throughout the Examination period in accordance with the Examination timetable.
2. SCC is very disappointed by the SoS's decision that consent of the application did not require bespoke enhancement measures for the Suffolk and Essex Coast and Heaths National Landscape (SECHNL) in order to enable the SoS to satisfactorily discharge their statutory duty under section 85(A1) of the Countryside & Rights of Way Act 2000 ("the duty"), even though the SoS recognises in paragraph 4.125 of his decision letter that:
 - a. *Due to the residual harms on the SECHNL, the Secretary of State agrees with the ExA that there should be consideration of how the Proposed Development would enable the decision-maker to comply with the duty.*
3. SCC has serious concerns about the reasoning of the SoS in making his decision: Despite the SoS' recognition that residual harms warrant consideration of how the duty can be discharged (para 4.125), the SoS considers that embedded mitigation measures consisting of the removal of the northern array area, reduction in total number of turbines and reduction in the height of the turbines are sufficient to discharge the duty.
4. In SCC's view, there are certain key issues with the SoS' decision in this regard: firstly, the embedded mitigation measures relied upon by the SoS to discharge the duty were accounted for in the applicant's assessments and so do not affect the level of residual harm. It is illogical and legally inadequate reasoning to rely on the embedded mitigation either to address the residual harm or to offset it.
5. Following from this, the fact that the residual harm could have been greater is not a consideration relevant to the specific function for which the SoS must perform the duty in this context. The relevant function in this context is the granting of development consent to the proposed development via the making of a Development Consent Order. The relevant function does not, therefore, include anything related to an alternative, more harmful, version of the project. The level of residual harm arising from an alternative version of the project has no bearing on how, and to what extent, the actually consented development will harm the SECHNL.
6. The making of this Order will introduce substantial residual harm on the SECHNL, as recognised by the SoS in paragraph 4.125. It is within the context of this specific function which introduces substantial harm to the SECHNL that the duty must be performed. Therefore, SCC considers that the SoS has erred by solely citing measures which do not affect the harm caused by the relevant function of the SoS and so cannot be considered to seek to conserve or

enhance the special qualities and natural beauty of the SECHNL in order to discharge the duty.

7. In what follows, SCC sets out the detail of why it considers that these two issues create substantial doubt as to whether the SoS has erred in law by failing to perform the duty.

Residual harm and embedded mitigation

8. The residual harm, cited by the SoS (see para 2a above), was identified and assessed by the applicant after changes to the proposals implementing these embedded mitigation measures, and thereby changing what constitutes the proposed development, were made. As the reduction in scale of the project was made pre-application, the environmental assessments submitted for examination had taken account of these embedded mitigation measures when concluding on the level of residual harm.
9. When considering this relationship between the residual harm of the development and the embedded mitigation measures referenced by the SoS in paragraph 4.126, the SoS is mistaken in his justification that he has performed the duty, in SCC's view. Case law at the highest level has confirmed that conservation is achieved by the **absence** of harm: see South Lakeland District Council v Secretary of State for the Environment [1992] 2 AC 141 at 150-151 (per Lord Bridge of Harwich). The SoS's reasoning appears to be that the proposed development, which include these embedded mitigation measures, allow the SoS to discharge the duty in the context of introducing residual harm on the SECHNL when, in fact, these measures were already accounted for when assessing the level of residual harm and so cannot seek to reduce the level of harm of the submitted proposals to the SECHNL in any meaningful way. This consideration does not appear to be recognised by the SoS in the following statement from paragraph 4.126:
 - a. *Actions taken to date on embedded mitigation would contribute to a continued conservation of the special qualities of the SECHNL, and in that way continue to be active in discharging the duty to seek to further the purpose of conserving the natural beauty of the special qualities of the SECHNL.*
10. It was an error of logic for the SoS to conclude that there could be 'a continued conservation of the special qualities of the SECHNL' and at the same time accepting that the proposal he was approving would result in 'residual harms on the SECHNL. The SoS's reasoning is legally inadequate to support the conclusions reached.

Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes

11. It is also difficult to reconcile the SoS' decision with the guidance published by DEFRA in 2024¹. The SoS references the guidance in paragraph 4.124 and alludes to it at several points in paragraphs 4.124 to 4.126. The guidance states that the active nature of the duty means, among other things, that:

a. as far as is reasonably practical, relevant authorities should seek to avoid harm and contribute to the conservation and enhancement of the natural beauty, special qualities, and key characteristics of Protected Landscapes

12. This is clearly what the SoS is alluding to in paragraph 4.126 when stating that the embedded mitigation measures contribute to a 'continued conservation' of the National Landscape and so are 'active' in relation to the duty. This appears mistaken for the reasons set out above; namely, that the cited measures do not, and cannot, have any effect whatsoever in reducing the level of residual harm on the SECHNL inflicted by the making of this DCO. Instead, the making of this DCO will inflict substantial residual harm on the SECHNL for decades to come and cannot amount to its 'continued conservation'.

Seascape, Landscape and Visual Impact Assessment

13. The SoS may have erred by considering that the cited embedded mitigation measures were not considered within the application's Seascape, Landscape and Visual Impact Assessment (SLVIA) [APP-043]. SCC recognises how this mistake may have come about, since the Applicant's summary of residual effects in the Planning Statement [REP8-003] appears to imply otherwise. Paragraph 5.23.12 states:

a. The impact assessment is based on a worst-case scenario of the largest turbines (40 WTGs up to 397m above MHWS) as this will result in longer distance visibility.

14. In paragraph 5.23.15 [REP8-003], the Applicant portrays the following measures as ones which mitigate the effects as assessed in the SLVIA [APP-043]:

a. Mitigation measures include the reduction of the size of the array area, reduction of the maximum tip height of the wind turbines and reduction of the number of turbines from 72 to 57 of the smallest turbines or 40 to 34 of the largest turbines to reduce the impact to seascape, landscape and visual effects

15. However, this is not an accurate depiction of the worst-case scenario assessed in [APP-043] of the Environmental Statement. Paragraph 18 in Section 29.3.2 of [APP-043] states:

¹ <https://www.gov.uk/government/publications/the-protected-landscapes-duty/guidance-for-relevant-authorities-on-seeking-to-further-the-purposes-of-protected-landscapes>

- a. *For the purposes of the assessment and visualisations, the SLVIA is based on a scheme of 34 WTGs with maximum tip height of 377m above MHWS, 1 and with a maximum rotor diameter of 337m. For SLVIA purposes these larger turbines will result in longer distance visibility due to the larger size of the turbines and therefore this 'maximum height' scenario is judged to be the worst case for assessment.*

16. Clearly, the paragraph above demonstrates that the mitigation measures cited in the Planning Statement are, in fact, embedded into the SLVIA and so do not further mitigate beyond the residual effects identified in the SLVIA.

The “function” of the SoS as it relates to the application of the duty

17. In paragraph 4.126, the SoS appears to be inferring that embedded mitigation has sought to reduce harm on the SECHNL and so satisfies the requirement of seeking to further the purpose of conservation of the SECHNL. Aside from what SCC considers to be a misunderstanding on the relationship between embedded mitigation and residual harm, there appears to be a separate error in applying the duty in this way.
18. The wording of the duty applies to the “function” of a relevant authority which, in this instance, would be the making of a particular Development Consent Order by the SoS. This constitutes the consented development and not any other version of the project. With this in mind, it is clear that the SoS must be able to discharge the duty within the function of making this DCO. In SCC’s view, this means that the SoS cannot appeal to previous versions, or hypothetical versions, of the DCO to discharge the duty as such considerations do not form any part of the particular function in question.
19. The relevant function performed by the SoS is not, therefore, a decision in relation to an alternative version of the project which does not include the embedded mitigation measures. In other words, the fact that the SoS is not consenting up to 72 turbines in the expanded array area, nor turbines with a maximum blade height of 397m, potentially as close as 22 km from the National Landscape (as was initially proposed by the applicant in pre-application consultation), has no bearing on the function for which the duty must be discharged, which is the decision to consent development consisting of up to 57 turbines and a maximum height of 377m in the revised array area some 40 km from the National Landscape. Instead, it is the effect of consenting the proposed development itself for which the duty must be complied with. This means that previous versions of the proposed development not before the SoS for consent are not relevant considerations which can allow the duty to be discharged.

New Forest National Park Authority v Secretary of State for Housing, Communities and Local Government and Mr Simon Lillington [2025] EWHC 726 (Admin).

