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To:
London Resort Company Holdings
All Interested Parties and Affected
Persons

Our Ref: BC080001
Date: 01 February 2022

Dear Sir/ Madam

The Planning Act 2008 Sections 89(3) and 89(4)

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

Response to Consultation, Advice and Procedural Decisions on Examination Procedure and Timing

I refer to the Examining Authority's (ExA's) procedural decision of 21 December 2021 and to its previous procedural decisions of 5 November, 15 September, 13 August, 29 July, 9 July, 25 June and 5 May 2021. Following careful consideration by the ExA of matters raised in responses to a consultation on procedure undertaken following the procedural decision of 21 December 2021, this letter records matters arising from the consultation process and sets out further procedural decisions about the timing of and approach to the Examination of this application.

Consultation on Procedure

My letter of 21 December 2021 sought views from the applicant, Interested Parties (IPs) and Affected Persons (APs) (the consultees) on the following 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?**
- 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?**
- 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?**
- 4. What other considerations might be relevant to this procedural decision?**
- 5. What other possible measures might the ExA lawfully and fairly decide to take in the circumstances and recognising the concerns of parties**

Consultees were asked to provide their in-principle responses to these questions by an initial deadline of 10 January 2022. Forty-eight responses were received (including a response from the applicant) and these were published on the Examination website ([AS-063] to [AS-109] inclusive). Following the publication of in-principle responses, consultees were provided with an opportunity to comment on them, by 24 January 2022. Fourteen responses were received (including a response from the applicant) and these have also been published on the Examination website ([AS-110] to [AS-123] inclusive). It should be noted that where a consultee has submitted more than one response for a deadline, these have been aggregated and considered as a single response for the purposes of the ExA's analysis.

Common themes emerging from the responses from statutory bodies and undertakers with responsibilities in the fields of traffic, transport, shipping, ports, water utilities and the natural environment (the 'service consultees') were that the applicant had fallen behind previous indications of progress or targets for planned work to prepare for the Examination and that little, if any, engagement had occurred between them and the applicant in recent time. Respondents who were also APs with interests in the compulsory acquisition process equally reported a very low level of engagement and that requests to address concerns about the adverse effects of compulsory acquisition proposals on businesses had not been practically addressed.

The question of whether or not the application could be considered to be ready for examination in March 2022 was a matter of considerable contention between the consultees.

- the applicant and one other consultee consider that it is not ready and propose retention of a July commencement, but do not provide any substantive evidence of progress to date or provide any detailed work programme to utilise the remaining time in such an extension;
- responses mainly from the service consultees expressed strong concerns about the lack of effective engagement between them and the applicant and the need for substantial further technical and design work before an Examination could commence in which outstanding matters could be properly addressed; and
- responses mainly from AP consultees noted the lack of effective engagement and also raised concerns about previous programme timescales not having been met and adverse social and economic effects from the local to national scale flowing from unresolved uncertainty around the future of the site. They called for an expedited Examination to enable this uncertainty to be addressed.
- A number of respondents called for the application to be withdrawn or for the ExA to mandate withdrawal.

ExA Consideration of Consultation Responses

In my letter of 21 December 2021, I noted instances of the applicant's lack of progress and apparently substantial delay in addressing matters arising from the designation of a SSSI over land at the Swanscombe Peninsula. I recorded that '*the ExA has substantial and rising concern about whether an ongoing delay to the commencement of this Examination as requested by the applicant remains justified, appropriate and in the public interest.*'

It is fair to observe that nothing in the applicant's or other consultees' responses to the 21 December 2021 procedural decision has led to any reduction in that concern. In summary terms it appears that effective engagement between the applicant and a wide range of relevant statutory consultees and APs has all but ceased. This general lack of progress appears to have affected a broad range of matters, issues and questions relevant to the Examination, not just the question of the SSSI designation. Its scope is such that there must now be very considerable doubt as to whether important and relevant matters bearing substantially on traffic, transport, shipping, ports, water utilities and the natural environment (amongst other matters) can feasibly be addressed in a timescale to an Examination commencing in July 2022.

Although an Examination commencing in late March 2022 may pose certain difficulties, it is important to note that the commencement of an Examination should not be delayed until July in circumstances where there is an increasingly low likelihood of it proceeding even then. Enduring delay leading to substantial uncertainty, constraining the actions of a range of actors in the national, regional and local economy creates disbenefits that must be taken into account. The avoidable prolongation of substantial uncertainty is not in the public interest. In these circumstances there is a balance to be struck between enabling preparatory work to occur as against bringing the application to an early Examination on the basis of current documentation, if preparatory work is not happening or there is no longer a reasonable prospect of it having been delivered by July 2022.

In response to these observations, the applicant can decide to withdraw the application. However, it must be understood that the ExA has no power under the Planning Act 2008 or the secondary legislation bearing on examination procedure to compel or advise on such a course of action. It is for voluntary consideration by the applicant.

If withdrawal does not commend itself to the applicant, the ExA views it as important to progress outstanding work and to minimise delay and the harms potentially caused by it. If the necessary work cannot or does not progress within a reasonable timescale, then there will be a point at which an unwithdrawn application must be examined in any case. For these reasons, the ExA has made a procedural decision (below) to place the case within a strictly time-bounded case management framework. In making this decision, the ExA has taken all of the issues raised in the in-principle consultation responses and the comments on them into account, alongside relevant considerations from the Examination Guidance issued by the Secretary of State¹.

