



The Planning Inspectorate

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North London Waste Authority

Your Ref:

Our Ref: EN010071

Date: 27 July 2015

Dear Ms Kerr,

This letter serves to provide comments on a suite of draft documents submitted to the Planning Inspectorate (the Inspectorate), namely:

- Draft Development Consent Order (DCO) (received 3 July 2015)
- Draft Explanatory Memorandum (received 3 July 2015)
- Draft Statement of Reasons (received 3 July 2015)
- Book of Reference (received 15 June 2015)
- Land and Works Plans (received 3 July 2015)

These comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) (PA 2008) or by the Secretary of State on any submitted application. However, I hope you will find them useful.

Please do not hesitate to contact me should you have any queries regarding the comments provided.

Yours sincerely,

Stephanie Newman

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Annex I Development Consent Order (DCO) and Explanatory Memorandum

The Inspectorate welcomed the use of annotated comments in the draft DCO in order to clarify the comparison with the model provisions and previously consented orders. As these annotations won't be provided in the application DCO, we would encourage the applicant to ensure that all information of this nature that would be of help to the Examining Authority (ExA) is captured within the Explanatory Memorandum. We also welcome that the draft has been produced in the Statutory Instrument template.

Interpretation

The applicant raises the possibility of there being "other works authorised by the Order" which are not development within the meaning of section 32 of the PA2008, and seeks clarification over whether such works should be included in Schedule 1. The Inspectorate advises that the primary purpose of the DCO is to give consent for authorised development, and as such what constitutes that authorised development needs to be entirely clear. For this reason it is not advisable to include works in Schedule 1 that aren't required for the purposes of the order.

The applicant seeks clarification over what volumes of the Environmental Statement to have certified and therefore to refer to in the DCO. This suggests to the Inspectorate that there is material which the applicant intends to submit that is for illustrative purposes and not for assessment. Ordinarily, the entire ES would be certified. The Inspectorate would welcome some more explanation of the rationale behind this query.

Article 3

The applicant suggests an approach that hinges on a requirement that the undertaker will need to submit fuller details of the project to the Local Authority for approval. There is a balance to be struck between the level of detail that the DCO needs to consent and that which can be left for the applicant to resolve with the Local Authority. However, the Inspectorate reminds the applicant that firstly the DCO needs to provide consent. It does that using an operative Article which cross-refers to the detail of the work as provided for in Schedule 1. It isn't possible therefore to remove the operation of consent as suggested. The detail provided by the applicant in Schedules 1 and 2 resembles that consented in other projects.

Article 13

The Inspectorate recommends that the applicant expresses the timing of the extinguishment of the River Lee Navigation as a stage in the construction of the development (rather than a point in time).

Articles 23 and 24

The Inspectorate notes the points made regarding terminology in Articles 23 and 24, and the concerns raised regarding the potential for inconsistency through the use of 'land discharged from rights', or 'extinguished' or 'suspended' rights.

The purpose of Article 23(2) is to clear, by the use of compulsory acquisition powers, any existing rights trusts and incidents off the title to the land, where they conflict with the new rights that the applicant is acquiring under Article 23(1). The Inspectorate considers that discharge/ extinguish mean the same thing in this context so there is no inconsistency of meaning, and both terms can therefore be used. The word 'suspension' in Article 23(3) has a different meaning; this is where existing rights trusts are temporarily interfered with rather than permanently discharged/ extinguished. As Article 23(2) is extinguishing rather than suspending rights, the word 'suspension' in Article 23(3) is unnecessary and could be removed.

Article 30

The Inspectorate notes the question from the applicant concerning how best to show which rights are being temporarily or permanently interfered with. The applicant is required to say whether rights are being temporarily or permanently interfered with as this information is material to the consideration of their application. It would be good practice to describe in the Book of Reference the statutory undertakers' rights that are to be temporarily suspended or interfered with, or whose apparatus will be removed or repositioned with reference to the plot numbers. This would assist the Examining Authority who will require this information and it would also assist the relevant statutory undertakers. This information should be included in Part 1 of the Book of Reference where the statutory undertakers' names and addresses are set out next to the relevant plot numbers.

The Inspectorate notes that the applicant refers to permanently interfering with statutory undertakers' rights. This is in fact compulsory acquisition of the rights and the statutory tests in section 122 have to be met in the usual way (an interference can only be temporary, even if it is for a long period of time).

Schedule 1

When comparing the works specified in Schedule 1 with the relevant Works Plans, the Inspectorate notes that there are some points that require clarification.

- *Works No. 1a*: The list of works provided in the Schedule is not easy to match up with the works listed on the plan. For example, works (vii) entry and exit ramps, and (viii) heat take-off equipment are not easy to locate on the plans; it is unclear if the observation tower marked on the plans is the same as the observation platform listed in (vi); and it would be helpful to know exactly what works are included within the process lines.
- *Works No. 1b*: It is not clear where the electrical substation with transformers is situated on the plan. The ramps ERF9 are marked on the plan but are not listed in the Schedule.

- *Works No. 2:* It is unclear where (i) a relocated transfer hall etc and (iii) are located on the plan.
- *Works No. 4:* The works consisting of the stabilisation of Salmon's brook/ Pymmes Brook is coded as 'U8' on the plan legend, however it isn't actually marked on the plan. It is unclear what the 'Generic Works' listed on the plan refer to in the list of works provided in the Schedule.
- *Works No. 5:* The Schedule does not contain all the works listed and marked on the plan (eg: the fencing, access route, and slope).

Other

The applicant also suggested amalgamating powers in Articles 13, 14, 22, 24, 26 and 30. It is unclear what the applicant seeks to achieve by amalgamating these powers; given each individual power comes with qualifications and restrictions there is logic to dealing with them separately.

