

# Riverside Energy Park

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## Applicant's response to Countryside Properties (UK) Ltd and L&Q New Homes Ltd Deadline 5 Submission

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# 1 Applicant's response to Countryside Properties (UK) Ltd and L&Q New Homes Ltd Deadline 5 Submission

## 1.1 Introduction

1.1.1 This document provides a response to the documentation submitted by BDB Pitmans LLP on behalf of Countryside Properties (UK) Limited and L&Q New Homes Limited ('the Respondents') at Deadline 5 (see **REP5-035**). Neither of the Respondents are an "Interested Party" pursuant to the Planning Act 2008, and therefore the response was accepted at the discretion of the Examining Authority. The response comments on:

- Consultation;
- Need for the Proposed Development;
- Criticism as to how the Applicant has responded to the GLA's submissions;
- Air quality and Health Impacts;
- Visual Impacts; and
- Impact on market value of Countryside Properties (UK) Limited and L&Q New Homes Limited's developments.

## 1.2 Consultation

1.2.1 The Applicant has carried out a thorough and detailed pre-application consultation with a range of stakeholders under section 42, 47 and 48 of the Planning Act 2008, as described in the **Consultation Report (5.1, APP-019)**. This is evidenced by the application acceptance process as well as the non-statutory and statutory consultation exercise which the Proposed Development has passed through.

1.2.2 The Applicant notes the Respondents' comment that "*there were no consultation events or document deposit locations to the north of the River Thames*". However, the consultation zone was identified such that it was proportionate to the Proposed Development and to the potential impacts arising from the construction and operation of REP. The Applicant's proposed consultation zone was included in the Statement of Community Consultation (SoCC) which was sent to the local authorities pursuant to section 47 of the Planning Act 2008, including to the London Borough of Barking and Dagenham (LBBD) and London Borough of Havering (LBH) (see **Section 7.3** of the **Consultation Report (5.1, APP-019)**), both located north of the River Thames. Each local authority was given the opportunity to comment on the

Applicant's consultation approach and the consultation zone, including the location of proposed consultation venues. The Applicant received no comments from LBBB or LBH.

- 1.2.3 In addition to this, as shown in **Figures 7.4 to 7.9** of the **Environmental Statement (ES) (6.2, APP-056)** and the updated **Figure 7.5 (6.2, REP3-008)**, the air quality modelling results indicate no significant effects arising from emissions north of the River Thames. This is the reason why the Applicant focused the consultation predominately south of the river.
- 1.2.4 The Respondents also states that "*they were only made aware of the Project when it was brought to their attention on 26 July 2019 when a local news article was shared*". The Applicant can confirm that as required by section 48 of the Planning Act 2008 and Regulation 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the APFP Regulations), a notice publicising the proposed application was published between 13 June 2018 and 27 June 2018, once in the London Gazette, once in a national newspaper (The Guardian) and for two successive weeks in a local newspaper (Bexley News Shopper). The Applicant also published a notice publicising the accepted application between 19 December 2018 and 26 December 2018, once in the London Gazette, once in a national newspaper (The Guardian) and for two successive weeks in a local newspaper (Bexley News Shopper), as required by Regulation 9(1) of the APFP Regulations.
- 1.2.5 Furthermore, as part of the acceptance process for the DCO application, section 55(4) of the Planning Act 2008 requires the Secretary of State to have regard to any Adequacy of Consultation representation received for a local authority consultee. No concerns regarding the adequacy of consultation were raised by 'Be First' on behalf of the LBBB (see **AoC-012**). To note, LBH did not make a representation regarding the Applicant's adequacy of consultation.
- 1.2.6 Accordingly, the Applicant complied with all of its duties in respect of consultation. The Respondents are large organisations and therefore their failure in noticing national notices is not something that an applicant can provide for, or indeed be blamed for. Given the lateness of the Respondents' submission, the Applicant reserves its position in respect of any additional costs it may be subjected to as a result of any issues that the Respondents raise at this stage of the Examination.

