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Ms Theresa Johnston  
Wellers Law Group LLP  
Bromley

Your Ref:

Our Ref: BC080001/ CAPP-022C

**By Email**

Date: 15 July 2022

Dear Ms Johnston

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

### **Applications by Wellers Law Group LLP for awards of costs on behalf of multiple persons: against London Resort Company Holdings Limited regarding an Application for an Order Granting Development Consent for the London Resort**

1. By multiple submissions made in April 2022, Wellers Law Group LLP and Mr Doug Hilton made applications for awards of costs (“the costs applications”) against London Resort Company Holdings Limited (“the respondent party”) regarding its Application for an Order Granting Development Consent for the London Resort (“the Order”) on behalf of multiple parties. The individual costs applications that are the subject of these submissions are itemised in **Annex A** to this letter. They have all been published and can be seen in the Examination Library under the references in that Annex.
2. 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).
3. The Secretary of State has published guidance on costs applications in relation to development consent order examinations (“the Costs Guidance”). It 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)
4. 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.
5. The costs applications itemised in Annex A arose in the following circumstances:

- Timely<sup>1</sup> applications made on behalf of various clients by Wellers Law Group LLP;
  - Timely<sup>1</sup> applications made on behalf of various persons by Mr Doug Hilton;
  - Late applications made on behalf of various clients by Wellers Law Group LLP in circumstances where a timely application had already been made on behalf of the same persons by Mr Doug Hilton; and
  - Late applications made on behalf of two clients by Wellers Law Group LLP in circumstances where original timely applications had been made on behalf of two other IPs due to a clerical error.
6. A case conference was held between the Planning Inspectorate, Wellers Law Group LLP and Mr Doug Hilton on 7 June 2022 at which it was agreed as follows:
- All persons originally represented by Mr Doug Hilton would henceforth be represented by Wellers Law Group LLP; and
  - To the extent that late applications had been made by Wellers Law Group LLP relating to persons on behalf of whom Mr Doug Hilton had already made timely submissions, the ExA would be recommended to accept the date of those submissions by Mr Doug Hilton as the starting point for consideration of those costs applications, whilst Wellers Law Group LLP would represent those persons as clients moving forward.

The ExA has accepted that recommendation and this letter commences the formal process for consideration of all costs applications previously managed by Mr Doug Hilton on that basis.

7. The case conference also identified that two parties represented by Wellers Law Group LLP (Mehi Ltd and Autocentric Ltd) were seeking awards of costs but had not been mentioned in timely originating correspondence from Wellers Law Group LLP or Mr Doug Hilton. Correspondence dated 12 July 2022 has been received from Wellers Law Group LLP [CAPP-021A] that addresses this point. This correspondence confirms that these two parties were not named in the originating correspondence despite their instructions to Wellers to seek costs on their behalf. Two other persons who had not instructed Wellers had instead been named as applicants for costs in a timely submission, due to a clerical error. The ExA has considered these circumstances and noting the potential for injustice to the two applicants concerned arising from an error that was not of their direct making, has agreed to accept and consider their applications for costs.
8. Further to the statutory powers outlined above, to the Costs Guidance, having had regard to the approach taken to previous costs decisions identified in the section 51 advice and following the case conference meeting and further correspondence to address the matters referred to in paragraphs 6 and 7, I am now writing to inform you that the ExA has given preliminary consideration to all of the costs applications itemised in Annex A to this letter. This letter is to acknowledge receipt of all of these costs applications and to set out the ExA's preliminary decisions on validity and the procedure that will be used to manage the costs applications.

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<sup>1</sup> The Costs Guidance Part B Paragraphs 11 and 32 advise that to be timely, applications for costs should normally be submitted with 28 days of notification of the withdrawal of the application for development consent.

9. In relation to the question of validity, the ExA has considered the Costs Guidance. It has characterised each of the applications into one of three classes described in **Annex B**, in summary as follows:

- Applications made on behalf of **successful objectors** to the proposed compulsory acquisition ("CA") of land or rights, and in respect of which it is not necessary for unreasonable behaviour by the respondent to be demonstrated (listed as the "SO" applications in the table in Annex A);
- Applications made on behalf of persons alleging **unreasonable behaviour** by the respondent party as the basis for their claim for costs (listed as the "UB" applications in the table in Annex A); and
- Applications made on behalf of **successful objectors** where allegations of **unreasonable behaviour** by the respondent party have also been made (listed as the Combination or "Comb" applications in the table in Annex A).

Annex B identifies the approach to be taken to validity and the procedural route for each class of applications. The table in Annex A identifies the class into which each individual application falls.

10. The Planning Inspectorate has grouped all of the costs applications identified in this letter under a single new master reference [CAPP-022]. Case management correspondence relevant to the whole group should proceed under that master reference. Correspondence that is relevant to individual applications but not to the group as a whole should continue to use the original case references set out in the table to Annex A.

11. In accordance with paragraph 34 (Part B) of the Costs Guidance, the ExA has asked me to write to the respondent party (copy attached), providing them with an opportunity to make any observations on the costs applications within 14 calendar days (by **29 July 2022**).

