From:	[redacted]
To:	London Resort
Cc:	[redacted]
Subject:	London Resort (BC080001): Further Response to Consultation on Examination Procedure and Timing
Date:	20 January 2022 12:24:36
Attachments:	image001.png Merlin - further response to PINS consultation on LRCH DCO application - 20-01-22.pdf

Dear Sir/Madam,

Following our earlier submission (7 January 2022), we – Merlin Entertainments Group – are now writing to provide a further response to the Examining Authority's Consultation on the Examination procedure and timing in relation to the DCO application (BC080001) for the London Resort.

We are a registered Interested Party (identification number: 20027911).

Please find attached our further response to the Consultation. In accordance with Advice Notice 8.4, we have ensured that all hyperlinks are only to pages on the Planning Inspectorate's website. As such, please ensure that these remain live links when the document is uploaded to your website.

I would be grateful if you could acknowledge receipt of this submission.

Kind regards

Chloe Couchman

Chloe Couchman
Corporate Communications Director
[redacted]
Merlin Entertainments
[redacted]

My pronouns: She/Her
Merlin Entertainments, Riverside Building – London County Hall, Westminster Bridge Road, London, SE1 7PB

MERLIN ENTERTAINMENTS LIMITED
LINK HOUSE
25 WEST STREET
POOLE
DORSET
BH15 1LD
UNITED KINGDOM

20 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: Further Response

INTRODUCTION

On 7 January 2022, we (Merlin Entertainments Group (MEG)) responded to the Consultation being undertaken by the Examining Authority (ExA) in relation to the Development Consent Order (DCO) application by LRCH (the Applicant) for the London Resort. [1] MEG is a registered Interested Party (identification number: 20027911).

We have now had the opportunity to review the responses submitted by the Applicant and other Interested Parties. This document sets out our response to those.

We look forward to seeing the ExA's next Procedural Decision when it is published on 1 February 2022.

SUMMARY

Having read the responses published on the Examination website on 12 January 2022, we have seen nothing which would lead us to revise the submission we made on 7 January 2022. It remains our view that it would be appropriate for the ExA to curtail delay and to proceed directly to Examine the application as currently before it, commencing in March 2022.

In our earlier submission, we offered the view that the Applicant has not, to date, put the extended time to positive use in the public interest. It is now clear – from the various other submissions made – that this lack of progress is far greater than had previously been indicated to be the case. The Applicant appears only to have undertaken a very tokenistic amount of engagement with statutory consultees and Affected Persons, and in many cases, none at all.

We would go as far as to suggest that the extension, to date, has not served any meaningful purpose at all – other than allowing the Applicant to wait for the confirmation of the SSSI Notification. The Applicant has not published

[1] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001097-Merlin%20Response.pdf

a single, updated document or demonstrated any tangible progress; instead just providing a long list of proposed new and updated documents (but with no accompanying detail) and a schedule of consultation that it intends to undertake.

In light of these circumstances, and the lack of substantive detail in the Applicant's own response to the Consultation, we are now of the view that the ExA should formally request a withdrawal of the application (which we had previously suggested as a possible measure), and invite the Applicant to re-apply in due course, with an *"Examination-ready"* application. As we previously suggested, if the ExA is minded to take such an approach, it should reserve its position on the principle of the development. The ExA may also wish to advise the Applicant that any decision to withdraw should be made no later than two weeks after its Procedural Decision, and also make clear that in the absence of a withdrawal by this date it (the ExA) will proceed to Examine the application as it currently stands, commencing in March 2022. Advising of the latter may help focus the Applicant's mind in deciding that a withdrawal, followed by a subsequent re-application, may be preferable (from its perspective) to an Examination commencing in March.

