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Lead Member of the Examining Authority for the London Resort Application  
The Planning Inspectorate, National Infrastructure Planning  
Temple Quay House, 2 The Square  
Bristol, BS1 6PN

10<sup>th</sup> January 2022

Dear Sir,

**RE: Application by London Resort Company Holdings (“the Applicant”) for an Order Granting Development Consent (“a DCO”) for the London Resort**

**Amendment to Constitution of the Examining Authority and Consultation on Examination Procedure and Timing (PINS Ref: BC080001)**

We write in response to your letter dated 21<sup>st</sup> December 2021, consulting the London Resort and all Interested Parties on the ongoing delays to the above Application’s Examination. We welcome the opportunity to outline our current views on the circumstances surrounding the Examination, writing as a coalition of Charities and Non-Governmental Organisations (NGOs) - Buglife, CPRE Kent, Kent Wildlife Trust and the RSPB (“the Coalition”).

As the Examining Authority (“ExA”) is very well aware the DCO process was introduced by the Planning Act 2008 as a means of determining applications for Nationally Significant Infrastructure Projects (“NSIPs”) in a manner which is intended to be streamlined and both cost and time efficient. The Coalition is deeply concerned that the conduct of the Applicant to date and in particular its continuing failure to meet deadlines and to provide requested materials has served only to thwart these objectives as we discuss in more detail below.

These ongoing delays have placed and continue to place a significant strain on the limited resources of the Coalition members; with our planning staff having to shift workloads in response to ever changing deadlines and timelines and by imposing the need, over a protracted and disproportionate period of time, to maintain engagement with partners and an overview of the changing state of the application. The effect of these delays has come at a particularly difficult time for many of the Coalition’s members with many commitments elsewhere being generated by major events such as the Biodiversity Summit and Biodiversity Convention Conference of the Parties. By unduly protracting the DCO process the Applicant is consuming a disproportionate amount of the Coalition’s collective resources and hindering the ability of its members to deliver on other conservation priorities.

In response to the specific queries raised by the Examining Authority:

**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?**

The purported justification for these delays has frequently been said to be the lack of certainty regarding the Site of Special Scientific Interest (SSSI) status of the site, following its notification on



11<sup>th</sup> March 2021 and ratification on 10<sup>th</sup> November 2021<sup>1</sup>. However, not only has the Applicant been aware of Natural England's intentions since before March 2021, it has also on several occasions made clear its view that the resulting SSSI notification would result in no material change, including on 15<sup>th</sup> April 2021 in its letter to PINS<sup>2</sup>:

"At this stage [the Applicant] anticipate[s] that the SSSI Notification should not necessitate any material change to the London Resort DCO application. This assessment is made by reference to the Order Limits, description of development and the parameters of the application submission.

The Notification clearly changes the ecological status of the Kent site, the relevant policy context in determination of the DCO application and, in turn, will require revision to a series of application submissions."

This indicates, that from the Applicant's perspective, responding to the SSSI notification should not form any proper justification for the ongoing delays to the DCO process.

Indeed, the Applicant has gone as far in their most recent update to the Examining Authority dated 24<sup>th</sup> November 2021<sup>3</sup> to state (on page 2) that,

"For the avoidance of doubt, there has not been, nor will this precipitate any material changes to our application, nor will the project be 'materially different'. Changes to design in response to the SSSI designation are limited to subtle changes in the green infrastructure strategy to preserve a greater area of notified habitat outside of the resort, whilst the off-site ecological strategy is being reframed to directly account for SSSI impacts. We remain committed to providing the ExA with the new and updated documents as previously promised. We can also confirm....that we will be addressing the full range of issues in relation to time-dependent information being sufficiently current and will....be supplementing our reports with additional information"

As such it is difficult to understand why further delay is necessary especially in light of the Applicant's knowledge of the proposed SSSI notification prior to March 2021 and the fact that in the course of the intervening 10 months it has held regular discussions with Natural England and has had ample time to prepare and assess the impacts of its proposals on the SSSI.

