

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

For Attention of Kathrine Haddrell
Case Manager

18th January 2021

Dear Ms Haddrell

Re Application by London Resort Company Holdings BC080001 Local Authority Adequacy of Consultation Representation.

Introduction

1. Thank you for your letter dated 4th January 2021 regarding the above referenced Development Consent Order (DCO) application made by London Resort Holdings Company (the Applicant) on 4th January 2021.
2. This is a joint adequacy of consultation representation made by Dartford Borough Council (DBC), Ebbsfleet Development Corporation (EDC) and Kent County Council (KCC) who are referred to in this representation as “the Authorities”. This is in response to a request from the Planning Inspectorate (the Inspectorate) by electronic letter received and dated on the 4th January 2021, on which the Authorities have until 18th January 2021 to respond. If you have any queries please contact Paul McKim our project co-ordinator or any of the Authorities Heads of Planning and relevant officers at KCC.
3. Under Section 55(4)(b) of the Planning Act 2008 (the Act), the Secretary of State, when determining whether to accept an application for development consent, must have regard to any adequacy of consultation representation received from a local authority that is within section 43 of the Act.
4. Under section 55(5) of the Act, an adequacy of consultation representation means a representation about whether the applicant complied with the applicant's duties under sections 42, 47 and 48 of the Act.
5. Dartford Borough Council and Kent County Council are within section 43 of the Act by virtue of being district and county councils respectively for land to which the application relates. Whilst not a local authority within the definition of that term contained within section 43(3) of the Act, Ebbsfleet Development Corporation carries out, among other matters, development management functions under the Town and Country Planning Act 1990 over the land to which the application relates. As such it

is clear that it's views on the adequacy of consultation carried out in relation to the application is of similar relevance to the Secretary of State's determination.

6. This letter sets out the Authorities' joint adequacy of consultation representation in respect of the application. It does not set out the Authorities' views on the merits or otherwise of the application. This representation also comments further on matters for the Examining Authority, once appointed should the application be accepted, to consider further in relation to the conduct of the pre-Examination and Examination stages.

Summary of Representation

7. This representation relates to the following matters concerning the Act in relation to the Applicant's duties to:
 - consult in accordance with section 42;
 - consult the local community in accordance with section 47; and
 - the proposed application in accordance with section 48.
8. The Authorities fully appreciate this is not an opportunity to re-run the consultation process. In doing so, the Authorities have also considered the Inspectorate's Advice Notes and the statutory guidance published by the Department for Communities and Local Government (as was) in March 2015 (the DCLG Guidance).
9. Based on its review of the Consultation Report, the Authorities are of the view that the Applicant has complied with the requirements of sections 42(1) to 42(1)(c), 47 and 48 of Act, though please see below reference to matters of consultation material substance. The Authorities are not in a position based on the Consultation Report alone, to confirm compliance with section 42(1)(d) in relation to consultation with persons with an interest in the land.
10. Whilst the Authorities are of the view that Applicant has complied with the requirements of its statutory duties, the Authorities would expect the Inspectorate to carefully consider whether the documentation upon which the Applicant consulted, in particular the PEIR, was sufficient for those consulted to develop a satisfactorily informed view of the likely significant effects of the proposal and to make comparisons with the level of detail provided in other DCO processes and other major project applications of this type to help inform that decision. Paragraph 19 of the DCLG Guidance recognises that the pre-application consultation process is crucial to the effectiveness of the process and that a thorough process can give the Secretary of State confidence that issues that will arise during the six months' Examination period will have been identified, considered, and – as far as possible – that applicants will have sought to reach agreement on those issues. In this respect, some progress has been made recently on some topics, although there have been some missed opportunities in seeking agreement with the Authorities on the detail of

its proposals, on the evidence base supporting the application and on the details of the mechanisms through which mitigation will be secured.

