

Riverside Energy Park

Applicant's response to the ExA's Rule 17 Letter on 30 August 2019

VOLUME NUMBER:

08

PLANNING INSPECTORATE REFERENCE NUMBER:

EN010093

DOCUMENT REFERENCE:

8.02.74

September 2019 | Revision 0 (Deadline 7A)

Planning Act 2008 | Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Contents

1	Applicant's response to the ExA's Rule 17 Letter on 30 August 2019.....	2
1.1	Introduction	2
1.2	ExA Question 1.1.1	2
1.3	ExA Question 1.2.1	3
1.4	ExA Question 1.2.2	7

Appendices

Appendix A	Additional site	11
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1 Applicant's response to the ExA's Rule 17 Letter on 30 August 2019

1.1 Introduction

1.1.1 On 30 August 2019, the Examining Authority (ExA) issued a Rule 17 letter in respect of the REP examination. This document responds to the request for further information in respect of the following:

- The Applicant is requested to respond to London Borough of Havering's response [REP6-009] to the Examining Authority's Further Written Questions [PD-012], which state that predicted concentration of Nickel and Chromium VI emissions generate a significant or potentially significant impact on Rainham resulting in exposure to harmful emissions of hundreds of properties and specify any additional mitigation measures that can be employed to reduce this residual impact?
- The Applicant is requested to please state whether it expects to be able to give any further commitment or certainty before the end of the Examination confirming the amount, quality and the location of the biodiversity off-setting, proposed in the Outline Biodiversity Landscape Mitigation Strategy (OBLMS) to be delivered through the Environment Bank approach?
- The Applicant - If further certainty confirming the amount, quality and location of the biodiversity off-setting is not provided it is possible that I may conclude that adequate mitigation has not been provided for the loss of open mosaic habitat resulting in a significant adverse effect in terms of biodiversity. Please will the Applicant comment on this possible conclusion.

1.1.2 The above matters (1-3) are addressed in order below.

1.2 ExA Question 1.1.1

1.2.1 The Applicant is requested to respond to London Borough of Havering's response [REP6-009] to the Examining Authority's Further Written Questions [PD-012], which states that predicted concentration of Nickel and Chromium VI emissions generate a significant or potentially significant impact on Rainham resulting in exposure to harmful emissions of hundreds of properties and specify any additional mitigation measures that can be employed to reduce this residual impact?

Response

1.2.2 The Applicant has responded to London Borough of Havering's response [REP6-009] to the Examining Authority's Further Written Questions [PD-012] at Deadline 7 in the **Applicant's response to Air Quality matters (REP7-018)**, in **Paragraphs 1.7.2 to 1.7.13**.

- 1.2.3 The response demonstrates that when all of the factors necessary for the consideration of the significance of effects are taken into account, the predicted concentrations of Nickel and Chromium VI are not significant. In particular, the conservative nature of the assumptions used in the ES modelling regarding the emission rates of Nickel and Chromium VI (**paragraphs 1.7.11 and 1.7.13** respectively of the **Applicant's response to Air Quality matters (REP7-018)**) mean that the actual Nickel and Chromium VI concentrations are likely to be lower than predicted and all of the impacts negligible.
- 1.2.4 The response demonstrates that when all of the factors necessary for the consideration of the significance of effects are taken into account, the predicted concentrations of Nickel and Chromium VI are not significant. In particular, this is due to the conservative nature of the assumptions used in the ES modelling regarding the emission rates of Nickel and Chromium VI (**paragraphs 1.7.11 and 1.7.13** respectively of the **Applicant's response to Air Quality matters (8.02.70, Rev 1)**).
- 1.2.5 As the impacts of Nickel and Chromium VI on residential receptors within Rainham are judged to be insignificant, then additional mitigation measures are not required to reduce this residual impact further.

1.3 ExA Question 1.2.1

- 1.3.1 The Applicant is requested to please state whether it expects to be able to give any further commitment or certainty before the end of the Examination confirming the amount, quality and the location of the biodiversity off-setting, proposed in the Outline Biodiversity Landscape Mitigation Strategy to be delivered through the Environment Bank approach?