The Inspectorate notes that the applicant is still considering appropriate wording for Requirement 28 in Schedule 2 on Combined Heat and Power, and Article 40 on Decommissioning and Transitional Arrangements. Given that these are important issues the Inspectorate would welcome some draft text on these articles in the next iteration of documents, prior to submission.

Explanatory Memorandum

The Explanatory Memorandum is very clearly written and the Inspectorate could identify no significant issues of concern. We did identify a few minor typographical mistakes:

- Paragraph 3.1: The Order seeks powers of ~~compulsorily~~ **compulsory** acquisition
- 5.3: This article [...] thereby authorising the construction ~~on~~ **of** the authorised development.[...] This article permits construction ~~to be carried out within~~ to be carried within the Order limits...
- 5.17: [...] introduced by the Environmental Permitting (England and Wales) Regulations 2010~~14~~. [...] consents under the Land Drainage Act 1991~~15~~ [...]

Annex II Draft Plans

On the whole the plans are clear and easy to read; however the Inspectorate has identified a few areas where improvements could be made.

For all but one area of compulsory acquisition (see plots 2, 3, 6 and 11) the plots do not indicate that the applicant is seeking to permanently or temporarily extinguish rights, as the Inspectorate understands is the case.

We note that in the master plans, there are three sub sections which are intended to be shown in more detail on subsequent plans. In practice the subsequent plans do reflect these areas, but the plots shown on them do not always follow the same logic, with additional cutting lines marked on dividing the plans up. It is not clear why this approach was taken as it could reduce clarity and readability.

In comparison with other schemes of a similar size, the applicant has produced quite a large number of plans. There is a trade-off between marking too much information on a plan and thereby reducing its readability, and marking too little on each plan and thereby creating a large number of plans which are unwieldy to read. We suggest that the applicant considers whether there is the potential for streamlining the plans without compromising on their readability.

The numbering of the plans in this first draft is not entirely logical. We understand that the applicant will be revising these for the next iteration. Finally, the Inspectorate also noted that 'waste bunker' was misspelt on a number of Works Plans.

Annex III Book of Reference (BoR)

On the whole the BoR is clear and the reference numbers tally with those on the plans. In order to aid navigation around the document, the Inspectorate recommends that a contents page be added and if possible the formatting be adjusted so that the tables carry over fewer pages.

The Inspectorate notes the question posed by the applicant as to whether it would be helpful if Part 1 of the draft BoR states which type of compulsory acquisition power is being considered for each interest listed in that Part. Although this is not a legal requirement, and this information can be found in the plans and Statement of Reasons, the Inspectorate considers that this information would be helpful in the BoR too. The same rationale applies to Part 3.

The Inspectorate also notes that the applicant seeks confirmation that the approach taken with respect to statutory undertakers is sound and in line with the DCLG Guidance "[Planning Act 2008 – Guidance related to procedures for compulsory acquisition of land](#)". To clarify, Part 1 of the BoR should set out the names and addresses of statutory undertakers whose rights are to be compulsorily acquired (ie discharged/extinguished). Part 3 should set out the names of the statutory undertakers listed in Part 1, in addition to those whose rights will be suspended/interfered with (eg those statutory undertakers whose apparatus will be removed or repositioned, or whose rights of access will be blocked, but whose rights will remain on the title to the land). The latter should also be included in Part 1 as their rights will cross land which is either being compulsorily acquired or is subject to a right to use the land.

Annex IV Statement of Reasons

The Statement of Reasons is very clearly structured and written, setting out the applicant's justification for applying for compulsory acquisition powers.

In section 7.6 the applicant cross references and relies upon the alternatives assessment to make the case for acquiring the land and interests compulsorily. In section 7.7.3 the applicant notes that it is considering potentially adding to these arguments. The Inspectorate considers that it would be beneficial to elaborate on the outcomes of the alternatives assessment in more detail in this section of the Statement of Reasons.

Finally, the Inspectorate has identified a few minor typographical mistakes:

- Paragraph 5.9.5 UK Renewable Energy Roadmap (2011): provides a delivery Roadmap to achieve the UK's renewable energy target. In respect of biomass electricity the Roadmap proposes: publishing a UK Bioenergy Strategy; applying the Strategy in deciding; new Renewables Obligation bands; focusing on measures to support long-term waste fuel supplies; working with regulators to introduce cost effective fuel monitoring and sampling systems and ensuring that environmental legislation does not have an unintended impact on renewable energy plants;
- 5.9.8 UK Bioenergy Strategy (April 2012): articulates a vision for the growth of sustainable biomass energy in the UK
- 5.9.9 Notes that biomass, energy from waste, Combined Heat and Power (CHP) and heat pumps remain key renewable heat technologies.
- 5.10.1 Government Review of Waste Policy 2011: evaluates waste management policies
- Table 1 Plot 7:
 - Compulsorily acquisition of Kennet Properties Limited's freehold title
 - there is insufficient space to create a new roadway and the north east corner of the site is a [SMINC] – *please spell out in full*
- Table 2 Plot 6, p.22:
 - a replacement lease is being proposed to allow them to operate from EcoPark House once the Project has been constructed
- Table 3 p.25:
 - the temporary laydown area will be restored into its previous condition
- 9.2.3 all fall within the definition of open space
- 9.3.7 (b) All three existing drainage systems will be decommissioned, including the existing connection of the three existing systems to the Chingford Sewer.
- 9.3.9 (b) [Virgin Media, BT, Vodafone and Zayo Group UK Ltd] have, collectively, apparatus running underneath plots 7 (Deephams Farm Road)

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.