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By email only:

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23rd November 2021

Dear Kath

Application by London Resort Company Holdings for an Order Granting Development Consent

Additional Submission by 11 businesses at Swanscombe Business Centre and Save Swanscombe Peninsula

We refer to the Applicant's letter of 27th October 2021, requesting a further extension to the start of the DCO Examination. The delay is now over a year and has become directly relevant to Affected Persons and Interested Parties. In these exceptional circumstances we request the ExA use its discretion to accept this submission which is made on behalf of 11 affected businesses at Swanscombe Business Centre and Save Swanscombe Peninsula.

Consequences of delay

This is the fourth request by the Applicant to extend the Examination start date. Each request has been for a relatively short period; however by the 'ratchet effect' the cumulative delay requested (effectively to June / July 2022) is now 14 months (compared to the typical DCO examination starting 3 months following acceptance). We are confident this delay is unprecedented in over 100 DCO applications.

We share the ExA's concern expressed in the Procedural Decision of 5th November 2021, about the likelihood of the Applicant meeting its latest dates and of the consequences of further uncertainty and delay for other parties. This is having the following substantive adverse impacts:

1. The materially significant delay and associated uncertainty is blighting the 100+ businesses operating in the shadow of compulsory acquisition. The uncertainty undermines effective business planning for investment, recruitment, expansion, re-location or any other medium / long term decision making. This is directly impacting the management and performance of the affected businesses, as attested by the 11 Affected Persons who are signatories to this letter.

2. Government policy is to accelerate the delivery of infrastructure and the consenting process. In the current consultation on the future of the NSIP regime, the first question is “what government, its arms-length bodies and other statutory bodies could do to accelerate NSIP applications”? To delay the start of the Examination by 14 months risks creating a precedent which undermines government policy.
3. We share the ExA’s concern that this exceptional delay will undermine the currency of base-line survey data and consultations.

‘Minimum Period Necessary’

Government Guidance is that any delay to the start of an examination must be kept to the “minimum period necessary”. There is however growing evidence the continued delay is not due to exceptional circumstances rather, in main, due to the Applicant’s inability or unwillingness to prepare and progress the DCO Application in a timely way:

- i. The Application was made on 31 December 2020. This coincided with the deadline date for expiry of a contractual option for acquisition of land from Swanscombe Development LLP, the largest affected landowner (see Annual Report to 31 December 2019, Swanscombe Development LLP, p.1, available at www.gov.uk/government/organisations/companies-house). This raises the risk that the timing of the Application was driven by commercial considerations, and not solely the readiness of the Application.
- ii. Many Relevant Representations speak to inadequacies in the Application, including (but are not limited to) from the following public authorities; Environment Agency, Historic England, Port of London Authority, Dartford Borough Council, Kent County Council, Ebbsfleet Development Corporation, and TfL.
- iii. The Applicant originally projected 4 months would be sufficient to address the exceptional circumstances of the SSSI designation. The SSSI designation process has not changed, and yet 4 months has become 14 without further reasonable justification.
- iv. It is apparent from the Applicant’s ‘Schedule of Consultation’ submissions that the frequency and quantity of consultations it committed to has not been met, or even closely met. For example, the Applicant did not meet with Natural England at all in nearly 4 months, between 9th June and 5th October. We also note that the Applicant has failed to provide progress reports to the ExA as instructed.
- v. The additional submissions of 28th October 2021, Dartford Borough Council, Kent County Council and Ebbsfleet Development Corporation (the LAs) corroborate the inadequacy of the Applicant’s approach:

“While some very limited discussions have taken place we have not yet been able to have any substantive discussions with the Applicant regarding the issues raised in our last letter; we are concerned that insufficient progress is being made in resolving our concerns. The Applicant has made little progress in responding to our concerns so far and the amount of work to resolve these issues is substantial.”

We are satisfied that any requirement for further delay to the Examination is principally the Applicant’s own responsibility and can no longer reasonably be said to be “necessary” due to exceptional circumstances.

Conclusion

The delay of over a year to the start of the Examination and associated uncertainty is causing harm to our businesses, and to many others.

On the evidence, we are satisfied that further delay to the Examination would not be to 'the minimum period necessary' and would therefore be at odds with government guidance and earlier Procedural Decisions. Further delay and uncertainty would exasperate the harm to affected businesses and we consider would create manifest unfairness.

We note that in their letter of 28th October 2021, the LAs consider that April 2022 is an achievable start date for the Examination, which is also consistent with the Applicant's recent commitment (5th October 2021) to the ExA to "*submit all updated and new documents to the ExA on 18 February 2022.*"

We ask the ExA to carefully consider the real, adverse consequences of continued delay on ours and other businesses and to address the risk of unfairness being created. Specifically, we request the ExA:

- A. To now take urgent action to prevent delay to the Examination beyond April 2022. This date is consistent with the recent commitment given by the Applicant which it should be expected to honour and is considered realistic by the principle LAs.
- B. To confirm in light of the delays to date, and the opportunity provided to the Applicant to significantly amend its Application (the majority of which is less than 50% complete) that all relevant law in the Environment Act 2021 (enacted 9th November 2021) will be a material consideration in the Examination.

We look forward to hearing from you.

Yours sincerely

As Affected Persons: Swanscombe Business Centre, Stuart Ray Ltd, True fit, Pure Flow, Trade Signs and Lighting, Tauro Design, Phantom Tinting, ER Diagnostics, All Type Facilities Ltd, Boorman Renovations, Interskill

As an Interested Party: Save Swanscombe Peninsula