

Riverside Energy Park

Analysis of whether the policy on Green Belt in the National Policy Statement applies to the Metropolitan Open Land in respect of the Proposed Development

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1.1 Introduction

1.1.1 This document has been prepared by the Applicant and was submitted for Deadline 4 of the Examination. It has been prepared following a request by the Examining Authority ("**ExA**") for the Applicant to provide a view on the weight to be attached to the Crossness Local Nature Reserve ("**LNR**") as Metropolitan Open Land ("**MOL**") at the Issue Specific Hearing on Environmental Matters on 5 June 2019. A summary of the Applicant's response is included at paragraphs 20.17 and 20.18 of the Applicant's Oral Summary from the Issue Specific Hearing on Environmental Matters (**8.2.019, REP3-027**). However, the Applicant agreed at the Hearing to provide a more detailed note for submission to the Examination.

1.2 Location of MOL with regard to the Order limits

1.2.1 Plan A in **Appendix A** of this note, shows the extent of MOL in Thamesmead. Plan B in **Appendix B** of this note, shows the MOL in the context of both the Crossness LNR and the Order limits.

1.2.2 As can be seen from Plan A, the MOL in Thamesmead is extensive, covering approximately 11,608 square metres. Plan B then clearly shows that:

- a. Crossness LNR is wholly within the MOL;
- b. part of the Crossness Sewage Treatment Works (Thames Water Utilities Ltd) itself is within the MOL; and
- c. no part of the Order limits, and therefore no part of the Proposed Development (except for a short length of highway verge and the surfaced highway itself to the west of Norman Road on the approach to the REP site), falls within land that is designated as both MOL and the Crossness LNR. Indeed no part of the Proposed Development apart from the verge/highway above falls within the Crossness LNR.

1.2.3 Land designated as MOL only (i.e. and not also as the Crossness LNR) falls within the Order limits on a very limited basis as described in the table below and shown on Plan B. The reasons for the inclusion of these plots in the Order limits and why they are required for the Proposed Development are set out in section 1.4 below.

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Table 1.1: Description of MOL within the Order Limits – see also Plan B

Plot Number	Description of the land
02/04 (part)	Scrubland and hardstanding at the Riverside Resource Recovery Facility, Belvedere
02/34	Greenery and shrubbery, south of the Riverside Resource Recovery Facility and west of Norman Road, Belvedere.
02/35 (part)	Greenery and shrubbery, south of the Riverside Resource Recovery Facility and west of Norman Road, Belvedere.
02/43 (part)	Grassland and watercourse south of the Riverside Resource Recovery Facility and west of Norman Road, Belvedere; plot located on the edge of plot 02/44
02/44 (part)	Grassland, south of the Riverside Resource Recovery Facility and west of Norman Road, Belvedere; on the edge of plot 02/44
02/48	Watercourse, grassland and shrubbery west of Norman Road (North) and south of the Riverside Resource Recovery Facility, Belvedere; plot located on the edge of plot 02/49
02/49 (part)	Grassland west of Norman Road and south of the Riverside Resource Recovery Facility, Belvedere; on the edge of plot 02/49
02/50 (part)	Grassland south of the Riverside Resource Recovery Facility and west of Norman Road, Belvedere
02/51	Drain and grassland west of Norman Road (North), Belvedere; on the edge of plot 02/49
02/52 (part)	Grassland to the west of Norman Road and north of Picardy Manorway, Belvedere; on the edge of plot 02/52
03/04	Woodland, grassland, shrubbery and public footpath (FP2), north of Eastern Way and west of Picardy Manorway, Belvedere.
03/05 (part)	Grassland and shrubbery west of Norman Road and north of Picardy Manorway, Belvedere
03/06	Grassland, substation and hardstanding west of Norman Road and north of Picardy Manorway, Belvedere
03/10 (part)	Grassland, substation and hardstanding west of Norman Road and north of Picardy Manorway, Belvedere