12. If the respondent party elects to respond to the costs applications, a copy of the response will be provided to you shortly after it has been received by the ExA. I will then provide you with an opportunity to make your final observations to the ExA in writing, within a further 14 calendar days. I will write to you again if needs be, to advise you of that start and end of that period. In such circumstances the costs applications will be decided by the ExA following receipt of your final observations (or if no such submissions are made by you, following the expiry of the deadline set for you to provide them).

13. If the respondent party elects not to respond to the costs applications, I will write to you to confirm that fact and there will be no need for final observations to be submitted. In these circumstances, the ExA will proceed directly to decide the costs applications after the expiry of the deadline in paragraph 9 above.

14. If you wish to participate further in this process, please ensure that any requested communications are received by the Planning Inspectorate on or before the relevant deadline. If for unforeseen reasons you are unable to communicate substantively by the relevant deadline, you are asked to contact the Planning Inspectorate as soon as possible, to provide reasons for the delay and to seek an agreed extension. Extensions are provided at the discretion of the ExA and do not have to be granted but will not be unreasonably withheld if requested for good reasons. If you do not meet a relevant deadline and do not seek an extension,

the ExA may proceed to decide these applications without further reference to you.

15. The outcome of the costs applications will be communicated to you in writing. In this regard, it is important that your clients are aware that the same costs cannot be claimed twice. Where a client is making a combination claim, if for example they are successful in their claim as a successful objector, they cannot then claim the same costs in relation to unreasonable behaviour, even if the ExA accepts that facts supporting a finding of unreasonable behaviour have been demonstrated.
16. All correspondence relating to the costs applications and the costs decisions by the ExA will be published on the National Infrastructure Planning Website.
17. 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  
Mr Doug Hilton

## Annex A: List of Persons Represented by Wellers Law Group LLP

The table to this Annex sets out the list of applicants for costs who were initially represented by Wellers Law Group LLP, by Mr Doug Hilton or by both Wellers Law Group LLP and Mr Doug Hilton. All of these applicants are now represented by Wellers Law Group LLP. The table identifies the original applications by reference number (providing access to these submissions in the Examination Library) and also identifies the procedural class into which each application falls and the validity considerations which apply to them. Annex B below describes each procedural class.

The respondent party has been requested to respond to each application in a table modelled on this Annex. An editable version of this Annex has been provided to them in Microsoft Word for that purpose.

Original Reference	Applicant for costs	Procedural Class	Notes
[CAPP-014]	Gabriel Ciudatu, AGB Cars Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from AGB Developments Dartford Ltd.
[CAPP-014]	Gabriel Ciudatu, AGB Developments Dartford Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from AGB Cars Ltd.
[CAPP-014]	Patricia Dole & Directors of MJD Group	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Mr Robert Samuel, Sheerness Recycling Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Dorian Osmani DMJ Group	UB	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Eriks Azimovs, Director of Mosero Performance Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Jac Anthony Connolly, JC Recoveries Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Vytautas Mickevicius of B2 Car Sales Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Madalina Bodolica and Andrei Botnaru, Dokin Car Parts Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from CD&A Ltd.

Original Reference	Applicant for costs	Procedural Class	Notes
[CAPP-014]	Madalina Bodolica and Andreie Botnary CD&A Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from Dokin Car Parts Ltd.
[CAPP-014]	Balbir Singh S&S Global Freight Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Constantin-Valetin Romanescu, Seamonix Services Construction Ltd	UB	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Kawsar Ahmed and Syed Obaidul Haque, E3 Motors London Ltd	UB	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Dr Nighat Jabeen and Mr Kunwarjeet of Nihang Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.
[CAPP-014]	Ms Helen Hall	None	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016 from Wellers confirms this application was submitted due to a clerical error and is withdrawn. <b>There is no need to respond to this application.</b>
[CAPP-014]	Ms Claire Edie	None	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016 from Wellers confirms this application was submitted due to a clerical error and is withdrawn. <b>There is no need to respond to this application.</b>
[CAPP-021]	Mehi Ltd	Comb	Not within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016 from Wellers confirms this application was instructed and intended to have been submitted in the stead of an application submitted in error. The ExA has considered this explanation and has agreed in the circumstances that it should accept this late application.
[CAPP-021]	Autocentric Ltd	Comb	Not within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016

<b>Original Reference</b>	<b>Applicant for costs</b>	<b>Procedural Class</b>	<b>Notes</b>
			from Wellers confirms this application was instructed and intended to have been submitted in the stead of an application submitted in error. The ExA has considered this explanation and has agreed in the circumstances that it should accept this late application.
[CAPP-015]	Vitesse Investments Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.
[CAPP-015]	Buckland Dartford Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.
[CAPP-017]	LD Developments Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.
[CAPP-017]	Sabotcastle Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.
[CAPP-017]	MES Contractors Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act. Late application [CAPP-020] made by Wellers Law Group LLP is not proceeding.
[CAPP-017]	JDP Property Services	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act. Late application [CAPP-020] made by Wellers Law Group LLP is not proceeding.
[CAPP-017]	Mr Dan Bramwell	UB	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act. Late application [CAPP-020] made by Wellers Law Group LLP is not proceeding.
[CAPP-018]	Mr John Palmer	Comb	Confirmed by Mr Doug Hilton as having formed part of his timely application [CAPP-018] as a member of Peninsula Management Group. Timely applications [CAPP-017 & 018] made by Mr Doug

Original Reference	Applicant for costs	Procedural Class	Notes
			Hilton have now been consolidated with this application and Wellers Law Group LLP act.