As we outlined in our Relevant Representation, new visitor attractions can create interest and add to the range and diversity of provision, raise standards and spur others to invest in their offer. [2] Whilst we remain unconvinced by the London Resort proposal (based on the information submitted with the current application), we recognise that LRCH is entitled to apply for a DCO because of the Nationally Significant Infrastructure Project (NSIP) designation which the scheme currently enjoys. However, the current application – although still capable of being examined in the near future – is evidently deficient, and therefore should, ideally, be withdrawn. A subsequent submission of an *"Examination-ready"* scheme (having regard for an accurate baseline of updated local factors and the UK's existing visitor attraction market), would provide the best prospect of a proper and meaningful Examination.

COMMENTS ON THE APPLICANT'S RESPONSE [3]

Given the substantive nature of the concerns outlined in the ExA's 21 December 2021 letter, it is disappointing that the Applicant has failed to demonstrate a willingness to properly address these. Indeed, the Applicant has instead sought to blame *"changing circumstances and external factors"* for the lack of progress it has made, even though Natural England's Notification of the SSSI is the only basis on which it has ever sought an extension.

We also note, with some concern, that the Applicant has suggested that its application was not ready for Examination at the time of submission – and even implying that the Planning Inspectorate (PINS) should have been aware of this. This claim, some 12 months after submitting the application, is puzzling (to say the very least).

Section 55(3)(f) of the Planning Act 2008 states that for an application to be accepted it must be *"of a standard that the Secretary of State considers satisfactory"*, before going on (in Section 55(5A)) to outline that in reaching this decision the Secretary of State must have regard to the extent which the application complies with various other requirements set out in this legislation – including the provision of documents and prescribed information. Furthermore, DCLG Guidance (Planning Act 2008: Guidance on the pre-application process – March 2015) is also clear the Secretary of State's judgment (in deciding whether to accept it for Examination) will be based on a

[2] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000860-Relevant%20Representation%20from%20Merlin%20Entertainments%20re%20the%20London%20Resort%20DCO%20application%201.pdf
[3] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001058-London%20Resort%20response%20to%20PINS%20-%2010th%20Jan%202022.pdf

number of aspects, including *"the overall quality of the application in terms of the ability of the Examining Authority to be able to examine it within the maximum 6 month statutory time period"* and *"the level of detail and definition of the project and the resulting quality of the information contained in the application as a whole"*.

The acceptance letter issued on 28 January 2021 is clear that, having had regard for the sections of the Act, the Secretary of State concluded that the application (including accompaniments) was of a satisfactory standard. [4] In comments on social media at the time, the Applicant welcomed the acceptance of the application, describing the decision as a *"game changer"*.

It is difficult to reconcile all of the above with the claim the Applicant is now making that the application was in fact not ready for Examination, thereby seeking to suggest that this stage could not have got underway immediately following the pre-examination period – as is, by default, required. This is inconsistent with the Applicant's 15 April 2021 letter which only sought an extension because of the SSSI Notification – and made no suggestion that the application was otherwise not ready for Examination. [5]

It does seem that the Applicant has been – and remains – unwilling to take a consistent and coherent approach, throughout the process, to the reasoning offered for the delays being incurred. We would respectfully suggest to the ExA that it disregards the suggestion from the Applicant that the application was not ready for Examination at the point of submission, and instead continues to work on the basis that it was (as reflected in the Secretary of State's decision at the time).

We also note that the Applicant has used its response to further make the case for the purported benefits of the proposed scheme, including its estimate of the value of economic growth that would arise from the development. We have no doubt that the Applicant has convinced itself on these matters, but the ExA has already decided that these are aspects which will be subject of detailed consideration (as Principal Issues) as part of the Examination. Whether the scheme will deliver an overall benefit (and the extent of it) should have no bearing on – or relevance to – the ExA's current deliberations on the timing and procedure of the Examination. We would respectfully urge the ExA to disregard these points when reaching its forthcoming Procedural Decision.