Response

- 1.3.2 At Deadline 7, the Applicant submitted the **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)**, which the ExA would not have seen before issuing the Rule 17 letter. This document sets out the findings of the preliminary offset site search.
- 1.3.3 **Table 1.1** below summarises the interim offsetting requirements following the refinement of the Application Boundary at Deadline 2. For continuity, the **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** retains reference to "Realistic best-case" and "Realistic worst-case" which were in the **Biodiversity Accounting Report (8.02.09, REP2-060)**. However, following the Applicant's refinement to the Application Boundary, these terms can be read as being the "best case" and the "worst case" - the updated calculation assesses the maximum parameters of the refined Application Boundary to calculate the "worst case" taking into account the construction assumptions set out in the Environmental Statement, whilst the "best case" is the Applicant's best assumption at this stage as to what the offsetting requirements would be following detailed design (and thus not utilising all of the flexibility contained in the Application Boundary). The figures below in

Table 1.1 have been used to inform the preliminary site selection process in this **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)**.

Table 1.1: Interim biodiversity impact assessment results summary

Biodiversity Assessment Results	Biodiversity units	
	Realistic best-case	Realistic worst-case
Existing site biodiversity units	197.62	197.62
Gross biodiversity loss	-53.72	-61.02
On-site compensation gain	8.48	12.72
Net biodiversity balance	-45.24	-48.28
+10% net gain	50.61	54.39

- 1.3.4 For a compensation scheme of a maximum of 54.39 biodiversity units, the Environment Bank estimates that a biodiversity offset scheme of up to 12.5 hectares (ha) would be required. The final offset size would be dependent on the potential for biodiversity uplift on each offset parcel, which is determined upon the existing baseline conditions, achievable habitat targets and management proposals, but this estimate is considered to be the worst case before detailed design.
- 1.3.5 These units cover the biodiversity loss, the minimum of 10% net gain and an allowance for temporal loss. Regarding the latter, temporal factors are incorporated into the DEFRA Biodiversity metric as a multiplier, which increases the amount of habitat that is required as the time to achieve the target habitat condition increases. Therefore, habitats which take longer to establish will need to deliver more habitat in order address the offset requirement. These temporal multipliers were employed through the **Biodiversity Accounting Report (8.02.09, REP2-060)** and so the requirement for additional habitat, in response to temporal losses, has already been factored into the biodiversity offsetting requirements in Table 1.1 above. It should be noted that this risk factor, along with others, are applied to the offset calculations prior to the addition of 10% for net gain.
- 1.3.6 **Section 3** of the **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** sets out the methodology used to identify potentially suitable biodiversity offsetting sites in accordance with the defined principles. This included a desk study search and discussion with a range of local landowners and conservation bodies which operate in the areas.
- 1.3.7 Sites were then screened to determine, in order of priority, if the sites were in the London Borough of Bexley (LBB) area, if they could deliver like-for-like habitat replacement for the offset requirements set out in **Section 1.3** of the **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)**, if

they supported ecological connectivity to the LBB or if they were within 10 km of the site and contributed towards the nature conservation objectives of the London BAP and/or the target habitats for the offset search.