1.3 Legislative and Policy context

- 1.3.1 Section 104 of the Planning Act 2008 establishes the primacy of any relevant National Policy Statement (“NPS”) in the decision making process in respect of development consent for a Nationally Significant Infrastructure Project (“NSIP”).
- 1.3.2 The primary policy reference is section 5.10 of NPS EN-1 *Land use including open space, green infrastructure & Green Belt*. However, there is no reference in the policy to MOL, meaning that the primary policy against which the Proposed Development is to be assessed against does not afford any

policy protection to MOL. This is the starting point for the ExA and the Secretary of State in the determination of the Proposed Development.

1.3.3 The London Plan (Policy 7.17) and the Draft London Plan (Policy G3) both stipulate that MOL should be treated as Green Belt and that Green Belt policies will apply. The Applicant recognises that the ExA, and the Secretary of State, may treat the London Plan and the Draft London Plan as both important and relevant matters under section 104(2) of the Planning Act 2008. The relevant London Plan policies are:

a. Policy 7.17 of the London Plan:

"The strongest protection should be given to London's Metropolitan Open Land and inappropriate development refused, except in very special circumstances, giving the same level of protection as in the Green Belt. Essential ancillary facilities for appropriate uses will only be acceptable where they maintain the openness of MOL."

b. Policy G3 of the Draft London Plan:

"Metropolitan Open Land should be protected from inappropriate development: 1. development proposals that would harm MOL should be refused..."

1.3.4 Applying the London Plan and Draft London Plan policy position of treating MOL as Green Belt, section 5.10 of NPS EN-1 affords protection to the Green Belt, stating at paragraph 5.10.17:

"When located in the Green Belt, energy infrastructure projects are likely to comprise 'inappropriate development'. Inappropriate development is by definition harmful to the Green Belt and the general planning policy presumption against it applies with equal force in relation to major energy infrastructure projects. The [Secretary of State] will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is outweighed by other considerations. In view of the presumption against inappropriate development, the [Secretary of State] will attach substantial weight to the harm to the Green Belt when considering any application for such development while taking account, in relation to renewable and linear infrastructure, of the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of Green Belt designation."

1.3.5 Should the ExA and the Secretary of State consider that the London Plan, and draft London Plan, are both important and relevant matters, then it follows that so is the National Planning Policy Framework ("**NPPF**", February 2019).

1.3.6 Paragraph 143 of the NPPF states that "*Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*" In terms of the definition of "*inappropriate development*", paragraph 145 states that planning authorities should regard "*the construction of new buildings as inappropriate in the Green Belt*", except those buildings listed in paragraph 145. Paragraph 146 states that "*other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land with it.*" Paragraph 146 then gives lists "*other forms of development*", of which "*engineering operations*" is one.

1.4 Application of policy context to the Proposed Development

1.4.1 As stated in paragraph 1.3.2 of this note, the starting point for the ExA and the Secretary of State is that there is no policy protection in the Energy NPSs for MOL. However, in acknowledgement of the policy position in the London Plan and the draft London Plan, this section considers the policy protection of paragraph 5.10.17 (in EN-1) relating to Green Belt and applies it to the MOL, should it be considered relevant by the ExA and the Secretary of State.

1.4.2 The first important point is that paragraph 5.10.17 applies to development "*located in the Green Belt*". Therefore, paragraph 5.10.17 only applies to that part of the Proposed Development that falls within the plots identified in Table 1.1. We set out in Table 1.2 below a list of those plots and the part of the authorised development that would be located on those plots:

Table 1.2: Summary of description of works and type of development

Plot(s)	Work Number(s)	Description of works	Type of development	Appropriate Development
02/34, 02/50	7	Installation of underground pipes and cables	Engineering operation	Yes
	9	Installation of underground electrical connection	Engineering operation	Yes
02/35	5	Supporting engineering infrastructure to the NSIP (given the location of the plot, any works on this plot would not involve buildings).	Engineering operation	Yes

