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Your ref : EN010093

09 April 2020

Dear Mr Wilkinson

**PLANNING ACT 2008**

**APPLICATION FOR THE RIVERSIDE ENERGY PARK GENERATING STATION ORDER**

## 1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 9 January 2020 of the Examining Authority ("the ExA"), Jonathan Green, who conducted an examination into the application ("the Application") submitted on 15 November 2018 by Cory Environmental Holdings Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Riverside Energy Park onshore generating station and associated development ("the Development").

1.2 The Application was accepted for examination on 14 December 2018. The examination began on 10 April 2019 and was completed on 9 October 2019. A number of changes were made to the Application during the examination. The details of these changes were made available to interested parties and examined by the ExA.

1.3 The Order, as applied for, would grant development consent for the construction and operation of an onshore generating station of around 96 megawatts ("MW") in the London Borough of Bexley in Belvedere adjacent to an existing energy from waste facility. The Development would include:

- an energy recovery facility with a generating capacity of around 76MW utilising a total annual waste throughput of up to 805,920 tonnes per annum;
- an anaerobic digestion facility with an annual waste throughput of up to 40,000 tonnes per annum of green and food waste;
- enabling infrastructure for Combined Heat and Power;
- solar voltaic panels with a generating capacity of around 1MW;

- a battery storage facility with a storage capacity of around 20MW; and
- associated development.

1.4 Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website[1] is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The ExA's findings and conclusions are set out in Chapter 4 to 8 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 9.

## 2. Summary of the ExA's Report and Recommendation

2.1 The principle issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- air quality;
- compulsory acquisition;
- design, layout and visibility
- the draft development consent order;
- economic and social impacts;
- habitats, ecology and nature conservation;
- historic environment;
- landscape and visual impact;
- noise, lighting, dust and vibration;
- transport and traffic; and
- water quality and flood protection.

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the ExA Report, the ExA recommends that the Order be made, as set out in Appendix D to the ExA Report [ER 9.3].

2.3 The Secretary of State notes that the Application was amended by the Applicant during the examination to allow for:

- the removal of plots 02/53 and 02/55 (shown on the original Land Plans [APP-007]) from the Main Temporary Construction Compound, and the use of plots 02/43, 02/44, 02/48 and 02/49, which had been originally included for works associated with the development of a Data Centre, as part of the Main Temporary Construction Compound;
- the use of cable troughs to cross a watercourse at Norman Road and a strategic sewer at Joyce Green Lane; and
- changes to the route proposed for the electrical connection including the removal of alternatives routes set out in the original application and the narrowing of the redline boundary for the works at certain points along the preferred route.

[1] https://infrastructure.planninginspectorate.gov.uk/projects/london/riverside-energy-park/?ipcsection=overview

2.4 The Secretary of State notes that the ExA accepted into the examination as non-material the changes relating to the use of cable throughs and the change to the route of the electrical connection. The Secretary of State also notes that the ExA was of the view that the change relating to the Main Temporary Construction Compound and the Data Centre constituted a material change and therefore sought further comment from the Applicant and IPs on this change. The Secretary of State is aware concerns were raised regarding the potential for adverse impacts on terrestrial biodiversity, whether the use of the Data Centre site and the delay in developing the Data Centre would result in impacts that hadn't already been assessed in the Environmental Statement and Supplementary Report, how access to the Data Centre site would be provided and potential contamination due to the existing ground conditions at the Data Centre site. The Secretary of State agrees with the ExA, for the reasons he gives in chapter 5 of the Report, that these changes should be accepted as part of the Development.

## 3. Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("2017 Regulations").

## 4. Secretary of State's Consideration of the Application

4.1 The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report.

4.2 The Secretary of State has had regard to the Local Impact Reports ("LIR") submitted by the Greater London Authority ("GLA"), London Borough of Bexley ("LBB"), London Borough of Havering ("LBH"), Kent County Council ("KCC") and Dartford Borough Council ("DBC"), environmental information as defined in the 2017 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes 87 relevant representations were made by statutory authorities, non-statutory authorities and local residents and businesses. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