### **1.3 Need for the Proposed Development**

- 1.3.1 The Applicant set out its position in respect of "need" in its **London Waste Strategy Assessment (LWSA)** of the **Project and its Benefits Report (Annex A of 7.2, APP-103)** and has supplemented this at Deadline 4 within the **Applicant's Response to Greater London Authority Deadline 3 submission (8.02.35, RE4-014)**. Within this assessment, the Applicant has assumed that London's recycling and waste reduction targets are achieved. The Applicant's assessment consistently demonstrates that, even when the

waste reduction and recycling priorities set out in the draft London Plan are achieved in full, the remaining level of need for residual waste treatment capacity is c.900 000 tpa in London. This is before any consideration is given to the South East. In all of the Applicant's evidenced scenarios, there is a need for REP. The Applicant has demonstrated within the **ES (6.1)** that there are no significant adverse effects identified, with the exception on visual impact, which is discussed in **Section 1.6** below.

#### **1.4 Criticism as to how the Applicant has responded to the GLA's submissions**

- 1.4.1 Since the start of the project and throughout Examination, the Applicant has been in discussions with GLA regarding REP. A summary of this consultation is provided in **Summary of Consultation and Update on the Statement of Common Ground between the Applicant and the GLA (8.02.62)**. The Applicant has responded in detail to all responses submitted by the GLA, the most recent being **The Applicant's Response to GLA Deadline 5 & 6 Submission (8.02.67)**.

#### **1.5 Air Quality and Health Impacts**

##### **Air Quality**

- 1.5.1 The Respondents' comments in respect of air quality effects are addressed in the **Applicant's response to Air Quality Matters (8.02.69)** submitted at Deadline 7.

- 1.5.2 It is noted that Be First (on behalf of LBBD) wrote in their Relevant Representation that:

*"I confirm that LBBD has no objections to the proposed development having considered its potential impact on its residents in respect of the following matters:*

*... The Council's Environmental Health Officer was consulted on the application. He concludes that the Borough air quality impacts associated with the operation of the proposed waste to energy facility will be negligible; this includes residents of the yet to be constructed Beam Park development (Receptor R15) who will be the most exposed LBBD residents to emissions from the facility. Consequently, there are no objections on this ground."*

- 1.5.3 Furthermore, in the **Statement of Common Ground with London Borough of Barking and Dagenham (8.01.08, REP3-017)** it is stated that:

*“Chapter 7 Air Quality of the ES (PINS Reference APP-044) sets out the assessment on air quality. As per LBBB’s RR, it is considered that the air quality assessment, including the assessment methodology, assessment of effects and proposed mitigation, is considered appropriate and that the air quality impacts associated with the operation of the proposed waste to energy facility will be negligible on LBBB.*

*LBBB’s acceptance of the air quality impact is subject to the DCO securing the mitigation measures set out in the Code of Construction Practice and the Environmental Permit securing the emissions limits.”*

### Health Impacts

- 1.5.4 The Respondents refer to paragraphs 5.6-5.11 of the GLA’s response at Deadline 4 (REP4-024) to which the Applicant responded as follows in the **Applicant’s Response to the GLA Deadline 4 Submissions (8.02.46, REP5-017)**:

“Paragraphs 5.6 to 5.11 of the GLA’s **Deadline 4 Final Report (REP4-024)** have focussed on the scientific papers prepared by the Small Area Health Statistics Unit (SAHSU) and commissioned by Public Health England, as described in **Section 2.2 of the Post Hearing Note on Public Health and Evidence (8.02.27, REP3-033)**, submitted at Deadline 3. The GLA’s comments are misleading.

In Paragraph 5.7 of its submission (**REP4-024**), the GLA notes that the paper by Ghosh *et al* focussed on a range of specific impacts but did not consider wider health effects. The scientific paper was never intended to consider wider health effects, as the purpose of the paper was specifically stated as follows: “*The aim of this study was to investigate at the national scale possible health effects associated with (i) MWI emissions of particulate matter  $\leq 10 \mu\text{m}$  in diameter (PM10) as a proxy for MWI emissions more generally, and (ii) living near a MWI, in relation to fetal growth, stillbirth, infant mortality and other birth outcomes.*” It is unclear why the GLA considers that a scientific paper with this aim should consider wider health effects.

The GLA refers to “*the well-evidenced life-long risks of elevated exposure to NO<sub>2</sub> or indeed any other long term health impacts associated with any of the pollutants emitted from the REP.*” The GLA has presented no evidence to support the implication that REP would have adverse health effects. In making this reference, the GLA appears to have ignored:

- a. Public Health England’s well known statement RCE-13 “*The Impact on Health of Emissions to Air from Municipal Waste Incinerators*”, quoted in **Post Hearing Note on Public Health and Evidence (8.02.27, REP3-033)**;

- b. The detailed air quality assessment submitted with the application, **Chapter 7 Air Quality** of the **ES (6.1, REP2-019)**;
- c. The detailed health impact assessment submitted with the application, **Appendix K.1 Health Impact Assessment** of the **ES (6.3, APP-094)**; and
- d. **Appendix C.3 Human Health Risk Assessment (HHRA)** of the **ES (6.3, REP2-040)**.

