

Deadline 7 Submission 3 September 2019

Riverside Energy Park, Belvedere

In the London Borough of Bexley

Planning Inspectorate reference: EN010093

National Infrastructure Project Development Consent Order application – Deadline 7 Representations

Development Consent Order, Section 90 of Planning Act 2008

Proposed development

Cory Environmental Holdings (the Applicant) propose to develop ‘an integrated multi-technology Riverside energy generation park including an Energy Recovery Facility (ERF incinerator), Anaerobic Digestion Facility, Solar Panels, Battery Storage and electrical connection route’.

As the Riverside Energy Park (REP) would have an electricity generating capacity over 50MWe, it is classified as a Nationally Significant Infrastructure Project under section 14(1)(a) and section 15(2) of the Planning Act 2008.

Purpose of this document

This document responds to the Applicant’s submissions at Deadline 5 of the Examination, focussing primarily on the Applicant’s revised draft Development Consent Order (DCO) and the Applicant’s response to comments received on the previous version of the DCO.

The document also refers to comments submitted by the Applicant at Deadline 5 with respect to the GLA’s previous submissions at Deadline 4.

1. Overview

- 1.1. The GLA has undertaken a review of all the documents submitted by the Applicant at Deadline 5, which include commentary on the GLA's Deadline 4 submissions. At this stage in the Examination, the GLA does not consider that it would assist the Examining Authority to return to the Applicant's responses to previous submissions, where it is considered that previous GLA submissions, including those submitted at Deadline 5, adequately answer the points raised by the Applicant. Of course, should the Examining Authority require a response to any specific points, the GLA would be pleased to answer any further written questions.
- 1.2. This submission focusses on new information provided by the Applicant at Deadline 5, in particular its revised draft DCO (Rev 3), which contains significant new provisions in Schedule 2 (Requirements). The GLA's central case remains that it considers that the proposed REP should not be granted development consent for the reasons set out fully in its previous submissions. The GLA remains of the view that the adverse effects of the proposed development have been underreported and its potential benefits overstated by the Applicant. The adverse effects of the development, in particular the ERF, would outweigh the purported benefits of the REP.
- 1.3. The GLA's view is that, in accordance with section 104(7) PA 2008, the statutory exemption applies and the application should not be decided in accordance with the National Policy Statements (NPSs). The GLA notes the Applicant's submissions in relation to this position, and provides a response here.
- 1.4. This document comments on the Applicant's key Deadline 5 submissions in turn in the following sections.

2. Revised Draft DCO (document 3.1 Rev 3)

- 2.1. This version of the draft DCO proposes some substantive as well as some minor changes to the Requirements set out in Schedule 2 compared with previous version (Rev 2), submitted at Deadline 3. The proposed changes are generally welcomed by the GLA as representing a move in the right direction, although not all the measures go far enough to overcome issues of concern.
- 2.2. The GLA's response to the proposed changes is set out in Appendix A to this document (Schedule 1), which provides a schedule of detailed responses to each amendment. For the purposes of this document, the following headline comments provide an overview of the GLA's position:
 - 2.2.1. **Requirement 14 HVC movements (amended)** – the proposal to set a limit on the volume of waste to be delivered by road is welcomed. However, the quantum of residual waste to be delivered by road remains too high (at approximately 30 per cent of total inputs on the nominal case) for a facility that purports to be strategically sited to benefit from river transport. The GLA's stated position is that the limit should be minimum 25 per cent by road/75 per cent by river to maximise river-based transport and reduce road traffic impacts. This level would align with the current RRRF DCO.

