
Thames Water Utilities Limited

Riverside Energy Park Examination – EN010093

Submission of Comments on behalf of Interested Party Thames Water Utilities Limited

**Submitted at Deadline 7
3 September 2019**

1. **BACKGROUND**

1.1 This submission comprises comments of Thames Water Utilities Limited (TWUL) pursuant to Deadline 7 in accordance with the timetable at Annex A of **the Examining Authority's Rule 8(3)** letter dated 8 August 2019.

1.2 Comments are submitted in respect of the following:

1.2.1 Comments on the draft DCO;

1.2.2 Comments on any additional information / submissions received by previous deadline;

1.2.3 Response to the Examining Authority's **Rule 13 letter dated 19 August 2019**.

2. **COMMENTS ON THE DRAFT DCO**

Schedule 2, Requirements

2.1 In its Deadline 4 submission [REP4-038 and REP4-039], TWUL suggested amendments to the Requirements of the dDCO to ensure that sufficient measures were secured to mitigate impacts on the Crossness Nature Reserve. Specifically, TWUL sought amendments to ensure that it was consulted on schemes and strategies prior to their submission to the relevant planning authority (as defined in article 2 of the dDCO).

2.2 **The Applicant's Response to comments on the Draft Development Consent Order** [8.02.54, REP5-025] submitted at Deadline 5, rejects the majority of amendments proposed by TWUL.

2.3 In the absence of voluntary consultation, TWUL requires the opportunity to consider what is being submitted to the relevant planning authority **in the Applicant's** purported discharge of the Requirements so that TWUL has sufficient time to provide its comments to the relevant planning authority.

2.4 TWUL has therefore updated its bespoke protective provisions. TWUL note that additional Requirements have been added to the dDCO submitted at Deadline 5 and includes, where relevant, these Requirements in its protective provisions. Specifically, TWUL has included a provision which provides that upon submission of any plan, scheme or strategy under Requirements 4, 5, 11, 13, 20 and 21 of the dDCO to the relevant planning authority, the undertaker must submit the same at the same time to TWUL.

2.5 In the circumstances, TWUL considers that it is entirely reasonable and proportionate to request such a provision, which in no way cuts across how the Applicant proposes to deal with the issues.

2.6 TWUL refers the Examining Authority to paragraphs 2.7 – 2.9 of this submission which provide an update on the protective provisions.

Schedule 10 Part 2, Protective Provisions

2.7 TWUL is still in discussion with the Applicant in respect of its required protective provisions.

2.8 TWUL is pleased to note that the majority of its required protective provisions have been agreed. There are a number of outstanding points which are to be agreed with the Applicant, although TWUL considers that the only point of substance is the addition of the provision referred to in paragraph 2.4 above.

2.9 The Examining Authority is referred to Annex A of this submission which contains a comparite of the latest protective provisions in circulation between TWUL and the Applicant and the protective provisions in the dDCO submitted by the Applicant at Deadline 5. The outstanding points are shown in track.

2.10 TWUL will continue to update the Examining Authority on progress in this regard.

3. **COMMENTS ON ANY ADDITIONAL INFORMATION / SUBMISSIONS RECEIVED BY PREVIOUS DEADLINE**

Update on Environment Bank Site Selection Progress

3.1 TWUL has been contacted by the Environment Bank as a landowner of several assets in the borough including the Crossness Nature Reserve and adjacent land (including Ridgeway, a Southern Outfall Sewer that is owned by Thames Water and runs into the Crossness Sewage Treatment Works and has a long footpath running through both the Greenwich and Bexley Boroughs) with potential for biodiversity offsetting.

3.2 Specifically, the Environment Bank has approached TWUL to discuss its interest in receiving monies for delivering net gain for biodiversity on the Crossness Nature Reserve and adjacent land.

