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7 January 2022

Submitted by email to: LondonResort@planninginspectorate.gov.uk

APPLICATION (BC080001) BY LONDON RESORT COMPANY HOLDINGS (LRCH)
FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE LONDON RESORT
Consultation on Examination Procedure and Timing

INTRODUCTION

On 21 December 2021, the Examining Authority (ExA) published a letter providing an update in relation to the Development Consent Order (DCO) application by LRCH (the Applicant) for the London Resort.

The ExA's letter advises that it wishes to consult the Applicant and Interested Parties in relation to five specific questions about future procedure. Having submitted a Relevant Representation on 31 March 2021, we (Merlin Entertainments Group (MEG)) are a registered Interested Party (identification number: 20027911).

This document sets out MEG's response to the Consultation. We may choose to make a further submission by 24 January 2022, after reviewing the responses received from the Applicant and other Interested Parties.

ANSWERS TO QUESTIONS

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?*

   No.

   As DCLG Guidance sets out, the Secretary of State's expectation is that Examining Authorities will not normally agree to postpone the start of an Examination for longer than three months. In a series of Procedural Decisions between May and November 2021, the ExA agreed to postponements which cumulatively amount to a period in excess of 12 months. We note that the most recent of these (5 November) has been described (in the 21 December letter) as the ExA deciding to "*conditionally accede*" to an extension, whilst acknowledging that it was not in accordance with the aforementioned DCLG Guidance.

   We also note that in its first Procedural Decision (5 May), the ExA stated that *"to ensure currency of all environmental information, and to minimise uncertainty for Interested Parties and Affected Persons, it is important*

that projected timescales are met". As has been shown over recent months, the Applicant has repeatedly failed to meet projected timescales, and this led the ExA to express concern (in its 5 November letter) *"about the likelihood of the Applicant meeting its latest dates and of the consequences of further uncertainty and delay for other parties".*

Whilst it is recognised that Natural England's Notification of the Swanscombe Peninsula Site of Special Scientific Interest (SSSI) was considered – by the ExA in its 5 May letter – to represent circumstances that justified delaying the start of the Examination, we note that there have been no subsequent developments which could reasonably justify further delays (as the Applicant sought and secured).

It is therefore right that the ExA has now, not before time, chosen to review whether an ongoing delay to the commencement of the Examination can continue to be justified. The Applicant's repeated shortcomings in providing information (as the 21 December letter notes) mean that Interested Parties cannot easily have confidence that more deficiencies and delays will not arise. Similarly, Interested Parties cannot be confident that they will have sufficient time to consider and respond to any new information that is forthcoming.

It is clear that the Applicant has not, to date, put the extended time to positive use in the public interest. It is plain that Interested Parties will be disadvantaged by further delay.

To date, in light of the ExA's inclination (between May and November 2021) to allow the Applicant a significant degree of latitude (and multiple extensions) in bringing forward updated information, our representations (as set out in Additional Submissions on 28 May and 28 July) have focused on the need for such changes to be the subject of full consultation on a statutory basis, prior to the commencement of the Examination. It remains our view that this is necessary if updated information is being submitted, given that this almost certainly will give rise to a material change in the application. Such an approach would, of course, lead to yet further delay.

However, as the ExA has now indicated that it is open to considering an alternative approach: curtailing the delay and proceeding directly to Examine the application as currently before it, we believe that it is in the public interest to do this. We welcome the ExA's consideration of this approach and set out the following reasons why a continued delay to the commencement of the Examination cannot be justified:

a. Having been advised by Natural England (in November 2020) about its intention to consider most undeveloped areas of the Swanscombe Peninsula for potential notification as a SSSI, the Applicant should have taken this into account prior to the subsequent submission of its DCO application. LRCH's failure to do so is insufficient grounds to justify a delay, and clearly the ExA can – and should – proceed to Examine the application based on the originally submitted information. There is no obligation upon Examining Authorities to accede to amendments to an application and it is therefore open to the ExA to conclude that it does not wish to accept changes and to Examine the application before it.

b. Notwithstanding what we have set out in (a) above, we recognise that the ExA exercised its discretion to delay the start of the Examination because of the Notification of the SSSI – on the basis that this was considered (by the Applicant in its 15 April letter) to represent *"an exceptional set of circumstances".* Despite the latter, we note that the Applicant is now saying (in its 24 November letter) that changes to design in response to the SSSI designation *"are limited to subtle changes"* and that this will not *"precipitate any material changes to our application, nor will the project be 'materially*

different'". On the basis that the Applicant now considers the changes arising from the SSSI designation to be so minor and inconsequential, there can be no justification in continuing to delay the Examination to the extent which the Applicant has sought. Plainly, there is not in fact *"an exceptional set of circumstances"* and there is no justification for further delay or for changes to the application.

c. The request – from LRCH – for a delay was ostensibly because of the SSSI designation, and extensions were granted because of this. Because of what we have highlighted in (b) above, there is now no remaining basis on which to justify a delay (given how minor the changes arising from the SSSI are stated to be). The ExA should work on the basis that all other matters are sufficiently current (as the Applicant did not seek a delay on any other grounds), and therefore the application as it stands should proceed to Examination (as it could have done in the summer of 2021).

d. From the perspective of our industry, we offer the view that the UK's visitor attraction market – which remains in the early stages of recovery from the global pandemic – would benefit from this application being determined in a timely manner. As we acknowledged in our Relevant Representation, the London Resort project would be likely to cause significant displacement and damage to existing operators in the UK – and this possible effect has been recognised by the ExA as a Principal Issue (7d) to be examined. A continued delay in the Examination would fail to minimise uncertainty for Interested Parties (such as MEG), who can reasonably expect – after almost a decade of this scheme being discussed – a final decision to be reached on timescales that do not excessively exceed what would be expected for a DCO application.