- 2.2.2. **Requirements 15 and 16 emissions limits (new)** – these new requirements which limit emissions from the ERF and Anaerobic Digestion plant are welcomed, but the GLA considers that the proposed controls should be extended to include the other pollutants of concern rather than restricted to oxides of Nitrogen only.
- 2.2.3. **Requirement 17 ambient air quality monitoring (new)** – this proposed requirement is welcomed but the GLA continues to support London Borough of Bexley (LBB)'s request for a contribution to local authority monitoring.
- 2.2.4. **Requirement 18 waste hierarchy scheme (new)** – this is a significant amendment by the Applicant, and the Applicant's constructive approach to this issue is welcomed. The GLA agrees that new Requirement 18 offers a potential mechanism for ensuring that only truly residual waste is treated in the proposed ERF. However, the GLA emphasises that the efficacy of these measures will ultimately be contingent on the detail of the proposed scheme that will be submitted in accordance with the proposed requirement, and its ongoing effective enforcement, monitoring and reporting performance to the LPA.
- 2.2.5. **Requirement 25 phasing of construction and commissioning (amended)** – the proposed amendment requires that the Anaerobic Digestion plant must now be built and commissioned at the same time as the ERF. This is in line with the position taken by the GLA consistently through the Examination process, and is welcomed. The GLA also consider a further amendment to Requirement 25 is necessary to ensure that the steam turbine with district heating offtake is programmed at the same time as the ERF, giving more certainty to the ERF operating in CHP mode.
- 2.2.6. **Requirement 26 combined heat and power (CHP) (amended)** – the amended details provided by the Applicant are welcomed in that they accommodate some of the proposed measures suggested by the GLA, particularly in regard to establishing a working group to agree the scope of the CHP review and the possibility of considering the heat demand opportunities in conjunction with those of the RRRF working group. The GLA considers that the requirement should be amended to require the Applicant to include the GLA, the London Borough of Bexley and other relevant boroughs to be members of the working group, along with potential major heat customers. The GLA regards the working group and the CHP review as a means to address the shortfalls of the Applicant's district heating assessment that has been raised by the GLA in its various submissions.

However, the GLA does not consider that the CHP review being revised every four years, as the Applicant has proposed, is appropriate: the GLA has requested, in its submissions, that this is carried out every two years, as have the London Borough of Bexley.

The GLA has asked for amendments to Schedule 1 Authorised Development to clarify that the steam turbine will include a 30 MW heat off-take for district heating, and is concerned about the enforceability as currently drafted. The

amendments sought by the GLA would achieve the same requirements as those in Schedule 2, Requirement 18 of the North London Waste Authority DCO¹.

2.2.7. **Requirement 27 use of compost material and gas (new)** – the GLA is concerned that the Applicant is not proposing the necessary commitment to ensure that the Anaerobic Digestion facility offers a recycling solution for the management of food waste. In the absence of a commitment to use digestate on land as a compost, recycling would not be achieved. Similarly, there is a lack of commitment to export biogas to the gas grid, evidenced by the proposal for only a single market review 12 months after commissioning. The GLA has expressed its concern in previous submissions, not only that the REP needs to show full commitment to obtaining the recycling benefit from the Anaerobic Digestion plant, but also that the burning of gas and digestate on site is unacceptable.

3. Applicant's Response to the GLA and LBB comments on the draft DCO (doc 8.02.54)

3.1. The Applicant's document 8.02.54 provides a response to both the GLA and LBB, who are the only interested parties to have commented on the draft DCO submitted at Deadline 3. The Applicant's response includes comments incorporated into the draft DCO (Rev 3) i.e. where the draft DCO has been amended to incorporate matters requested by GLA or LBB and which are not repeated here. This section focuses on comments made on GLA or LBB proposals that have not been accepted by the Applicant.

3.2. **Cap on waste transported from outside of London** – the Applicant provides no justification for its position (paragraph 9.7) that it cannot agree to such a cap. The GLA questions this as the existing RRRF consent, as amended in 2015, imposes an agreed cap of 115,000 tpa (or 15 per cent of the RRRF's operational capacity) on the amount of waste imported from outside of Greater London. A similar cap on waste imports to the ERF would ensure that London's strategic waste management needs can be met as the Applicant has maintained throughout the Examination process, and help to achieve the Mayor's statutory 100% net waste self-sufficiency target by 2026.

3.3. **Transport for delivery of waste and removal of ash should be zero carbon** – the Applicant rejects this on the basis that there is no specific policy requirement. Policy 7.3.1 in the Mayor's London Environment Strategy sets out that London waste authorities need to comply with ULEZ (i.e. all HGVs to be Euro VI minimum), and work towards the Mayor's overall ambition for all heavy vehicles to be fossil fuel-free by 2030. The GLA considers it reasonable for the vehicles servicing the facility to meet the same policy requirement.