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Plot(s)	Work Number(s)	Description of works	Type of development	Appropriate Development
	6	Supporting infrastructure such as pipework, cables, telecommunications, services, drainage, accesses.	Engineering operation	Yes
02/43, 02/44, 02/48, 02/49, 02/51	7	Installation of underground pipes and cables	Engineering operation	Yes
	8(a), (b), (d) and (e)	Temporary construction compound – hard standing, parking, accesses, fabrication area only	Engineering operation	Yes
02/52, 03/05	8(a), (b), (d) and (e)	Temporary construction compound – hard standing, parking, accesses, fabrication areas only	Engineering operation	Yes
03/06	8(a), (b), (d) and (e)	Temporary construction compound – hard standing, parking, accesses, fabrication areas only	Engineering operation	Yes
	9	Installation of underground electrical connection with an above ground cable trough structure	Engineering operation	Yes
03/04,03/10	9	Installation of underground	Engineering	Yes

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Plot(s)	Work Number(s)	Description of works	Type of development	Appropriate Development
		electrical connection with an above ground cable trough structure	operation	

1.4.3 The second important point is that, pursuant to the definition in paragraph 145 of the NPPF, "*inappropriate development*" in the Green Belt constitutes "*new buildings*" unless one of the exceptions applies. As can be seen in the table above, no "new buildings", indeed no buildings, are proposed in the plots that are located in the MOL. Therefore, paragraph 145 of the NPPF does not apply.

1.4.4 Paragraph 146 of the NPPF identifies other forms of development that would be "*not inappropriate*" in the Green Belt provided that they "*preserve the openness and do not conflict with the purposes of including land within it.*" Paragraph 146 then cites the forms of development that would meet this criterion. The form of development in paragraph 146 that applies in this case is "*engineering operation.*"

1.4.5 As the table above makes clear, all of the works proposed in the MOL can be summarised as follows:

1.4.6 **installation of underground cables** – the underground cable would progress from the main REP site down or alongside Norman road. Given the MOL includes the grass and shrubbery that abuts Norman Road both at the top and also at the bottom (plots 02/34, 02/35, 02/50, 03/04, 03/06 and 03/10), the underground connection could be located within the MOL, but underground. The Applicant submits that these works are "engineering operations" in accordance with Fayrewood Fish Farms Ltd v Secretary of State for the Environment [1984] J.P.L. 267, on the basis that they are of a type usually undertaken by, or calling for the skills of, an engineer. In addition, once the works are complete, they are underground and thus would "*preserve the openness*" of the MOL and would "*not conflict with the purposes of including land within*" the MOL.

1.4.7 **above ground electrical cable trough structure** - a cable trough structure is likely required at the southern end of Norman Road, at the junction with Picardy Manorway (plots 03/04, 03/06 and 03/10). This is to enable the cables to cross the existing waterway. The structure would either be supported off the existing structure, or on its own independent foundations. The structure would allow a clear span of the existing watercourse and would be set at a height similar to that of the existing bridge. This structure "carries" the electrical cable and as such is part of the electrical connection, being an

engineering operation that would usually be undertaken by, or require the skills of, an engineer. In addition, given the presence of an existing bridge structure which the cable trough would lie adjacent to, the cable trough would "*preserve the openness*" of the MOL and would "*not conflict with the purposes of including land within*" the MOL.