   It is noted that all other UK visitor attractions (whether new or existing) see their plans for development proposals considered by Local Planning Authorities (LPAs), which are required to determine applications within statutory time limits (unless a longer period has been agreed with the applicant). Given that the DCO route is supposed to streamline the decision-making process, it would be perverse if the ExA continued to allow an excessive delay which runs contrary to this objective. Whilst recognising that the DCO route is subject to a different set of timescales and regulations to those which apply to LPAs, we believe the ExA is now in an ideal position to ensure that LRCH does not continue to benefit from a disproportionally flexible approach (compared to other visitor attractions) in how its application for planning permission is handled. No other visitor attractions have been granted the opportunity to bypass local decision-making when their planning applications are determined.

e. The Government's consultation on the Nationally Significant Infrastructure Planning (NSIP) process closed last month (17 December 2021). This included (amongst others) the following areas of focus:
   - *what government, its arms-length bodies and other statutory bodies could do to accelerate NSIP applications;*
   - *aspects of the examination and decision process which might be enhanced;*
   - *impediments to physically implementing NSIP projects; and*
   - *potential limits in the capacity or capability of NSIP applicants, interested parties and other participants.*

   Without wishing to pre-empt the outcome of this consultation, it would appear that the above aspects could be addressed (insofar as the London Resort application is concerned) if the ExA agreed to proceed to Examination without further delay. The granting of extensions, to date, have been contrary to what the Government is clearly wanting to achieve through improvements to the NSIP process.

Proceeding to an Examination solely based on a consideration of the information submitted at the time of the application would also remove the need to provide an opportunity for additional Interested Parties to register (as we previously suggested would be required). Our stated concerns about the proposed new and updated information (such as the intended additional document of a Supporting Resort and Leisure Market Assessment, which we considered could constitute a material change, thereby requiring fresh consultation) would no longer apply. Essentially, undertaking an Examination based on the application currently before the ExA would allow the scheme to be determined based on the state of play at 31 March 2021 – i.e. the date by which all current Interested Parties were required to register. It is not antithetical to the public interest that such an application be examined; it will give certainty as to whether the proposal is acceptable in this location.

Finally, on this point, we would note that the significant flexibility the ExA has demonstrated (in granting extensions and postponing the start of the Examination) has given rise to the perception that the Applicant has been able to secure particular influence over the process during this time. This has tended to undermine public confidence in the progression of the application, however there is now the opportunity to reverse this tendency by bringing the process – as much as possible – back into line with the requirements of DCLG Guidance and ensuring a fair, transparent and even-handed Examination of the application. It is clearly in the public interest to do so.

In summary, we consider that the Applicant has been provided with more than ample opportunity to bring forward updated information. Its repeated failure to do so (in line with the commitments it had made) means that the ExA is now fully justified, without further delay, in proceeding to Examine the application as it currently stands.

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?*

If the ExA resolves to allow a delay to continue, we ask that the points set out in our earlier Additional Submissions are taken into account.

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?*

Yes, for the reasons we have set out in response to question (1) above.

It is, however, important that in such circumstances the Examination takes place solely in relation to the information submitted at the time of the application. We note the Applicant tweeted on 31 December

2021 that its *"to-do list"* included *"update DCO documents"*. Whilst LRCH has (repeatedly) promised to submit such updated documents, the manifest failure to do so has led the ExA to its current deliberations as to whether it should proceed to Examine the application as currently before it.

If the ExA resolves to take such a curtailed approach, it must make clear to the Applicant that the submission of updated DCO documents is no longer required.

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

The ExA should have regard not only for the guidance published by PINS, but also in particular to the letter sent from a DCLG Minister to the then Infrastructure Planning Commission of 28 November 2011. We note how the ExA is approaching this deliberation, but would emphasise the point made about ensuring a proper opportunity for representations to be made by Interested Parties having regard to the *Wheatcroft* case. This essentially requires that anyone affected by amended proposals must have a fair opportunity to have their views heard and properly taken into account.

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

In the 21 December letter it is surmised that the ExA cannot, at this stage, direct or request a withdrawal of the application. This is correct, in respect of directing withdrawal or refusing the application. However, there is no reason why the ExA cannot request a withdrawal, and in such circumstances, it would be acceptable if the position of the ExA on the principle of the development was reserved. Similarly, it is possible to advise that in the absence of a withdrawal it will proceed to Examine the application as it stands.