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To:  
London Resort Company Holdings  
All Interested Parties and Affected  
Persons

Our Ref: BC080001  
Date: 21 December 2021

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Dear Sir/ Madam

## **The Planning Act 2008 Sections 89(3) and 89(4)**

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

#### **Amendment to Constitution of the Examining Authority and Consultation on Examination Procedure and Timing**

I refer to the Examining Authority's (ExA's) previous procedural decisions of 5 November, 15 September, 13 August, 29 July, 9 July, 25 June and 5 May 2021. This letter is to inform you of a change to the constitution of the ExA and to seek your views before future procedural decisions about the Examination of this application are taken. It sets out an approach to be taken for further written submissions in the pre-Examination period. It also provides information about aspects of the compulsory acquisition process and circumstances where applications for costs may be relevant.

#### **Access to Procedural Decisions**

The ExA has drawn together its procedural decisions to date and provided links to them in a table that has been published on the Examination website. This table is intended to record the status of all decisions moving forward, including whether they have been cancelled, amended or remain applicable, aiming to assist all Interested Parties (IPs) and Affected Persons (APs). It will be maintained until the conclusion of all processes relating to this application that are conducted by the ExA. The table can be found online [here](#).

#### **Constitution of the ExA**

As originally appointed on 13 April 2021, Stuart Cowperthwaite was the Lead Member of the ExA. Stuart Cowperthwaite resigned his roles with effect from 14 December 2021. My name is Rynd Smith and on 14 December 2021 I was appointed to the ExA and as Lead Member in Stuart Cowperthwaite's stead. A link to the instrument of appointment which has been published on the Examination website can be found [here](#).

#### **Consultation on Future Procedure**

In response to matters arising broadly from the then possible designation of a Site of Special Scientific Interest (SSSI) at the Swanscombe Peninsula, on 27 October 2021, the Applicant wrote to the ExA, indicating that it wished to delay the submission of

amended material until April/ May 2022, and to further delay the commencement of the Examination accordingly. A link to that correspondence can be found [here](#). On 5 November 2021, the ExA decided to conditionally accede to this request, noting (at point 1 in that letter) that it *'anticipates that it will be unable to decide on the date(s) of the PM before May/ June 2022 and that a PM is therefore unlikely to be held before June/ July 2022.'* However, in reaching that position, the ExA noted that it was not in accordance with the advice on timing provided in the DCLG Examination Guidance<sup>1</sup>, which observes that submitted applications for development consent are generally deemed to be ready for Examination and that the pre-Examination period should not normally extend for more than three months.

The final decision (to designate the SSSI) made by the Council of Natural England on 10 November 2021 (a link can be found [here](#)) and the response of the Applicant to this decision are both relevant to any further decisions by the ExA about the timing of the submission of additional information and the commencement of Examination.

However, since 5 November 2021, the ExA has also received correspondence from Interested Parties (IPs)<sup>2</sup> raising concerns about the consequences for the regional economy and employment, flowing from enduring uncertainty and delay in the Examination of the application and raising ongoing concerns about lack of engagement by the applicant. These representations include requests that the application should be rejected or that the applicant should be asked to withdraw the application until such time as it is ready for Examination. Although it should be noted that the ExA has no legal power under the Planning Act 2008 to reject the application or to call for its withdrawal at this stage, the matters relating to economic and social effects raised in this correspondence are also relevant to the ExA's deliberations.

Reinforcing concerns expressed in the ExA's letter of 5 November 2021, the applicant in recent weeks has not provided the ExA with any more than the most basic information about its intentions in respect of possible changes to the application to respond to the SSSI designation. Nor have the requested four weekly updates been provided since September 2021 in a manner that records specific changes or timescales for anticipated changes to the application document set and associated consultation. A partial basis for the ExA's initial agreement to an initial delay included an understanding that the applicant would provide progress reports demonstrating that the extended time was being put to positive use in the public interest. The conduct of the applicant in this respect is also a relevant consideration.

In these changed circumstances and noting the intent of the DCLG Examination Guidance that accepted applications should normally be ready for early Examination, the ExA has substantial and rising concern about whether an ongoing delay to the commencement of this Examination as requested by the applicant remains justified, appropriate and in the public interest. It wishes to consult the applicant and IPs on the following questions.

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<sup>1</sup> [Planning Act 2008: Guidance for the examination of applications for development consent \(publishing.service.gov.uk\)](#) See paragraph 45 at pg 13.

<sup>2</sup> All relevant correspondence can be found published on the documents tab of the Examination Website: [The London Resort | National Infrastructure Planning \(planninginspectorate.gov.uk\)](#).