- 1.4.8 **installation of underground pipework** – the underground pipework extends from the main REP site to the land that has the benefit of planning permission for data centres. This pipework is to enable heat or a private wire connection to be provided from REP to the future data centres. This route covers plots 02/34, 02/35, 02/43, 02/44, 02/48, 02/49, 02/50 and 02/51. The Applicant submits that these works are "engineering operations" in accordance with Fayrewood Fish Farms Ltd v Secretary of State for the Environment [1984] J.P.L. 267, on the basis that they are of a type usually undertaken by, or calling for the skills of, an engineer. In addition, once the works are complete, they are underground and thus would "*preserve the openness*" of the MOL and would "*not conflict with the purposes of including land within*" the MOL.
- 1.4.9 **installation of access roadway** – part of the MOL clips plot 02/35, which is land owned by the Cory group and which would be required for the access way into REP. It is established in section 336 of the Town and Country Planning Act 1990 that the formation or laying out of means of access to a highway is an "engineering operation." In addition, once the works are complete, the accessway, being effectively hardstanding, would "*preserve the openness*" of the MOL and would "*not conflict with the purposes of including land within*" the MOL.
- 1.4.10 **temporary construction compound** – the MOL clips the edge of the plots where the main temporary construction compound is to be located, being plots 02/43, 02/44, 02/48, 02/49, 02/51 and 02/52. However, given the location of the MOL on these plots, there would be no buildings, or indeed any buildings, as confirmed in Table 1.2 above. Accordingly, the works would involve simply hard standing which is used for parking, and assembly/fabrication areas, all of which would be classed as "engineering operations"¹, that would "*preserve the openness*" of the MOL and would "*not conflict with the purposes of including land within*" the MOL. The MOL also clips plots 03/05 and 03/06, which is the southern section of the main temporary construction compound. Accordingly, as confirmed in Table 1.2, above, the land would simply be used for hardstanding, parking and construction laydown (note that part of the land is already covered in hardstanding), preserving the openness of the MOL.
- 1.4.11 All of the above works are classed as "Associated Development" to the NSIP (i.e. the generating station elements of REP). Accordingly, only Associated Development is located in the MOL, and none of these works are "inappropriate development", which means that, pursuant to paragraph 143 of

¹ Roman Catholic Diocese of Southwark and Regalpoint Homes (WW) Ltd v Bromley LBC [2016] P.A.D. 31

the NPPF, they are not, by definition, "harmful" to the MOL. Accordingly, paragraph 5.10.17 of EN-1 does not apply to these works, given the paragraph only applies to "inappropriate development" in the Green Belt.

1.4.12 It follows, therefore, that policy 7.17 of the London Plan does not apply and policy G3 of the draft London Plan does not apply as the Proposed Development would not "harm" the MOL given no part of the Proposed Development is "inappropriate development" for the reasons set out above.

1.4.13 This conclusion is also out in the Planning Statement (**7.1, APP-102**), which at paragraphs 5.15.8 to 5.15.11 includes an assessment of the impact of the Proposed Development on the openness of the MOL. The Planning Statement concludes at paragraph 5.15.11:

"The Proposed Development is not expected to have an adverse impact on the openness of MOL as the only development proposed within areas of MOL will be engineering operations.... NPPF paragraph 146 (Chapter 13) classifies such engineering operations as not being inappropriate in the Green Belt provided they preserve its openness. As such, in accordance with NPS EN-1 paragraph 5.10.10, NPPF paragraph 143 (Chapter 13) and Saved UDP Policy ENV15 the Proposed Development is not inappropriate development and is not expected to be harmful to MOL."

1.5 Indirect impacts on the MOL

1.5.1 Having established that no part of the Proposed Development is "inappropriate development", the Proposed Development is therefore in compliance with the policy protection for MOL in the London Plan and the policy protection for Green Belt in the NPS EN-1.

1.5.2 The question of indirect impacts on the MOL, has been considered in the context of the Crossness LNR in the Townscape and Visual Impact Assessment ("**TVIA**") as a townscape receptor. Whilst MOL is not a landscape and visual designation, the TVIA assessed the impact of the Proposed Development on the openness of the Crossness LNR, and thus the MOL. The potential residual effect on townscape is reported as moderate adverse (see response to the ExA's first written question 4.0.1 (**8.02.04, REP2-055**)). The TVIA also assessed effects on people's views, and concluded that the effect on people's views from public rights of way in the Crossness LNR would be moderate adverse, noting that whilst the gap between the existing Riverside Resource Recovery Facility and the Thames Water Sewage Treatment works would lessen, a gap would still remain.

