

Our Ref: 2007406
PINS Ref: EN010138
Enquiries to: Mark Woodger

Via Portal

For the attention of Jonathan Manning

Date: 18th June 2024

Dear Mr Manning,

**RIVENHALL EFW – IWMF EN010138
ESSEX COUNTY COUNCIL 2007406
ECC DEADLINE 3 SUBMISSIONS**

Please find set out below and attached Essex County Council's Deadline 3 submissions. These consist of the following:

1. Post-hearing submissions, including written summaries of oral submissions to the hearings.
2. Post-hearing submissions requested by the ExA –
 - a. Provide source data from noise modelling to Essex County Council (ECC) and engage in further discussion to seek agreement (Jacobs Technical Note attached).
 - b. Engagement between the parties on cumulative noise assessment associated with the Dry Silo Mortar Plant at Bradwell Quarry.
 - c. Parties to further discuss whether a deed of variation is needed to the existing Section 106 agreement, particularly with regard to its definitions.
 - d. Provide written response to the Applicant's submissions to written question Q1.3.2 [REP1-011], particularly Sections 5 and 6 of Annex 1.
3. Comments on any other submissions received at Deadline 2.
4. Statement of Common Ground and Commonality with Host Authorities Version 2.2 (attached)
5. ECC Draft Development Consent Order (Ddco) (attached) .

1. Post-hearing submissions, including written summaries of oral submissions to the hearings.

At Hearing 01 ECC raised the issue as to whether, to appropriately control the development for which Consent is here granted, a cap on the amount of electricity produced should be applied to limit the potential environmental effects of the development as here applied for.

ECC is minded that when the development was originally Scoped by the Planning Inspectorate the proposal was to increase energy production in excess of the current 49.9 MW limit. The Applicant's Scoping submission is within the Examination Library (ExA) at APP-039, and within this at 3.1.4 it states:

Once installed and commissioned, it is anticipated that the likely generating capacity of the facility would be approximately 65 MW; this value may potentially alter during design development and operation.

Within the submitted Scoping opinion (APP-039) alternatives were put forward to the proposal as here being considered at 4.1.3, options are considered, these being:

- No development, hence production remains at 49.9MW
- Less than @ 65MW
- More than 65MW
- Others

In its response in consultation to the applicant's Scoping request (APP-041) ECC responded to the same on the basis that the development would generate *approximately 65 MW* of electricity and did so on that basis.

The Planning Inspectorate response to Scoping, attached within the ExA at APP-040 at para 1.0.8, states:

This Opinion has been prepared on the basis that the Proposed Development relates to an extension to the gross electricity generation output of the consented Rivenhall Integrated Waste Management Facility (IWMMF, the 'consented scheme') from 49.9MWe to an excess of 50MWe gross electricity generation output as set out in section 3.1 of the scoping report. References to the Proposed Development in this Opinion relate to that extension. Section 2.2 of the scoping report explains the excavation works and construction of retaining walls underway of the consented scheme is underway and is scheduled for commission by 2025.

It is correct that the amount of electricity to be generated would exceed 49.9MW but in PINS's Scoping Response it is not clear whether a cap was considered at 65MW and in doing so was material in their Scoping consideration.

However, it is apparent within the applicant's own submission, within the ExA at APP-029 in Chapter 4 of the considered Alternatives that, at paras 4.4.3 to 4.4.4:

The turbine proposed to be installed under the Consented Scheme has a maximum output potential. To generate electricity greater than 65MW a larger turbine and generator is likely to be required. This would require a significant change to the consented building envelope.

In order to operate efficiently, the larger turbine would also require more throughput of fuel to increase the generating output, thereby requiring an increased number of HGV trips delivering the waste. This would have indirect negative air quality and noise effects, with the larger turbine and building potentially having negative noise and vibration and landscape and visual impacts once operational. It is not considered a reasonable alternative by the Applicant.

This DCO proposes no changes whatsoever to the building envelope, no additional HGV movements and no additional throughput of fuel. What ECC considers as being particularly relevant is that, in the applicants' own words, exceeding 65 MW could have "indirect negative air quality and noise effects" on the environment.

The ExA at Hearing 01 also made this point and suggested that such impacts were not factored in when the proposal was originally Scoped, and as such were not factored considered when the PINS Scoping Opinion was issued, hence such impacts are not within the ES accompanying this submission. ECC wholly supports this view.

