Cory Decarbonisation Project

Planning Inspectorate Reference: EN010128

SAVE CROSSNESS NATURE RESERVE

Deadline 2: Comments on further information and submissions received at Deadline 1

(including comments on draft Deeds of Obligations)

Introduction

1. The further information provided by the Applicant does not assuage the concerns set out in our written representation at Deadline 1. The information provided by other parties echoes and supplements our concerns. We provide below responses to the new information received.

Required footprint

2. It remains unclear from the Applicant's documents what the Applicant believes to be the minimum necessary footprint for the Carbon Capture Facility. The Applicant's TSAR Process Overview[1] states "*Option 2 (Compact) could be accommodated within a range of site size (some 6.3ha to over 8ha) dependent upon various factors*". It remains unclear exactly what those 'factors' are.

3. We maintain that a smaller footprint could be achieved, and endorse the detailed alternative designs prepared on behalf of Landsul and Munster Joinery.

4. The Applicant's Flue Gas Ductwork Note[2] still fails to explain the discrepancy in the Applicant's submissions, namely that the TSAR originally stated that the flue gas ductwork could be located on the existing Riverside Campus, but later submissions stated this was not possible.

Alternative sites

5. We endorse the alternative designs prepared on behalf of Landsul and Munster Joinery, which show that delivery in the East Zone (specifically North Zone 1) is possible.

6. We add that a relocation of FP4 along the southern and eastern edges of North Zone 1 (as shown in red in Figure 1 below) would allow for a more efficiently designed site in East Zone (North Zone 1). While we do not consider this change necessary, it would make it even more feasible to avoid impact to third parties, allow for a contiguous site, and also facilitate access to and from Norman Road. It would also minimise impact on users of FP4, as detailed below.

Figure 1 – proposed relocation of FP4

[1] Appendix B to the Written Summary of the Applicant's Oral Submissions at ISH1
[2] Appendix C to the Written Summary of the Applicant's Oral Submissions at ISH1

7. It may also be possible to split delivery of the Carbon Capture Facility across the East Zone (North Zone 1), Borax North and Borax South. This approach should only be considered as a fallback to delivery in East Zone (North Zone 1), as it would entail some harm to Crossness Nature Reserve (albeit significantly less than the Proposed Scheme). The Applicant has previously confirmed that delivery of two separate Carbon Capture Plants (one for Riverside 1 and one for Riverside 2) would be possible[3]. This proposed layout would seemingly work well with such an approach.

8. These examples would overcome the Applicant's purported issues around delivery in the East Zone (impact on multiple businesses and issues around FP4), while still avoiding the significant harm to Crossness Nature Reserve arising under the Proposed Scheme. The Applicant has failed to consider either of them, demonstrating further that the Applicant has not properly considered alternatives, and has not followed the mitigation hierarchy.

Thamesmead Golf Course

9. The Applicant states that the Proposed Scheme is the *"only way"* that ecological improvements to Thamesmead Golf Course can be delivered in the near future[4], since Peabody's delivery strategy is currently without a funding mechanism. This conclusion does follow from the current lack of funding. There are multiple alternative avenues to secure funding. Members of the Save Crossness Nature Reserve team have secured millions of pounds towards ecological projects in the local area and can therefore attest to the availability of funding.

10. In terms of capital funding, the National Lottery Heritage Fund is currently providing grants up to £10m under its 'Landscapes, parks and nature' fund. Various Countryside Stewardship funds would be available for the work proposed. The new grants programme from the British Ecological Society is another potential route. In the last year suitable funding has been offered by the GLA[5] (who provided initial funding for the project), City of London[6], and City Bridge Foundation[7] - while these have now closed, they were available to Peabody and similar funding will likely be available soon. These are only a few examples, and there are likely to be many more.