20. This case remains the leading judgement of the application of the duty in the courts. The duty discussed in this decision is a similarly worded one which applies to National Parks, rather than Areas of Outstanding Natural Beauty,

under section 11A(1A) of the National Parks and Access to the Countryside Act 1949 Act. However, the similarities between the wording of the duties mean the considerations of this decision are suitably applicable to the application of the section 85(A1) duty under Countryside and Rights of Way Act 2000 for the North Falls project. This has been recognised by the Courts in cases involving the section 85(A1) duty directly: see R (CPRE Kent Branch) v SSHCLG [2025] EWHC 1781 (Admin); R (Luton and District Association for the Control of Aircraft Noise) v Secretary of State for Transport [2025] EWHC 3206 (Admin). This also appears to be accepted by the SoS in this decision, and in other decisions made by the SoS, given the acceptance in paragraph 4.124 that the purposes of “conserving and enhancing” should be understood as disjunctive rather than conjunctive which is established in Mr Justice Mould’s ruling.

21. In his decision, Mr Justice Mould gives clarification on how the duty should be understood and under what circumstances it can be discharged. Paragraph 86 of the decision details how the decision maker can discharge the duty:

a. If the decision maker is satisfied that the proposed development will leave the natural beauty, wildlife and cultural heritage of the National Park unharmed, he or she may grant planning permission on the basis that he or she has thereby discharged the duty under section 11A(1A) of the 1949 Act to seek to further the statutory purpose under section 5(1)(a) of that Act. In such a case, the decision maker will have properly sought to further the statutory purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park, by satisfying themselves that to grant planning permission for the proposed development will leave the specified characteristics of the National Park unharmed.

22. Key considerations which lead to this view include the notion that “conservation and enhancement” may be understood as disjunctive rather than conjunctive and that “conserving” should be understood in ordinary English as “to preserve intact or to maintain in an existing state” and “to prevent something of natural or environmental importance from being damaged or destroyed”: Oxford English Dictionary, 2nd ed, OED Online – revised entry (2010).” (paragraph 77).

23. Paragraph 63 of the decision of Mr Justice Mould also explains how, where there is found to be a conflict with the statutory purposes, offsetting measures may be required to address that conflict:

The planning authority may need to consider whether and if so, how the proposed development may be mitigated in order to address the identified conflict with the statutory purposes. They may need to consider whether any compensatory measures are available which might offset the identified conflict with the statutory purposes. They will need to consider the imposition of conditions or the need to obtain planning obligations to secure such measures.

24. Paragraph 4.125 of the SoS' decision is clear that the SoS considers that the proposed development before them will not leave the SECHNL unharmed and the residual harm is of such a magnitude that the decision maker must consider how the application enables him to comply with the duty. Therefore, under Mr Justice Mould's established understanding of "conserve" (which is consistent with the House of Lords decision in South Lakeland), the proposed development must be considered to interfere with the purposes of the SECHNL's designation. Indeed, this is supported by the fact that the SoS proceeds to identify measures which allow the duty to be discharged. This would be unnecessary to establish were the proposed development considered not to interfere with the purposes of the SECHNL's designation. This is demonstrated by Mr Justice Mould's description of the procedure which must be undertaken by the decision maker:

- a. *a duty "to seek to further" the section 5(1) purposes necessarily invests the planning decision maker with the responsibility to judge, firstly, whether the planning application before them for decision proposes development which interferes with the fulfilment of those purposes; and if it does, whether and if so why the grant of planning permission is justified.* (paragraph 62, underlining added)

25. The extent of the residual harm to the SECHNL means that the SoS must explain why granting development consent is justified. SCC has sought to show that the SoS has committed an error in this justification, since measures which cannot reduce the level of residual harm are considered by the SoS to justify the consent of the development and the function to which the duty applies is not the absence of a more harmful version of the proposed development, but the consent of the proposed development itself. The passage from paragraph 4.126 of the decision letter quoted in paragraph 9a of this letter makes explicit this error in reasoning, claiming that measures which do not reduce residual harm will contribute to continued conservation (i.e. continued protection from harm) for the SECHNL.

26. Paragraph 70 of Mr Justice Mould's ruling states that "*the question whether the inspector has failed to discharge the duty is to be judged by considering the reasons he gives for his decision. It is relevant to ask whether those reasons give rise to a substantial doubt as to whether he has erred in law by failing to perform the statutory duty under section 11A(1A) of the 1949 Act*". For the reasons set out in this letter, SCC considers that the reasons given by the SoS reasons give rise to a substantial doubt as to whether he has erred in law by failing to perform the duty.