Adequacy of Consultation under Section 42 of the Act

11. The Consultation Report notes that the Marine Management Organisation was consulted, notes the local authorities consulted included the Authorities, and notes that the Greater London Authority was consulted.
12. With respect to section 42(1)(d) – persons with an interest in the land, paragraphs 9.28 to 9.32 of the Consultation Report notes that the Applicant carried out Stage 5 consultation under this provision following land referencing and details the measures taken to consult newly identified persons following changes to the Order limits or changes to what is referred to as the "blue line". The Consultation Report refers to other application documents (Statement of Reasons and Book of Reference), of which the Authorities have not had sight.
13. The Authorities are not therefore in a position to be able to confirm that the Applicant has consulted all persons with an interest in land that it is under a duty to consult, nor to offer any views on the diligent inquiries undertaken to identify such persons. The Authorities would expect this to be a matter the Inspectorate would consider in detail.
14. The Authorities have received a summary statement on behalf of business operating on the Swanscombe Peninsula Industrial Estates. Section 4 of the summary statement raises some concerns in relation to those parties being specifically advised of the consultation. The Authorities would expect the Inspectorate to satisfy itself that the relevant persons were consulted in accordance with section 42(1)(d) of the Act.

Adequacy of consultation under section 47 of the Act

15. The Consultation Report sets out the steps taken by the Applicant to comply with its duties to consult the community under section 47 of the Act accurately.
16. Dartford Borough Council and Kent County Council were consulted on the Stage 4 Statement of Community Consultation (SoCC). This was within the prescribed time limits with the Applicant either having responded to matters raised by the Authorities and/or noted matters for future follow up. Dartford Borough Council and Kent County Council are satisfied that the stage 4 community consultation was carried out in accordance with the stage 4 SoCC.
17. In response to the Draft Stage 5 SoCC from the Applicant dated 3rd June 2020, the Authorities were consistent in their response (EDC 30th June 2020; KCC 30th June 2020; DBC 1st July 2020) to the Applicant. The key responses of the Authorities included:

- Concerns over consultation in the main holiday period.
- Nature of consultation in respect of its format mainly online.
- Whether the approach to consultation allowed for interested parties to properly shape the scheme.
- Structure and operation of the webinars.
- Engagement with groups identified as “seldom heard”.
- Extent and locations where hard copies of the consultation documentation could be made available with advice on locations.
- Kent County Council also raised technical matters concerning transportation-Local Transport validation Report, Transport Model Report, and a Transport Model Forecast Report.

18. The Authorities are satisfied with the Applicant's responses at that time and the Applicant either amended its approach and materials and/or noted matters for follow up.

19. The Authorities recognise the difficult circumstances in which the stage five community consultation was undertaken. The Authorities are satisfied that the Applicant carried out its community consultation in accordance with the Stage 5 SoCC, in compliance with its duty under section 47(7) of the Act.

Adequacy of consultation under section 48 of the Act

20. The Consultation Report provides details of stages 4 and 5 section 48 publicity. For the stage 4 consultation, the section 48 notice was published in the Kent On Sunday, North Kent News Shopper Series, Essex Enquirer, Gravesend Reporter, Thurrock Gazette, the Kent Messenger, The Times, London Gazette and Fishing News. For the stage 5 consultation, the Section 48 notice was published in the Gravesend and Dartford Messenger, Thurrock Gazette, The Times, London Gazette, Lloyd's List and Fishing News Weekly.

21. The Authorities are satisfied that the locally circulating publications are appropriate, in relation to each of its areas, and is satisfied that the Applicant has complied with its duties to consult under section 48 of the Act.

Substance of the Consultation

22. In their capacities as section 42(1)(a) consultees the Authorities have carefully considered the documents published by the Applicant for its statutory consultation and have provided detailed responses, in particular on the Preliminary Environmental Information Report (PEIR) and on the draft Development Consent Order and Explanatory Memorandum.

23. The Authorities acknowledge that by its nature PEIR will not be as detailed or comprehensive as an Environmental Statement and that there is no requirement for the PEIR to be a draft Environmental Statement. Nonetheless, PEIR should provide the information reasonably required for the consultation bodies to have an informed view of the likely significant environmental effects of the proposal, including what, when, where and how impact mitigation is proposed so that can be adequately discerned and secured. In this regard the Authorities would ask the Inspectorate to consider the PEIR and come to a conclusion as to whether it meets this test, taking into account representations made previously in that respect and the applicant's response to those.