1.5.3 In respect of visitor experience to the MOL within Crossness LNR, it is likely that any visitors would be focussed on undertaking ecologically related activities within the nature reserve itself rather than on the views of surrounding built development. Whilst there would be some reduction of openness when looking northwards, due to new built form, openness is

maintained and the Crossness LNR would not be enclosed, this includes taking into consideration the consented and built Data Centre, which is located to the east of Crossness LNR. The Crossness LNR is a nature reserve and green space set within an existing active urban area and existing views out from the LNR to the east already look to existing industrial buildings and structures. The LNR clearly provides 'green relief' from the existing surrounding urban context and the associated noise and activity of this area. The Proposed Development, if consented, would not alter that 'green relief' function and it is considered unlikely that there would be a loss of educational opportunities or that residents and visitors would be unable to benefit from the educational opportunities afforded by the species and habitats present there.

- 1.5.4 The relevant policy tests in respect of indirect impacts on the MOL, given this relates to impacts of development outside the MOL, are in Chapter 5 of NPS EN-1 (Landscape and Visual). Paragraph 5.9.8 of EN-1 recognises that "*[v]irtually all nationally significant energy infrastructure projects will have effects on the landscape.*" As the Proposed Development is not located in, or close to, a nationally designated landscape, the relevant landscape policies are in paragraphs 5.9.14 to 5.9.17. Paragraph 5.9.17 is particularly important, which directs the Secretary of State to consider "*whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including reasonable mitigation.*"
- 1.5.5 Careful design has been integral to the Applicant's development of REP, with the orientation of the Main REP Building cited as being part of embedded mitigation at Paragraph 9.8.2 of the Environmental Statement (ES) (**6.1, REP2-021**). In addition, options for the orientation and design of REP were considered during the design process and are set out at Section 5 and at Section 6 of the **Design and Access Statement (DAS) (7.3, APP-104)**, and also outlined in Section 5.3 of Chapter 5 of the ES (**6.1, REP2-015**). The selected orientation, with the footprint of the Main REP Building on a north-south axis, was chosen, via an options appraisal exercise, and provides a balance between permeability of views to and from the River Thames as well as in relation to other factors such as access for traffic and seeking to minimise the potential for operational traffic congestion within the site.
- 1.5.6 The proposed orientation, and stepped building arrangement, takes into account the relationship with the Crossness LNR. When compared with the other possible design solutions, (as shown in as shown in Section 5 and Section 6 of the Design and Access Statement (**7.3, APP-104**), the stepped roof design provides a reduced height and mass of the Main REP Building as well as a reduced width of built form which could be seen; and therefore allows visual permeability in views from the Belvedere area, located to the south of the Proposed Development, and from Crossness LNR shown in viewpoints (VP) 2,3,4,8 and 9 in Appendix E2 Photo Viewpoints of the ES (**6.3, APP-074**).

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- 1.5.7 It is noted that the London Borough of Bexley states at paragraph 11.9 of its Local Impact Report (**REP2-082**) that "*it is anticipated that a high quality of design can be achieved...*"
- 1.5.8 Accordingly, the Secretary of State can conclude that the requirement for careful design in paragraph 5.9.17 of EN-1 has been met.
- 1.5.9 In terms of visual effects, the maximum impact is reported as moderate adverse, which is unsurprising given the nature of the development and which is recognised as a natural consequence of energy projects in NPS EN-1, section 5. However, these moderate effects must be considered in the context of the REP site, which is designated as Strategic Industrial Land, is predominantly a brownfield site, has the use of purpose built jetty infrastructure and the River Thames network, the co-location with the adjacent Riverside Resource Recovery Facility means that the building footprint can be reduced, is within an industrial setting, and has good road and opportunity to secure an electrical connections. On top of these locational benefits, the Proposed Development will generate electricity, of which there is an urgent need (particularly for that part that is renewable), as well as provide waste capacity helping divert waste higher up the waste hierarchy away from landfill. The benefits of the Proposed Development clearly outweigh the moderate visual effects.