¹ See Appendix A Section 10 para New Requirement 25. The full North London Waste Authority DCO can be found at <https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/?ipcsection=docs&stage=7>

- 3.4. **Impact on bus services** – the Applicant continues (paragraph 20.1) to reject TfL’s request for compensation for the disruption to bus services during construction, on the basis that the bus routes are operated by a business for which there is no claim for compensation. TfL would however draw the distinction that, in the case of bus services, they are supported through the public purse, with regard to marketing and promotion in order to provide an essential service to Londoners and visitors to the capital. The Applicant is not a statutory undertaker and as such the no compensation provisions do not apply. Any additional costs due to the impact during construction would have to be met by further subsidy from the public purse or through reduced services to the people who live, work and visit this part of London and/or who use the routes concerned; this is notwithstanding the existing demand/need. The impacts arises directly from the works and for no other reason. TfL is therefore is seeking a contribution from the Applicant to pay for measures to mitigate the impacts on buses and passenger journeys, to maintain capacity and frequency.
- 3.5. **Gas export** – the Applicant at paragraph 21.1 sets out its position that gas exports should be assessed for feasibility and commercial viability up to 12 months from commissioning of the Anaerobic Digestion plant. This is considered wholly inadequate. The Applicant does not provide any explanation as to why further reviews should not be carried out and, in the absence of a convincing explanation, the GLA would wish to see reviews continued for gas exports in line with compost, and that reviews for both products should be undertaken at a frequency that demonstrates commitment from the Applicant to finding suitable outlets. In the absence of gas export the gas would be burned on site, and as previously submitted to the Examination this practice is considered unacceptable.
- 3.6. **London Living Wage** – the Applicant continues (paragraph 22.1) to reject this request, whilst at the same time stating that the ‘vast majority’ of jobs at the REP will be highly skilled, at degree or above level. On 29th of July, the Mayor launched his Good Work Standard which sets the benchmark that the Mayor wants every London employer to work towards and achieve, including payment of the London Living Wage. This accredited initiative brings together best employment practice and has been developed in collaboration with London's employers, professional bodies and experts. Although not a policy requirement, the Applicant in undertaking accreditation to the Good Work Standard would be demonstrating leadership in best practice employment and corporate responsibility, and could use its accreditation to demonstrate social value when competing for public sector procurement opportunities. More information on the Good Work Standard can be found on the GLA’s website².
- 3.7. **London Non-Mobile Road Machinery Low Emission Zone standards** - in addition to the matters above on which the Applicant has provided comment, it is noted that the Applicant has failed to provide any commitment or comment on the adoption of the London Non-Mobile Road Machinery (NRMM) Low Emission Zone standards, which they committed to at the ISH. The Requirement is needed to ensure that emissions from construction machinery are adequately controlled in line with other developments in London. This commitment should be included in requirement 11 or the Code of Construction Practice, and the GLA is happy to provide suggested wording. The GLA would request that this is remedied in the next draft.

² <https://www.london.gov.uk/what-we-do/business-and-economy/supporting-business/what-mayors-good-work-standard>

4. Applicant's response to GLA Deadline 4 submission (document 8.02.46)

- 4.1. The Applicant's document 8.02.46 provides a critique and rebuttal to the GLA's submission at Deadline 4. Most of the matters raised by the Applicant have already been considered by the GLA in previous submissions, most recently in its Deadline 5 response which supersedes the Applicant's document 8.02.46. The GLA is, in general terms, satisfied that its Deadline 5 submission adequately deals with the points raised, and would refer the Examiner to this response. Certain minor points of clarification and rebuttal are provided in the schedule attached at Appendix A.
- 4.2. The Applicant has provided new evidence in relation to a limited number of substantive matters, which are responded to below.