We welcomed<sup>4</sup> PINS' letter to the Applicant dated 5<sup>th</sup> May 2021<sup>5</sup> accepting the SSSI notification would have implications

"The ExA agree that the SSSI notification, post acceptance of the Application by the SoS, and the implications for the ecological status of the Kent site, represent circumstances that justify delaying the start of the Examination"

And granting the extension requested on the basis that:

1. Several key application documents would be updated to be "*sufficiently current and to form the basis for the Application*", noting that "*to commence the statutory Examination period in this*

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001038-Natural%20England%20-%20Swanscombe%20Peninsula%20SSSI%20further%20information.pdf>

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000878-Applicant's%20letter%20responding%20to%20SSSI%20notification.pdf>

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001039-London%20Resort%20Letter%20to%20PINS%2024.11.2021.pdf>

<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000893-Joint%20letter%20from%20Kent%20Wildlife%20Trust,%20RSPB,%20Buglif%20and%20CPRE%20Kent.pdf>

<sup>5</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000887-Rules%204,%209%20and%2017%20Letter%20-%205%20May%202021.pdf>

*knowledge would represent a risk to being able to carry out a fair process within the statutory six-month Examination period”;*

2. *“To minimise uncertainty for Interested Parties and Affected persons, it is important that projected timescales are met”* requesting the Applicant provide a comprehensive list of the documents that will be submitted and a programme setting out when they will be submitted including responding to Natural England’s Relevant Representations;
3. Reminded the Applicant of the need to comply with the Infrastructure Planning (EIA) Regulations 2017, publicising and consulting on the new environmental information was required; and
4. Requested that clear justification was provided as to why the Applicant does not anticipate the SSSI notification necessitating any material change to the Application, taking account of PINS Advice Note 16.

And concluded with:

**“The ExA has considered the need to be able to complete the examination of the Proposed Development within the statutory timeframe with the required information to conduct that process fairly. The ExA has also considered the impact of a delay to the start of the Examination period on Interested Parties and Affected Persons.”** (emphasis added)

We are of the view that a continued delay to the Examination is not in the public interest. On 25<sup>th</sup> June 2021, the Applicant indicated that the final submission of relevant updated documents would be on 3<sup>rd</sup> September 2021. A further delay was indicated by the Applicant on 21<sup>st</sup> July 2021 for final submission for ‘late- November’ 2021. On 1<sup>st</sup> September, yet another delay for submission was requested by the Applicant, pushing the final submission to 18<sup>th</sup> February 2022. The latest delay by the Applicant, dated 27<sup>th</sup> October 2021, has now proposed a final submission date of ‘April/May’ 2022. We also note PINS follow up letter to the Applicant on 5<sup>th</sup> November due to the Applicant failing to achieve and comply with PINS requests<sup>6</sup>.

We would therefore seek for the Examination to take place as soon as possible, given the number of extensions already given, the fact that it is not in the public interest for this process to be protracted any further than is strictly necessary, and also (as mentioned above), the impact to Coalition members caused by the ongoing delay in a particularly important year for all of them.

## **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;**

It is a highly unusual situation to find an applicant seeking to cause further delays to the consideration of its own application and thwart a process designed to streamline decision-making, principally for its own benefit. The Applicant must clearly demonstrate why it needs additional time, and for what purposes any additional extension is justified. In our view, this has not been done.

The Applicant must also clearly demonstrate rigour and direction for any proposed extension to provide confidence that in this instance, their timetable is finally deliverable – again in our view this has not yet been demonstrated and as mentioned above, which to highlight the Applicant’s inability to fulfil these requirements previously.

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<sup>6</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001020-The%20London%20Resort%20Procedural%20Decisions%205%20November%202021.pdf>

**b. is a schedule of updated and new documents and a schedule of consultation sufficient to justify ongoing delay; and, if not**

No. A detailed explanation of the delays and failure to meet previously agreed deadlines to submit to the Examining Authority is required. An understanding of the delays to date will help to inform the need and appropriateness of any further extensions.