1.6 Conclusion

- 1.6.1 As stated in paragraph 1.3.2, the starting point for the ExA and the Secretary of State is that there is no policy protection in the Energy NPSs for MOL. However, in acknowledgement of the policy position in the London Plan and the draft London Plan, this note considers the policy protection of paragraph 5.10.17 relating to Green Belt and applies it to the MOL, should it be considered relevant by the ExA and the Secretary of State.
- 1.6.2 No part of the Proposed Development is located in the Thames Water owned Crossness LNR and no part of the NSIP element of the Proposed Development is located in MOL.
- 1.6.3 Only works that are classed as Associated Development are to be located in MOL. Out of these works, all are "engineering operations" and either permanent but located underground or temporary in nature to support the permanent underground engineering operations. All would preserve the openness of the MOL and as such are *not* "inappropriate development", which means that, pursuant to paragraph 143 of the NPPF, they are not, by definition, "harmful" to the MOL. Accordingly, paragraph 5.10.17 of EN-1 does not apply to these works, given the paragraph only applies to "inappropriate development" in the Green Belt. It follows, therefore, that policy 7.17 of the London Plan does not apply and policy G3 of the draft London Plan does not apply as the Proposed Development would not "harm" the MOL given no part of the Proposed Development is "inappropriate development" for the reasons set out above.

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- 1.6.4 In terms of indirect effects on the MOL, careful design has been integral to the Applicant's development of REP, having regard to the Crossness LNR, which is within the MOL. The proposed orientation, and stepped building arrangement, takes into account the relationship with the Crossness LNR and allows visual permeability in views from the Belvedere area, located to the south of the Proposed Development, and from Crossness LNR. The Secretary of State can therefore conclude that the requirement for careful design in paragraph 5.9.17 of EN-1 has been met.
- 1.6.5 In terms of visual effects the maximum impact is reported as moderate adverse. Given the planning designation of the REP site as Strategic Industrial Land, as well as the locational benefits of the REP site and the urgent need for electricity (particularly for that part that is renewable), the benefits of the Proposed Development clearly outweigh the moderate visual effects.