Planning Balance

4.4 The Secretary of State is aware that a number of Interested Parties including local organisations and residents raised concerns regarding potential harm on townscape and landscape as well as potential negative impacts on transport. The ExA concluded that although the Applicant had carried out a thorough assessment of townscape and visual impacts in line with the Overarching National Policy Statement for Energy ("EN-1") and the National Policy Statement

for Renewable Energy Infrastructure ("EN-3"), there were a number of locations where there would be moderate adverse effect which cannot be fully addressed through the mitigation measures included in the Order [ER 5.9.32]. The ExA also concluded that while he did not think there would be adverse effects on road or river transport from the construction and operation of the Development, there would be some disruption to traffic from the construction of the electrical connection that could not be mitigated through the measures included in the Order to minimise these impacts [ER 5.6.58].

The Secretary of State's Conclusion

4.5 In the context of EN-1, these are considerations that the Secretary of State must weigh in the planning balance. The Secretary of State agrees with the ExA's conclusion that a high weighting should be given to the established need for the development of electricity generating infrastructure [ER 5.15.5], and that these local adverse effects do not outweigh the benefits of the type identified in EN-1 and therefore the case for development consent has been made and should be granted [ER 5.15.6].

Need for the Development

4.6 The Planning Act 2008 together with the National Policy Statements set out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects ("NSIPs"). EN-1 acknowledges that it is critical that the UK continues to have secure and reliable supplies of electricity as part of the transition to a low carbon economy. It also highlights an urgent need for new electricity transmission and distribution infrastructure to be provided. EN-3 provides specific guidance relevant to renewable energy infrastructure and sets out additional technology-specific consideration to the generic impacts considered in EN-1. EN-3 states that where an energy from waste facility is in accordance with the waste hierarchy, it will play an important role in meeting the UK's energy needs, and that the recovery of energy from the combustion of waste forms an important element of waste management strategies.

4.7 The Secretary of State is aware that a number of Interested Parties objected to the Development on the basis that there was no need for new energy from waste capacity in London because projections on the availability of waste fuel stock shows that sufficient residual waste fuel stock would not be available for processing over the lifetime of the Development, and the Development would be a disincentive to waste prevention and improvement of recycling rates resulting in the incineration of recyclable and reusable waste.

The Secretary of State's Conclusion

4.8 EN-1 makes clear that "Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery". The Government's Resources and Waste Strategy, published in 2018, sets out how we will minimise the damage caused to our natural environment by reducing and managing waste safely and carefully. The ambition for the future of waste management in England is to ensure that we preserve material resources through a reduction in the generation of waste and by moving towards a circular economy. It also aims to manage any residual waste in a way that maximises its value as a resource whilst minimising environmental impacts. Accordingly it gives the view that while energy from waste (EfW) should not compete with greater waste prevention, re-use or recycling, it does play an important role within the waste hierarchy by diverting waste that cannot be reused or recycled from landfill, which is generally considered the least favourable method of managing waste.

4.9 The Secretary of State notes that during the examination, the Applicant introduced a new requirement, Requirement 16, which will ensure the maintenance of the waste hierarchy in priority order by minimising recyclable and reusable waste received by the Development, and failure to

comply with this requirement would put the Applicant in breach of the Order. The Secretary of State agrees with the ExA that this should ensure the Development will not breach the principals of the waste hierarchy. The Secretary of State also agrees with the ExA that projections on the availability of waste fuel stock is subject to uncertainty, and that the Applicant's projections took into account the Mayor of London's policies on reducing waste arising and increased recycling and reuse rates [ER 5.2.34], and the issue of whether or not the volume of waste fuel stock available will allow the Applicant to make use of the total capacity of the Development is a commercial matter for the Applicant [ER 5.2.37].

4.10 After having regard to the consideration set out in Chapter 3 [ER 3.1.3 - 3.1.11] of the ExA's Report, and in particular the conclusions on the principle of the Development in ER 4.4.1 – 4.4.5 and the ExA's findings in Chapter 5 of the Report, the Secretary of State is satisfied that making the Order would be consistent with EN-1 and EN-3. Taken together, these National Policy Statements set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The Secretary of State notes that the ExA is satisfied that the Applicant has given consideration to design and to alternatives to the Development, and that the requirements of EN-1 in this regard have been met [ER 4.4.6].

