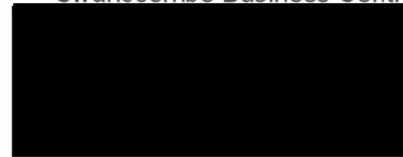




Swanscombe Business Centre Ltd



Examining Authority
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol

By email only:

londonresort@planninginspectorate.gov.uk

10th January 2022

Dear Examining Authority

**APPLICATION BY LONDON RESORT COMPANY HOLDINGS FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE LONDON RESORT**

CONSULTATION ON EXAMINATION PROCEDURE AND TIMING

Thank you for your letter of 21st December 2021 addressing the concerns set out in our letter of 23 November 2021. We respond to the ExA's questions as follows:

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?

DCLG Guidance states:

"The Secretary of State's expectation is that Examining Authorities will not normally agree to postpone the start of the examination for longer than three months."

A delay to July 2022 would be **15 months; a full year longer than DCLG guidance**. This extraordinary delay and uncertainty is having profound adverse effects, creating unfairness and cannot be justified by any extant exceptional circumstances. Further delay is manifestly contrary to the public interest for the reasons set out below.

1.1 Adverse effects of delay

1.1.1 *Harm to businesses, employees and economy*

DCLG Guidance states:

"The Government is firmly committed to ensuring that the rights of those whose land is being compulsorily acquired are properly protected under the major infrastructure development consent regime."

As Affected Persons we and many others threatened by compulsory purchase do not believe our rights are being properly protected. Our businesses and employees are being harmed by the continued delay and uncertainty caused by the Applicant's failure to meet timescales it has committed to. We set out below some tangible examples:

- Stuart Ray Ltd – deferred employment of apprentices from the local community and expansion of the business
- Swanscombe Business Centre – we along with all the businesses at the centre are being penalised living under this constant umbrella of uncertainty, we are having to keep the rents low to attract businesses into the centre, units are left empty for months and we are reluctant to invest in the building.
- Interskill – We are always trying to increase our work-load and would like to take on another plumber or possibly an apprentice but are reluctant to commit as we do not know ultimately when this is going to happen.
- Pureflow – We wish to invest in apprentices and expanding the office staff from the local community but are reluctant in case we have to move 15 miles away from the area.
- TrueFit Dental Labs – We aspire to modernise the workshop and invest in new equipment that may not fit in the new unit if we have to move.
- Appeal Parking Tickets – We cannot plan for the future waiting for the decision.
- Trade Signs and Lighting – We are unable to create a forward strategy when the Planning process keeps getting delayed.
- Vacant and undeveloped sites – the threat of compulsory purchase is fettering development of much needed industrial premises. For example we note a 3.7 acre vacant undeveloped site on the Lower Road, Northfleet Industrial Estate, allocated as an employment site in policy DP20 of the Dartford Development Policies Plan (2017), but currently vacant.

The above represent a few examples from just seven of the Affected Businesses. Extrapolated across the 100+ Affected Businesses, it can be reasonably concluded that further delay and uncertainty will exasperate the harm to these businesses, their employees and the wider economy. The delay and uncertainty is obviously a highly stressful and unwelcome intrusion into the lives of Affected Persons and their employees. It is moreover fettering investment, blighting business and harming local employment.

1.1.2 Human Rights

We consider that continued delay, so far outside the scope of DCLG guidance, would breach the Human Rights of Affected Persons owning businesses threatened by compulsory purchase, in accordance with the Human Rights Act 1998 as follows:

- Article 1, Protocol 1 “Every natural or legal person is entitled to the peaceful enjoyment of his possessions”
- Article 6, “In the determination of his civil rights...everyone is entitled to a fair and public hearing within a reasonable time”

1.1.3 Statutory Blight

We note the ExA's reference to Statutory Blight. This mechanism would not be available to investment owners, or businesses with a rateable value of over £36,000. For those potentially qualifying businesses, it typically takes 12 - 24 months to complete this process, assuming suitable re-location premises can be found. In practice, most of the Affected businesses are represented by CPO advisors, and the lack of blight applications to date reflects that an unforced business re-location is a high risk approach, particularly given the recognised dearth of commercial and industrial premises

in London and the South East. This is recognised in the Applicant's Environmental Statement ('ES') (Chapter 7 – Land Use and Socio-Economics):

"The sensitivity of the businesses to displacement effects depends on the ability of these businesses to respond to change....Given the large proportion of the businesses which are 'bad neighbour', industrial uses and small businesses, the sensitivity of the businesses (and their workers) within the PSB at risk of displacement is deemed high...it is conservatively assumed that the majority of displaced businesses are unable to satisfactorily relocate in 2022 and their trade is severely disrupted." (our emphasis)

We anticipate that the Applicant may now seek to rely on the Statutory Blight provisions as a remedy to the uncertainty created by DCO delay and in order to justify further postponement. In this event we note the Applicant's earlier reference above, and that Blight was not referred to at all in ES Chapter 7 as an available measure to mitigate the major adverse impact on displaced businesses. Businesses are also sceptical that the Applicant could fund blight acquisitions, noting the financial model in their funding statement and that they have not acquired any properties by agreement to date, including those available and marketed for sale.

We conclude statutory blight cannot mitigate the harm caused by further delay and uncertainty.