At Hearing 01 ECC recognised the applicants position that electricity generated can vary from time to time due to the calorific content of the waste arriving at site, and that in certain weather conditions the generation of power could increase in excess of 65MW. ECC does not wish to explicitly limit the day-to-day operations of the site in such a way that electricity generated could be lost at times during these periods. However, ECC is, in our professional opinion, rightly concerned that by placing no cap whatsoever on electricity generated is unacceptable as the impacts of the same have not been proven. The ExA will remember our comments as to an average MW generation over say monthly intervals, is ultimately necessary as an unlimited energy cap could well give rise to potential impacts not considered by this DCO.

Within the current Draft DCO at REP1- 004 there is no limit on electricity which could be generated, ECC suggests that one is added in order to ensure that the production of electricity is not prejudiced but limited to a level as is considered by this DCO.

At Hearing 01 reference was made to a DCO made at the Slough Multifuel Extension, made by the Secretary of State on 28 November 2023. Within Schedule 1 of that DCO it states at Work 1

that:

An extension to the Slough Multifuel combined heat and power generating station with the effect that, once extended, the extended generating station will have a gross installed generating capacity of up to 60MW.

ECC has had no direct involvement in the Slough DCO, but in this case, it was considered correct for the decision making authority to place a limit on electricity to be generated, ECC asks that similar consideration be given here to the Indaver proposals which are under consideration.

ECC does not see that the applicants propose this change within their deadline 02 submissions. When our Local Impact Report is considered at REP2-004 they respond to our request for a cap as follows:

The inclusion of the word 'likely' was deliberate and is intended to signify that there is not total certainty on what would be required to generate electricity. This DCO Application is the result of technology improving over a period of time such that greater electrical output can be derived from the same fuel throughput simply through the availability of more efficient plant. It is not impossible that a similar scenario could be incurred in the future. This is why the dDCO is seeking a reasonable degree of flexibility as to the power output; a degree of flexibility that has been granted on other DCOs as set out in the Applicant's response to ExQ1 Q1.5.2 [REP1-011].

ECC notes this comment and understands that electricity generation could vary from time to time, which has been previously explained here. However, ECC remains of the view that as it currently is proposed a lack of a meaningful, necessary and entirely reasonable cap on average energy production could mean that the true impact of this proposal was not Scoped into the submission, and hence the potential impact of this have not been included within the applicants Environmental Statement.

This point has been made to the applicants, and ECC will continue to work with them to see if a mutually acceptable solution can be achieved as this DCO progresses within its as set ExA timetable.

2. Post-hearing submissions requested by the ExA

- A. **Provide source data from noise modelling to Essex County Council (ECC) and engage in further discussion to seek agreement.**

ECC and Jacobs have requested the noise modelling data from the applicant to understand how noise levels have been calculated, however no background data has been provided.

Therefore, a full review of the noise models has not been possible at this time due to the supporting data (which may include manufacturer datasheets, noise measurement data, internal room noise level calculations, etc.) not being made available. As such, it is not possible for Jacobs to confirm the veracity of the predicted noise levels presented in the ES chapter.

Despite the lack of the supporting data that had been previously requested by Jacobs, it has been possible for some checks to be completed regarding the propagation of noise from the site to the noise receiver at the various noise sensitive receptors and a number of comments have been raised. We would recommend that SLR consider the comments and then review the settings / approaches adopted, as appropriate, to confirm that they represent reasonable worst-case conditions. The most pertinent comments that may be contributing to an under prediction of noise levels are:

- The level of reflection that has been assumed from the surfaces of buildings within the model.
- Noise source directivity, particularly if there are examples of noise source propagation from sources to receivers that are on-axis and consequently more likely to result in an increase in prediction noise level at receivers.

There are also potential sources of noise over prediction identified in the review, such as the receiver height at The Lodge (worst-affected receptor) at night and the omission of source directivity for noise sources where the noise propagation path is off-axis.

A full copy of Jacobs Technical Note 'Review of Noise Modelling Files', dated 18th June 2024 is attached to ECC's Deadline 3 submission.

B. Engagement between the parties on cumulative noise assessment associated with the Dry Silo Mortar Plant at Bradwell Quarry.

Background

Jacobs have previously provided consultation responses for the PEIR and Environmental Statement stages of this DCO, dated 09/08/23 and 19/04/24 respectively. A cumulative assessment examining the combined effects of the IWFMF and existing consented activities at Bradwell Quarry site was requested in our August 2023 response. Our April 2024 response notes that the ES states that night-time cumulative impacts would not occur since the quarry does not operate at night. However, certain activities at the quarry are permitted during the evening and part of the night-time period.