- 1.3.8 All sites and projects were considered in respect of their additionality (i.e. ability to secure net gain above and beyond what is currently on-site) and the ability to maintain these features over the course of a 25-year management agreement.
- 1.3.9 The sites identified during the preliminary site search all include features LBB identify as desirable selection criteria and clearly provide potential offsetting opportunities that if combined would exceed the compensation requirements of the proposed development. A summary of the sites is included within **Table 4.3 Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** and the locations of these sites are illustrated in **Figure 7.1 Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)**. A total of 14 sites within LBB, Royal Borough of Greenwich, London Borough of Bromley and London Borough of Barking and Dagenham were presented, with 9 sites being wholly or partly within LBB.
- 1.3.10 Following a meeting between the Applicant, Environment Bank and the LBB on Monday 09th September, the Applicant agreed that it will update the **Outline Biodiversity and Landscaping Mitigation Strategy (OBLMS) (7.6, REP7-007)** at Deadline 8 to provide clarity to the site selection process so as to maximise the opportunity for there being no net loss of biodiversity in LBB. The following confirmation will be provided in the OBLMS as to how the final site or sites for the offsetting will be identified, which includes:
 1. sites within the LBB will be prioritised;
 2. from the list of LBB sites, those owned by the LBB and which are able to provide the compensation will be reviewed;
 3. if there are no suitable LBB owned sites, sites within LBB that are not owned by LBB will be reviewed and those sites closest to the REP site and best able to provide the offset will be prioritised;
 4. if no sites within LBB are able to provide the offset, sites outside the LBB will be reviewed.
- 1.3.11 At the meeting on 9 September 2019, 5 preferred sites in LBB ownership were identified for further assessment, including an additional candidate site identified by the LBB during the meeting (Appendix A provides information on Site 15). These sites will be subject to more detailed site surveys in September/early October 2019 to provide further detail on the existing baseline conditions, target habitat opportunities and biodiversity accounting calculations of achievable biodiversity gains.
- 1.3.12 This further detail is not required pre-decision of the DCO Application given the level of certainty over the number of potential sites available, their location

and size and initial quality together with **Requirement 5** of the **draft Development Consent Order (DCO) (3.1, Rev 4)** (to be submitted at Deadline 8) which provides the security for the delivery of the off-setting. However, taking the above criteria, the Applicant will continue to work with the LBB to identify the site or sites within the LBB and owned by the LBB which can deliver the required offset (based on the worst case so before detailed design) and enter into an agreement with the LBB securing the site or sites for the purposes of **Requirement 5** of the **dDCO (3.1, Rev 4)**. The Applicant aims to enter into this agreement as early as reasonably practicable, and hopefully before the end of 2019.

1.3.13 In addition, Environment Bank, on behalf of the Applicant, is in the process of contacting landowners of all 14 sites identified within the **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** to provide an update on the site selection progress and to undertake further assessment of those sites which score highly in accordance with site selection criteria. This assessment will inform the sites that are taken forward for the final Biodiversity and Landscaping Management Plan required under **Requirement 5** of the **dDCO (3.1, Rev 4)**.

1.3.14 The LBB has arranged to meet with the Environment Bank on 18th September to discuss the 5 preferred sites in their ownership in more detail to enable the on-going site assessment. Environment Bank are also meeting with Thames Water on 17th September to further discuss opportunities on land within their ownership.

1.3.15 Whilst the final offset package site(s) have not been confirmed, it is anticipated that several sites may be utilised to form an optimum compensation package based on habitat enhancement opportunities and site location. Based on the site search undertaken, it is evident that a number of sites and project options have offsetting potential and therefore there is a high degree of certainty that the Applicant will deliver the required compensation for the Proposed Development within LBB alone. A priority for the selection of the final site package will be to deliver target habitat types in locations which will enhance Bexley's existing network of natural habitats.

1.3.16 As stated at Deadline 7, it is agreed between the Applicant and LBB, that LBB is the target borough for the biodiversity offset. **Paragraph 5.1.2 Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** states that:

“A total of nine potential offset sites (including one site spanning LBB and Greenwich) have been identified within LBB. These sites cumulatively comprise 78.22 ha with potential for habitat enhancement works within LBB. This far exceeds the total ha required (which is currently estimated to be between 8.2– 11.3 ha) to compensate the Proposed Development. These sites include a range of habitat projects including opportunities for OMH and woodland ensuring that like-for-like projects are available in LBB to replace priority habitats lost to the Proposed Development. All projects include the restoration or enhancement of a Site of Importance for Nature Conservation,

either at the metropolitan, borough or local level, and so would support the consolidation of the local ecological networks LBB. Furthermore, projects include enhancements for both priority habitats and species, thereby providing opportunities to contribute toward local nature conservation objectives both in London and LBB."

1.3.17 This clearly demonstrates that a site or potentially, sites, within the LBB have the capability of providing the required quantum and quality for the biodiversity offsetting for the Proposed Development.

