

# RIVERSIDE ENERGY PARK DCO

LB Bexley Deadline 7a Submission

13<sup>th</sup> September 2019

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# 1 INTRODUCTION

- 1.1 On 30<sup>th</sup> August 2019, the Examination Authority issued a request for further information via a Rule 17 letter. This request included one matter for the attention of the London Borough of Bexley (LBB).
- 1.2 The further information request for LBB, set out in paragraph 1.2.3 of this Rule 17 letter, states:

*"London Borough of Bexley is requested to comment on whether in the absence of further certainty on biodiversity off-setting provided during the course of the Examination it considers that there would be a significant adverse effect in terms of biodiversity and if so whether this would be outweighed by the benefits of the proposed development."*
- 1.3 This document provides LBB's response to this matter raised by the Examination Authority.

## 2 BIODIVERSITY

- 2.1 The concerns of LBB relating to biodiversity matters that remained at deadline 7, are summarised below:
- LBB is concerned that the off-setting value, to which the biodiversity off-setting scheme will be developed to deliver biodiversity benefits, is not proposed to be finalised until after detailed design.
  - LBB remains concerned that confirmation of the quality, amount and location of compensation offsetting sites will not be available until after determination of the DCO application. In the absence of this detail LBB feel that it is not possible to be fully confident that residual impacts on biodiversity will be adequately mitigated or compensated.
  - Harm to habitat either on-site or off-site should not be permitted to take place until the full off-setting value has been determined, full mitigation measures have been identified and compensation habitats / biodiversity enhancements that equate to at least the value of any harm to be caused have been implemented. Otherwise losses to biodiversity could take place in advance of any benefits being realised. If at least equal habitat replacement elsewhere is not achievable in advance of on-site losses, despite evidence of all reasonable efforts being made, then the biodiversity metric should allow for this short-term, temporary loss of biodiversity by increasing the area/value of the biodiversity offset to be implemented, in proportion to that short-term loss – this would be over and above any 10% environmental net gain already proposed by the Applicant.
  - LBB require that a significant amount of the proposed offset habitat is delivered within the LBB administrative area. Otherwise, this will lead to an overall loss of biodiversity within the Borough. Such a result would be considered contrary to Local Plan policy including Policy TS15 of LBB's Unitary Development Plan.
  - Biodiversity mitigation plan should have regard to 'protected' and non-protected habitats and species
- 2.2 A meeting was held between the Applicant, the Environment Bank and LBB on 9<sup>th</sup> September 2019 to progress matters.
- 2.3 The meeting was positive, however, it was acknowledged that the exact quality, amount and location of compensation offsetting sites will not be available until after determination of the DCO application. Whilst the intentions from the Applicant are to provide sufficient and appropriate compensation, LBB consider that the only way to secure greater certainty is to ensure the DCO Requirements are sufficiently detailed, specific and binding to ensure the Applicant is required, and has the incentive, to provide the agreed compensation as soon as practicable. Further amendments to the DCO requirements and additions to the outline Biodiversity and Landscape Mitigation Strategy (OBLMS) are therefore considered necessary. Further details on this are provided below.
- 2.4 At the meeting with the Applicant on the 9<sup>th</sup> September 2019 LBB outlined the Council's preferred site selection criteria, related to compensation associated with impacts on sites within the LBB administrative area, this being:

- firstly 'sites in Bexley' should be prioritised;
  - secondly 'council owned sites';
  - then, if no Council owned sites are able to provide the compensation required, sites not owned by the Council but within Bexley should be considered. Those sites which close to the development site and are best able to provide the offset should be priorities; and
  - finally, If no sites in Bexley are able to provide the compensation, sites outside the borough should be considered.
- 2.5 LBB propose that this site selection priority order is set out and specified in the OBLMS to maximise the opportunity for there being no net loss of biodiversity in LBB. It is considered this wording provides additional clarity to the summary criteria set out in paragraph 5.19 of the OBLMS report and paragraph 3.3.2 of the Site Selection for Biodiversity Offsetting report submitted by the Applicant at deadline 7.
- 2.6 A conference call was also held with the Applicant on 12 September 2019 to discuss matters further. At this call and subsequently confirmed in an email, the Applicant has stated that they propose to include text in the OBLMS that commits the Applicant to providing offset compensation solely within LBB provided suitable and sufficient land is made available. The Applicant has also confirmed that they will carry on the biodiversity off-setting work with LBB after the Examination closes including the provision of a clear commitment through a legal agreement between the Applicant and LBB by the end of November 2019 to provide all biodiversity offsetting compensation in borough (subject of course to LBB land being available for offsetting). The implementation of such changes in the OBLMS and signing of a legal agreement would alleviate the concerns about the development creating net biodiversity losses in the borough. LBB welcomes review of such amendments and the formal confirmation to these commitments by the Applicant.
- 2.7 In order to minimise the potential for losses to biodiversity to occur in advance of any benefits being realised. It is proposed by LBB that the DCO requirements are strengthened to both specify the need to include for 10% net gain is included in the compensation provided but also to set out that if at least equal habitat replacement elsewhere is not achievable in advance of on-site losses, despite evidence of all reasonable efforts being made, then the area/value of the biodiversity offset to be implemented, should be increased to allow for this short-term, temporary loss in proportion to that short-term loss.
- 2.8 The suggestion made by the Applicant in Table 1 of the updated OBLMS submitted at deadline 7 for phased reinstated of biodiversity enhancements and for reinstatement of habitats 12 months after commissioning, which could be almost 5 years from commencement of the development, is not considered sufficient or appropriate. However, at the subsequent conference call held with the Applicant on 12 September 2019, and subsequently confirmed in an email, the Applicant has stated that they accept that the amount of biodiversity offset should be increased to take into account temporal loss of habitat and that this addition should apply in addition to the 10% net gain already proposed.
- 2.9 The Applicant has suggested this would be achieved through the application of a temporal risk factor within the DEFRA metric calculation that increases with duration of biodiversity loss. The Applicant has stated that they will propose further amendments to the OBLMS to account for this. LBB welcome such a proposed amendment, however, do consider that the whilst a temporal risk factor has been applied by the Applicant in the calculation of the biodiversity metric already, it is not yet clear that this risk factor includes for all time-lag related, temporary biodiversity loss, including the

time between impacts and full compensation for such impacts being realised. LBB welcomes review of such amendments.

- 2.10 With regard to requirement 5 of Schedule 2 of the draft DCO LBB propose a number of further amendments to those submitted by LBB at deadline 7, which LBB consider will help address these matters. The revised wording proposed is set out below. The text in red relates to proposed amendments made by LBB at deadline 7 and the text in blue relates to further proposed changes to this requirement in an attempt to address our key concerns that i) compensatory land should be provided before/ at same time as loss; and ii) prioritisation should be made for compensatory land within LBB or if outside LBB then selected based on criteria agreed with LBB.

### **Biodiversity and landscape mitigation strategy**

5.—(1) No part of the authorised development may commence until a biodiversity and landscape mitigation strategy for that part has been submitted to and approved by the relevant planning authority. The biodiversity and landscape mitigation strategy must be substantially in accordance with the outline biodiversity and landscape mitigation strategy and include details of—

- (a) mitigation measures required to protect protected habitats and species, **non-statutory designated sites and other habitats and species of principal importance** during the construction of the authorised development;
- (b) mitigation measures required to protect protected habitats and species, **non-statutory designated sites and other habitats and species of principal importance** during the operation of the authorised development;
- (c) the results of the Defra biodiversity off-setting metric together with the off-setting value required and the nature of such off-setting **(which must incorporate a minimum of 10% biodiversity net gain across the Development Consent Order boundary limits and any additional sites/land used for ecological offsetting purposes. This should be compared to the situation that existed prior to the commencement of the authorised development )**;
- (d) the mechanism for securing the off-setting value any long term management and monitoring commitments in respect of the off-setting; and
- (e) any hard and soft landscaping to be incorporated within Work Nos. 1, 2, 3, 4, 5 and 6 including location, number, species, size of any planting and the management and maintenance regime for such landscaping.

(2) The details of mitigation measures approved under sub-paragraph (1) in so far as they relate to offsite biodiversity compensation must –

- (a) evidence prioritisation of sites for off-set delivery within the London Borough of Bexley and where it has been demonstrated this has not been possible, that sites have been identified in accordance with established selection criteria agreed with the London Borough of Bexley; and
- (b) ensure that all off-setting compensatory land is provided before any biodiversity loss is incurred, where it is evidence that this is not possible, then the area and/or value of the biodiversity offset to be implemented should be increased in proportion with that short-term loss.

(3) The biodiversity and landscape mitigation strategy must be implemented as approved under sub-paragraph (1).

### 3 CONCLUSIONS

- 3.1 In conclusion and in specific answer to the Rule 17 letter, LBB considers that without certainty as to delivery of biodiversity off-setting, there could be a net loss of biodiversity within the borough and therefore the biodiversity effects of the project must continue to be considered a significant adverse impact at the local level.
- 3.2 LBB considers that this adverse impact would be appropriately mitigated if the changes to the DCO set out above were incorporated.