We further note that the Applicant is suggesting that consideration should be given to what it describes as the *"absence"* of London Resort, in light of the proposed scheme apparently being *"factored in"* to many strategic initiatives. The Applicant boldly asserts that the absence of the scheme could have a *"disastrous impact on the commercial effectiveness of a multitude of public and private sector strategies"*. These fanciful assertions should be completely disregarded, and have no bearing on the ExA's deliberations on the timing and procedure of the Examination. The scheme does not currently enjoy a Development Consent Order (nor even a recommendation to the Secretary of State), so no public or private sector bodies should be factoring it into their strategies. Indeed, we see that Dartford Borough Council (DBC) has recently submitted a new Local Plan to the Secretary of State which includes an alternative, preferred proposal for the site (in place of London Resort).

Finally, in respect of the Applicant's response, we note its assertion that an Examination commencing in March 2022 could be one that *"lacks legitimacy and risks undermining the NSIP process"*, whereas it suggests that the roadmap to a June / July commencement would result in an *"effective and legitimate Examination"*. We would urge the ExA to reject these unsubstantiated, binary assertions. In suggesting the option of an Examination

[4] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000805-LONR%20-%20Notifiation%20of%20Decision%20to%20Accept%20Application%20-%2028%20January%202021.pdf
[5] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000878-Applicant's%20letter%20responding%20to%20SSSI%20notification.pdf

commencement in March 2022 (based on the application as it currently stands), the ExA has undoubtedly already reached the view that such an approach would be both acceptable and legitimate.

As we set out in our earlier response, it is not antithetical to the public interest that the application as it currently stands be examined. This is, after all, what the Applicant submitted as a scheme which it then considered was ready to be examined (as the Secretary of State confirmed by deciding to accept it) within the maximum 6 month statutory time period. As we stated in our earlier response, the Applicant's insistence (as set out in its 24 November 2021 letter) that the SSSI designation (the only given reason for the delays to date) will not *"precipitate any material changes to our application"* surely means that the Examination of the application as it currently stands (i.e. from March 2022 onwards) is entirely appropriate and legitimate. [6]

Swanscombe Development LLP

Although the next section of this response comments on the submissions made by other Interested Parties, it is relevant to make reference here to the submission made by David Lock Associates on behalf of Swanscombe Development LLP (SDLLP), given that its content is aligned with that from the Applicant. [7] SDLPP is the freehold owner of significant extents of land at Swanscombe Peninsula, and LRCH has an option agreement with it. SDLPP therefore has a vested interest in the progression of the DCO application.

Firstly, we disagree with SDLPP's assertion that the delays to date have not been of the Applicant's making. Our earlier response is clear about the shortcomings of the Applicant's approach.

We are concerned that SDLPP is suggesting that the ExA entered an *"agreement"* of accommodating changes to the application which it cannot *"renege"* on. This is fanciful, not least because the Applicant has failed to fulfil the commitments it made in respect of submitting new and updated documents by certain dates. As the ExA made clear in its 21 December 2021 letter, the ExA decided to *"conditionally accede"* to the request for a further delay, thereby effectively reserving the right not to formally grant such an extension. It would clearly be perfectly acceptable for the ExA, having had regard for the various responses received, to now decide to proceed to Examine the application as it currently stands. SDLLP's assertion that such an approach would not be a reasonable response is without merit, and we urge the ExA to disregard it.

COMMENTS ON THE RESPONSES SUBMITTED BY OTHER INTERESTED PARTIES

We recognise that a significant number of Interested Parties are directly affected by the Applicant's proposals at a local level, as statutory consultees, Affected Persons or similar. After reviewing their responses (along with that submitted by the Applicant), we have reached the view that the ExA should formally request a withdrawal of the application, and invite the Applicant to re-apply in due course, with an *"Examination-ready"* application. In the absence of a withdrawal, the ExA should default to proceed to Examine the application as it currently stands, commencing in March 2022. The case for the latter (as opposed to an Examination starting in June / July 2022) is even more compelling when having regard for the responses submitted by other Interested Parties.