3.3 TWUL has confirmed its interest in being an offset provider in principle to the Environment Bank. At this stage, TWUL understands that, the Crossness Nature Reserve and the Ridgeway site have been identified as part of a preliminary site search. A short-list process needs to be undertaken with the London Borough of Bexley to finalise the preferred sites that could deliver net gain proposals to meet the offset requirements.

3.4 **Therefore, whilst the offsetting proposal may seek to address some of TWUL's concerns** in relation to the impact on the Crossness Nature Reserve as raised in its previous submissions [REP2-092, REP3-049, REP3-050, REP4-038, REP4-039 and REP5-039] and this submission, there is no guarantee that either the Crossness Nature Reserve or the Ridgeway site will be accepted for off-setting purposes.

3.5 **In this regard, TWUL's position** in respect of the indirect impacts of the Project on the Crossness Nature Reserve and suggested measures which could be adopted to address these concerns remains the same and it is imperative that TWUL are provided with the opportunity to comment on the plan, scheme and strategies submitted to the relevant planning authority through the protective provisions, as mentioned above.

Applicant's Response to Thames Water Deadline 4 Submission (Document 8.02.50) ("the Applicant's Response to TWUL's Deadline 4 Submission")

3.6 The Examining Authority will recognise that a large part of the points commented on below **have been made in TWUL's previous submissions, most recently** Deadlines 4 [REP4-038 and REP4-039] and 5 [REP5-039]. Therefore, TWUL respectfully suggests that this submission is read in conjunction with its Deadline 4 [REP4-038 and REP4-039] and 5 [REP5-039] comments.

3.7 For the purposes of this submission, TWUL has set out its comments in the same format as **appears in the Applicant's Response Document.**

Crossness Access Road

3.8 TWUL previously expressed concerns about the potential impacts on the Crossness Access Road – see paragraph 2.11 of TWUL's Deadline 4 submission [REP4-039 and REP4-039]. **In the Applicant's Response to TWUL's Deadline 4 submission, TWUL is pleased to note that:**

3.8.1 the Crossness Access Road is not included in the Application Boundary, and that it will not be used for access from the public highway to the compound areas and that a separate access or accesses would be created from Norman Road;

3.8.2 the Crossness Access Road will not form the access route between the two Data Centres; and

3.8.3 the Applicant does not intend on closing the access or refusing access and that any disruption from construction of the Electrical Connection would be minimised **through the liaison measures set out in the Applicant's outline Construction Traffic Management Plan (CTMP) at Deadline 5.**

3.9 Therefore, subject to the amendments to its bespoke protective provisions being accepted by the Applicant and securing the opportunity to comment on the CTMP, TWUL is happy that its concerns in respect of the Crossness Access Road have been addressed.

Public Rights of Way FP2 and FP4

3.10 In its Deadline 4 submission [REP4-038 and REP4-039], TWUL raised concerns about the temporary closure of FP2 and FP4. TWUL is pleased to read that:

3.10.1 access to FP2 and FP4 will not be significantly affected during construction or operation; and

3.10.2 during any works in the vicinity of FP4, the continuity of FP4 will be maintained via a short diversion.

3.11 **In response to the Applicant's paragraphs 1.25 and 1.26 in its Response to TWUL's Deadline 4 submission, TWUL does not agree with the Applicant's conclusion that the provision of a visitor car park is unnecessary. Whilst TWUL accepts that the access arrangement is "currently satisfactory", it will not be satisfactory if the Project was to come forward. For the reasons stated in its Deadline 4 submission (see paragraphs 2.11.5 – 2.11.6), there will be an increase in traffic generated on Norman Road and around the Data Centre site during the construction and operation period. Two thirds of Norman Road has a cycle lane running alongside it which means that visitors attending the Reserve by car have to park at the top end by the existing Cory Riverside Recourse Recovery Facility. With the Project's construction traffic being in the same location, car parking on Norman Road – even if not directly limited by the construction phase – will impact on visitor accessibility to the Crossness Nature Reserve.**