1.3.18 In summary, **Paragraph 1.3.5 of the Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** makes clear that the reasonable worst case calculation is indeed the "worst case" as it assumes the maximum parameters across the Proposed Development are utilised. Accordingly, the worst case amount of offsetting has been provided to the Examination as follows:

- the **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** provides the ExA and the Secretary of State with the maximum amount of biodiversity units (54.39) and linear units (3.97) that are required to deliver the compensation and the minimum of 10% net gain;
- the Environment Bank estimates that a maximum land area of 12.5 ha will be required to compensate for this worst case amount of 54.39 biodiversity units; and
- the Environment Bank estimates that a maximum land area of 0.9 km of linear habitat will be required to compensate for this worst case amount of 3.97 linear units.

1.3.19 The **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** demonstrates that there are sites available that can provide the compensation required and minimum of 10% net gain for the Proposed Development. The **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** also demonstrates that there are sites within LBB that can provide that offsetting and net gain and that the Applicant is working with LBB on that priority basis. Accordingly, the ExA and the Secretary of State have evidence of the potential location and quality of the offsetting site or sites and the opportunities that arise.

1.4 ExA Question 1.2.2

1.4.1 The Applicant - If further certainty confirming the amount, quality and location of the biodiversity off-setting is not provided it is possible that I may conclude that adequate mitigation has not been provided for the loss of open mosaic habitat resulting in a significant adverse effect in terms of biodiversity. Please will the Applicant comment on this possible conclusion.

Response

- 1.4.2 Environment Bank estimates in **Paragraph 1.3.6 of the Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** that to offset the best case of 50.61 biodiversity units, approximately 8.2 – 11.3 ha of land would be required for habitat creation or enhancement. It follows, that the worst case of 54.39 biodiversity units would require approximately 12.5 ha of land.
- 1.4.3 As detailed in Paragraph 1.2.17 above, the offset search identified offsetting site opportunities cumulatively comprising 78.22 ha in LBB alone, far exceeding the estimated offset land requirement. Whilst further refinement of these opportunities will be undertaken, there is a high degree of confidence and flexibility to ensure that the biodiversity offsetting requirement of the Proposed Development can be adequately compensated for within LBB
- 1.4.4 **Tables 1.3 and 1.4 Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** identify the impact to each habitat type by the Proposed Development in biodiversity units. Of those listed, OMH, broad-leaved woodland, swamp and watercourses are considered to be Habitats of Principal Importance in England. All other habitats are considered to be either low to moderate distinctiveness and are not priority habitats. The preliminary offset site search has principally focussed on identifying sites with opportunities for OMH creation and several opportunities have been proposed within LBB that could enable the creation/restoration of this habitat type. This includes preferred sites identified by LBB, which are being brought forward for site survey and further exploration.
- 1.4.5 The guidance provided by Defra on biodiversity offsetting is that at no time should an offset result in 'trading down' of habitat value, whereby residual impact to priority habitats should not be compensated for by creation or restoration of non-priority habitats, and it is encouraged that compensation of priority habitats be like-for-like where possible.
- 1.4.6 The site search also identified a range of sites/projects that could both facilitate habitat creation/restoration opportunities for other priority habitats affected by the Proposed Development as well as enhancement opportunities for local priority habitat and species which are not affected by the development. As the DEFRA Biodiversity offsetting metric requires the 'up-trading' of biodiversity units (i.e. offsetting low and medium distinctiveness habitats with habitats of a higher distinctiveness), there is a high degree of certainty that the quality of habitats included in the final offsetting strategy will be either equivalent to, or of a higher distinctiveness than, those lost from the Proposed Development and that offsetting projects will contribute towards a net gain for local nature conservation objectives.
- 1.4.7 The offset site search has identified ten potential offset sites within the London Borough of Bexley (including the new site identified by LBB during the 9th September meeting). Whilst the final location of the offset sites has yet to be determined, all preferred sites suggested by LBB are within LBB thereby ensuring no net loss of biodiversity from the Borough overall. In addition, all

sites proposed in **Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** have also been selected as they provide physical connectivity to the network of strategic green wildlife corridors within the Borough or support wider nature conservation objectives for priorities sites, habitats and/or species within LBB.