We make the following observations, having read the responses from other Interested Parties:

[6] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001039-London%20Resort%20Letter%20to%20PINS%2024.11.2021.pdf
[7] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001091-SDLLP%20Response.pdf

1. The Applicant evidently has not made any serious attempt to secure progress through dialogue with consultees – contrary to the various schedules it has published – and in some cases has gone backwards (such as starting to challenge the findings of an earlier study commissioned in partnership with HS1). [8] It is particularly concerning to note that the Applicant has had no engagement with Natural England since June 2021, despite saying two months later (in comments reported in the New Civil Engineer magazine) that *"in dialogue with Natural England we aim to agree a way forward which both delivers significant economic growth and job creation and a bio-diversity net gain"*. [9] This statement clearly implies that dialogue was underway, when in fact nothing was happening and no progress has been made at all. This clearly indicates that on the most substantive issue of all (i.e. the one which was used to seek and secure a delay), the extended time has not been put to any positive use in the public interest.

2. Having regard for the complete lack of meaningful progress made during the seven months of delay to date, it is difficult to have confidence that the Applicant will be able to make anything like the progress required during a shorter period (just five months) to ensure readiness for the commencement of an Examination in June / July in relation to a substantially revised and updated application (as the responses from various consultees suggest would be needed). We note that a number of Interested Parties have expressed significant doubts as to the likelihood of the Applicant being ready for June / July, particularly having regard for the lack of any proper explanation from the Applicant as to why it has (a) repeatedly missed earlier deadlines that it set for itself and (b) not progressed the engagement activity to which it had committed. Several Interested Parties raise, with much credibility, the real risk of the application not being ready by June / July for a proper Examination – thereby suggesting that incurring such a delay would fail to achieve its sole purpose.

3. In its response, the Port of London Authority makes a significant observation that:

   > *"the longer the delay, the greater the potential for the scheme to evolve further and / or for there to be other external factors for the Applicant to take into account with consequential further changes to the application documents, which could include material changes"*. [10]

   This point is highly relevant to the ExA's deliberations about whether a continued delay (in the Examination commencement) is appropriate. We have already seen (as referenced in various responses by Interested Parties, such as that from the Port of Tilbury) that, since the application's submission in December 2020, a number of new factors have come into play which materially affect the baseline against which the application will be considered. [11] Given the ever evolving nature of public and private sector decisions, it is highly likely that an Examination commencing in June / July would take place within the context of an even further evolved policy framework and changed circumstances (i.e. the baseline), thereby necessitating yet further adjustments to the scheme in order for it to be relevant. Furthermore, the ExA's expressed concern about the possibility of the assessments in the Environmental Statement not being *"sufficiently current"* would only increase with a later commencement for the Examination.

   This is, of course, why the Secretary of State has set defined time limits and guidance in relation to the progression of DCO applications which, wherever possible, must be adhered to. We would respectfully

[8] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001076-HS1%20Response%20Redacted.pdf
[9] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001081-Natural%20England%20Response%20Redacted.pdf
[10] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001084-PLA%20Response%20Redacted.pdf
[11] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001059-PoTLL%20Response%20to%20ExA%20Procedural%20Decision%20of%2021%20December%202021.pdf

suggest to the ExA that an Examination commencing in March has a considerably better prospect of being an effective and legitimate process than one getting underway in June or July. To take this point further, a decision by the Applicant to withdraw and then resubmit a fully updated *"Examination-ready"* application would be even better.