In paragraph 5.8 of its submission, the GLA takes the paper by Freni-Sterrantino *et al*, which was a detailed quasi-experimental time series study of the effect of the opening of new ERFs on infant mortality rates, but decides that the most important point from this paper is that it shows that ERFs release a small amount of PM2.5. We are not sure why the GLA has chosen to ignore the actual conclusion of the paper – “*we did not find an association between the opening of a new MWI and changes in infant mortality trends or sex ratio at birth for 10 and 4 km buffers, using distance as proxy of exposure, after taking into account temporal trends in comparator areas and potential confounding factors*” – given that this research was specifically carried out to investigate this point.

Further, the GLA asserts that any increase in PM2.5 emissions may be unacceptable. The Applicant notes that any development which leads to traffic (i.e. essentially any development) would lead to an increase in PM2.5 emissions and that the GLA's position would appear to oppose any development in London at all. The impact of emissions of PM2.5 is considered in **Paragraph 7.9.23 of Chapter 7 Air Quality** of the **ES (6.1, REP2-019)** and is found to be negligible.

In paragraph 5.9 of its submission, the GLA criticises the Applicant for failing to mention the more recent paper from the same research group (see Appendix 5 of the GLA Deadline 4 Submission Documents (**REP4-029**)). Before commenting on the paper, the Applicant notes two areas where the GLA has been misleading.

- a. The GLA's reference to the paper is incorrect. The GLA has implied that the authors are Freni-Sterrantino and Ghosh whereas the lead author is Parkes and Freni-Sterrantino is not named as an author. The correct reference to the paper is Parkes *et al*<sup>1</sup>.
- b. The paper was published at 00:01 on Friday 21 June 2019. Deadline 3 was 18 June 2019. **Post Hearing Note on Public Health and Evidence (8.02.27, REP3-033)** was submitted at Deadline 3. We are unsure why the GLA expected the Applicant to include a reference to a paper which was published after the deadline and so consider that this is an unjustified and misleading slight on the Applicant.

<sup>1</sup> Parkes B, Hansell A.L., Ghosh R.E, Douglas P., Fecht D., Wellesley D., Kurinczuk J.J., Rankin J., de Hoogh K., Fuller G.W, Elliot P., and Toledano M.B. "Risk of congenital anomalies near municipal waste incinerators in England and Scotland: Retrospective population-based cohort study". Environment International (Parkes *et al*).



The GLA's characterisation of the paper's conclusions is also misleading. The objective of the paper was as follows: *"To conduct a national investigation into the risk of congenital anomalies in babies born to mothers living within 10 km of an MWI associated with: i) modelled concentrations of PM10 as a proxy for MWI emissions more generally and; ii) proximity of residential postcode to nearest MWI, in areas in England and Scotland that are covered by a congenital anomaly register."* Under objective (i), which related congenital anomalies to modelled concentrations and so would be considered the more representative approach, the study found no association, as the GLA reports. Under objective (ii), there was a small excess risk, but the paper's authors note that this may be due to residual confounding.

The researchers issued a statement<sup>8</sup> on the Imperial College website which takes account of the full body of work, not just this latest paper. This is included as **Appendix A** of this document [*Note: Appendix A is available in the **Applicant's Response to the GLA Deadline 4 Submissions** (8.02.46, REP5-017) and is not repeated in this submission*]. The Applicant notes the following extracts.

- a. *"Professor Anna Hansell, Director of the Centre for Environmental Health and Sustainability at the University of Leicester, who previously led the work while at Imperial College London, added: "Taken together, this large body of work reinforces the current advice from Public Health England – that while it's not possible to rule out all impacts on public health, modern and well-regulated incinerators are likely to have a very small, or even undetectable, impact on people living nearby."*
- b. *"Professor Mireille Toledano, Chair in Perinatal and Paediatric Environmental Epidemiology at Imperial, said: "In these studies we found a small increase in risk for children living within 10 km of an MWI being born with a heart defect, or a genital anomaly affecting boys, but did not find an association with the very low levels of particulates emitted. This increase with proximity to an incinerator may not be related directly to emissions from the MWIs. It is important to consider other potential factors such as the increased pollution from industrial traffic in the areas around MWIs or the specific population mix that lives in those areas."*

Given these statements, the Applicant does not agree that the latest paper undermines Public Health England's advice.