Hoddesdon EfW decision (section 3.3)

- 4.3. The Applicant rejects the GLA's objection to using combined cycle gas turbine (CCGT) as the marginal source of energy and refers to the recent planning decision on the application made by Veolia for an ERF at Ratty's Lane in Hoddesdon (ref: 7/0067-17). The decision was issued on 19 July 2019.
- 4.4. The Inspector in this inquiry makes the following point at paragraph 17.58, quoting, in turn the New Barnfield Inspector: *"it is not disputed that the absolute level of climate change benefit will vary over time, as the energy mix changes and decarbonises. However, it is reasonable to make the assessment of benefits using the marginal technology at the present time as the appropriate comparator"*.
- 4.5. Reference is made to the same DEFRA Guide to the Debate document as used by the Applicant to justify the use of gas CCGT as the marginal source; this document is cited as still being current guidance despite being written in 2014.
- 4.6. It is not clear from the Inspector's statement why it is reasonable to use the marginal technology at the present time as an appropriate comparator for a facility that has not yet been built. It is not clear that gas CCGT is the marginal technology even today; still less clear that it will remain so in ten years' time and beyond.
- 4.7. The GLA would refer the Examining Authority to a research report, which is referred to in the Guide to the Debate, DEFRA's Energy recovery for residual waste: A carbon-based modelling approach (February 2014). The report, attached as Appendix B, is concerned with identifying the critical factors that affect the environmental case for energy from waste (EfW) in comparison to landfill from a carbon perspective and the sensitivity of that case to those factors. In particular, the aim was to examine the influences that the biogenic carbon content of the waste and the thermal efficiency of the EfW process have on the relative benefits of EfW and landfill.

4.8. The report makes a number of findings and recommendations that are of direct relevance to the REP, and supports the GLA's stated position that CCGT is not current or considered by government to be the marginal source of energy, that it's not correct to compare the emission performance of an ERF against landfill to determine its CO₂ saving benefits, and therefore that the Applicant is overstating the CO₂ saving benefits of the REP. The key findings and recommendations from the report relevant to the REP include:

- The model was found to be highly sensitive to the marginal energy mix used to calculate carbon offset from generation and the level of landfill gas capture. It was sensitive to other parameters but these two were clearly the key factors (paragraph 7);
- Decreasing the carbon intensity of the background electrical energy mix was found to increase the biogenic content of waste required for a plant operating at a given efficiency, or alternatively increase the minimum efficiency of plant required to operate with a waste of a specific biogenic content (paragraph 9);
- Three scenarios were developed for electricity only EfW to look at the sensitivity of carbon outcomes to different assumptions over time. The carbon intensity of the offset energy was varied in line with DECC predictions for the marginal energy mix, which see a decarbonisation towards 2030, this was kept the same across the scenarios; the modelling used a range of marginal values reducing from the current (2014) baseline of 0.373 through 0.300, 0.250, 0.200 and 0.150 t/MWh (Table 10). The three scenarios were then developed based on the initial level of methane released from landfill as dictated by the capture rate (paragraph 12);
- Under all three scenarios, in the long term (by 2050), a high proportion of biogenic content (in the region of >70%) was required for electricity only generation. This could only be achieved by pre-treating the waste or much greater fossil plastics collection and recycling than is currently seen (paragraph 13);
- In all scenarios there was an apparent cut off point beyond which an electricity only plant would have a lifetime carbon dis-benefit (paragraph 15);
- Similarly, there were cut off points where, despite overall lifetime benefits, at the end of the plant's lifetime it would be a net carbon emitter relative to landfill and therefore there would be a carbon dis-benefit in extending its life. These transitions happened earlier and at higher efficiencies than the overall lifetime dis-benefits (paragraph 16);
- The nature of this analysis means that some net emissions in later years are being offset by earlier carbon savings (paragraph 17).