Carbon Emissions

4.11 A number of Interested Parties objected to the Development due to the level of carbon emissions it would emit. These include concerns regarding:

- the ability of the Development to meet the lower Carbon Intensity Floor ("CIF") target of around 300 grams of CO2/kWh (a measure of the carbon impact of generating energy from waste) which is likely to be in place when the CIF is reviewed in 2025;
- the failure to meet the likely new 2025 CIF level may lead to a breach of the Emissions Performance Standards ("EPS") for 2030 set in the Mayor of London's London Environment Strategy 2018;
- the use of Combined Cycle Gas Turbines ("CCGT") as the electricity generation source that would be displaced by the Development;
- whether the gross electrical efficiency of 34% assumed by the Applicant was exceptionally high;
- the inclusion of carbon equivalent savings from the reduction of emissions from landfill sites and combined heat and power in the carbon calculation for the Development;
- the incineration of recyclable or reusable waste; and
- whether successful deployment of a combined heat and power network from the Development is feasible.

The Secretary of State's Conclusion

4.12 The Secretary of State agrees with the ExA's conclusion that the current CIF level is the relevant minimum level of carbon emissions against which the Development should be assessed [ER5.3.22], CCGT is the appropriate counterfactual against which the Development should be assessed [ER 5.3.24]. The Secretary of State also agrees that as the Order includes provisions to ensure compliance with the waste hierarchy therefore inclusion of the carbon equivalent benefit of diverting waste from landfill is acceptable, and that the carbon equivalent benefit of the Development would be higher if the maximum throughput of waste fuel stock was assumed [ER 5.3.26]. If the CIF is to change in the future to meet the EPS for 2030, then the Development will, as part of London's waste infrastructure, have to play its part. As the Mayor's analysis shows the most recently assessed baseline CIF for London is 700 grams of CO2/kWh and will have to improve to meet the targets by a combination of further development of CHP infrastructure and

greater recycling of fossil carbon containing feedstocks (in particular plastics). The Secretary of State also agrees with the ExA that the Applicant has included provisions to improve the likelihood of successful development of combined heat and power. The Secretary of State therefore agrees with the ExA's overall conclusion that the Development meets the carbon emissions targets currently in place for energy from waste.

Total Capacity

4.13 The Secretary of State is aware that during the examination, the Applicant argued that an overall MW capacity and a tonnage capacity for waste fuel stock should not be included in the Order on the basis that any increase in generating capacity would be met through the deployment of improved technology without resulting in any impacts above those already assessed in the Environmental Statement for the Development, or through a variation to the Environmental Permit for the Development through the Environmental Permitting Regime.

The Secretary of State's Conclusion

4.14 The Secretary of State accepts that for renewable energy projects, a maximum generating capacity is not required as any new technology that might be installed will be constrained by the parameters set within the Order which set the envelope within which the environmental statement was compiled such as, but not limited to, building design and maximum permitted noise levels. However, the Secretary of State does not accept the Applicant's argument for not including a cap on the maximum waste fuel throughput on the basis that there is a possibility that an increase in waste throughput might lead to impacts on areas beyond those that would be considered as part of any variation to the Environmental Permit. The Environmental Statement for the Development, in particular the air quality and traffic assessments, have been carried out on the basis of a "worst case scenario" waste throughput. The Secretary of State notes that during the examination a requirement was added to the DCO to limit the maximum waste throughput. However, the Secretary of State considers that the maximum throughput capacity for an energy from waste plant is the equivalent of the maximum generating capacity for a fossil fuel generating station. The Secretary of State has therefore included a maximum waste throughput cap for both the energy from waste and anaerobic digestion elements of the Development in Schedule 1 of the draft Order to ensure that the Development remains within the envelope of that assessed worst case.

Carbon Capture Readiness ("CCR")

4.15 As set out in EN-1 and EN-2 – the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure, all commercial scale fossil fuel generating stations with a capacity of 300MW or more must be 'Carbon Capture Ready' ("CCR"). Applicants are required to demonstrate that their proposed development complies with guidance issued in November 2009 or any successor to it.

The Secretary of State's Conclusion

4.16 As the combustion element of this Application seeks consent for an electricity generating facility with a total generating capacity of under 300 MW using waste as fuel, the Secretary of State is satisfied that this is not a development to which the CCR requirement applies.