The need for enhancement measures

27. Perhaps it should be understood that the SoS's position is that, despite the residual harms caused by the proposed development, the relevant considerations have led the SoS to judge that no further measures are necessary to comply with the duty. SCC does not see how this judgement could

be arrived at in a reasonable manner given the nature of the considerations relevant to this judgement.

28. The level of residual harm associated with the proposed development is certainly far from negligible, which is supported by the SoS's decision letter. In paragraph 4.123, the SoS recognises the residual adverse effects on the special qualities and natural beauty on the SECHNL in addition to the significant residual effects on several viewpoints within the SECHNL. Moreover, in paragraph 4.127, the SoS attributes moderate negative weight to seascape, landscape and visual matters "having regard to the significance of effects on the assessed VPs within the SECHNL and the resulting residual, albeit not significant, effects on the special qualities of SECHNL and the special character of SHC identified."
29. It should be noted that the residual significant effects on viewpoints within the SECHNL has obvious implications for the development's effects on several natural beauty indicators, including the following natural beauty indicator of Relative Wildness:
- a. *"Significant areas of semi natural landscape and seascape notably along the coastline, offshore and within undeveloped estuaries where there is little evidence of apparent human activity despite the sea walls and coastal marshes."*²
30. It is clear that this natural beauty indicator, among others, would be disproportionately affected by offshore, rather than onshore, development. Consequently, such natural beauty indicators are far more applicable to certain areas within the designation along the coastline. The explicit reference of "Coast" in the title of the designated landscape also indicates the importance of this area to the purposes of the designation in addition to the distinction between what contributes to the natural beauty of coastal areas compared to other areas further inland. The limited geographic extent of the total area of the designation which will be affected has no bearing on how, and to what extent, the area experiencing the harm from the proposed development will be adversely impacted. Therefore, it is not clear to SCC in what sense the SoS (see paras 4.125 and 4.126) can infer that the residual harm is in some sense diminished due to the notion that only the 'open coastal edge' of the geographic extent of the designation is affected.
31. Whilst considerations of geographic extent certainly can affect the implementation of enhancement measures to be restricted only to the affected area of the SECHNL, they cannot justify the absence of further measures in relation to the residual harm introduced to a certain area within the SECHNL. Indeed, the enhancement proposal put forth by the National Landscape Team [REP8-094] placed geographic restrictions on where enhancement activities could take place based on where within the designation residual harm would be introduced.

² See <https://coastandheaths-nl.org.uk/wp-content/uploads/2021/01/Natural-Beauty-and-Special-Qualities-of-the-Suffolk-Coast-and-Heaths-2016.pdf>

32. The result of these considerations is that it is quite clear that the SoS accepts that the proposed development will inflict residual harm on the natural beauty of the SECHNL to a moderate extent. It could also be argued that the SoS has not properly considered the relevant factors when concluding on the level of residual harm. Contrary to the SoS's position, SCC considers that this residual harm entails that the proposed development does not, and likely cannot, contribute to furthering the purpose of conserving the SECHNL's natural beauty. This is supported by relevant case law cited in this letter, including Mr Justice Mould's ruling and the House of Lords decision in South Lakeland. This letter has established that embedded mitigation measures cannot seek to reduce residual harm and so cannot be judged to be sufficient in enabling the duty to be discharged when substantial residual harm remains.
33. The proposed development must, therefore, seek to enhance the SECHNL's natural beauty to offset the residual harm to the purpose of conserving the SECHNL's natural beauty. A lack of enhancement measures must be justified. As demonstrated in paragraph 4.126, the SoS justification relies wholly on embedded mitigation measures contributing to 'continued conservation' of the SECHNL's natural beauty which, as this letter has pointed out, is an error of logic and legally inadequate.
34. Whilst the SoS does note that "a development of this scale, by its very nature, will struggle to conserve or enhance the special qualities of the SECHNL in terms of landscape and scenic qualities", it does not follow that the proposed development cannot enhance the SECHNL's natural beauty. This is demonstrated by the National Landscape Team's submission of an enhancement scheme for the affected area of the SECHNL [REP8-094] which was recommended for inclusion in the DCO by the ExA³.
35. When considering the SoS's view on the level of residual harm on the SECHNL, the associated interference on the purpose of conserving the SECHNL's natural beauty and the availability of enhancement measures which are considered reasonable, practical, proportionate and necessary by the ExA, SCC does not see how it could be justified in law for the SoS to consent the development without any measures which seek to enhance the SECHNL's natural beauty and yet be considered to have performed the duty. In any case, in SCC's view, the errors contained in the SoS's justification create substantial doubt as to whether the SoS has erred in law by failing to perform the duty.

