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National Infrastructure Planning
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21st March 2022

By Email: LondonResort@planninginspectorate.gov.uk

Dear Mr Smith

Application BC080001 by LRCH for a Development Consent Order (DCO) for The London Resort

We write as various Interested Parties (IPs) and Affected Persons (APs), all of whom have previously made written representations – including many by the recent Procedural Deadline A (15th March).

Your 1st February letter asked for final pre-Examination representations to be submitted to the ExA by 15th March, and you previously advised that the ExA would not normally accept and publish any further written submissions on an uninvited basis. We would, however ask the ExA to accept this submission, on the basis that it seeks pre-Examination clarification in relation to important matters which directly impact on preparations for the forthcoming likely commencement of an Examination (and the resulting short deadlines that apply once this is underway).

Your 1st February letter was clear that the Preliminary Meeting on 29th / 30th March would lead to one of two outcomes:

- 1) **An Examination commencing on 30th March** (in the circumstances where it appears on the balance of probabilities that an effective Examination commencing in June or July would be unlikely to be able to proceed); or
- 2) **An Examination commencing in June or July** (in the circumstances where the prospects of progress are considered to be sufficient to support an effective Examination commencing at this time).

With regard to the above options, we note that the Applicant has already reached the view that an Examination commencing in June or July (as it had previously asked for) is now not possible, saying in its 15th March letter (from Savills) that *“a period of 6 months is needed from the Preliminary Meeting to the commencement of the Examination, which would allow the documentation to be more complete, liaison with all relevant parties, substantive progress on Statements of Common Ground and provide for a more efficient Examination”*.

It many respects, it is helpful that the Applicant has confirmed – in advance of the Preliminary Meeting – that an Examination commencing in June or July is not possible. **This clearly leaves the ExA with only one option out of the two it previously put forward: an Examination commencing on 30th March.** We, and others, will work on this basis and look forward to March commencement of the Examination being confirmed at the Preliminary Meeting.

This does, however, give rise to a matter which appears to be causing some ambiguity, and is the principal focus of this correspondence. Your 1st February letter was clear that the Applicant should submit a final updated copy of the Schedule of Updated and New Documents by 15th March, which it has done. However, in addition to this Schedule, the Applicant has also submitted an updated version of many of these documents (albeit the tracked changes show that the extent of the amendments are, in many instances, relatively minor). These documents are now available on your website.

Whilst we acknowledge the Applicant's right to submit such updated documents (and of course, not before time, given the deadlines it repeatedly missed last year), it is our understanding that these have no relevance whatsoever to an Examination commencing on 30th March, based on:

- 1) Your 21st December letter stating that an Examination commencing in March 2022 would see the ExA considering “*the application as currently before it*” (i.e. in its originally submitted form, as it remained at the date of this Procedural Decision).
- 2) Your 1st February letter stating that an Examination commencing in March 2022 would take place “*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*” – which clearly reinforces the point about the application being examined in its original form (i.e. not including the consideration of updated documents).

This would appear to be abundantly clear, and an Examination on March 2022 can – and should – take place in relation to the application in its original form (as it remained at the time of the most recent Procedural Decisions). It therefore follows that these updated documents from the Applicant can – and should – be disregarded, in such circumstances. Such an approach also avoids the need for (a) allowing additional Interested Parties to register and (b) consultation to take place ahead of the Examination (as both the ExA and the Applicant had previously suggested would be required with updated documents).

There does, however, appear to be some lack of clarity on these matters, which would benefit from some pre-Examination direction from the ExA. One respondent – Quod on, behalf of the Ebbsfleet Development Corporation, Dartford Borough Council (DBC) and Kent County Council – has said:

“The LAs [Local Authorities] are concerned that the new and updated documents will include a substantial amount of additional environmental and assessment information. The Rule 6 Letter indicates that Deadline 1 is 12th April, which is less than 28 days from 15th March. As the ExA is aware, 28 days would be the minimum period for consultation under section 42, with a 30 day minimum stipulated for consultation on further environmental information. In the normal course of events, host local authorities have a period of around 3 or 4 months between an application being accepted and the deadline for submission of the LIR. By contrast, assuming that the ExA will review the material prior to publication, it is likely that interested parties will have 8 working days to review this material before the Preliminary Meeting, or 18 days before Deadline 1, where both the LIR and Statements of Common Ground are expected to be submitted under the Draft Examination Timetable contained in Appendix D to the Rule 6 letter. These timescales are clearly insufficient to allow a meaningful review to take place, or for the likely impact of the proposed development to be properly considered within the Local Impact Report or within the LAs’ Written Representation.”

Firstly, Quod is suggesting that if the Examination gets underway on 30th March, the LAs would not have sufficient time to review the updated documents (which the Applicant indicated it would submit (and did) by 15th March) ahead of Deadline 1 on 12th April (which would be triggered by a March commencement).

Secondly, we note that DBC’s Cabinet will, this Thursday (24th March), be considering a report entitled “*Development Consent Order Timetable and Local Impact Report*”, which also refers (in paragraph 7.4) to the “*significant amount of further information*” which the Applicant was due to submit by mid-March, and the possibility that a revised LIR would then have to be prepared.

The comments from both Quod and DBC directly (as referenced above) appear to be based on the false understanding that the Applicant’s recently submitted updated documents are relevant to an Examination commencing on 30th March. These documents clearly are not relevant in such circumstances, based on what the ExA previously advised that an a Examination commencing in March would consider “*the application as currently before it*” (i.e. in its originally submitted form, as it remained at the time of the most recent Procedural Decisions, so therefore not including these recently submitted documents). If the ExA maintains this stance (which is the only logical and consistent approach to take in such circumstances) then there is no need for the LAs (or indeed any other IPs and APs) to review and consider these updated documents from the Applicant.

Given that DBC’s Cabinet is meeting as soon as this coming Thursday, and will be deliberating about what approach to take in respect of the LIR and related matters, we consider it is imperative that the ExA urgently confirms that an Examination commencing on 30th March would not need to have regard for such updated documents (in line with the ExA’s most recently stated position). If this matter is not clarified until the Preliminary Meeting, there could be much unnecessary preparatory work taking place ahead of 29th March that then has to be aborted. This is not in anyone’s interests.

We would urge the ExA to clarify the approach that will be taken as a matter of urgency. In the absence of any further Procedural Decision (and / or clarification provided) prior to the Preliminary Meeting, it is clear that the most recent Procedural Decisions apply – and specifically what was set out in your 21st December and 1st February letters regarding the approach which would be taken in relation to an Examination commencing in March 2022.

Yours sincerely

D O HILTON



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