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Ms Jessica Graham and Mr Mustafa
Latif-Aramesh
Associate and Managing Associate
BDB Pitmans

Your Ref: JNG/TGH/151216.0073

Our Ref: BC080001/ CAPP-002C

Date: 8 July 2022

By Email

Dear Ms Graham and Mr Latif-Aramesh

Planning Act 2008 (as amended) – Section 95

Application by National Highways 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 26 April 2022, BDB Pitmans acting for National Highways ("NH") 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-002].
2. On 3 May 2022, I wrote to you, 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 you on 17 May 2022 addresses this point. I subsequently wrote to you on 26 May 2022 to inform you that the Examining Authority (ExA) had asked me to write to the respondent party providing them with an opportunity to make any observations on the costs application within 21 calendar days (by 16 June 2022). No such response was received.
3. I have referred these circumstances to the ExA and sought its procedural decision. The ExA has decided that in circumstances where the respondent has breached the deadline for its response without either providing a reason or seeking an extension, it will proceed to decide your application on the basis of the material already before it. In reaching this decision, the ExA observed that the respondent has already been provided with a reasonable opportunity to make its response. For it to create further delay by additionally extending the time-period for the respondent to respond without having been provided with either a request or a reason to do so would be unfair to your client and in-principle unreasonable as a course of action.

4. In circumstances where a respondent does elect to respond to an application for costs, established practice and the provision of procedural fairness indicate that the applicant for costs should then be provided with an opportunity to make a final written submission, addressing any relevant points raised by the respondent, before the costs decision is taken. However, in this instance, where no response has been provided, the ExA takes the view that your application for costs can be decided directly. There is no need for you to make a final submission on behalf of your client because the ExA has all the information that it needs to decide your client's application and no case has been made against the application by the respondent to which in fairness you need to respond.
5. It follows that the ExA will proceed to decide your client's costs application, the outcome of which will be communicated to you in writing.
6. All correspondence relating to the costs applications will be published on the National Infrastructure Planning Website following the costs decision by the ExA.
7. If you have any questions about this letter, please do not hesitate to contact me.

Yours sincerely

Edwin Mawdsley
Case Manager

cc The Respondent Party