

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

23 May 2022

FAO Edwin Maudsley (Case Manager)

Your ref: BC080001/ CAPP-009C (UB)

Dear Sirs

Planning Act 2008 (as amended) – section 95

Application by Quod Ltd. on behalf of Ebbsfleet Development Corporation, Dartford Borough Council and Kent County Council 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 09 May 2022 and to the costs application dated 26 April made by Quod Ltd. on behalf of Ebbsfleet Development Corporation, Dartford Borough Council and Kent County Council (“the Costs Application”).

We note that regarding Matter 1 the Examining Authority (“the ExA”) has made a preliminary decision that the Costs Application was made within 28 days of the withdrawal of the application and is therefore considered “timely” but the ExA has not reached a concluded position on the question of whether it is a valid application and whether it has the jurisdiction to consider the costs application citing: *“Whilst there are circumstances (including those in respect of which the section 51 advice referred to in paragraph 4 above was given) in which successful objector costs claims can arise in the time prior to a Preliminary Meeting, further to paragraph 12 of the Costs Guidance, it is not clear that costs for unreasonable behaviour can do so, but neither are such claims conclusively excluded....”*

Your letter invites LRCH to make any observations on the Costs Application by 23 May 2022.

Whilst we are not in a position to comment on the ExA’s jurisdiction we would contend that Paragraph 12 of the [Award of costs: examinations of applications for development consent orders guidance](#) is very clear: *“For costs purposes, the examination is treated as starting at the beginning of the Preliminary Meeting held under Section 88 of the Planning Act 2008.”*

It is a statement of fact that the application was withdrawn prior to the beginning of the Preliminary Meeting and therefore the examination had not commenced.

We are also of the belief that whilst paragraph 12 does not conclusively exclude any type of claim we contend that when read in conjunction with the paragraph that immediately follows: *“Some additional and different considerations apply to compulsory acquisition requests which are dealt with in Part D”* that this paragraph, paragraph 13 clearly sets out the exclusion to paragraph 12.

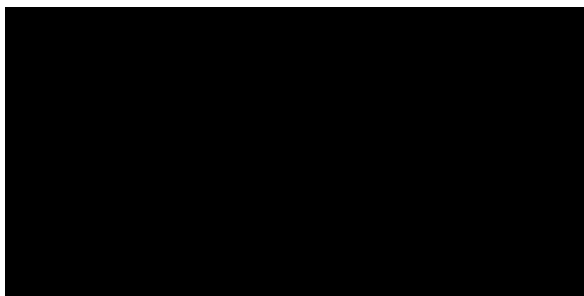
Additionally, the application was withdrawn as a result of one the key issues identified by the Examining Authority which would result in a material change to the application. At Part C of the Guidance under Paragraph 3, bullet point 8 states: *“...if the application is withdrawn as a clear result of consultation and discussions between the applicant and any interested party and the reason for the withdrawal relates to any of the key issues identified by the Examining Authority prior to the Preliminary Meeting, an award is unlikely to be made in favour of any interested party.”*

We confirm that LRCH has not disputed Cost Applications where validity is a matter of principle and where applications qualify under paragraph 13 and relate to Part D, as the Guidance is clear about how Cost Applications made under Part D qualify.

We have not commented specifically on Matter 2 as we believe our comments relating to Matter 1 set out above does not warrant this.

LRCH therefore requests that in making any costs award, the ExA expressly follows the Guidance.

Yours faithfully



For and on behalf of
London Resort Company Holdings Limited