11. Regarding long-term management, further support could be provided from organisations like the Bumblebee Conservation Trust and North West Kent Countryside Partnership, both of which already provide similar support for the enhancement of the nearby Ridgeway. Furthermore, conservation areas are frequently maintained by volunteers – for example nearby Lesnes Abbey Woods and Stave Hill Ecological Park (managed by The Conservation Volunteers).

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[3] See paragraph 2.2.5 of the Planning Statement
[4] Page 27 of Applicant's Written Summary of Oral Submission at ISH1
[5] See 'Green Capital Grants' programme
[6] See 'Enjoying Green Spaces and the Natural Environment' programme
[7] See 'Revenue funding: making London a greener city for all' programme

12. The Applicant's position also overlooks Peabody's in-house capabilities. Peabody owns vast amounts of greenspace, with dedicated teams responsible for its enhancement and management. It has also set up a Thamesmead Nature Forum and volunteer groups. The 'Pathway to the Thames' document makes no mention of the need for funding via a partnership like the one proposed with the Applicant. Therefore it seems it would be possible for Peabody to manage the site itself.

13. All of the above suggests alternative funding is available that would avoid the destruction of valuable land and ecology on Crossness Nature Reserve. Therefore, the Applicant's role in delivery of the Thamesmead Golf Course works is overstated. Accordingly, it should not be considered legitimate mitigation for the significant biodiversity harm arising from the Proposed Scheme.

Gannon land

14. The Applicant has confirmed that, as part of the Riverside 2 development, it has committed to restoring the Gannon land parcel (which we believe to be roughly 1 hectare) as Open Mosaic Habitat (OMH)[8]. The Proposed Scheme is to be built on this land, meaning this benefit from Riverside 2 will be lost. The Applicant only proposes compensation *in biodiversity net gain terms* through the provision of OMH at Thamesmead Golf Course.

15. However, the Applicant has failed to account whatsoever for the separate harms of loss of open space and green infrastructure. Delivery of OMH on Thamesmead Golf Course fails to mitigate this harm, since that land is already open space and green infrastructure. Furthermore, given the Gannon land is connected to Norman Road Field (in turn connected to Crossness Nature Reserve), it is possible this land would go on to achieve MOL and even SINC designation, which again is not accounted for. We believe it is likely that, once OMH, the Gannon land would have been removed from the SIL allocation, and so the Applicant's reliance on partially developing the Proposed Scheme on SIL land should be seen in this context. This is yet another example of how the Applicant has failed to properly assess the full extent of the harm and correctly apply the mitigation hierarchy.

Public access

16. We take particular issue to the proposed PRoW in the north-west corner of the Site, creating a second route between FP2 and FP3. This route is redundant given the existing route to the west that serves the same purpose. It will lead to completely unnecessary fragmentation of and harm to habitat, while offering no meaningful benefit.

17. The Applicant's Written Summary of Oral Submissions at ISH1 confirms that the exact routes and detailed design of the new and altered PRoWs are not yet determined. Until this information is prepared, the full extent of the potential ecological harm, and

[8] See page 26 of Written Summary of the Applicant's Oral Submissions at ISH1

the level of mitigation required, cannot be properly assessed. We request that the Applicant provides this information before Deadline 3.

18. The Applicant proposes protection of ecologically sensitive areas through signs encouraging visitors not to stray from the paths and instructing dog walkers to keep dogs on a lead. Of course, there is no guarantee that this guidance will be followed. There would be a high residual risk of harm to vulnerable and valuable species and habitats; therefore, this alone is insufficient mitigation.

19. The Applicant has also failed to consider how the relocation of grazing land for the grazier will create potential health and safety risks affecting public access (considered further below).

Footpath 4 (FP4)

20. The Applicant continues to overstate the harm to FP4 if the Carbon Capture Facility were delivered in the East Zone. The Applicant's East Zone Connectivity Note only confirms that all the problems listed are either resolvable, or ultimately do not create a significant amount of harm, especially when compared to the loss of Crossness Nature Reserve Land under the Proposed Scheme. The potential effect on the linear green and blue infrastructure along Norman Road is obviously far less significant than the actual loss of the more valuable Crossness Nature Reserve land.