Further observations on the Applicant's approach to pre-application consultation

24. In preparing this adequacy of consultation representation the Authorities have had regard to the DCLG Guidance published in March 2015. A common thread running through the DCLG Guidance is that the emphasis on the front-loaded nature of consultation in the major infrastructure planning regime is designed to ensure a more transparent and efficient Examination process. This common thread is expanded upon in the following key paragraphs:

- Para 15-Pre-application consultation is a key requirement;
- Para 18-Early involvement of Local Authorities and local communities can bring benefits to all parties;
- Para 19-Confidence in the process that main issues have been identified, considered and as far as possible Applicant's have sought to reach agreement on those issues;
- Para 20-Characteristics of valuable consultation;
- Para 33-Importance of the role of Local Authorities in the process;
- Para 34-Local expertise in relation to community consultation;
- Para 83-Good practice to inform those who have participated, how this has shaped the project and outstanding issues; and
- Para 98-Discussions with a range of parties on Draft Development Consent Order (DCO).

25. The Applicant's Consultation Report confirms that five stages of consultation have taken place over a six-year period, the first three being non statutory with the last two being carried out on a statutory basis. The Applicant refers to these consultations as being stages one to five in its Consultation Report.

26. It should be noted that the first four stages were over a relatively short period of time, commencing in July 2014 and finishing in June 2015. Matters were demonstrably linked and considered by local authorities, local bodies, groups, and other organisations resulting in a consistent body of knowledge and understanding of the proposal.

27. It is inevitable given the length of time between the end of stages one through to four and the beginning of stage 5, matters and circumstances will have changed. The development proposal has changed in its scale with the inclusion of additional activities such as the “Conferention Centre”, the introduction of residential accommodation and importantly provision of “glide and ride” facilities with a jetty and pier facilities for visitors at and for distribution logistics at Swanscombe and Tilbury.
28. At the same time external policy and legislative changes have also occurred. For example, the government-backed Ebbsfleet Development Corporation promoting and overseeing the development of Ebbsfleet Garden City, the designation of the Swanscombe Marine Conservation Zone with its enhanced legal status and the progression of the Dartford Local Plan.
29. The Authorities fully appreciate changes will occur over such an extended period and the Applicant in its stage 5 consultation has sought to highlight these matters as an evolution from previous rounds as part of their consultation response.
30. These changes have inevitably raised additional matters that need to be addressed. As it stands a number of these matters remain outstanding which is not surprising given the scale of the project, its potential for impacts and the complexities of the required technical assessments and related mitigation.
31. The Authorities have sought information from the Applicant in order to come to an informed judgement about the impacts of the scheme and to work collaboratively on mitigation proposals in advance of the submission of the application. For example, the following documentation has been sought by the Authorities but not yet received:
- a. Transport modelling and methodology/ Resort Travel Planning/Network Rail/HS1 capacity details/public transport ticketing strategy/TRICS data/visitor and staff catchment, distribution, and movement.
 - b. Ecological surveys/off-site compensatory land for biodiversity mitigation and ability to support open mosaic land and a Green Infrastructure Strategy.
 - c. Hydrology /surface water drainage strategies.
 - d. Design and access strategies.
 - e. Heritage and archaeological baseline surveys updates-desk top archaeological assessments/archaeological deposit model/historic landscape assessments/updated historic records/archaeological field evaluations-Bakers Hole SSSI and non-designated assets associated with Springfield Roman Town.
32. The Applicant has held initial meetings with the Authorities in the spring and summer of 2020, with follow up post consultation/pre submission. Regular programmed meetings with the Authorities through a series of topic workshops commenced at the end of November 2020. These workshops are due to run to the end of March 2021 and, while essentially presentational Q&A sessions, are useful in helping to shape discussions around specific topic areas and areas of focus.