Concluding remarks

36. To be clear, SCC is not claiming that the duty necessarily requires applications to include enhancement measures for any level of harm on a Protected Landscape. In previous decisions, the SoS has taken the view that the harm

³ See paragraph 5.4.138 of [https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010119-001794-1%20-%20North%20Falls%20Offshore%20Wind%20Farm%20Rec%20Report%20for%20SoS%2027%20Oct%202025%20COMBINED%20A-C%20\(1\).pdf](https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010119-001794-1%20-%20North%20Falls%20Offshore%20Wind%20Farm%20Rec%20Report%20for%20SoS%2027%20Oct%202025%20COMBINED%20A-C%20(1).pdf)

from certain developments would be minimal such that it would not be reasonable for bespoke enhancement measures to be required. This includes the Five Estuaries Offshore Wind Farm decision⁴ within which the SoS attributed little negative weight to Seascape, Landscape and Visual matters. By contrast, for North Falls, the SoS attributes moderate negative weight to Seascape, Landscape and Visual matters.

37. Rather, what SCC takes issue with is the fact that, in the case of North Falls, the SoS recognises that the level of residual harm is such that the proposed development interferes with the purposes of the designation of a Protected Landscape and yet considers measures which do not affect that level of residual harm to enable him to comply with the duty.
38. The, likely unintended, implication of this decision is that discharging the duty as part of an NSIP consent could be based on a different, more harmful version of the NSIP which had not been submitted for consent. In other words, pre-submission actions/changes to the scheme can be considered sufficient to discharge the duty, no matter if residual harm remains. In an extreme scenario, this could result in developers proposing an unnecessarily harmful version of the project pre-submission, which they would change to a less harmful version when making an application in order to discharge the duty.
39. Moreover, the decision appears to endorse the notion that the duty can be discharged on the sole basis of measures which cannot, and do not, reduce the level of residual harm on the purposes of the designation of Protected Landscapes. This is of serious concern to SCC.
40. SCC considers that the issues identified in this letter would likely be sufficient to establish that there is substantial doubt as to whether the SoS has erred in law by failing to perform the statutory duty under section 85 (A1) of the 2000 Act. Therefore, SCC strongly urges the SoS to review the reasons for his decision in respect of the duty. Should the SoS agree that there is, at least, substantial doubt as to whether he has performed the duty, SCC invites the SoS, under section 153 of, and Schedule 6 to, the Planning Act 2008, to issue an Order to change the DCO made on 14 May 2026 according to the recommendation of the Examining Authority (at para 5.4.136) by amending the made Order to include an additional requirement (using the wording set out by the Examining Authority in para 5.4.136) to require the promoter to implement the compensation scheme submitted by the National Landscape Team [REP8-094] which would ensure that the SoS performs the statutory duty.
41. Paragraph 3(3) of Schedule 6 to the Planning Act 2008 states:

(3) The power may be exercised without an application being made if the Secretary of State is satisfied that—

(a) the development consent order contains a significant error, and

⁴ See paragraph 4.4 of <https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010115-002035-SoS%20Decision%20letter.pdf>

(b) it would not be appropriate for the error to be corrected by means of the power conferred by paragraph 1 of Schedule 4 or paragraph 2 of this Schedule.

42. Should the SoS agree that he has erred in law by failing to perform the duty, SCC considers that this would constitute a significant error for the purposes of paragraph 3(3)(a). SCC considers paragraph 3(3)(b) would be satisfied to allow the SoS to change the Order on account of the power conferred by paragraph 1 of Schedule 4 being restricted in its exercise for an error which is not part of the statement of reasons for the decision. Paragraph 2 of Schedule 6 is also not appropriate to correct the error as that power can only be exercised on an application made to the Secretary of State by parties defined in subparagraph (4). If no such application is made, then that power cannot be exercised.
43. Should the SoS repeat the mistakes outlined in this letter in future decisions for NSIPs located in Suffolk, SCC would be seriously minded to consider challenging such decisions.
44. SCC asks for a response to this letter by no later than 6 July 2026.