4. A number of Interested Parties have highlighted the apparent funding difficulties which the Applicant is facing (as reflected in the widely documented reluctance to commit to meet the costs being incurred by various consultees). Network Rail has referred to the Applicant's company accounts which show negative net assets, and Transport for London (TfL) notes that the Applicant is not currently funded to carry out the development, but just that investors have been identified. [12] [13] As we noted in our Relevant Representation, the Applicant has stated (in its Funding Statement) that securing the required debt / equity is based on delivering *"sufficient operating revenues"*. [14] Based on our considerable experience of operating visitor attractions across four continents, we remain of the view that the Applicant's projected visitor numbers (which presumably are used to calculate the *"sufficient operating revenues"* needed to secure the required debt / equity) are unrealistic. All of this is highly relevant to the Applicant's current financial circumstances and the prospects of it subsequently being able to meet the very significant costs associated with implementing a Development Consent Order for this scheme. We would respectfully suggest to the ExA that (a) what we have outlined above strengthens the case to formally request a withdrawal of the application and a subsequent re-submission (including a more comprehensive Funding Statement), and (b) the need for (in the absence of a withdrawal) an Examination to get underway no later than March 2022 (to avoid further unrecoverable costs being incurred by Interested Parties).

5. Finally, in terms of the points raised by other Interested Parties, we note the following suggestion from TfL:

   > *"In the event that the Applicant fails to provide sufficient information to enable a proper examination, but also fails to withdraw its application at the request of the ExA, the ExA may wish to consider curtailing the six month examination period to a significantly reduced duration. Whilst the ExA is under a duty to complete the examination within a six-month period, it does not need to utilise the full six months. Indeed, it would not be in the public interest to entertain a six-month examination period for an incomplete application not capable of proper examination, and it would not be fair on Interested Parties to incur the significant expense associated. Instead the ExA could decide to hold a limited examination whereby hearings are held immediately following the preliminary meeting (compulsory acquisition and open floor only) and followed by a single round of written submission, and then only any further submissions required to ensure that Interested Parties have had the opportunity to comment on the application."*

   We consider that this proposal has particular merit, particularly in relation to an Examination getting underway in March, should the Applicant not respond favourably to any request from the ExA to withdraw. Whilst we consider the application, as it currently stands, to be capable of Examination (as reflected in the Secretary of State's decision to accept it), we also recognise that the Applicant's failure, to date, to put the extended time to positive use means that aspects which should have been updated by now have not been. We therefore urge the ExA to consider the merits of curtailing the six month Examination period and instead holding a limited process, along the lines of what TfL suggests.

[12] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001056-AS%20-%20Network%20Rail%20Infrastructure%20Limited.pdf
[13] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-001094-TfL%20Response%20Redacted.pdf
[14] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/BC080001/BC080001-000366-4.2%20Funding%20Statement.pdf

Such decisions could be taken in due course (at the time of the Preliminary Meeting), exercising the powers the ExA has, as set out in Section 89(1) of the Planning Act 2008. We note that the Port of Tilbury has suggested some further possible steps that could be taken in this regard.

Clearly, if the ExA was requesting a withdrawal of the application, it might be helpful to indicate its likely approach to an Examination (i.e. in the absence of a withdrawal) in its forthcoming Procedural Direction, to help inform the Applicant's consideration of such a withdrawal request.

CONCLUSION

Having regard for all of the above, we are firmly of the view that there is now a compelling case for the ExA to formally ask the Applicant to withdraw the application, in order that it can re-apply in due course, with an *"Examination-ready"* application. The current application is deficient (solely because of the Applicant's lack of preparedness and progress), but is still capable of being examined in the near future (March 2022 onwards). A continued delay (until June / July 2022) would merely render the application as being further deficient, resulting in the Examination being even less relevant. The latter would also cause greater uncertainty and increased costs for Interested Parties (with no reasonable prospect of such costs being recoverable), whilst offering no greater likelihood of a fully informed recommendation to the Secretary of State.

It is clear that a withdrawal of the application (and a subsequent re-application, if the Applicant is so inclined) would be the best course of action. We ask the ExA to do all it reasonably can to persuade the Applicant to take this step, whilst making clear that – in the absence of a withdrawal – an Examination (of the application as it currently stands) will get underway in March 2022.