**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**

CPRE Kent should be added to the Schedule of Consultees, following their submission of relevant representations on 31<sup>st</sup> March 2021. We have previously requested their inclusion as a consultee in the submission dated 24<sup>th</sup> August 2021<sup>7</sup>.

Considering the biodiversity significance of the site, confirmed through the SSSI notification, it is also disappointing that neither the Applicant nor their appointed ecologists have undertaken any form of consultation with the Coalition to discuss how impacts on the SSSI might be minimised and/or mitigated, nor the scope of any mitigation or off-site compensation proposals. This is despite the Schedule of Consultation listing Buglife, Kent Wildlife Trust and the RSPB as appropriate for monthly consultations.

These concerns were raised in the above letter dated 24<sup>th</sup> August with both the Applicant's ecologists and shared with the Examining Authority, however, consultation remains completely absent. It is essential that this is addressed appropriately with any extension and any potential to save Examination time and reduce length of submissions realised.

**d. what further steps should the ExA take if commitments to progress continue not to be met?**

In the event that submission deadlines continue to be missed and further extensions are requested, the Examining Authority should consider imposing an absolute deadline to enable the timeline for the start of the Examination to be agreed and to provide certainty to all involved. The coalition would also like to know what other sanctions might exist in these highly unusual circumstances, where an applicant is delaying progress with its own application, should further issues occur.

**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 would like to respectfully remind the ExA that the Applicant has clearly stated (as set out above including in its 24<sup>th</sup> November 2021 letter to PINS) that they do not see the SSSI notification as a significant or material change to its application and has maintained this position throughout the series of requested extensions. As such further delays are unjustified and the Examination should proceed as soon as is practical.

However, as none of the updated Environmental Statement information and other updated Application documents have been made available that assesses and considers the potential impacts on the SSSI and its features, we welcome PINS reminding the Applicant of the need for new environmental information consultation with a minimum period of 28 days. We also support PINS

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<sup>7</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000997-Kent%20Wildlife%20Trust,%20RSPB,%20Buglife%20and%20CPRE%20Kent%20-%202021.08.24.pdf>

recommendation that this consultation should be pre-examination (in our view preferably prior to the preliminary hearing) and not during or parallel to the Examination itself, to reduce the strain on Interested Parties and ensure time to taken by the Applicant to consider consultation responses and made further changes if required. We believe this will aid the smooth running of the Examination.

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

We welcome the ExA's recognition that costs awards may be considered in due course. The continued drawing out of this process is placing an unfair burden on the limited resources of the Coalition and doubtless also on those of other Interested Parties.

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

Again, we welcome the ExA already considering the fairness to all parties involved and the accumulating cost and resource impacts of engaging with a protracted NSIP process that was originally accepted as long ago as January 2021, but which has still not generated a confirmed Examination timetable upon which all parties might rely in planning their resource allocations over time. The Coalition appreciates and supports the ExA's previous request (in its 5<sup>th</sup> May 2021 letter to the Applicant) that

“To assist in the consideration of any changes, the Applicant is requested to provide both clean and tracked change copies of any updated Application documents when they are submitted. Changes to any updated plans should be highlighted clearly.”<sup>8</sup>

The Coalition requests that all updated documents are clearly marked as such, due to the volume of material expected. This will ensure that Interested Parties are able to scrutinise the materials in the time allowed as efficiently as possible.

Thank you for providing us with the opportunity to respond to the ongoing delays of the examination. We would be happy to provide more expansive answers to the above if the ExA would find it useful.

Yours sincerely

Buglife

CPRE Kent

Kent Wildlife Trust

The RSPB

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<sup>8</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000887-Rules%204,%209%20and%2017%20Letter%20-%205%20May%202021.pdf>