Combined Heat and Power ("CHP")

4.17 EN-1 requires that applications for thermal generation stations under the Planning Act 2008 should either include CHP, or evidence that opportunities for CHP have been explored where the proposal is for a generating station without CHP. The Secretary of State notes that the Application was accompanied by a CHP Assessment which concluded that the capital cost of the development of a heat network would not be off-set from the revenues that could be expected,

and that financial support would be necessary to make the development of a heat network viable. The Secretary of State is aware that the GLA raised concerns regarding the feasibility of successful deployment of CHP in line with GLA policies and disagreed with the Applicant's assessment of potential demand for district heating from the Development.

The Secretary of State's Conclusion

4.18 The Secretary of State agrees with the ExA that the Applicant has met the requirement in EN-1 to demonstrate that opportunities for CHP have been seriously explored, has explained why CHP is not currently economically or practically feasible and has provided details of potential heat requirements in the vicinity of the Development that it could potentially meet in the future. The Secretary of State notes that in addition to meeting this requirement, the Applicant will construct the Development so that it is CHP ready, and has included a requirement (requirement 24) in the Order to require the ongoing monitoring and exploration of the potential for CHP, and that the Applicant is required to report its findings to LBB. The Secretary of State agrees with the ExA that this requirement should improve the likelihood of the deployment of a district heating scheme being successfully developed, and that the Applicant's commitments go beyond the CHP requirement specified in EN-1 [ER 5.4.31].

Air Quality

4.19 The Secretary of State is aware that a number of Interested Parties including the GLA, LBB, Jon Cruddas, MP for Dagenham and Rainham, Teresa Pearce, MP for Erith and Thamesmead, Local Councillors, local residents and local organisations raised concerns regarding the impact the Development would have on air quality. On 21 February 2020 during the Secretary of State's decision-making period, Jon Cruddas MP submitted to the Secretary of State a petition on behalf of his constituents objecting to the Development on grounds of detriment to air quality and the impact this would have on human health and biodiversity. The petition was signed by over 2,000 local residents. On 27 March the Secretary of State received a further petition from the Not Another Incinerator in Bexley campaign organised by the Greenwich-Bexley Environment Alliance. During the examination, Greenwich-Bexley Environment Alliance also raised concerns regarding the impact of the Development on air quality, human health and biodiversity.

The Secretary of State's Conclusion

4.20 The Secretary of State notes that the ExA was satisfied that the Applicant's assessment of potential impacts on air quality was carried out following the methodology recommended in standard professional guidance [ER 5.7.82]. The Secretary of State is also aware that Natural England, in its Statement of Common Ground with the Applicant, confirmed that it was of the view that the Applicant's assessment of likely effects on air quality during construction, operation and decommissioning of the Development and the assessment of cumulative effects were appropriate. In its Relevant Representation, Public Health England also confirmed that it was satisfied with the methodology used by the Applicant to undertake its assessment, and noted that emissions from the Development would be controlled by the Environmental Permit for the Development (see paragraph 8.3- 8.4 below). The Secretary of State is also aware that the Applicant and LLB entered a section 106 Agreement under the Town and Country Planning Act 1990 to secure funding for air quality monitoring for 25 years to address LBB's concerns regarding the need to monitor impact from change to the emissions of air pollutants even if air quality standards are not exceeded by the Development (see paragraph 8.6 – 8.7 below). The ExA overall conclusion is that that the impacts of the Development on air quality as it affects human health [ER 5.7.84] and environmental receptors [ER 5.11.62] is acceptable. The Secretary of State agrees with the ExA's conclusion.

Noise

4.21 The Secretary of State is aware that a number of Interested Parties including local individuals raised concerns regarding from noise from the Development. LBB also raised concerns relating to noise and questioned whether operational noise from the Development would meet the levels set in LBB's standard guidance for operational noise from a fixed plant. Thames Water Utilities Limited, who are responsible for the management and enhancement of Crossness Nature Reserve ("CNR"), also raised concerns regarding the impact of noise from construction to the CNR.