33. There has been on screen sharing of elements of the submission documents for example elements of its landscape response, intertidal salt marshes and 2-dimensional highway design to aid discussion in the workshop environment. These have been useful and encouraging. However, this is no substitute for data sets and the documents themselves and officers feel the Applicant has missed a number of opportunities to focus on substantive matters and seek to agree them as far as possible ahead of the Examination.
34. The Authorities are aware and as referenced in the Consultation Report that meetings have taken place with the Community Liaison Group with elected members and resident associations representation. However the Authorities are also aware some local groups have raised concerns about post consultation dialogue on matters concerning community and environmental matters and how consultation representations have helped to shape the final submission.
35. The Authorities are also aware guidance recommends early sight of the Consultation Report ideally pre submission; however the Authorities received the Consultation Report after submission of the application.
36. On DCO obligation (section 106) matters, headline heads of terms topics were set out as part of the Authorities' response to the PEIR. One meeting so far has taken place on 17th December 2020. This agreed a structural approach to the DCO obligation, though no detail on heads of terms have yet been discussed. It is pleasing that further meetings are planned. The Authorities wish to move forward with this process, alongside discussions on the DCO Requirements, as soon as possible and agree as much as possible ahead of Examination hearings. There has also been one meeting on the DCO and its Requirements on the 15th December 2020, which was a positive discussion. In this regard, it is hoped and anticipated that further positive progress can be made.
37. Following acceptance of the application and the publication of the full suite of application documents, officers and other parties will be able to review in full the application document suite, including the supporting data and strategies. This will require an intensive period of work given the level of information received to date, and this may affect the timing of being able to make informed judgements and decisions leading into the Examination.
38. There are a number of important impact and impact mitigation matters outstanding which need further assessment and work, and matters upon which officers remain unsighted. Work will be needed for the Authorities to properly appreciate the evidence, the impacts and the required mitigation.
39. The Authorities are of a view that these and other matters are capable of being dealt with transparently through the Examination as matters for consideration by the Examining Authority (ExA), and through continuing discussions between the

Applicant and the Authorities provided sufficient time and resource assistance is provided, and will certainly be challenging given the information position reached to date.

40. If the DCO is accepted the Authorities' request the ExA use its discretion in setting realistic dates for the preliminary meeting to allow positive progress to be made before the commencement of the six-month Examination.
41. The Authorities also need to be adequately resourced through arrangements with the Applicant during what will be an intensive period, particularly coming at a time when the Authorities are also faced with unprecedented pressures responding to the COVID-19 pandemic. The Authorities consider this approach would be strongly beneficial to the efficient conduct of the Examination. Resource arrangements have not yet been agreed but discussions are ongoing and it is hoped will be agreed shortly.
42. The Authorities are aware this is the first “business or commercial” NSIP Development Consent Order (DCO) application and as such may present a different set of challenges for consideration, including an appreciation of the level of detail needed for a major mixed use development project as opposed to, for example, a linear infrastructure or an energy project. If the Inspectorate and/or the Secretary of State were to undertake a “lessons learnt” review after formal matters are concluded the Authorities would be happy to participate and share experiences and views.

Conclusions

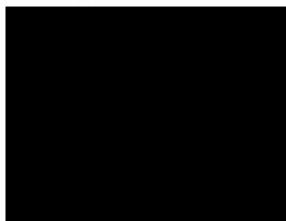
43. In summary, as detailed above, the Authorities confirm that, in their view, the Applicant has complied with the requirements of its pre-application consultation duties under sections 42(1)(a) to (c), 47 and 48. The Authorities are unable to offer a view on the Applicant's compliance with its duties to consult persons with interests in the land under section 42(1)(d) based on the information provided.
44. The Authorities are of the view that Applicant has complied with the requirements of its statutory duties, and the Authorities are content for the Inspectorate to decide whether the documentation upon which the Applicant consulted, including the PEIR, was overall sufficient for consultees to be able to have an informed view of the likely significant environmental effects/impacts of the proposal and proposed mitigation measures, taking into account the position explained above.
45. The Authorities are keen to move forward into a structured programmed environment, adequately resourced and tackling matters at pace.
46. The Authorities intend to positively engage with the Applicant ahead of the commencement of the Examination hearings to narrow the issues so far as is possible and to allow for an efficient Examination hearings. To assist in achieving this outcome, the Authorities request adequate time is available during the pre-Examination period to allow for further progress to be made on these matters which

can be recorded in Statements of Common Ground and, as far as possible, in substantively agreed form DCO Requirements, Obligations and DCO drafting.

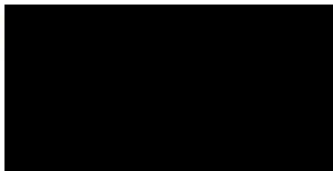
Yours sincerely



Sonia Collins, Head of Planning Services
on behalf of Dartford Borough Council



Mark Pullin, Chief Planning Officer
on behalf of Ebbsfleet Development Corporation



Barbara Cooper, Corporate Director for Growth, Environment & Transport
on behalf of Kent County Council