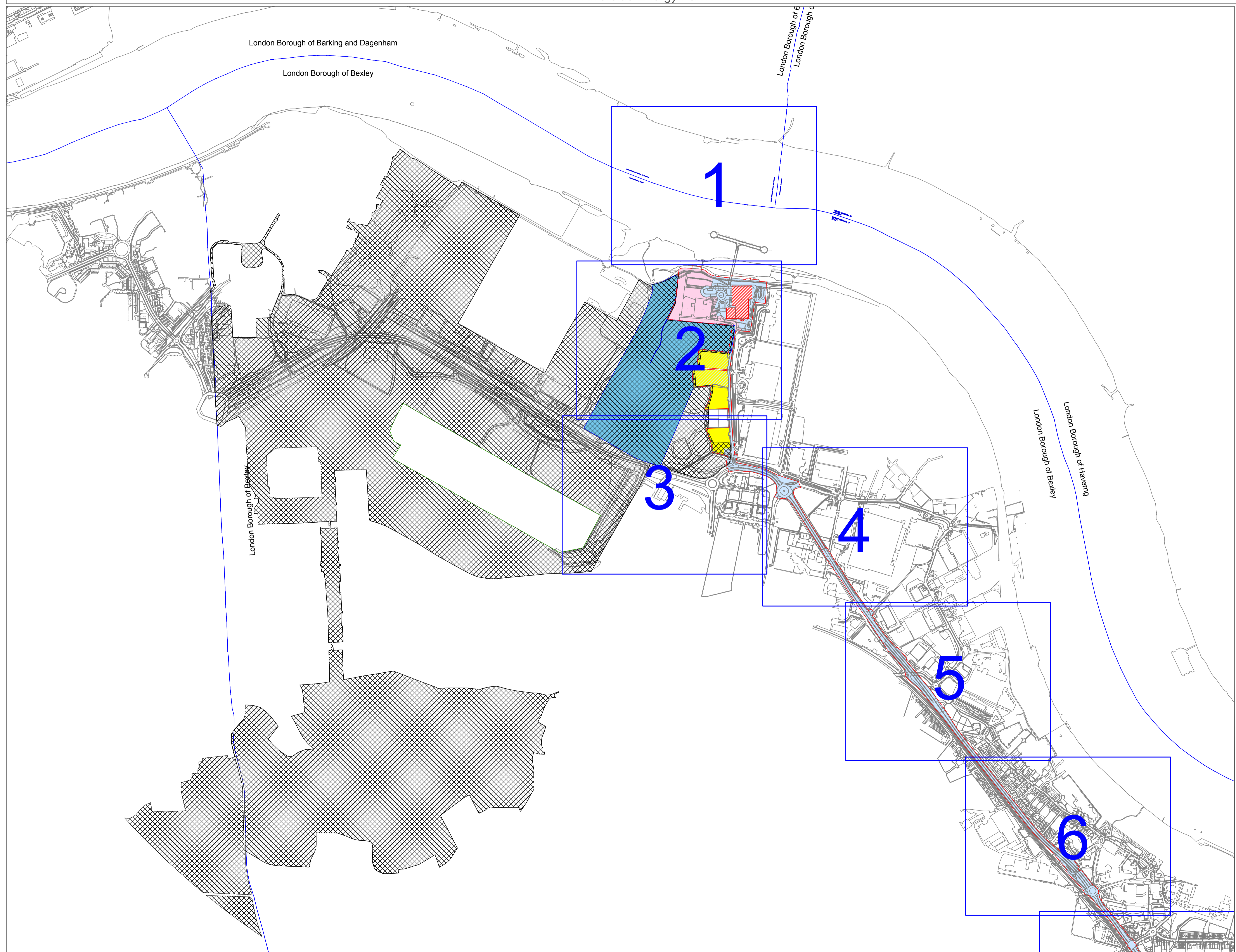
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Appendix A Plan showing extent of MOL in Thamesmead

Key:

- Order limits - the area within which the authorised development may be carried out.
- Metropolitan Open Land
- Crossness Nature Reserve



Title:
Appendix A Plan Showing
Extent of MOL in Thamesmead

Scale:
1:7500 @ A1

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Appendix B Plan showing the MOL in the context of both the Crossness LNR and the Order limits

Key:

- Order limits - the area within which the authorised development may be carried out.
- Order land - freehold and leasehold to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights.
- Order land - new rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights.
- Order land - temporary use of land in relation to which it is proposed to suspend easements, servitudes and other private rights.
- Area not included in Development Consent Order.
- Order land: new rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights as well as the temporary use of land in relation to which it is proposed to suspend easements, servitudes and other private rights.
- Metropolitan Open Land
- Crossness Nature Reserve

Interest to be acquired	Relevant Plots
Freehold and leasehold to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights.	02/02, 02/04, 02/05, 02/06, 02/07, 02/08, 02/09, 02/11, 02/12, 02/16, 02/17, 02/20, 02/21, 02/22, 02/23, 02/24, 02/26, 02/27, 02/28, 02/29, 02/30, 02/35, 02/36, 02/37, 02/56
New rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights.	02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/16, 02/19, 02/25, 02/31, 02/32, 02/33, 02/34, 02/38, 02/45, 02/46, 02/50, 02/51, 02/54, 02/57
Temporary use of land in relation to which it is proposed to suspend easements, servitudes and other private rights.	02/52
New rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights as well as the temporary use of land in relation to which it is proposed to suspend easements, servitudes and other private rights.	02/43, 02/44, 02/47, 02/48, 02/49

Title: Metropolitan Open Land Plan

Scale: 1:2500 @ A1

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