

Mr Rynd Smith
Lead Member of the Examining Authority
The Planning Inspectorate
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By email to: LondonResort@planninginspectorate.gov.uk

10 January 2022

LAF007/AO

PINS ref: BC080001

Dear Mr Smith,

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

Response on behalf of Swanscombe Development LLP to Consultation on Examination Procedure and Timing

Swanscombe Development LLP welcomes the opportunity to comment on the Examination procedure and timing.

Swanscombe Development LLP ('the LLP') is the freehold owner of significant extents of land at Swanscombe Peninsula and upon which the London Resort is proposed to be developed. The LLP has entered into an option agreement with London Resort Company Holdings Limited ('LRCH') which will allow it to acquire from the LLP land necessary to deliver the London Resort.

The application for an Order to Grant Development Consent was made by the applicant in December 2020 and accepted for Examination by correspondence dated 28 January 2021. Natural England notified the designation of Swanscombe Peninsula as a Site of Special Scientific Interest on 11 March 2021. The application by LRCH was therefore submitted and accepted before the notification of the SSSI. The change in circumstances which has led to the current delay in the Examination procedure was not of the applicant's making, but instead was triggered by Natural England's actions. Natural England's process for considering whether to confirm the SSSI designation took 8 months with confirmation of notification set out in correspondence dated 19 November 2021. Until that time, no certainty could be attached as to the future status or extent of the SSSI. LRCH and others (including the LLP and the Ebbsfleet Development Corporation) engaged in that process and sought material changes to the SSSI and its boundaries, however, the timings and approach were not in their control. There was real prospect of changes being to the extent and status of the SSSI, but the duration of delay was not in the applicant's (or any other party other than Natural England's) control.

It is therefore the LLP's view that the applicant should not and cannot be held responsible for delays pursuant to the timing of the notification of the Swanscombe Peninsula SSSI. This is entirely pertinent to the questions raised by the Examining Authority ('ExA') and must bear upon the ExA's procedural decisions on this matter. In that context, Swanscombe Development LLP's responses to the ExA's questions of 21 December 2021 are as follows.

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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?

Swanscombe Development LLP believes that allowing time to update the application to address the confirmation of the Swanscombe Peninsula SSSI (including updates consequential to the revised date of the examination) is justified and in the public interest. It forms this view on an analysis of the procedures and regulations which govern the Examination process; on the circumstances which have given rise to the delay; and, on the consideration of alternative remedies.

The ExA notes in its correspondence that the *Planning Act 2008: Guidance for the examination of applications for development consent* ('the Guidance') sets out at paragraph 45 that the pre-Examination period should not normally extend for more than three months. There is clear implicit provision that the pre-Examination period may abnormally extend for longer and there is no regulatory restriction precluding that. Elsewhere, the Guidance sets out the power of the ExA to manage the Examination process. At paragraph 5 it notes that it is for the ExA to decide how an application is to be Examined, and at paragraph 35 that view is reiterated with reference to the Procedure Rules. As the ExA notes, there is no provision for it to reject the application or call for its withdrawal. Continued delay is therefore not incompatible with the ExA's authority or with Procedures.

The circumstances which have given rise to the delays to date arose, as set out above, following submission of the application and were not of the applicant's making. It is right and proper that the applicant should have the opportunity to consider and amend (to the extent necessary) its application in response to those external circumstances. The applicant should not be penalised for the actions of others, but of course should act in a reasonable and timely way in responding to those actions. Any concept of 'delay' must be set on the basis of the November confirmation of the SSSI and actions since then.

Given the ExA's acknowledgment of the actions which legislation does and does not allow it to take in the current circumstances, the alternative remedies appear to be either that the applicant withdraws its submission voluntarily, or that the ExA proceeds to Examination on the basis of information already before it. It is the LLP's view that neither remedy is a reasonable response to the circumstances. The applicant would in both cases be penalised for the actions of others. Neither would the public interest be served, since effort made to date by Interested Parties would be discarded, and would need to be reinvested once a resubmission was made. The applicant has committed to update the application, and it is consideration of how that can be best managed which the ExA should, in the LLP's view, focus upon.

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;

The LLP's view, as expressed above, is that the delays to date substantially derive from the actions of others. It recognises, however, that the applicant's ongoing responsiveness is now relevant. The applicant had, with the ExA's agreement, established a monthly reporting protocol. We consider that the reinstatement of that protocol, supported if necessary by additional and detailed milestones, provides an appropriate, proportionate and effective mechanism for describing progress on the updates to the application. Now that clarity exists about the status of the SSSI, a timetable to be established by the ExA in agreement with the applicant should be robust and not subject to further variation.

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

We again respectfully remind the ExA that the applicants were not responsible for the delay caused by notification and subsequent confirmation of the Swanscombe Peninsula SSSI. However, given the resolution of that matter, it is reasonable to anticipate that the applicant will address those matters in a timely way, and to an agreed programme. As set out in response to question 2b, the timetable to be established by the ExA following this consultation should be fixed. The regular reporting methods which should now, in the LLP's view, be reintroduced are a means of recording progress against that timetable. We do not expect that any further delay beyond that agreed timetable will arise.

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

The LLP believes that two elements of information contribute to an understanding of timely progress. First, a clear set of tasks or actions which are necessary to reflect the changed circumstances of the SSSI notification or to otherwise address matters raised by the ExA. Second, timings must be attached to those tasks/actions in accordance with a reasonable and robust programme. Together those elements constitute a means of understanding in advance the materials which the applicant now intends to provide (as new or amended materials), and being able to gauge the progress and efficacy of engagement with Interested Parties, as well as the overall timing of the Examination process.

The LLP considers that the reporting process previously agreed between the ExA and the applicant provides a suitable method for monitoring progress. If the ExA wishes further security, it may wish to agree more detailed milestones in that context.

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

The ExA is bound by the legislation and regulations which govern the Examination process and must therefore act in accordance with them. It is for the ExA and the applicant to consider, within that framework, what further actions should be taken and by whom should the new programme of activity not 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?

Recognising that the applicant could not govern the timing of the SSSI notification process, the LLP does not consider that forcing the applicant to Examination would be justified. The ExA has accepted the principle of accommodating changes to the application, and has found the justification for doing so acceptable. It cannot renege on that agreement. The applicant must therefore be allowed, using processes described above, the opportunity to update the application in a timely way.

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

The LLP respectfully reminds the ExA of the derivation for the delay to the Examination to date, and believes that any decision about next steps must be made with reference only to the applicant's ability to control processes since November 2021 and not before.

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

Whilst the ExA has scope to decide how an application will be examined, it is bound by the legislation and regulations and can only act in accordance with them. It cannot and should not act in a way which impedes the rights of the applicant as laid down by legislation.

The LLP is grateful for the opportunity to offer its views on next steps. The applicant has set out its intention to accommodate the notification of the Swanscombe Peninsula SSSI and the ExA has agreed that that can happen. In the LLP's view, it is right and proper that such activity should now proceed under a timetable agreed between the ExA and applicant, to allow the Examination to be held in an effective and efficient way and which allows all Interested Parties to consider the application and contribute effectively to discussion informing its determination.

We thank the ExA for its consideration in this matter.
Yours sincerely,

ARWEL OWEN
PARTNER

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cc: Swanscombe Development LLP