3.12 TWUL requires the outline CTMP to include measures to provide sufficient parking facilities for visitors attending the Crossness Nature Reserve to address the increase of traffic generated by the Project and the Data Centres. Or, in the alternative, TWUL requires the amendment to Requirement 13(1) as follows:

"(i) measures to secure sufficient parking facilities for visitors attending the Crossness Nature Reserve"

Response to TWUL comments on additional information/submission

3.13 ***Environmental Impacts***

3.13.1 **In paragraph 1.3.4 of its Response to TWUL's Deadline 4 submission, the Applicant comments that the Project will not put TWUL in breach of its statutory duties. Specifically, that the Project will not conflict with TWUL's statutory duty under section 3 of the Water Industry Act 1991 (the "WIA 1991") to further the flora and fauna, and to have regard to the desirability of the public to have freedom of access to places of natural beauty and the Secretary of State's guidance under section 5 of the 1991 Act in the form of a Code of Practice on Conservation and Recreation (February 2000).**

3.13.2 The Applicant comments that the Project lies outside of section 3 of the WIA 1991 because the Project is being proposed by a third party and not TWUL. TWUL disagrees with this statement on the basis that section 3 of the WIA 1991 refers to proposals relating to the *functions* of a relevant undertaker. **In any event, TWUL's point is that it brought the Crossness Nature Reserve forward as part of its statutory duties under section 3 of the WIA 1991 and, due to indirect impacts on the Crossness Nature Reserve, the Project will put it in breach of these duties. For example:**

- 3.13.2.1 the Project and Data Centre buildings detract from the natural beauty of the marshland landscape;
- 3.13.2.2 NOx emissions will alter the adjacent vegetation structure;
- 3.13.2.3 buildings shade out the adjacent ditches and flora; and
- 3.13.2.4 three to five years of construction disturbance will remove breeding bird species.

3.14 *Visual Impacts*

- 3.14.1 In response to paragraphs 1.3.5 – 1.3.9 of the Applicant’s Response to TWUL’s Deadline 4 submission [REP4-038 and REP4-039], TWUL’s position remains the same regarding its preference for the curved roof design of the Project.
- 3.14.2 However, TWUL accepts the Applicant’s comment in paragraph 1.3.10 of the Applicant’s Response to TWUL’s Deadline 4 submission [REP4-038 and REP4-039] that it is willing to explore the potential use of green roofs or bio-solar roofs at the detailed design phase. Notwithstanding this, noting the fact that the same statement was made by the Applicant for the outline planning permission granted for the Data Centres and not followed through at detailed design stage – instead, small sedum roofs on the gatehouse and bike shed were proposed) – TWUL is concerned that the Applicant will not follow through with this commitment. This point **responds to the Applicant’s comment at paragraph 1.3.30** of its submission. **TWUL’s amendment to the protective provisions**, as mentioned in paragraph 2.4 of this submission, seeks to ensure that TWUL is given the opportunity to consider the biodiversity strategy proposed by the Applicant.
- 3.14.3 In response to paragraph 1.3.11, TWUL does not consider it necessary to provide **an assessment methodology to explain why it does not agree with the Applicant’s assessment that the “cumulative effects would result in a Slight Adverse townscape effect which has a Minor level of significance and is not Significant.”** A 65m high building (with a 90-113m stack) on the Northern boundary of the Crossness Nature Reserve in addition to two 26m high Data Centres on the East boundary of the Crossness Nature Reserve is more than “Slightly Adverse” and certainly more than a “Minor” level of significance on the open space and marshland around the Crossness Nature Reserve on the basis that they do result in a change in the key characteristics of townscape character due to their massing and scale and contribute towards the loss or alteration of the townscape character.