The Secretary of State's Conclusion

4.22 The Secretary of State notes that during the examination, LBB and the Applicant agreed a requirement (Requirement 19) on the control of operational noise which was included in the final draft of the Order. The ExA concluded that although there is potential for some disturbance from noise during the construction of the electrical connection, this would be below the significant observed adverse effect level and will be of limited duration in any one location as the works progress [ER 5.8.19]. The Secretary of State agrees with the ExA's overall conclusion that with the inclusion of Requirement 19, there should not be any significant adverse effects from noise [ER 5.8.20].

## 5. Impacts on European Wildlife Sites and Protected Species

5.1 The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") require the Secretary of State to consider whether the project would be likely, either alone or in combination with other plans and projects, to have a significant effect on a Natura 2000 Site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment ("AA") must be undertaken by the Secretary of State pursuant to regulation 63 of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a Natura 2000 Site.

5.2 The Development does not overlap with any designated Natura 2000 Sites, with the Epping Forest Special Area of Conservation being at a distance of 15km to the north west of the Development site.

5.3 Evidence was presented in the Applicant's Environmental Statement which concludes that given the distances of the nearest statutory designated sites from the Development site, no direct or indirect impacts are anticipated on any statutory designated sites and therefore the Development does not qualify under regulation 63(1) of the Habitats Regulations as requiring an Appropriate Assessment.

5.4 Natural England has agreed the Development is unlikely to result in any significant effects on the integrity of the special interest of any Natura 2000 Site and that an Appropriate Assessment is not required.

5.5 Following the close of the Examination the Applicant contacted the Secretary of State on 11 March 2020 with an update on the biodiversity off-setting agreement. In the update the Applicant stated that it had identified five potential sites that could meet the worse-case biodiversity offsetting requirement and had completed a biodiversity offset framework agreement with Thames Water to secure one of those sites. The remaining four sites are owned by LBB and the Applicant states that they are in an advanced stage of drafting an agreement to secure the sites. The Applicant is confident that all biodiversity offset targets will be achieved.

5.6 The ExA is satisfied that that there is sufficient evidence that no likely significant effects have been identified and that no mitigation measures are required to conclude that the Development is unlikely to have significant effects on any Natura 2000 Site or their features, either alone or in combination with other plans and projects [ER6.3]. The Secretary of State agrees with the ExA that there is sufficient evidence to determine that an Appropriate Assessment is not required and that there are no Habitat Regulations matters which would prevent the granting of the Order

## 6. Consideration of Compulsory Acquisition and Related Further Representations

6.1 The Secretary of State notes that the Applicant is seeking compulsory acquisition powers to acquire free hold interests and private rights and to temporarily possess land.

Adequacy of Funding

6.2 The Ministry of Housing, Communities and Local Government guidance requires that an application for a development consent order is accompanied by a statement explaining how both the acquisition of land and the implementation of a proposed development would be funded and that the funding would be available in a timely fashion within the time limits for implementation set by the development consent order. A Funding Statement was submitted with the Application and examined by the ExA. The ExA concluded that the funding statement and article 10 in the Order provides security that funds will be available to pay compensation for compulsory acquisition.

6.3 The Secretary of State is satisfied that the Applicant's Funding Statement, together with article 10, provides an adequate means of securing the funding for all compulsory acquisition compensation costs of the Development, and that they support the existence of a compelling case for the grant of compulsory acquisition powers in the public interest.

Human Rights Act 1998

6.4 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and the compulsory purchase powers contained in the draft Order. The Secretary of State notes that: the Examination ensured a fair and public hearing; any interference with human rights arising from implementation of the Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. The Secretary of State is therefore satisfied that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

The Secretary of State's Conclusion on Compulsory Acquisition and Temporary Possession

6.5 Having considered the ExA's analysis of compulsory acquisition and temporary possession including the examination and the representations received, the Secretary of State agrees that the Development for which the land and rights are sought would be in accordance with national policy as set out in the relevant National Policy Statements and that there is a national need for electricity generating capacity, including capacity from energy from waste and the other elements of this Development. He is satisfied that the need to secure the land and rights required to construct the Development within a reasonable commercial timeframe represent a significant public benefit. The Secretary of State is content that the private loss to those affected is mitigated through the choice of the Application land, and the limitation to the minimum extent possible of the rights and interests proposed to be acquired. He agrees that the Applicant has explored all reasonable alternatives to the compulsory acquisition of the land, rights and interests sought and there are no better alternatives. The Secretary of State is content that adequate and secure

funding would be available to enable compulsory acquisition within the statutory period following the Order being made and there would be no disproportionate or unjustified interference with the human rights of individuals. In conclusion, the compulsory acquisition powers are justified and there is a compelling case in the public interest for land and interests to be compulsorily acquired and the Development would comply with the relevant sections of the Planning Act 2008.

