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Mr Roy Pinnock  
Partner  
Dentons UK and Middle East LLP

Your Ref: RYP/RYP/073402.00001

Our Ref: BC080001/ CAPP-005B

Date: 04 May 2022

## By Email

Dear Mr Graves

### Planning Act 2008 (as amended) – Section 95

#### **Application by MTD Coln Industrial Limited for an award of costs: against London Resort Company Holdings Limited regarding an Application for an Order Granting Development Consent for the London Resort**

1. By a submission dated 25 April 2022, Dentons UK and Middle East LLP acting for MTD Coln Industrial Limited ("MTD") has made an application for an award of costs ("the costs application") against London Resort Company Holdings Limited ("the respondent party") regarding its Application for an Order Granting Development Consent for the London Resort ("the Order"). The costs application has been published and can be seen in the Examination Library [CAPP-005].
2. The Examining Authority (ExA) appointed to examine the Order is empowered to make awards of costs against relevant parties. The power to award costs under section (s) 250(5) of the Local Government Act 1972 is applied to an application for a DCO by s95(4) of the Planning Act 2008 (PA2008).
3. The Secretary of State has published guidance on costs applications in relation to development consent order examinations ("the Costs Guidance"). It can be accessed by following this link:  
[Award of costs: examinations of applications for development consent orders - Guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/award-of-costs-examinations-of-applications-for-development-consent-orders)
4. On 7 April 2022, the Planning Inspectorate provided advice under section 51 of the Planning Act 2008 in relation to previous costs decisions taken on the Atlantic Array application, which is available via the [National Infrastructure Planning Website landing page](#) for the London Resort.
5. Further to the statutory powers outlined above, to the Costs Guidance and having had regard to the approach taken to previous costs decisions identified in the section 51 advice, I am writing to inform you that the ExA has given preliminary consideration to the costs application. This letter is to acknowledge receipt of the

costs application, to set out the ExA's preliminary decision that the costs application is valid and to set out the process under which a decision will be taken on it.

6. In relation to validity, the ExA has considered the Costs Guidance, referring specifically to all paragraphs in Part D. The ExA notes the basis of MTD's costs application as being that it considers itself to be a 'successful objector', that it is not necessary for unreasonable behaviour by the respondent to be demonstrated and that it has not sought to demonstrate such behaviour. On the basis that MTD appears to the ExA to be an Affected Person, that the application for the Order has been withdrawn and so MTD also appears to be a 'successful objector' and that the costs application was made within 28 days of the withdrawal of the application for the Order and so is timely, the ExA has agreed to consider the costs application. In reaching this view, the ExA notes specifically that whilst the examination of the London Resort application had not commenced at the point where the application was withdrawn, previous costs decisions in relation to Planning Act 2008 casework by the ExA for the Atlantic Array demonstrate acceptance of the principle that costs may be applied for in circumstances where an application is withdrawn in the period between acceptance for Examination and the Preliminary Meeting. The ExA here sees the approach taken by the ExA for the Atlantic Array as being relevant and applicable to the circumstances of the MTD application for costs.
7. In accordance with paragraph 34 (Part B) of the Costs Guidance, the ExA has asked me to write to the respondent party (copy attached), providing them with an opportunity to make any observations on the costs application within 14 calendar days (by **18 May 2022**).
8. If the respondent party elects to respond to the costs application, a copy of the response will be provided to you shortly after it has been received by the ExA. I will then provide you with an opportunity to make your final observations to the ExA in writing, within a further 14 calendar days. I will write to you again if needs be, to advise you of that start and end of that period. However, it should be noted that because there are no allegations of unreasonable behaviour associated with the costs application, the respondent party may elect not to respond to the costs application. In those circumstances, I will not write to you again as there will be no need for final observations.
9. In circumstances where the respondent party elects to provide a response to the costs application, it will be decided by the ExA following receipt of your final observations (or if no such submissions are made by you, following the expiry of the deadline set for you to provide them). In circumstances where the respondent party does not elect to provide a response to the costs application, the ExA will proceed to decide the costs application after the expiry of the deadline for their response in paragraph 7 above. In either circumstance, the outcome of the costs application will then be communicated to you in writing.
10. All correspondence relating to the costs application and the costs decision by the ExA will be published on the National Infrastructure Planning Website.

11. If you have any questions about this letter, please do not hesitate to contact me.

Yours sincerely

Edwin Mawdsley  
**Case Manager**

Enc. Correspondence to the Respondent Party