Jacobs have also been involved with the DCO hearing held on 4th June 2024.

Comments on Cumulative Assessment

SLR's Technical Memorandum states that the cumulative assessment addresses the operation of the Dry Silo Mortar (DSM) plant at the quarry, in combination with the IWMF during the evening period 19:00-22:00 and night-time period 06:00-07:00. The current planning consent for operations at Bradwell quarry (ESS/12/20/BTE, 22 June 2022) allows the operation of the DSM during these hours, but Condition 10 also allows the operation of the bagging plant (with roller shutter doors closed) during these hours. It is understood that current demand for these goods means that neither the DSM nor the bagging plant operate frequently; however, they are consented to operate independently or concurrently should demand rise. The worst-case cumulative assessment should include contributions from all sources that may operate concurrently. The bagging plant has not been considered by the Technical Memo.

The Technical Memo has used a previous planning application for a change to operating hours for the DSM (ESS/20/17/BTE, 14 August 2018) in order to derive predicted DSM noise levels at 10 identified receptors including Heron's Farm, close to the DSM and The Lodge which is close to the IWMF. Bradwell Hall is identified as a DSM receptor in the planning consent but has not been modelled for the cumulative assessment. This receptor is close to the DSM, but further from the IWMF than Heron's Farm and is therefore not expected to experience cumulative effects at levels more adverse than Heron's Farm.

The DSM noise levels have been predicted for this assessment using the same method employed by the previous DSM application. We have undertaken our own calculations for one receptor also using this method and conclude the calculations have been undertaken by SLR appropriately. They include contributions from the DSM plant itself and the loading shovel used to service it.

The Technical Memo then adds the DSM predicted noise levels to the IWMF noise levels and compares these cumulative noise levels with the existing consented IWMF noise limits. Notwithstanding our previous comments (August 23 and April 24) regarding the appropriateness of applying the previously consented IWMF noise limits to the current proposed applications, it is concluded that the predicted cumulative noise levels would meet these existing IWMF noise limits. It should be noted that the predicted cumulative noise levels for The Lodge are equal to the proposed noise limit.

It should also be noted that predicted DSM noise levels presented in the DSM application are 3 dB lower than the night-time noise limit imposed by the current Bradwell Quarry consent (39 dB vs 42dB LAeq 1 hr), and 5dB lower than the evening noise limit (44dB LAeq 1hr). Compliance monitoring undertaken for the DSM plant has been unable to confirm the exact site attributable noise levels due to the influence from extraneous noise. ECC would be unable to take any enforcement action if DSM noise levels increased above the predicted noise levels until the planning consent was

breached. Therefore, it would be prudent to consider whether the DSM operating at its consented limit would, in combination with the IWMF, cause a significant cumulative effect. For example, adding 3dB to the Technical Memo's predicted DSM noise levels would result in an exceedance of SLR's proposed night-time noise limit at The Lodge.

Conclusion

Notwithstanding our previous comments regarding suitable noise limits, the Technical Memo on cumulative noise assessment has not robustly demonstrated that SLR's proposed noise limits would be met during the identified evening and night-time periods. The current quarrying consent would allow concurrent operation of the bagging plant and DSM plant; however, the cumulative assessment focuses only on the DSM. Furthermore, the ability for the DSM to operate up to its consented noise limits should also be considered.

C. Parties to further discuss whether a deed of variation is needed to the existing Section 106 agreement, particularly with regard to its definitions.

ECC will provide further comments by Deadline 4.

D. Provide written response to the Applicant's submissions to written question Q1.3.2 [REP1-011], particularly Sections 5 and 6 of Annex 1.

ECC explained at the Hearing that a written response would be provided.

Sections 5 and 6 of Annex 1 of the applicant's reply to first written questions relates to:

E. THE DESCRIPTION OF THE CONSENTED SCHEME AS AN "INTEGRATED WASTE MANAGEMENT FACILITY" DOES NOT REQUIRE COMPLETE IMPLEMENTATION

F. THE EXTANT PERMISSION DOES NOT CONTAIN CONDITIONS OR OBLIGATIONS PROHIBITING PARTIAL IMPLEMENTATION OR THE CONSTRUCTION AND OPERATION OF THE EFW PLANT ALONE

Since submission of this information ECC has revised its position with respect to whether the difference of interpretation of the planning permission by the WPA and the applicant are pertinent to the consideration of the DCO.

ECC's Response to deadline 2 – Appendix 1 "ECC's Comments to Applicant's Response to the ExQ1 – Deadline 2 (21st May 2024) provides responses to the applicant's comments [REP2-007].