## 7. General Considerations

Equality Act 2010

7.1 The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[2]; pregnancy and maternity; religion and belief; and race. This matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues. This included consideration of the objections raised during the Examination in relation to the potential impacts on human health of emissions and particulates. The Secretary of State is aware that the Applicant conducted a health impact assessment which considered a number of health impacts and concluded that there would be no significant effects on air quality from the Development. The Secretary of State notes that the ExA, Natural England and Public Health England were satisfied with the Applicant's air quality assessment and guidance from Public Health England is that modern, well run and regulated municipal waste incinerators are not a significant risk to public health. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that waste incinerators make only a very small contribution to local concentrations of air pollutants. Further, the operational air quality of the Development will be covered by the Environmental Permit. As such, the Secretary of State sees no evidence which suggests that such differential impacts are likely in the present case.

Natural Environment and Rural Communities Act 2006

7.2 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

7.3 The Secretary of State is of the view that the ExA's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

## 8. Other Matters

Climate Change Act and the Net Zero Target

8.1 On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions by net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction 'net zero' target

[2] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

8.2 The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. He further notes that the ExA concludes that the principle of the Development is in line with the national need for secure and reliable supplies of electricity as part of the transition to a low carbon economy. As discussed above, at 4.7 and 4.10, the Secretary of State also notes that current waste policy confirms that where energy from waste does not compete with greater waste prevention, re-use or recycling, it plays an important role in diverting waste from landfill, with an acknowledged carbon equivalent benefit. The Secretary of State therefore considers that granting consent for the Application would not be incompatible with the amendment to the Climate Change Act 2008.

Environmental Permits

8.3 The Secretary of State notes that the Development would be subject to the Environmental Permitting regime under the Environmental Permitting Regulations 2016 covering operational emissions from the generating station. The Secretary of State must be satisfied that potential emissions from the Development can be adequately regulated under the Environmental Permitting Regime, as outlined in paragraph 4.10.7 of EN-1. The Secretary of State notes that the Environment Agency, having considered the general content of the Environmental Statement for the Development is satisfied and agrees that it is of a type and nature that should be capable of being adequately regulated under the Environmental Permitting Regime. The Secretary of State also notes that the Environment Agency confirmed in its letter to the Applicant dated 11 September 2019 contained within Annex A of the Applicant's document titled 'Applicant's update on Environmental Permit Determination' that:

> *"Only when we have completed our assessment of the Permit application fully can we say whether or not we will be able to issue the Permit, however at this stage we have not found any reason to refuse the application".*

8.4 In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit will not be granted in due course.

8.5 Similarly, the Secretary of State notes that there are various other consents, licences and permits that are likely to be required to construct and operate the Development [ER 1.6.1], and has no reason to believe that the relevant approvals would also not be forthcoming.

Section 106 Agreement

8.6 The Secretary of State notes that during the examination, the Applicant and LBB were in the process of negotiating a section 106 Agreement ("Planning Agreement") under the Town and Country Planning Act 1990 to secure financial contribution for ambient air quality monitoring and to secure funds for the decommissioning of the Development. The Secretary of State is aware that in their Statement of Common Ground, LBB and the Applicant agreed that the Planning Agreement is necessary because there is a need to monitor changes in air pollutants even if the Development does not exceed any air quality standards, and there is a need to address any socio-economic impacts that may arise from the decommissioning of the Development. The ExA concluded that, subject to the Planning Agreement being signed, development consent should be granted for the Development.