21. The impacts on users of FP4 are overstated. It is common to have vehicle crossings on public footpaths – in fact, FP1 even crosses a busy dual carriageway (the A2016 Eastern Way).

22. The fact that a small part of FP4 would *"feel significantly more industrial in character"* is of minor concern, and to be expected when surrounded by SIL. Furthermore, as per Figure 1 above, these concerns could be improved through a rerouting of FP4 along the southern and eastern edges of the Carbon Capture Facility.

Relocation of graziers

23. The Applicant's Equalities Considerations document[9] sets out further detail regarding relocation of the grazier, Ms Anderson. However, the Applicant has failed to consider the knock-on effects this will have on the remaining Crossness Nature Reserve. The Applicant seeks to justify loss of the paddocks by ascribing them low value, due to lack of public access and purported low ecological value (an approach we dispute). But these conditions would be replicated on whatever land becomes the new grazing land. Therefore, in effect, it is the purportedly higher value (and potentially publicly accessible) land that is lost. This reveals a logical inconsistency in the Applicant's approach.

[9] Appendix A to Written Summary of Applicant's Submissions at CAH1

Norman Road Field

24. We disagree with the Applicant's analysis of the planning position relating to Norman Road Field. We accept that (at least some of) the *initial works* required under the Ecological Master Plan were carried out under permission 08/01834/FUL. However, there is no evidence that the further long-term management that is also required under the Ecological Master Plan has been carried out. There is no evidence that Management Plans have been produced. The Applicant itself notes a "*lack of long-term management of the interventions that had been undertaken"*[10]. The 10 Consent only refers to the initial works and not the long-term management.

25. The URS 'Ecological Enhancement and Protection Scheme' document provided by LBB is not relevant: it was not relied upon by LBB when discharging condition 18 of the 10 Consent. The LBB decision letter (Appendix 8 of our Deadline 1 Written Representation) instead relies on a separate document produced by AECOM the following year, which has not been produced. In any event, the URS document only confirms the initial Norman Road Field works were completed; it does not confirm long-term management[11].

26. The Applicant incorrectly states that the ten-year period referred to in the Ecological Master Plan runs from the date of the initial works; the wording clearly states that it is the Management Plans themselves that run for ten years. Given the lack of management, that requirement is still live and enforceable.

Management of Crossness Nature Reserve (including comments on draft Deeds of Obligations)

27. The Applicant's approach now relies on Deeds of Obligations pursuant to section 111 of the Local Government Act 1972. The draft Deed of Obligations (B) only sets out terms relating to the Members' Area and manager of Crossness Nature Reserve employed by TWUL (with Deed of Obligations (A) relating to Thamesmead Golf Course). We assume therefore that a separate s106 agreement is intended in relation to broader planning obligations, but this has not been provided. It is unclear why this is the case, and how the Applicant intends for the land to be bound by the obligations pursuant to these Deeds of Obligations. We request that the Applicant gives a full explanation, including a draft of any additional s106 agreement, as soon as possible.

28. The Applicant's claim that compulsory acquisition is *"necessary"* is incorrect. Third parties could be required to manage the land through positive s106 obligations (either by varying existing agreements or entering into a new one). The Applicant tacitly accepts this in its proposal to place positive obligations on TWUL to ensure the Members' Area (which will stay under TWUL ownership) is *"managed in the same way*

[10] Page 31 of Written Summary of Applicant's Submissions at ISH1

[11] Assuming the AECOM document does the same, then this means that the document required pursuant to condition 18 must in fact be different to the Management Plans required in the Ecological Master Plan, contrary to our initial assumption

as the rest of the land"[12]. This demonstrates that the same level of management can be achieved without acquisition.