Relevant responses are provided to Q1.3.1 and Q1.3.2 in Appendix 1 of REP2-007. Within these responses ECC maintains its view that there could be a breach of planning control if the EfW were to operate without other elements of the IWMF. However, the WPA has clarified its position with respect to the planning permission's interpretation and whether it is pertinent to the DCO.

Having reconsidered the relationship of the DCO with the Consented Scheme as explained in the extract below from ECC's response to Q1.3.2 the WPA is of the view that granting of the DCO would not undermine the WPA's position with respect to the interpretation of the planning permission. The matter of the difference of interpretation is a matter that hopefully will be resolved between the WPA and the applicant by way of a CLPUD prior to the operation of the EfW element of the IWMF.

Extract from response to Q1.3.2

WPA's Current Position:

"The Waste Planning Authority has considered its position further since these earlier submissions with respect to the Rivenhall DCO. It is acknowledged that the IWMF does include permission for a CHP/EfW plant. The DCO seeks to extend the power output to above 49.9MW, that being the limit to which a local planning authority can consider. If other elements of the IWMF were to be developed it is likely that a substantial percentage of the heat and steam would be utilised by other elements of the IWMF and the available heat and steam to generate power would be substantially reduced. However, on further consideration it is recognised, that at this stage the current development on site and the works proposed as part of the DCO would not preclude the development of the other elements of the IWMF. In addition, if a DCO were to be granted the applicant does not have to utilise the full power output permitted and could choose to develop any or all of the elements of the IWMF, such as the MDIP and generate less electricity. While the WPA remains of the view that the IWMF was considered by both the SoS and the WPA on the basis of an integrated facility, which delivered more sustainable development than a standalone EfW, the WPA is now of the view the DCO, if granted, would not undermine the WPA position on the integration/severability of the planning permission. The point at which there could be breach of planning control would be at the point the EfW operates without the other integrated elements of the IWMF. It is the intention of the WPA to work with the developer to try to resolve this difference of interpretation of the planning permission prior to the EfW coming into operation. The submission of a Certificate of Lawful Development for a Proposed Use (CLPUD) has been suggested to the applicant, but to date this option has not been taken up. The submission of a CLPUD would enable the WPA to formally consider the matter taking into account the position of the applicant and as well as its own advice. Nonetheless, the Inspector may wish to consider whether the WPA's position is correct (whether the IWMF planning permission does not permit the operation of a standalone EfW; that in fact there is not an extant

permission for “An existing generating station” that allows its output to be increased through the DCO process.)”

3. Comments on any other submissions received at Deadline 2 (Local Impact Reports).

| LIR Ref. | ECC Response |
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| Background and Context | |
| 3.1.9 | ECC maintains its view that there could be a breach of planning control if the EfW were to operate without other elements of the IWMF. However, the WPA has clarified its position with respect to the planning permission’s interpretation and whether it is pertinent to the DCO. |
| Principle of Development | |
| 6.4.1 – 6.4.2 | ECC acknowledge that the IWMF does include permission for a CHP/EfW plant. The DCO seeks to extend the power output to above 49.9MW, that being the limit to which a local planning authority can consider. If other elements of the IWMF were to be developed it is likely that a substantial percentage of the heat and steam would be utilised by other elements of the IWMF and the available heat and steam to generate power would be substantially reduced. However, on further consideration it is recognised, that at this stage the current development on site and the works proposed as part of the DCO would not preclude the development of the other elements of the IWMF. In addition, if a DCO were to be granted the applicant does not have to utilise the full power output permitted and could choose to develop any or all of the elements of the IWMF, such as the MDIP and generate less electricity. While the WPA remains of the view that the IWMF was considered by both the SoS and the WPA on the basis of an integrated facility, which delivered more sustainable development than a standalone EfW, the WPA is now of the view the DCO, if granted, would not undermine the WPA position on the integration/severability of the planning permission. The point at which there could be breach of planning control would be at the point the EfW operates without the other integrated elements of the IWMF. It is the intention of the WPA to work with the developer to try to resolve this difference of interpretation of the planning permission prior to the EfW coming into operation. |
| Climate Change | |
| 7.2.2 | Discussion relating the study area relevant for the reporting of emissions arose at Hearing 1. ECC provided a response reiterating the importance to the County's responsibility to set and achieve a trajectory to net zero carbon emissions. As the project will be of significant emissions, a provision of information to identify the predicted emissions and cross examination to county wide emissions is requested. |