8.7 The Secretary of State considers that the Planning Agreement should be considered in the context of monitoring of any changes to pollutants below air quality standards and in the context of socio-economic benefits and any potential impacts that may arise when the Development is

decommissioned. The Secretary of State is satisfied that this is in keeping in EN-1 which states that the Secretary of State should, when considering a proposed development, consider potential long-term or wider benefits as well as any potential adverse impacts (EN-1, paragraph 4.1.3). The Secretary of State therefore agrees with the ExA that the Planning Agreement is necessary to make the Development acceptable in planning terms, and that the provisions in the Planning Agreement directly relates to the Development and are fair and reasonably relate in scale and kind to the Development. The Secretary of State received from the Applicant a signed Planning Agreement which was completed with LBB on 6 March 2020.

Riverside Resource Recovery Facility

8.8 The Development is to be located immediately adjacent to the Applicant's existing Riverside Resource Recovery Facility ("RRRF"). The RRRF generating plant was granted consent under section 36 of the Electricity Act 1989 on 15 June 2006 ("section 36 consent"). A variation to the section 36 consent and deemed planning permission was granted on 13 March 2015 ("varied section 36 consent"). The Secretary of State notes that the relevant planning authority assigned a consent reference, reference GDBC/003/00001C-06, to both the section 36 consent and deemed planning permission as varied. An extant planning permission for the RRRF generating plant was made under the Town and Country Planning Act 1990 (reference 16/02167/FUL) ("Planning Permission") by the relevant planning authority on 4 October 2017. The Secretary of State notes that the Development and the RRRF generating station will share the Development site and that inconsistency is likely to arise between the Order and the Planning Permission in respect of RRRF's jetty and pier, RRRF's ecological and management plan and RRRF's ash storage areas.

8.9 Article 6(3) within the Order authorises the varied section 36 consent and the Planning Permission to be modified to resolve the issues identified in relation to the RRRF's jetty and pier and its ash storage areas. The Secretary of State notes that the ExA was satisfied that the Applicant had addressed the concerns raised by LBB during the examination, in particular the ability to store ash onsite for five days. Article 6(4) has been included to ensure that where there might be a conflict between the Planning Permission and the Order, the Applicant shall not be in breach of any conditions contained within the Planning Permission by complying with the Order. The Secretary of State notes that the loss of land that forms part of the ecological and management plan has been taken into account in the biodiversity off-setting proposals within the biodiversity and landscape mitigation strategy included as a Requirement in the draft development consent order. The Secretary of State is satisfied that it is necessary and expedient to include these provisions to ensure the construction of the Development and for it to operate alongside the existing RRRF facility.

## 9. Representations Received After the Close of the Examination

9.1 The Secretary of State also received the following correspondence after the close of the examination:

- An email from ESP Utilities Group dated 31 October 2019 requesting the Applicant provide updates on the extent and nature of proposed works so that they are able to establish whether any precautionary of diversionary works are necessary to protect their low pressure gas mains and electricity networks immediately west of the existing Riverside Resource Recovery Facility. The Secretary of State notes that the letter is provided for information only and does not seek to amend the Order and therefore does not consider that this is a matter relevant to his decision.

- On 21 February 2020, Jon Cruddas MP submitted a petition on behalf of his constituents objecting to the Development on grounds of detriment to air quality, human health and biodiversity. For the reasons set out in the ExA's Report and paragraph 4.20 and section 5 above, the Secretary of State is satisfied that these matters have been fully considered and this petition raises no new evidence to suggest that further impacts are likely in the present case.

- On 27 March 2020, the Secretary of State received a further petition objecting to the development from the Not Another Incinerator in Bexley campaign, organised by the Greenwich-Bexley Environment Alliance. During the examination, Greenwich-Bexley Environment Alliance raised concerns about the number of incinerators in the local area and that new high-rise buildings may be as high or higher than the stack heights, as well as impacts on human health, climate change, Crossness Nature Reserve and Rainham Marshes. The Secretary of State is also aware of their concerns regarding the potential impact on traffic during the construction of the electrical connection and from the transport of waste during operation, air quality impacts from the operation of the development and through the transport of waste during operation and the waste hierarchy and impacts on recycling. For the reasons given in sections 5, 4.8, 4.12 and 4.20 above and for reasons given in the ExA's Report, the Secretary of State is satisfied that these matters have been fully considered and this petition raises no new evidence to suggest that further impacts are likely.