29. The fact that the Applicant is liable for compliance with the DCO is irrelevant: whether or not the Applicant acquires the land, TWUL will continue to manage it, and the Applicant's method of ensuring TWUL's compliance will be through enforcement of the contract between the two parties. The Applicant's draft Deed of Obligations already allows for direct enforceability in this way. The same level of control and ability to enforce (and risk) arises through either route.

30. The claim that "*there is nothing in property terms preventing TWUL from wishing to develop that land for development in the future"* is deeply misleading. TWUL is prevented from developing the land under its existing s106 agreement, and under its statutory obligations[13]. Furthermore, the strong planning designations of Crossness Nature Reserve protect it from redevelopment. The Proposed Scheme does not materially add to that level of protection. In any event, it would be absurd to justify development on (and extensive loss of) Crossness Nature Reserve in order to protect the remainder from further development.

31. The Applicant's assertion that *"imposing new planning obligations on a third party… would essentially be akin to a positive covenant in property terms"*, is misguided. It is common practice and entirely legitimate for s106 agreements (whether varied or new) to impose new, positive planning obligations on third parties. The limitations on the use of positive covenants do not apply to planning obligations. It would be the third parties' free choice to enter into these new obligations. The alternative – being forced to lose the land entirely – is surely more coercive. In any event, this argument contradicts the Applicant's own approach, since the Applicant is already proposing to impose new obligations on TWUL under the draft Deed of Obligations.

32. The Applicant's notion of *"de facto"* acquisition is irrelevant to the statutory test of acquisition being *required*. The Applicant also greatly overstates what TWUL can currently do with the land, given the various limitations listed above. In reality, TWUL would hardly be more limited than it currently is.

Environmental Permitting

33. In the Written Summary of the Applicant's Oral Submissions at CAH1, the Applicant states that *"the mechanism for achieving the* [95%] *capture rate is the Environmental Permit"* and refers to the EA guidance from March 2024 titled *'Post combustion carbon dioxide capture: emerging techniques'*. However, the guidance only states that operators *"should aim to design"* plants to achieve this rate of capture and considers capturing at least 95% to be BAT (i.e. best available technique).

[12] We note that the Applicant now seeks to secure these obligations in the separate Deed of Obligations pursuant to section 111, but could just as easily secure them under the overarching s106 agreement.
[13] See paragraph 12 of our Written Representation at Deadline 1

34. First, there is a difference between what the guidance encourages when designing a carbon capture system (i.e. merely aiming to design it with a view to achieving 95%) and achieving BAT (capturing at least 95% during normal operating conditions). It is possible that a system may be designed to achieve 95% but fall short of achieving this operationally.

35. Secondly, the guidance is caveated with the words *"normal operating conditions"*. The impact of this caveat is that, if there are not normal operating conditions, a less than 95% capture is permitted. Consequently, it is possible that the capture system may fail to achieve 95% capture in those circumstances too.

36. Thirdly, whilst the 95% is expressed as being akin to a minimum required standard, it is not in practice. This is due to the reasons highlighted above and this is also evident from the fact that there are existing carbon capture facilities that do not achieve this rate and are allowed to continue operating. It could be the case, for example, that the site is found to achieve less than 95% and considered to be BAT compliant (despite the guidance saying that they consider at least 95% capture to be BAT). What is BAT at a particular site is dependent on quantitative and qualitative analysis of BAT. It could be the case that the quantitative and qualitative analysis shows it would be too costly to make the improvements that would be necessary to achieve the 95%. This would leave the site operating at a less than 95% capture rate.

37. Fourthly, in practice, if a carbon capture facility is found not to be BAT compliant, this will only be picked up during permit reviews by the Environment Agency. Additionally, assuming that the outcome of the BAT analysis is that improvements should be made to achieve the *"at least"* 95% capture rate, that may take a substantial amount of time to resolve. This is because, the site operator will be given a period of time to implement the improvements that are necessary to achieve BAT.

38. Consequently, it is incorrect to say that the Environmental Permit ensures that a 95% capture rate is achieved, and the Applicant has failed to provide other sufficient evidence to support its contention.