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| | <p>The Government's 2005 to 2021 UK local and regional greenhouse gas emissions – data tables (Excel) (updated 6 July 2023) advise that in 2021:</p> <ul style="list-style-type: none"> • Essex Countywide emissions equated to 6,619 kilo-tonnes of CO2. <p>Reporting against local carbon values is consistent with the approach identified in figure 4 of the IEMA Methodology guidance document.</p> |
| 7.2.3 | As above. |
| 7.3.1 | Both ECC and BDC are requesting the emissions data be presented in full; in order for transparency of the impact of the project as a contributor to global heating to be understood. As the amount of CO2 emissions is assumed to be significant, it is considered an important part of the consideration of this development. |
| 7.3.4 | See responses above. |
| 7.3.5 | See responses above. |
| 7.3.8 | The Long run marginal emission factors (LR-MEF) are consistent with the national trajectory for emissions and the carbon budgets outlined to achieve net zero by 2050. The methodology underpinning the LR-MEF is suitable for the comparison to the emissions associated with an alternate energy generation means for the capacity of the IWMF. However, the comparison between the direct emissions associated with the facility and the subsequent reduction of emissions through alternate method of waste management has not been presented. This opinion was also expressed verbally during Hearing 1 by ECC. |
| 7.3.9 - 7.3.10 | Opinion raised during 3.iii of Hearing 1. |
| 7.3.11 | See responses above in relation to provision of emissions data for the development. Opinion raised during 3.ii. of Hearing 1. |
| 7.4.1 | Opinion raised during 3.iv of Hearing 1. The applicant should identify the methods of mitigation to provide a trajectory of decarbonisation to net zero emissions for 2050. |
| 7.4.2 | Opinion raised during 3.iv of Hearing 1. See further opinion above. |
| 7.4.3 | Opinion raised during 3.iv of Hearing 1. See further opinion above. |
| 7.4.4 | Initial ECC point raised in order to identify presence of wider industry synergy between EfW and CCUS. |
| 7.4.6 | See responses above in relation to provision of emissions data for the development. Opinion raised during 3.ii. of Hearing 1. |
| 7.4.7 - 7.4.8 | No further opinion to be raised at this time. |
| Noise and Vibration | |
| 8.4.6 | ECC and Jacobs have requested the noise modelling data from the applicant to understand how noise levels have been calculated, however no background data has been provided to meet the current deadline. |

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| | Therefore, a full review of the noise models has not been possible at this time due to the supporting data (which may include manufacturer datasheets, noise measurement data, internal room noise level calculations, etc.) not being made available. As such, it is not possible for Jacobs to confirm the veracity of the predicted noise levels presented in the ES chapter. |
| 8.4.8 | ECC do not consider that the Planning Inspectorate in issuing the Scoping Opinion agreed to the methodology for the noise assessment, in particular that the Proposed Development should be assessed against the noise limits within the Consented Development. ECC also considers that it is not appropriate for the noise limits of the existing permission to form the baseline for the assessment. |
| 8.4.22 | See responses above and comments by Jacobs in Section 2A and 2B of this ECC Deadline 3 submission. |
| 8.4.25-29 | See responses above. |
| 8.2.29 – 8.4.37 | ECC asks for the applicant to explain this comment at Deadline 04. |
| 8.5.2 | ECC understands the position as stated by the applicant. Regardless of the site’s lengthy planning history and its operating conditions what is to be considered here is a new development and it is correct that the assessment of noise, Scoped into this DCO by the Planning Inspectorate, is done with current and not historic noise standards. The appellant correctly identifies the nuances between old and current standards and the potential negative impact if new standards are not used to assess the appropriateness or otherwise of the development. |
| Summary | |
| 12.1.15 | <p>ECC notes this comment and understands that electricity generation could vary from time to time, which has been previously explained here. However, ECC remains of the view that as it currently is proposed a lack of a meaningful, necessary and entirely reasonable cap on average energy production could mean that the true impact of this proposal was not Scoped into the submission, and hence the potential impact of this have not been included within the applicants Environmental Statement.</p> <p>This point has been made to the applicants, and ECC will continue to work with them to see if a mutually acceptable solution can be achieved as this DCO progresses within its as set ExA timetable.</p> |

I hope the above is of assistance, however, please do not hesitate to contact me if you have any questions or queries on the above.

Yours sincerely,

[REDACTED]

**Mark Woodger, Principal Planner
Principal Planning Officer (National Infrastructure)**

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