3.15 *Visitor Health and well-being*

Paragraphs 1.3.15 and 1.3.16

- 3.15.1 The Applicant does not accept that the Project would cause a detrimental effect on open space and any adverse relationship with visitor experience. Given this, the Applicant does not consider that there would be any significant effects on visitors and no compensation is considered appropriate in respect of the list provided by TWUL in paragraph 3.14 of its Deadline 4 submission [REP4-038 and REP4-039]. TWUL does not agree with **the Applicant’s assessment and** maintains that the scale and massing of the Project will have a detrimental impact on the visual amenity of visitors at the Crossness Nature Reserve and is not conducive to the peace and tranquillity that visitors have come to expect. Therefore, TWUL maintain its position that the detrimental impact on the visual amenity of visitors at the Crossness Nature Reserve would be offset by providing compensatory measures.
- 3.15.2 As mentioned in paragraph 3.15 of its Deadline 4 submission [REP4-038 and REP4-039], TWUL referred to a meeting held on 25 April 2019 with the Applicant

and the Friends of the Crossness Nature Reserve (another Interested Party). At this meeting the Applicant asked what socio-economic measures could be potentially offered at Crossness. In its Deadline 2 [REP2-092] submission TWUL suggested measures necessary to compensate against the loss of open space impacts of the Project on the visitor experience which should be considered by the Applicant further. TWUL repeated these suggestions in paragraph 3.14 of its Deadline 4 submission.

- 3.15.3 **In paragraph 1.3.16 of the Applicant's Response to TWUL's Deadline 4 submission, the Applicant comments that it does not consider TWUL's suggestions are required to mitigate the adverse effects of the development and is not willing to progress them at this time.**
- 3.15.4 TWUL are disappointed noting that the Applicant has previously asked for suggestions of socio-economic measures at the Crossness Nature Reserve and one of the compensation measures (the provision of a bird hide) was received positively by the Applicant.
- 3.15.5 This makes it more imperative that TWUL secure its bespoke protective provisions as mentioned in this submission so that it has the opportunity to state its position on measures to reduce the impacts and effects of the Project on the Crossness Nature Reserve later down the line.

3.16 *Other Impacts*

Paragraph 1.3.17

- 3.16.1 **It is TWUL's position** that due to the change in location of the Main Temporary Construction Compounds which will be immediately neighbouring the Crossness Nature Reserve, the potential effects arising from traffic movements, such as noise disturbance and dust will be considerable, both on the wildlife that resides on those fields and on the Crossness Nature Reserve, and on site users and visitors.
- 3.16.2 TWUL wish to ensure that measures are secured through the CTMP as referred to in Requirement 13 to mitigate against these effects, hence the inclusion of the opportunity to receive a copy of the CTMP at the same time as it is submitted to the relevant planning authority in its bespoke protective provisions, as mentioned above.

Paragraphs 1.3.20 and 1.3.21

- 3.16.3 **Paragraph 1.3.20 of the Applicant's Response to TWUL's Deadline 4 submission [REP4-038 and REP4-039] provides that TWUL's proposals for the avoidance of all construction works in the south and south west of the Project during the entire bird nesting season (1st March – 31st August) are unnecessary.** The Applicant comments that measures to mitigate effects on breeding birds during construction of the Project are set out in the OBLMS (7.6, EP3-014) which is secured in Requirement 5 of the dDCO.
- 3.16.4 In paragraphs 2.5 – 2.7 of its Deadline 4 submission, TWUL sought amendments to Requirement 5 to provide that it was consulted on the OBLMS prior to submission and approval by the local planning authority. **In the Applicant's Response to comments on the draft Development Consent Order [8.02.54, REP5-025], the Applicant does not accept TWUL's amendments to Requirement 5.** As mentioned at paragraph 2.4 of this submission, TWUL responds to this by seeking an amendment to its bespoke protective provisions.
- 3.16.5 **In response to paragraph 1.3.21 of the Applicant's Response to TWUL's Deadline 4 submission [REP4-038 and REP4-039], TWUL recognise that lapwing may typically nest in April and May.** However, there are exceptions. For instance, newly hatched Lapwing chicks were observed by multiple visitors to the

Crossness Nature Reserve at the end of June this year. The young, not ready to fly for 5 – 6 weeks, would therefore not be independent until mid-August. Although Lapwing only rear one brood per year, they will lay up to four replacement clutches if the eggs are lost. It is for this reason, and the fact that most passerine bird species raise multiple broods per year, that the breeding season is officially identified as ending at the end of August. Therefore, TWUL **does not agree that the Applicant's approach in paragraph 5.3.57 of the Applicant's Responses to Written Representations (8.02.14, REP3-022)** is proportionate or reasonable.