## 10. Secretary of State's conclusions and decision

10.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent. Given the national need for the Development, as set out in the relevant National Policy Statements referred to above, the Secretary of State does not believe that this is outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.

10.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 9.2.1] to include modifications set out below in 11.1. In reaching this decision, the Secretary of State confirms regard has been given to the ExA's Report, the LIRs submitted by the GLA, LBB, LBH, and jointly by KCC and DBC and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 that the environmental information as defined in those Regulations has been taken into consideration.

## 11. Modifications to the Order by the Secretary of State

11.1 The Secretary of State has made the following modifications to the Order:

- Amendment of the wording in relation to the capacity of the generating station in Schedule 1 (authorised development) to include a reference to the maximum tonnage per annum of waste fuel throughput as the impacts in the environmental statement have been assessed against this figure;
- Removal of introductory provisions in relation to parcels of open space. There are no known parcels of open space within the Order limits;
- Amendment of the definition of "maintain" in Article 2(1) of Part 1 to reflect that changes will be material if they give rise to any materially new or materially different effects as

assessed in the environmental statement, irrespective of whether the effects are better or worse;

- Amendment of the definition of the undertaker in Article 2(1) of Part 1 to refer to the Applicant only. Cory Environmental Holdings Limited and Riverside Energy Park Limited are two separate entities and defining them as a single undertaker provides insufficient clarity. Provision has been made at Article 9(4)(a) for the undertaker to transfer the benefit of the Order to Riverside Energy Park Limited without the consent of the Secretary of State;
- Amendment to Article 3(1) to confirm that the undertaker is granted development consent for the authorised development within the Order limits. It is presumed that this detail was originally omitted in error;
- Removal of Article 10(5), which was a provision asserting that a guarantee or alternative form of security does not apply to the exercise of specific provisions within the Order in, on or under any street. This has been removed as no justification was provided on why a guarantee or alternative form of security should not cover liabilities relating to streets;
- Insertion of Article 19(5), which is a provision requiring the undertaker to restore land within the Order limits to a reasonable condition following exercise of its right to survey and investigate the land. This is to ensure the land is left in good condition following use by the Applicant;
- Removal of Articles 19(6) and 20(11), which contained references to provisions from the Compulsory Purchase Act 1965 relating to the acquisition of land. It is presumed that these were originally included in error;
- Amendment of Article 20(6) to extend the period in which a counter-notice can be served in response to notice by the undertaker of its intention to carry out protective works. This extends the notice period from 7 to 10 days to give owner/occupiers reasonable time to respond;
- Removal of Article 22(2) as it duplicated provisions contained within Article 26;
- Insertion of Article 41(2) to exclude service by post as an effective means of service in relation to the requirement under Article 20(5) to serve notice of the undertaker's intention to carry out protective works. This is to limit the risk that affected owner/occupiers who are temporarily absent from their property will not receive the notice within the period in which a counter-notice may be served;
- Removal of Article 42(4), which set a time limit for the Secretary of State to appoint an arbitrator. There is no evidence that the Secretary of State has previously failed to appoint an arbitrator on request;
- Insertion of Article 2(3) to Schedule 12, which requires applications made under requirements to be accompanied by a report stating whether the subject matter of the application will give rise to any materially new or different environmental effects compared to those in the environmental statement. This was done to give effect to existing references to such a report within Article 2(4);
- Removal of Article 3(5) to Schedule 12, which provided for the separation of parts of an application where requests have been made for further information from the undertaker. This has been made to ensure clarity and procedural certainty as splitting parts of the application from one another would require different decisions to be made on each part.

11. 2 The Explanatory Note to the Order has been amended to reflect the amended undertaker definition and to enable public inspection of the Order online while restrictions on movement remain in place in response to the coronavirus pandemic.

11. 3 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes made in the interests of clarity and consistency, and changes to ensure that the Order has its intended effect.

## 12. Challenge to decision

12.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

## 13. Publicity for decision

13.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

13.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

**Gareth Leigh**

Head of Energy Infrastructure Planning

**ANNEX**

## LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

- https://infrastructure.planninginspectorate.gov.uk/projects/london/riverside-energy-park/

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)**

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