1. **Taking the current circumstances into account, can a continued delay in the commencement of the Examination of the Application until June or July 2022 still be justified in the public interest?**
2. **If a delay is still justified:**
  - a. **what steps will or should the applicant take to assure the ExA that the time period of the delay is justified;**
  - b. **is a schedule of updated and new documents and a schedule of consultation sufficient to justify ongoing delay; and, if not**
  - c. **what regular reports and other information should be provided to the ExA by the applicant and by what dates, to demonstrate that progress is being made and that the extension of time is being put to good use, which in turn might be suggested as being sufficient to offset the harm caused by ongoing delay and is therefore in the public interest; and**
  - d. **what further steps should the ExA take if commitments to progress continue not to be met?**
3. **If, taking account of the changed circumstances, further delay is not justified, would it be appropriate for the ExA to curtail delay and to proceed directly to Examine the application as currently before it, commencing in March 2022?**
4. **What other considerations might be relevant to this procedural decision?**
5. **What other possible measures might the ExA lawfully and fairly decide to take in the circumstances and recognising the concerns of parties?**

Please respond to these questions by **10 January 2022**. All submitted responses will be published on the Examination website. Responses to them by the applicant and IPs may be made by **24 January 2022**. Any responses will also be published. All submissions and responses will be taken into account by the ExA in making its next procedural decision, which it intends to make and publish on **1 February 2022**. That decision will set the next steps in the procedure to be applied to this application by the ExA.

In relation to the publication of all submissions and responses to this consultation, please ensure that you do not incorporate anything that is confidential, sensitive or that you would not otherwise wish to be published.

### **Additional Written Submissions in the Pre-Examination Period**

The ExA is strongly conscious of the need for efficient use of public resources together with the provisions of fair process to all participants in the pre-Examination process. It notes a rising desire amongst participants to communicate with it on numerous matters. It is however important that where any such communication is received and accepted, that it is published, and an opportunity is provided for comments to be made on any published material by any participant. This process generates a substantial body of information that may or may not be relevant to Examination, prior to its commencement. In principle, Examination is the time in which written submissions are invited, made and considered by the ExA. The pre-Examination period is confined to the arrangement of Examination processes and an ExA would not normally receive a substantial body of written submissions during this time.

For these reasons, the ExA has decided to request that all remaining written submissions should be concentrated into the two deadlines set in its decision above. If you have any further comments on procedural matters (including on previously published additional submissions), please provide them by **10 January 2022**. All submitted responses will be published on the Examination website. Any additional representations to the responses received to the questions should be received by the **24 January 2022**.

Outside this process, please note that the ExA will not normally accept and publish any further written submissions on an uninvited basis. Where circumstances change and an evident urgent need arises it may exercise discretion to accept and publish uninvited submissions, but the authors of these would need to identify that relevant circumstances have changed and that there is therefore an urgent need for such submissions to be made and published.

### **Compulsory Acquisition Request Considerations**

The ExA notes concerns from IPs and Affected Persons (APs) who have land or rights subject to a Compulsory Acquisition (CA) request from the applicant, that ongoing delay may be materially adversely affecting their ability to conduct their business or personal affairs and or to dispose of their land or rights as they see fit.

The ExA therefore draws the applicant's, IP's and AP's attention to the fact that in certain circumstances a 'blight notice' procedure is available<sup>3</sup>, under which redress can be sought by an AP against the acquiring authority – in this instance the applicant. If you are an AP and you remain aggrieved by the effects of delay on your land or rights you may wish to seek legal advice on this procedure.

### **Costs Considerations**

The ExA draws the applicant's and IP's attention to guidance on the 'Awards of costs: examinations of applications for development consent orders'<sup>4</sup>, which is aimed at ensuring all parties involved in an examination behave in reasonable manner and follow good practice. This can be in terms of timeliness and the preparation of representations or other written material. It is explained that the failure of the applicant or any party to both take note of and follow guidance and advice issued by DCLG and/or the Inspectorate may result in an application being made by an aggrieved party, for an award of costs.

The guidance clarifies that 'the power to award costs enables a party to be awarded the costs necessarily and reasonably incurred in the examination. However, the factual basis of an application may relate to what happened before the consent application was submitted or before the Preliminary Meeting if those facts are claimed to demonstrate unreasonable behaviour.'

Examples of unreasonable behaviour on procedural grounds include 'late submission of any documents or late compliance with any requests made by the ExA', as well as 'resistance to or lack of cooperation with any other party in providing information, where that behaviour has the effect of extending the duration of the examination'.

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<sup>3</sup> Pursuant to s175 Planning Act 2008 and Sch 13 of the Town and Country Planning Act 1990.

<sup>4</sup> [Award of costs: examinations of applications for development consent orders - Guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

The ExA notes that the IPs continue to express concerns about the applicant's engagement with them and there have been several delays to the dates for the submission of new and updated documents. Furthermore, as noted above, progress reports requested by the ExA have not been provided. The Applicant and all IPs are hence advised that conduct in the pre-Examination period is conduct in respect of which, in principle, an application for costs may be submitted.

Drawing these matters together, the ExA trusts that the position in this letter is clear and looks forward to receiving responses to the matters subject to consultation, on or before the dates provided. We will give all submissions our most careful attention before we write to you again with a further procedural decision on the approach to Examination. Until then, we wish you all the best for the festive season.

Yours faithfully

*Rynd Smith*

**Rynd Smith LLB MA MRTPI FRSA  
Lead Member of the Examining Authority**