4.9. In the concluding discussion, the following points are made:

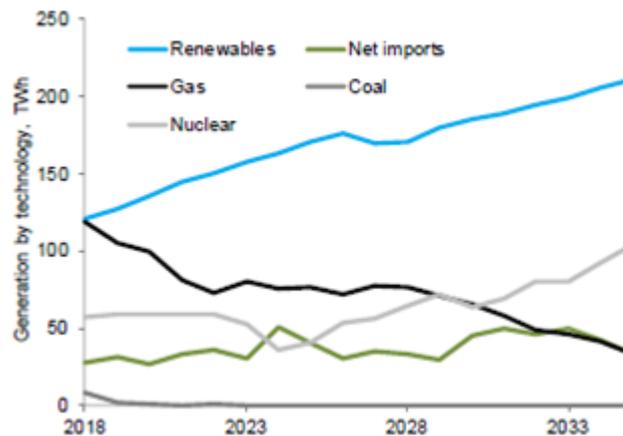
- Using conventional analysis (disregarding biogenic carbon) the model indicates a good carbon case for continuing to include EfW as a key part of the hierarchy. However, as time goes on this case will get progressively worse for electricity only generation as the carbon intensity of the marginal energy mix decreases and if technology for landfill gas capture improves (paragraph 203);
- New plants commencing operation will minimise the risks of becoming environmentally unsound by adopting higher efficiency processes, not just producing electricity but also heat and/or using high biogenic content fuels (paragraph 205);
- This will potentially require a degree of pre-processing of black bag waste to raise the biogenic content of the fuel through removal of fossil based plastics. However, the energy cost of any such processes will need to be included in the calculation of the net efficiency (paragraph 206);

- An alternative approach would be to adopt collection and recycling regimes that remove more of the fossil plastic from the residual waste which will both decrease the overall volume of residual waste and increase the relative biogenic content of that which remains (paragraph 207).

4.10. With regard to the issue as to the correct marginal energy mix to be used as basis for comparison, the Report commits a whole section (section 5.3) to explaining that rather than use CCGT as the comparator, the correct approach is to use *“the marginal energy mix which represents the carbon intensity of generating an additional kW of electricity. Currently this is comparable to CCGT as this is the marginal technology, however, as renewable energy and nuclear make a greater contribution to the marginal energy mix this will change and the result will be a significant drop in the carbon intensity of the marginal energy mix”*.

4.11. In the period since 2014 when the Report was published, this effect has been evidenced in the reported energy generation figures. In April 2019, BEIS published its updated energy and emissions projections³. The document included the graph shown as Figure 5.1 below. From this it is clear that – at the time of publication in 2019 – renewable generation has already overtaken gas in terms of its proportionate contribution to the UK’s total generation capacity. Since the contribution for renewables is shown as steadily increasing, whilst that of gas CCGT is decreasing, this suggests that new generation capacity coming online is now likely to be renewables, rather than gas. The graph shows a steady decline in gas CCGT out to 2035 – by which point the contribution from gas to the UK’s total electrical generation is anticipated to be less than a third.

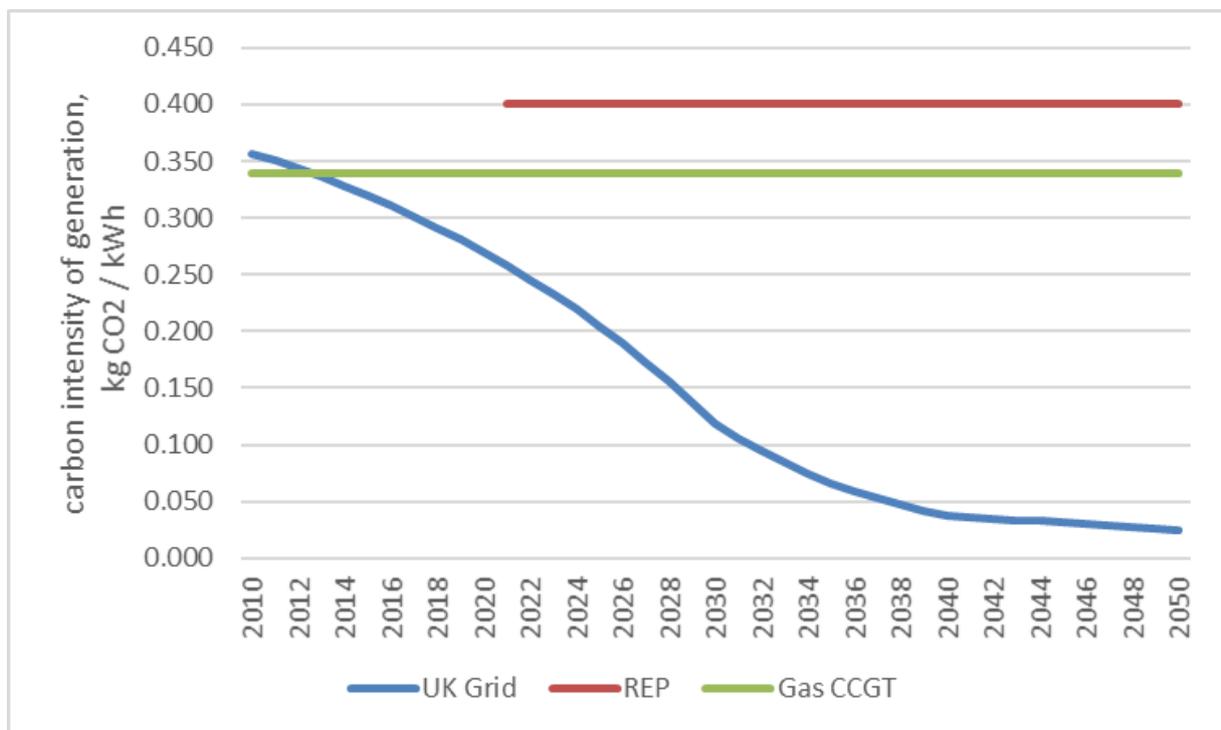
Figure 5.1: Electricity generation by fuel source