In paragraphs 5.10 and 5.11 of its **Deadline 4 Final Report (REP4-024)**, the GLA attempts to undermine the significance of the work carried out by the Small Area Health Statistics Unit (SAHSU) by noting that it only considered adverse reproductive and infant health outcomes. The work was originally commissioned by Public Health England in response to comments by opponents of ERFs about adverse reproductive and infant health outcomes. Public Health England did not consider that further research into other health impacts was necessary because the evidence is already clear. As mentioned previously, the air quality and health impacts of REP have been considered comprehensively in other documents."



## 1.6 Visual Impacts

- 1.6.1 The REP Townscape and Visual Impact Assessment (TVIA), as presented in **Chapter 9 TVIA (6.1, REP2-022)** of the ES, considered committed development within the London Riverside Opportunity Area in the Cumulative Assessment. However, the Opportunity Area is not considered a visual receptor in its own right and a TVIA does not typically assess private views.
- 1.6.2 The viewpoints used for the REP TVIA were agreed with relevant local authorities, including those located north of the River Thames.
- 1.6.3 Whilst the overall height of the 'Rochdale Envelope' parameters may be taller for REP than the existing RRRF, the REP development is subject to a set of **Design Principles (7.4, APP-105)**, secured through **Requirement 2(2) of the draft Development Consent Order (3.1, REP5-003)**. These principles place a significant focus on reducing the scale and massing of the final development, including the use of a stepped main building design which achieves the lowest height of the options that were considered and consulted upon at the pre-application phase.
- 1.6.4 It is noted that Be First (on behalf of LBBB) wrote in their Relevant Representation that:
- 1.6.5 *"I confirm that LBBB has no objections to the proposed development having considered its potential impact on its residents in respect of the following matters:*
- ...The proposed building would be significantly larger and taller in comparison with the existing facility to be retained. It would be clearly visible in views from Barking Riverside and Dagenham Dock on the other side of the Thames. It is considered that an industrial building fronting the River Thames is appropriate to its character, and that the development would not cause harm to the landscape or visual amenity."*
- 1.6.6 Furthermore, in the **Statement of Common Ground with London Borough of Barking and Dagenham (8.01.08, REP3-017)** it is stated that:
- "Chapter 9 Townscape and Visual Impact Assessment of the ES (PINS Reference APP-046) sets out the assessment of Townscape and Visual Impacts. As per LBBB's RR, it is considered that the TVIA, including the assessment methodology, assessment of effects and proposed mitigation, is considered appropriate and that and that the development would not cause harm to the landscape or visual amenity."*
- ## 1.7 Impact on market value of Countryside Properties (UK) Limited and L&Q New Homes Limited's developments.
- 1.7.1 Given the above, there is no justifiable or reasoned basis to claim any form of negative impact from the Proposed Development, an NSIP, on the

Respondents' own development proposals (a development under the Town and Country Planning Act 1990). Furthermore, from a TVIA perspective, private views (to which no-one has a right) do not form part of a visual impact assessment methodology.

## **1.8 Case Law**

- 1.8.1 The cited case of *Newport County Borough Council v Secretary of State for Wales* [1998] Env LR, was concerned with an award of costs application in respect of a refusal of a planning permission. In that case, it was an accepted proposition that public perception of risk, even where unsubstantiated, is a valid consideration to take into account when determining whether or not to grant a planning permission (the case was, of course, before the Planning Act 2008 came into force and so is concerned with planning permissions not development consent orders).
- 1.8.2 The Court held that perceived fears, even though they were not soundly based upon scientific evidence or logical fact, were a relevant planning consideration. However, it is up to the decision maker to determine the weight to be attached in its balancing exercise of all planning considerations.
- 1.8.3 The Respondents, who are not members of the public but large commercial companies, appear to be stretching the interpretation of this case to assert they somehow have a perceived fear of how the Proposed Development could impact on their own development proposals. The Applicant strongly disputes this interpretation which is without foundation especially given the Respondents have not participated in the Examination process where the impacts and benefits of the Proposed Development have been thoroughly tested.