

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

27 April 2022

FAO Edwin Maudsley (Case Manager)

Your ref: BC080001/ CAPP-001C

Dear Sirs

Planning Act 2008 (as amended) – section 95

Application by HS1 Limited for an award of costs against London Resort Company Holdings Limited (“LRCH”) for an order granting development consent for the London Resort

We refer to your letter dated 14 April 2022 and to the costs application³ dated 8 April made by DLA Piper UK LLP on behalf of HS1 Limited (“the Costs Application”).

We note that the Examining Authority (“the ExA”) has made a preliminary decision that the Costs Application is valid, having regard to the Costs Guidance, notwithstanding that the London Resort Development Consent Order (“DCO”) application was withdrawn before the examination of the application commenced. In reaching this view, the ExA draws on what it considers to be analogous cost decisions in relation to the withdrawn application for the Atlantic Array offshore wind farm (“AA Decisions”).

Your letter invites LRCH to make any observations on the Costs Application by 28 April 2022.

We confirm that LRCH does not dispute that the Cost Application is valid as a matter of principle. Whilst land in the ownership of HS1 Limited comprises Crown Land, which cannot itself be compulsorily acquired, it is accepted by LRCH that HS1 Limited owned land in respect of which compulsory acquisition powers were sought by LRCH for the purposes of acquiring third party interests in or over that Crown Land. HS1 Limited made a relevant representation in respect of the proposed compulsory acquisition of those third-party interests, amongst other matters, and this representation was still maintained by HS1 Limited at the date that the DCO application for the London Resort was withdrawn.

We note that the costs awards made by the ExA in the AA Decisions were full costs awards in respect of: *“the costs incurred in the preparation and submission of RRs in respect of their land and/or rights and in preparation or making of their objections to the proposed compulsory acquisition affecting their rights until the withdrawal of the application on 26 November 2013 and the costs of making this costs application, such costs to be assessed in the Senior Courts Costs Office if not agreed.”*

Were equivalent wording to be adopted by the ExA in respect of the Costs Application, LRCH is concerned that it could lead to disputes about the precise scope of any costs award in the due course, in the Court or otherwise. In circumstances where the DCO application was withdrawn before the examination commenced, paragraph 13 and Part D of the Costs Guidance provide a limited exception to what would otherwise have been a bar to the recovery of costs. Such costs should only properly relate to those incurred by HS1 Limited in objecting to the impacts of the proposed compulsory acquisition, in its capacity as a person with an interest in land for the purposes of section 44 of the Planning Act 2008. Costs that HS1 Limited may have incurred in engaging in or making representations on other aspects of the DCO application are not recoverable pursuant to the Costs Guidance given that the examination of the London Resort application did not commence.

The scope of the relevant representations made by HS1 Limited in respect of the London Resort DCO application extends far beyond matters relating to the impacts on HS1 Limited's land as a result of the proposed compulsory acquisition of third-party interests in Crown Land. Its relevant representations cover other issues such as the following:

1. Adequacy of the Environmental Statement;
2. Impacts of the London Resort on rail services, including the perceived need for additional platform capacity at London St Pancras Station; and
3. Operational interfaces between the London Resort and HS1 Limited's statutory undertaking for which HS1 Limited sought both protective provisions and a series of requirements for HS1 Limited to be consulted by the local planning authority on the approval of planning details.

LRCH submits that costs incurred by HS1 Limited in preparing, making, or pursuing its relevant representations in relation to the above matters fall outside of the limited scope of paragraph 13 and Part D of the Costs Guidance and should be expressly excluded from any costs award which the ExA may make in respect of the Costs Application.

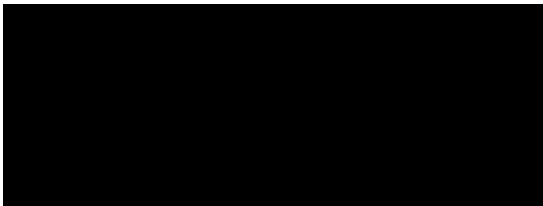
Furthermore, LRCH submits that any such costs award should expressly state:

1. That only the costs incurred in the period between the service of the section 56 notice until the date of withdrawal of the application by LRCH are payable. This is consistent with the rationale in paragraphs 13-15 of the AA Decisions in which the ExA distinguished between the express encouragement in the section 56 notice to persons affected by compulsory acquisition to submit an objection, and the stage prior to the opening of the relevant representations period where parties had a greater choice as to whether to engage in consultation on the proposed application;
2. That costs incurred in negotiating the private treaty acquisition of any land belonging to HS1 Limited are excluded; and

3. That the quantum of any costs incurred should be assessed upon the standard basis rather than the indemnity basis, the standard basis being the normal basis of costs awards in a compulsory purchase context. In this regard, paragraph 24.11 of the Practice Directions of the Upper Tribunal (Lands Chamber) dated 19 October 2020 [Upper Tribunal \(Lands Chamber\) Practice Directions | Courts and Tribunals Judiciary](#)) advises that costs payable on the standard basis are allowed: *“to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate will be resolved in favour of the paying party.”*

LRCH therefore requests that in making any costs award, the ExA expressly limits the scope of any such costs award as submitted above.

Yours faithfully



For and on behalf of
London Resort Company Holdings Limited