

**Our ref:** Q210454  
**Your ref:** BC080001  
**Email:** [REDACTED]  
**Date:** 16 June 2022



Edwin Mawdsley  
Case Manager  
National Infrastructure Planning  
Temple Quay House, 2 The Square  
Bristol, BS1 6PN

For the attention of Edwin Mawdsley  
By Email

Dear Edwin,

**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 regarding an Application for an Order Granting Development Consent for the London Resort**

I write on behalf of Ebbsfleet Development Corporation, Dartford Borough Council and Kent County Council (“the LAs”) to make a concluding written submission in response to all matters relevant to the LAs’ application for an award of costs (“costs application”) arising from your letter dated 23 May 2022. You have sought any concluding observations from my client in respect of:

- **Matter 1:** *the validity of the costs application and the jurisdiction to award costs for unreasonable behaviour in these circumstances; and, without prejudice to this first matter.*
- **Matter 2:** *the unreasonable behaviour alleged in the costs application and whether it meets the test for an award set out in the Costs Guidance.*

In response to Matter 1, I refer you to section 2 of the LAs’ costs application where it sets out the legal basis for costs award. Paragraph 2.4 of our response states:

*There is no reason to consider that the Examining Authority’s power to award costs under section 95(4) of the 2008 Act requires an examination to formally commence under section 88 of the 2008 Act. Although the usual approach to costs awards being after an examination has commenced is referenced in paragraph 12, and elsewhere, of the Guidance, the Guidance is guidance only and as a matter of long-established public law a decision maker is entitled to depart from guidance where it has clear reasons to do so. Those clear reasons do not have to be ‘compelling’<sup>7</sup> and there is therefore a reasonable discretion available to the Examining Authority.*

I also refer to sections 6 to 9 of the LAs’ costs application where it sets out clear reasons for the ExA as the decision maker to depart from the Guidance in consideration of the LAs’ costs application.

The respondent party indicated that its withdrawal was a result of an identified issue which they considered would result in a material change to the application, with reference to Part C of the



Guidance under paragraph 3. I refer to paragraph 6.1 of the LAs' costs application, which sets out clearly that "...*At the time by which the Applicant withdrew its application there was no material change in circumstances and there were not exceptional circumstances*". Further details are provided at section 8.

As such, I consider the LAs' costs application valid on both legal and factual basis. In relation to Matter 2, I therefore urge the ExA to take appropriate account of our alleged unreasonable behaviour of the respondent party as set out clearly in sections 6 to 9 of the costs applications.

Yours sincerely,



Matthew Sharpe  
Senior Director

cc.

Mark Pullin, Ebbsfleet Development Corporation  
Sonia Collins, Dartford Borough Council  
Rob Hancock, Kent County Council  
Richard Ford, Pinsent Masons LLP