- 1.4.8 Prior to the detailed design stage, further assessment of the preferred sites will be used to inform production of outline management plans and biodiversity enhancement calculations for each site, confirming the potential habitat and biodiversity target available at each location. These results will be submitted to LBB to inform the selection of the final offset package. The final offset package will consider offset location, with respect to proximity to the development and habitat connectivity, and available habitats targets that offer like-for-like compensation for residual habitat impacts from the Proposed Development or enhancement of locally targeted priority habitats.
- 1.4.9 Following the detailed design stage, the impact and compensation requirement of the development will be reassessed and confirmed. Final surveys of the offset package will be undertaken, and the management plans and delivery agreements finalised.
- 1.4.10 As described in the **Paragraph 11.11** and **11.12.3 Chapter 11 Terrestrial Biodiversity** of the **ES (6.1, REP2-023)**, the compensation for the residual loss of habitats from the REP site will be delivered through the financial contribution to the Environment Bank and Legal agreement for delivery of an offset package to enhance habitats outside the Application Boundary. Taking into account this offset, the ES concluded that residual effects on habitats would not be significant. The offset package is secured through **Requirement 5** to the **dDCO (3.1, Rev 4)**.
- 1.4.11 The ExA and the Secretary of State have the confidence that the offsetting is robustly secured through **Requirement 5** of the **dDCO (3.1, Rev 4)**. The Requirement (as updated for Deadline 8) requires a strategy to be submitted to LBB prior to commencement that sets out the following:
 - Final biodiversity units and linear units following the approval of the detailed design pursuant to Requirement 2 together with confirmation as to how the units include the biodiversity loss, the minimum of 10% net gain and temporal loss. It is noted that the Design Principles, which are secured by Requirement 2, require the Applicant to accommodate in the detailed design integrated biodiversity. The final biodiversity units and linear units will be lower than the reasonable worst case units identified in the Offsetting Report for the reasons expressed above;
 - The mechanism for delivering the land that equates to those final biodiversity units and linear units, which will involve:
 - confirmation of the final site or sites and confirmation of how the final site or sites has/have been chosen in accordance with the prioritisation set out in the OBLMS;

Riverside Energy Park

Applicant's response to the ExA's Rule 17 Letter on 30 August 2019

- production of conservation management plans for the final site or sites; and delivery timetable.
- production of the signed contracts with the landowners for 25 years of conservation management of the final site or sites; and
- confirmation that the sum to deliver and manage and monitor the compensation and minimum 10% net gain on the final site of sites is to be paid within 10 days of the London Borough of Bexley approving the biodiversity and landscape mitigation strategy to enable the conservation management plan approved under the OBLMS to be implemented.

1.4.12 With this mechanism in place, together with the evidence submitted by the Applicant, there is certainty in delivery of appropriate compensation and no significant effects on habitats, taking into account the compensation, as stated in the ES.

Appendix A Additional site

Site 15 (East Wickham Open Space)

Size: Approx. 3 ha available for offsetting

Location: London Borough of Bexley

Proposed by: LBB

Description:

The site comprises a mixture of secondary woodland, acid and semi-improved neutral grassland, scattered trees and amenity grassland. The areas of acid grassland are species-rich, and the secondary woodland is considered to be wet woodland, both of which support rare plant species for London as well as a large assemblage of invertebrate species and a population of common lizard. The site is notified as a SBINC (Grade II).

Opportunities:

The site has been subject to a reptile translocation in the recent past and offers opportunities to enhance approximately 3 ha for this species. The site also provides opportunities for the creation of OMH. Areas of invasive cherry laurel are also present on site and so control/removal of this species may also provide some restoration opportunities for existing habitat on site.

Rationale for inclusion:

The site is located in LBB, approximately 4.7 km south of the REP site and 4.5 km southwest of the Electrical Connection Route. The site supports enhancement opportunities for a SBINC (Grade II) and includes opportunities for the creation of OMH which is a Habitat of Principal Importance and a priority habitat in the London Biodiversity Action Plan. OMH is also a target habitat for the offset site search.