³ <https://www.gov.uk/government/collections/energy-and-emissions-projections>

4.12. It is noted that the above BEIS document was published just before the UK parliament declared a climate emergency. This arguably makes it even more important to take a forward-looking perspective, as it is now reasonable to expect existing carbon budgets will be revised downwards in the near future in response to this emergency declaration. In this context, and given the above data, it cannot be appropriate to base the decision on what is the marginal source of generation - for a facility that will continue to generate electricity out until beyond 2040 - on information from a document that was published in 2014.

4.13. Furthermore, other Government sources indicate that Government is reflecting the current UK generation mix in its advice to business and other stakeholders. The BEIS website contains energy conversion factors for business carbon reporting⁴ that recommend the use of a UK electricity carbon equivalent of 0.28307 kg CO₂e/kWh in 2018. This aligns with the Eunomia report, Deadline 3 GLA Written Summary of Oral Case Appendix 3 and contrasts with the 0.4 kg CO₂/kWh (ie CCGT) used by the Applicant for the REP. This confirms that the facility will generate electricity that is of a higher carbon intensity than that generated by the UK electricity grid in 2010. By the time the facility is likely to start generating electricity, the carbon intensity of the grid will be much lower, in the order of 0.25 kg CO₂e per kWh electricity. Over time, the difference in carbon intensity between electricity generated at the REP and that of the grid will widen, as is shown in the graph below taken from the Eunomia report.



4.14. As the Applicant has drawn attention to the Hoddesdon planning decision (albeit a decision under the Town and Country Planning Act 1990), the GLA has given consideration to the Inspector’s and Secretary of State’s views on the weight to be given to the appellant’s CHP proposals, which according to the County Council’s evidence were considered to be particularly good at this site (paragraph 8.23 – 8.24).

⁴ <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2018>

- 4.15. The Inspector considered the matter at paragraph 17.63. He states: “Clearly, higher savings would be achieved when operating in CHP mode. However, whilst the plant would be constructed to be CHP ready, with a readily accessible local market including nearby industrial and glasshouse development, the scheme before the Inquiry does not include heat generation at this time. That was also the case with the New Barnfield scheme. In that instance the Inspector concluded that little reliance could be placed on the contribution of CHP to energy recovery. I have no reason to take any different view and am satisfied that for the purposes of this section of my Report, any benefits accruing from CHP should not be counted towards potential carbon savings at this time”.
- 4.16. The evidence provided in the Hoddesdon Inquiry, including evidence under cross-examination from potential heat off-takers, indicates a greater level of certainty that CHP benefits could be delivered than has been provided in respect of REP. Nevertheless, the lack of contractual commitment led the Inspector and SoS to give only ‘limited weight’ to the climate change benefits (paragraph 35 of SoS letter). It is considered that given the limited evidence of engagement presented by the Applicant, that the CHP proposals for REP should also be given only limited weight in the decision.