3.16.6 **In response to paragraph 1.3.25 of the Applicant's Response to TWUL's Deadline 4**, chick mortality is an important factor in Lapwing decline and chick mortality is usually linked to avian and fox predation (usually corvids). Trees and tall buildings, surrounding the ground-nesting locations, naturally increase the risk of avian perching and therefore predation.

3.16.7 TWUL wish to secure that measures are secured through the Biodiversity and landscape mitigation strategy referred to in Requirement 5 to mitigate against these effects. It is therefore imperative that it secures the opportunity to receive a copy of the strategy at the same time as it is submitted to the relevant planning authority in its bespoke protective provisions, as mentioned above.

3.17 *Wildlife Impacts*

Barn Owls

3.17.1 In paragraph 1.3.24 of the Applicant's Response to TWUL's Deadline 4 submission, it welcomes suggestions of opportunities that could be adopted by the Environment Bank as part of the off-setting proposals and secured through Requirements 4 and 5 of the dDCO.

3.17.2 TWUL would welcome the creation of tussocky grassland verges around the perimeters of the Project and Data Centre site, rather than manicured horticultural planting. This would secure suitable habitats and additional foraging areas for Barn Owls.

3.18 *Cumulative Impacts*

3.18.1 **In paragraph 1.3.27, the Applicant comments that "neither ringed nor little ringed plovers were recorded breeding during surveys in 2018."** It is correct that ringed and little ringed plover did not breed on the Data Centre site in 2018 and that this is possibly due to the disturbance resulting from ground investigations. However, as the Applicant is aware, ringed and little ringed plover bred on the Data Centre site in previous years – for example ringed plover were breeding on the sites in 2015 and 2016 when the planning application was submitted to LB Bexley **but the Applicant's** ecologists missed them due to the timing of their surveys – **Cory's ecologists at the time undertook surveys before 18th April 2016** when survey methodology requires surveys in April, May and June. TWUL refers the Examining Authority to the Figure provided at Annex B to this submission.

3.18.2 To protect against ringed and little ringed plover, it is important that TWUL secure the amendments sought to its bespoke protective provisions.

3.19 *Shading*

3.19.1 **In paragraph 1.3.32 of the Applicant's Response to TWUL's Deadline 4** submission, the Applicant considers that the measures to reduce the effect on watercourses is not required as mitigation.

3.19.2 There will be shading impacts on the adjacent Crossness Nature Reserve if the Project is constructed. This will impact vegetation structure and the Water Vole-

populated ditches that are immediately adjacent the application boundary. Measures to reduce the effect on these water courses, as suggested in paragraph 3.26.4 of TWUL's Deadline 4 submission [REP4-038 and REP4-039], would reduce bankside and in-channel vegetation cover and thereby reduce some of the shading impacts.

- 3.19.3 The Applicant confirms its intention to explore such measures with TWUL when detailed design is undertaken. TWUL welcomes this suggestion however, is concerned that such discussions will not take place. TWUL has therefore sought to amend the protective provisions, as per paragraph 2.4 of this submission, to ensure that sufficient measures are secured to mitigate the impacts on the Crossness Nature Reserve.

3.20 **National Policy Statement EN-1**

- 3.20.1 TWUL would refer the Examining Authority to paragraphs 2.28 – 2.35 of its **Deadline 5 submission which responded to the Applicant's Analysis of Metropolitan Open Land (MOL)** in respect of the Proposed Development (8.02.41, REP4-020).