1.1.4 *Impact on local communities*

Swanscombe Peninsula SSSI is highly valued by thousands of people in South-East London and Kent as a vital open space to connect with nature in a highly urbanised area. It contributes significantly to the quality of life of people in these communities. Over 100 hectares of the SSSI habitat and treasured wildlife and landscapes would be lost if the development proceeds. There is very significant public interest in the outcome of this application, which, given that 100 hectares of legally protected habitat is threatened with development, is a 'test-case' for the level of protection afforded to SSSIs at a time where government policy is committed to protecting 30% of land in the UK to protect biodiversity.

The delay and uncertainty around the future of the Peninsula is causing widespread anxiety and impacting on the well-being and quality of life of local communities and all those concerned about the biodiversity crisis.

1.2 Conduct of Applicant

We agree that the conduct of the Applicant is a materially relevant consideration. As set out in our letter of 23 November 2021 evidence suggesting that continued delay was principally the Applicant's own responsibility and not "necessary" due to exceptional circumstances.

The Applicant was aware of the likelihood of the SSSI designation when making the application. While the SSSI designation has been concluded by the ExA to represent exceptional circumstances justifying a delay, the Applicant judged that 4 months would be sufficient to address this. There is no reasonable explanation why it is necessary to extend 4 months to 14/15 months. If, as the Applicant is at pains to claim, there is no associated 'Material Amendment' and design changes will be limited in their words to 'subtle changes to the green infrastructure' (letter of 24th November 2021); how is such an extraordinary delay justified?

The Applicant has sought to justify further delay with reference to additional 'exceptional circumstances', being Kent County Council's (KCC) traffic modelling and HS1's passenger study (Applicant's letter of 1st September 2021). These are very unlikely to be 'exceptional' circumstances which could not be dealt with in the usual course of the Examination. If these were genuinely exceptional circumstances it could reasonably be expected that the Applicant would be regularly meeting with HS1 and KCC to progress these issues. Instead the Applicant had not met with HS1 for 3 months prior to the last Schedule of Consultation provided (29th September 2021) and in over 2 months for KCC who have commented subsequently (28th October 2021) that *"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."*

This is reflective of the Applicant's manifest failure to keep to the schedule of consultation and projected timescales committed to at the initial extension stage. In addition to the examples in our letter of 23rd November, we note that:

- Progress Reports – of the 9 requested by the ExA (4 weekly from 12 May 2021) the Applicant had provided only 5 (as at 21 December 2021), and none at all since 28 September.
- Consultation – the Applicant is woefully behind the schedule committed to. For example, the following 22 consultees were to be met 'monthly' or 'more than once a month'; Historic England, Port of Tilbury, Thames Water, UK Power Networks, Medway Council, Sevenoaks District Council, London Borough of Bexley, Galley Hill Trading Estate, Land Securities, Jet Stream, Essex County Fire & Rescue, Essex Police, Essex Ambulance, Kent Fire & Rescue Authority, Kent Police, Kent Ambulance, Kent Resilience Forum, Locate in Kent, Thames Gateway Kent Partnership, Buglife, Kent Wildlife Trust. As at 28th September, the Applicant had not met any of these consultees, even once.
- The Applicant has still not responded to the ExA's request to clarify the 'reasonable worst-case scenario' that it has adopted for the Rochdale Envelope approach and assessment of landscape and visual effects. As requested by the ExA on 9th July 2021, and which the Applicant committed to respond to by late November 2021.

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?

Further delay cannot be justified in the circumstances. An extension to March 2022 would in itself show great flexibility by the ExA, being a delay of 11 months; over triple that in DCLG Guidance. The Applicant has sought four delays to date, and with each extension has subsequently failed to meet revised timescales and actions without reasonable explanation. On the evidence to date, it is highly unlikely the Applicant would be ready even by June /July 2022.

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?

We requested the Applicant's request for further delay be declined in our letter of 23 November 2021. Subsequently we wrote to the ExA on 23rd December 2021 setting out our concerns about the lack of updates and we note the ExA's confirmatory comment in their letter of 21st December:

"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."

Accordingly and for the reasons set out in '1' above, we agree the Examination should start no later than March 2022.

The Applicant previously committed to submit revised documents (in context of the SSSI designation) by the end of November 2021, so can have no reasonable complaint to the start of Examination in March 2022. In so far as the application is not ready for Examination, that is an outcome of their own conduct, and does not justify further delay which would be contrary the Public Interest and would inevitably be subject to Judicial Review should the DCO latterly be authorised.

4. What other considerations might be relevant to this procedural decision?

The government Policy Paper 'Transforming Infrastructure Performance; Roadmap to 2030' sets out in its action plan an "Ambition to reduce timescales by up to 50% for projects entering the Nationally Significant Infrastructure Project (NSIP) regime by 2023" and the National Infrastructure Planning Reform Programme has been established to accelerate NSIP applications.

In the circumstances described above, a further postponement of the Examination would run directly contrary to government policy, and risk setting a precedent leading to delays with other DCO applications. We consider that this wider context, and the government's policy in this regard, is directly relevant to the ExA's decision in this case.

Meanwhile, emerging development plans for Dartford, Gravesham and Ebbsfleet Garden City are undermined by the uncertainty around the future of Swanscombe Peninsula SSSI. It is therefore also in the interests of effective planning policy making, both locally and for the NSIP regime, that the Examination is expedited.

5. What other possible measures might the ExA lawfully and fairly decide to take in the circumstances and recognising the concerns of parties?

n/a

We trust the ExA agrees that enough is enough. We respectfully urge you to now take decisive action to prevent further harm to businesses and communities.

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