Procedural Decision

¹ [Planning Act 2008: Guidance for the examination of applications for development consent, \(March 2015\)](#)

The ExA is minded to set a Preliminary Meeting (PM) for 29 March 2022, with 30 March reserved for its continuation if required. The PM would be held virtually. A further letter (prepared under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the EPR)) will be sent to the applicant, IPs, APs and other statutory consultees on 14 February 2022, providing formal notice, joining arrangements and an agenda for the PM, together with draft proposals for an Examination commencing in March 2022, should this be decided to be necessary. However, March commencement may be deferred if the ExA is persuaded that there are good reasons to do so.

Whether or not the Examination will proceed on a March 2022 or a deferred timescale will be decided following the consideration of relevant procedural submissions and evidence at the PM.

At the PM the ExA will be seeking submissions from the applicant, IPs and APs on the progress made up to that point, and the prospects of that progress being sufficient to support an effective Examination commencing in June or July of 2022. In circumstances where it appears on the balance of probabilities that an effective Examination would be unlikely to be able to proceed on that timescale, the ExA would then consider whether to commence Examination in March 2022 on the basis that the application must in any case be examined, a recommendation made and a decision made, in the interest of resolving enduring uncertainty.

To assist decision-making at the PM, **the applicant** is requested to submit the following information to the ExA, by **15 March 2022** (unless otherwise specified):

- A detailed **work programme** showing work in hand to address matters raised by the designation of the Swanscombe Peninsula SSSI, in relevant representations and subsequent procedural submissions (including but not limited to the matters of traffic, transport, shipping, ports, water utilities and the natural environment) and all anticipated outstanding work. Where work remains outstanding, a reason for this must be summarised and key dates for ongoing preparation and completion must be included in the programme.
- A **list of all engagements** (consultation and meetings) with IPs and APs undertaken between 1 February and 10 March 2022, recording the attendance, purpose, scope and method of each engagement and summarising conclusions and agreements reached.
- The applicant's **schedule of updated and new documents** must be brought to currency and copies provided to the ExA by 15 February 2022, with final updated copies provided by 15 March 2022.

IPs and APs are also requested to submit their own list of **list of engagements** (consultation and meetings) with the applicant undertaken between 1 February and 10 March 2022, recording the attendance, purpose, scope and method of each engagement and summarising conclusions and agreements reached. If prepared, these lists should be submitted to the ExA by **15 March 2022**.

Information submitted by the applicant, IPs and APs will be published as soon as possible after 15 February and 15 March 2022 and may be referred to by the ExA and all parties at the PM.

Access to and Effect on Other Procedural Decisions

The ExA has drawn together its procedural decisions to date and provided links to them in a table that has been published on the Examination website. This table is intended to record the status of all decisions moving forward, including whether they have been cancelled, amended or remain applicable, aiming to assist all Interested Parties (IPs) and Affected Persons (APs). It will be maintained until the conclusion of all processes relating to this application that are conducted by the ExA. The table can be found online [here](#).

This letter contains a procedural decision which varies those aspects of procedural decisions taken on 25 June, 29 July, 15 September and 5 November 2021 that relate to the timing of the commencement of the Examination and progress towards a PM.

Additional Written Submissions in the Pre-Examination Period

The ExA is strongly conscious of the need for efficient use of public resources together with the provisions of a fair process to all participants in the pre-Examination period. It thanks all participants who have endeavoured to communicate with it within the framework provided by its procedural decision of 21 December 2021.

It is important to the establishment and retention of a fair and orderly process that, unless circumstances justifying out of sequence communication arise, written communication with the ExA is normally limited to the purposes and deadlines that the ExA defines. This decision has set out a framework for further written submissions to be made on 15 February and 15 March 2022. The Rule 6 Letter may seek further information and set additional dates for further responses. The ExA is not seeking any further written communications than those requested here or in the Rule 6 Letter. Submissions received will be published as soon as possible following the relevant deadlines. Comments on them will be sought at the PM.

Where circumstances change and an evident urgent need arises, the ExA may exercise discretion to accept and publish uninvited submissions, but the authors of these submissions would need to identify that relevant circumstances have changed and that there is therefore an urgent need for such submissions to be made and published.

Other Matters

On the basis that a number of responses to the 21 December 2021 consultation referred to locations within the site, the ExA carried out a second unaccompanied site inspection (USI2) on 20 January 2022. Matters observed there have been taken into account and informed the decisions communicated in this letter. A factual note of the inspection can be seen [here](#).

In my letter of 21 December 2021, I drew attention to matters relating to compulsory acquisition and blight, and to the potential for parties to make applications for costs. That advisory material continues to be of potential relevance.

Drawing these matters together, the ExA trusts that the position in this letter is clear and looks forward to receiving responses to the matters identified, on or before the dates provided. We will give all submissions our most careful attention and look forward to discussing the progress of this case at the PM in due course.

A decision about when to bring the application into Examination will be made following the hearing of relevant procedural submissions at the PM and taking into account all relevant evidence about the adequacy of further progress.

Yours faithfully

Rynd Smith

**Rynd Smith LLB MA MRTPI FRSA
Lead Member of the Examining Authority**