Evolution of energy policy (section 3.4)

- 4.17. The Applicant seeks to address the GLA’s comments on the evolution of climate change policy and to consider the extent to which this is relevant in the decision-making process for an energy NSIP.
- 4.18. The wording of Section 104(3) PA 2008 appears not to be in contention. The Application must be decided in accordance with the relevant NPS except to the extent that exceptions apply, one of which is section 104(7) PA 2008. The Applicant pleads that the NPS establishes an unassailable need case for energy generation. The GLA’s views are perhaps more straight-forward than the Applicant’s lengthy response at paragraphs 3.4.4 – 3.4.47 suggests. Simply, the GLA’s case is that the Applicant has overstated the benefits, and under-stated the dis-benefits, of the proposed development, and hence falls within the exceptions.
- 4.19. Helpfully, the Applicant accepts at paragraph 3.4.27 of the Applicant’s Response to the GLA Deadline 4 Submissions (8.02.46) that the *“evolution of climate change policy is only an issue if one accepts that REP would be a carbon producer”*. The GLA considers that REP would be a carbon producer as set out in GLA submissions including its Written Representations (REP2-071) paragraphs 3.26 - 3.31 and Deadline 4 Further Representations (REP4-024) paragraphs 2.18 - 2.21. On that basis, it is open to the Secretary of State to conclude that the adverse impact of the proposed development would outweigh its benefits, in accordance with the GLA’s submissions to the Examination. It follows that the exception in section 104(7) PA 2008 is effective if the Secretary of State agrees with the GLA. Should the Secretary of State disagree, then the GLA accepts that the Application must be decided in accordance with the NPS, subject to the Secretary of State finding that no other exceptions ought to be applied.

4.20. If the exception in section 104(7) PA 2008 applies, the obligation that the Secretary of State must decide the application in accordance with the NPS is ousted by the exception. It is not the GLA's position that the NPS ceases to have relevance to the Secretary of State's decision if section 104(7) PA 2008 applies, simply that the decision on the Application would no longer be required to be in strict accordance with the NPS. That is the effect of the plain language of the section 107 PA 2008. The NPS is relegated to the status of an "important and relevant" matter, rather than being determinative. This should not be contentious – section 102 PA 2008 provides that the Secretary of State must have regard to any NPS. "Having regard to", and "deciding in accordance with" are materially different exercises, and the GLA's view is that the progress of climate and energy policies since 2011 are "important and relevant" matters which the Secretary of State must also have regard to in accordance with section 104(2)(d) PA 2008.

4.21. As noted by the Applicant at paragraph 3.4.35 of its Response, section 104(7) provides "important flexibility to the decision-maker". The GLA agrees. On that basis, the position adopted by the Applicant in paragraph 3.4.36 of its response is not sustainable: the suggestion that it would be "unlawful" not to decide the Application in accordance with the NPS is incorrect, and, if the Secretary of State agrees that an exception applies, seeks to usurp the discretion of the decision-maker. Plainly, there is a need case set out in the NPS, and the Applicant is entitled to pray in aid that need case. However, if section 104(7) PA 2008 applies, that need case should be considered in light of significant changes in energy policy since the adoption of the NPS. Given the progress made since the adoption of the NPS, the GLA considers that where an exception applies, the need case for energy generation cannot be established by the NPS. On that basis, the GLA considers that the Examining Authority should require the Applicant to establish a need case in order that the Secretary of State can properly perform the balancing exercise implicit in section 102 PA 2008.

5. Conclusion

5.1. The Applicant's response to GLA submissions once again provides extensive detail but offers very little in terms of new evidence. Where new evidence has been provided the GLA has considered this and provided a response. The GLA considers that the additional information provided by the Applicant at Deadline 5 does not alter its fundamental objections to the proposed ERF. However, in general, the Applicant does not address the matters of concern to the GLA.

5.2. With regards to the draft DCO, the GLA recognises that progress has been made and this is welcomed, but considers that it does not go far enough to overcome its stated concerns and consequently maintains its objection.

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