Response to comments on document 6.6 Environmental Statement Supplementary Report as requested by the ExA in its Rule 17 letter dated 1st July 2019 ("ES Supplementary Report")

- 3.21 In response to paragraph 1.4.2 of the Applicant's Response to TWUL's Deadline 4 submission, TWUL maintains its position that the proposed consecutive or concurrent construction of the Data Centre site and the Main Temporary Construction Compound would mean that visitors attending planned events would be unable to access the site in a safe manner. **TWUL's vehicular access and planned community events is through the Crossness Access Road** – not through FP2 or FP4 which are for pedestrian use only. The Crossness Access Road bisects the two Data Centres / Main Temporary Construction Compound where, for example, there will be increased vehicle and plant presence / movement, increased noise, and dust. The Crossness Access Road will be in the middle of a construction site. TWUL continue to seek the provision of a visitor car park, as mentioned in paragraph 3.10 of this submission.
- 3.22 TWUL is confused by the following statement made by the Applicant: that whilst "*the Crossness LNR will be bounded by the Main Temporary Construction Compound, the works will not be closer than the existing location which also bounds the reserve.*" The Main Temporary Construction Compound is now proposed to be built on the Cory Fields which are immediately adjacent to the Crossness Nature Reserve. The previous location proposed for the Main Temporary Construction Compound is further south and did not have such an **imposing impact on the Crossness Nature Reserve**. Further, it is TWUL's position that the Cory Fields are a wildlife-rich habitat containing confirmed breeding of red-list birds and rare invertebrates – the previous location for the Main Temporary Construction Compound is less ecologically valuable because it lacks the vegetation structure of the Cory Fields.
- 3.23 To protect against the impact on wildlife on the Main Temporary Construction Compound, TWUL require the opportunity to comment on the Biodiversity and landscape strategy through the protective provisions, as mentioned above.

4. **RESPONSE TO THE EXAMINING AUTHORITY'S RULE 13 LETTER DATED 19 August 2019**

- 4.1 In response to the Examining Authority's Rule 13 letter dated 19 August 2019, TWUL wish to reserve the right to attend and, where relevant, speak at the following:

Issue Specific Hearing on the draft Development Consent Order on 19 September 2019 – in relation to securing mitigation measures relating to the Crossness Nature Reserve and protective provisions for statutory apparatus.

4.2 In its Deadline 5 submission [REP5-039], TWUL reserved the right to attend at the **Compulsory Acquisition Hearing ("CAH") to be held on 18 September 2019**. TWUL wishes to inform the Examining Authority that it no longer intends on attending the CAH. In so far **as it has been able to review the Applicant's updated Book** of Reference and Land Plans, TWUL is content that the Applicant does not intend on acquiring any interest over land owned by TWUL forming part of the Crossness Nature Reserve in order deliver the Project.

4.3 **In the event that TWUL's position changes in** respect of its intention to attend the above hearings, it will update the Examining Authority.

5. **CONCLUSION**

5.1 **For the reasons set out above, it is TWUL's position that the indirect impacts on the** Crossness Nature Reserve are Significant.

5.2 TWUL is in discussions outside of the Examination Process towards reaching agreement to satisfactorily address its concerns in relation to seeking protective provisions which protect **TWUL's operational interest in the Crossness Nature Reserve and also** its interest in statutory apparatus.

5.3 TWUL will continue to update the Examining Authority with the progress of agreement of these matters throughout the Examination.

Annex A

Annex B

Figure 1 – Ground-nesting Ringed Plover breeding on Cory Field North in 2016



Ringed Plover on nest, Cory Field North,
26th April 2016 (Photo by D. Zimmer)

Ringed Plover on nest, Cory Field North with
Cory Energy's Riverside Resource Recovery
Facility in background, 26th April 2016
(Photo by D. Zimmer)