



FAO Edwin Maudsley (Case Manager)
National Infrastructure Planning
Temple Quay
2 The Square
Bristol
BS1 6PN

10 June 2022
By Email

Your ref: BC080001/CAPP-008D

Dear Edwin,

Application by Ebbsfleet Development Corporation for an award of costs against London Resort Company Holdings (LRCH) for an order granting consent for London Resort

We write in response to your letter of 26 May 2022 which references LRCH's letter of 18 May 2022 responding to Ebbsfleet Development Corporation's (EDC) costs application of 21 April 2022.

We note that in its response, LRCH acknowledges that the Examining Authority (ExA) has accepted EDC's costs application as valid, having taken account of both Part D of the Costs Guidance and a number of analogous costs decisions granted in favour of successful objectors following the withdrawal of the application for the Atlantic Array offshore wind farm (the AA Decisions).

LRCH further acknowledges in its response that the AA Decisions awarded successful objectors their costs in full. LRCH does though argue that such costs should only relate to those incurred in objecting to the direct impacts of the proposed compulsory acquisition and not other issues raised by the objector. EDC would like to stress that no distinction was made in the AA Decisions between those costs incurred in preparing Relevant Representations that related solely to the direct impacts of the proposed compulsory acquisition, and those that related to other issues that the successful objector may have raised. There is, therefore, no precedent for seeking to attempt to distinguish between costs incurred based solely on the nature of the types of issues that the successful objector raised in their Relevant Representation. Nor is there any suggestion in the Costs Guidance that applications that are successful based on Part D of the Guidance should be partial awards where the Relevant Representation refers to issues other than those directly related to the impacts of the proposed compulsory acquisition. Finally, given the decision as to whether to grant compulsory acquisition powers requires consideration of the wider justification for the project (to determine whether the grant of powers is in the public interest), issues associated with the wider application and the justification for the project are entirely relevant to EDCs objection to the compulsory acquisition of its land and therefore the distinction LRCH are trying to make is entirely arbitrary.

EDC therefore maintains that the application of Part D of the Costs Guidance, as interpreted in the AA Decisions, should result in its Costs Application being awarded in full. In the event that, despite the precedent set by the AA Decisions (to which EDC were referred in the 7 April 2022 section 51 advice), the ExA finds that any costs award to EDC should be limited to those costs of its Relevant Representation where directly related to the impact of the proposed compulsory acquisition, then EDC requests the opportunity to revise the Costs Application with respect to the remainder of its costs



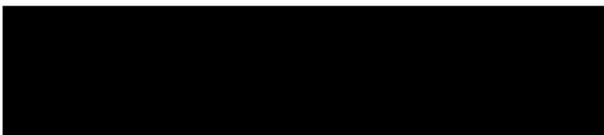
so that the Costs Application may also refer to Part B of the Costs Guidance and the unreasonable behaviour of LRCH.

With regard to the period during which costs were incurred, I refer you to paragraphs 18 to 21 of the AA Decisions which acknowledge that the process for the examination of a DCO is wider than the statutory period of the examination. Therefore, taking too narrow a reading of the Costs Guidance would place affected persons at a financial risk with no guarantee of recompense whilst they are simultaneously being encouraged to engage and potentially risk their own costs. The AA Decisions did not expressly limit the awards made to successful objectors to just those costs incurred following receipt of the section 56 notice. There is no precedent for such an approach, nor does this approach find any support within Part D of the Costs Guidance. EDC therefore maintains that its costs should be awarded in full as claimed.

Likewise, there is no distinction to be made that would justify excluding the costs incurred by EDC in seeking to negotiate a private treaty acquisition with LRCH. Applicants and affected parties are encouraged to seek to negotiate to agree the sale and purchase of land by agreement. EDC entered into the negotiation process in good faith and in the spirit of the DCO process. To exclude such costs would be unconscionable and would discourage affected parties from entering into private treaty negotiations in future applications. EDC therefore maintains its position that any costs award should include all those wasted costs incurred by EDC in entering into private treaty negotiations with LRCH in advance of the application being withdrawn.

Finally, there is no precedent in the AA Decisions, nor any indication in Part D of the Costs Guidance, that the costs of a successful objector should be awarded on a standard, rather than on an indemnity basis. LRCH have not clarified the basis upon which they consider the Upper Tribunal (Lands Chamber) Practice Directions 2020 to apply to the Costs Application. Even were the Directions to apply (which is not admitted), EDC would direct the ExA to: (i) paragraph 24.12 of the Directions which provides for the award of costs on an indemnity basis; and (ii) the recent decision of *Pro Investments Limited v London Borough of Hounslow* [2022] UKUT 54 (LC) in which the claimant was awarded its costs of pursuing its claim for compensation on an indemnity basis following the application by the Tribunal of the general principle of equivalence. Were the ExA to consider the Practice Directions to apply to the Costs Application as suggested by LRCH, then EDC submits that this would necessarily incorporate the Upper Tribunal's recent finding that the effect of the principle of equivalence is that such costs should be awarded on an indemnity basis.

Yours sincerely



Jennifer Hunt
Head of Ebbsfleet Central
Ebbsfleet Development Corporation

