



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

Customer Services: 0303 444 5000  
e-mail: [LondonResort@planninginspectorate.gov.uk](mailto:LondonResort@planninginspectorate.gov.uk)

FAO Mr Andrew Martin  
London Resort Company Holdings

Your Ref:

Our Ref: BC080001/ CAPP-002D

**By Email**

Date: 26 May 2022

Dear Mr Martin

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

### **Application by National Highways for an award of costs against London Resort Company Holdings Limited for an Order Granting Development Consent for the London Resort**

1. On 26 April 2022, BDB Pitmans acting for National Highways (“NH”) 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-002].
2. On 3 May 2022, I wrote to BDB Pitmans, seeking clarification as to whether there was any overlap between the costs application and another costs claim [CAPP-013] by the Secretary of State for Transport (“SoST”). Correspondence from BDB Pitmans on 17 May 2022 addresses this point. This letter is therefore to confirm that consideration of the costs application submitted on behalf of the NH will now proceed.
3. 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).
4. The Secretary of State has published guidance on costs applications in relation to development consent order examinations (“the Costs Guidance”). The Costs Guidance 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)
5. 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.

6. 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.
7. 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 NH'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 NH has not sought to demonstrate such behaviour. On the basis that NH appears to the ExA to be an Affected Person, that the application for the Order has been withdrawn and so NH 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 NH application for costs.
8. In accordance with paragraph 34 (Part B) of the Costs Guidance, the ExA has asked me to write enclosing the costs application, providing the respondent party with an opportunity to make any observations on the costs application within 21 calendar days<sup>1</sup> (by **16 June 2022**). Noting that there is no allegation of unreasonable behaviour in the costs application, if the respondent party is content with the decision-making process and that all relevant facts and responses to the Costs Guidance are already available to the ExA, no such observations need be made. If you do not submit a response, the ExA would proceed to decide the costs application, the outcome of which will be communicated to you and to NH in writing.
9. If you elect to respond to the costs application, a copy of the response will be provided to NH shortly after it has been received by the ExA. I will provide NH with an opportunity to make its final observations to the ExA in writing within a further 14 calendar days.
10. Following receipt of final observations from NH (or the expiry of the deadline, if no such submission is received), the ExA would proceed to decide the costs application, the outcome of which will be communicated to you and to NH in writing.

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<sup>1</sup> Deadlines in Costs procedures are normally set at 14 calendar day intervals. An extended deadline has been provided on this occasion in recognition of the Queen's Platinum Jubilee.



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

Yours sincerely

Edwin Mawdsley  
**Case Manager**

Enc. A costs application against London Resort Company Holdings Limited made by BDP Pitmans for NH on 26 April 2022 [CAPP-002].

Clarifying correspondence from BDB Pitmans on 17 May 2022 [CAPP-002Q1R1].