## **Annex B: Procedural Classes of Costs Applications**

There are two procedural classes of application.

- Applications made on behalf of persons alleging **unreasonable behaviour** by the respondent party as the basis for their claim for costs (the “UB applications”); and
- Applications made on behalf of **successful objectors** where allegations of **unreasonable behaviour** by the respondent party have also been made (the “Comb. applications”).

### **UB applications**

Where an application is marked ‘UB’ in the table to Annex A, this means that the ExA notes that the applicants concerned are not APs and that the application is founded on an allegation that the respondent party behaved unreasonably.

In relation to the validity of the costs applications in this class, the ExA notes that they were made within 28 days of the withdrawal of the application for the Order and so are timely<sup>2</sup>. However, the ExA has not reached a concluded position on the question of whether these applications are valid applications and whether it has jurisdiction to consider these costs applications.

This class of applications rely on allegations of unreasonable behaviour by the respondent party. They are based on the applicants having standing as Interested Parties (IPs). The ExA accepts that all of the applicants in the class are IPs. Whilst there are circumstances (including those in respect of which the section 51 advice referred to in paragraph 4 of the covering letter 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. It follows that there is a question in relation to validity and jurisdiction that must be decided before a decision is taken on the merits of this class of costs applications.

The following IPs with costs applications already under consideration by the ExA have made submissions that rely on allegations of unreasonable behaviour alone and argue that such claims can validly be made in relation to matters arising before a Preliminary Meeting [CAPP-003, 004, 007, 009 & 010]. These submissions are relevant to the validity and jurisdiction question as to whether such claims can be made.

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<sup>2</sup> In relation to timeliness, it should be noted that whilst certain applications made by Wellers Law LLP were not timely [CAPP-019 & 020], in each circumstance where that was the case, a timely application on behalf of the same applicants had already been made by Mr Doug Hilton. Judgments of timeliness in those applications are based on the timing of the earliest application made on behalf of the applicant concerned. Due to a clerical error, in respect of two parties in [CAPP-014], timely applications were made on behalf of persons who did not instruct Wellers Law LLP to apply on their behalf and two clients who had instructed that applications should be made were excluded from this application in error. On receipt of an explanation, the ExA has decided to allow that error to be corrected (see [CAPP-021]).

A further group of APs have made submissions that rely on both the standing of the costs applicant as an AP and on allegations of unreasonable behaviour [CAPP-006, 011, 013, 014, 015, 017, 018, 019 and 020]. To the extent that these applications for costs also argue that unreasonable behaviour claims can be made in relation to matters arising before a Preliminary Meeting, then aspects of them raise considerations that are relevant to the question of jurisdiction.

All of the documents referred to above are available on the National Infrastructure Planning Website documents tab.

In accordance with paragraph 34 of the Costs Guidance and for the reasons set out above, the ExA has decided to address the validity and the jurisdiction question and the question of whether the respondent party's behaviour satisfies the necessary tests for unreasonable behaviour in a rolled-up procedure. The ExA has asked me to write to the respondent party (copy provided), providing them with an opportunity to make any observations on the following matters:

- **Matter 1:** the validity of each costs application in this class 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 applications in this class and whether these meet the tests for awards set out in the Costs Guidance.

### **Combination applications**

Where an application is marked 'Comb.' in the table to Annex A, this means that the ExA considers that the applicants concerned are APs identified in the Book of Reference (or have equivalent interests in land within the scope of the request for CA powers) and that they have objected to the CA of their land and/or rights and so are successful objectors (in the **first part** of their costs application). However, these applicants have additionally alleged that the respondent party behaved unreasonably (in the **second part** of their costs application). These applications proceed on the basis of one or both elements of a two-part claim.

In relation to the validity of the **first part** of the costs applications in this class, the ExA has considered the Costs Guidance, referring specifically to all paragraphs in Part D. The ExA notes the basis of this first part of this class of costs applications as being that the applicants consider themselves to be 'successful objectors', that it is not necessary for unreasonable behaviour by the respondent to be demonstrated in order for this part of their claims to succeed.

On the basis that all of the applicants in this class appear to the ExA to be APs or to have equivalent interests, that the application for the Order has been withdrawn and so these applicants also appear to be 'successful objectors' and that the costs applications were made within 28 days of the withdrawal of the application for the Order and so are timely<sup>2</sup>, the ExA has agreed to consider the costs applications in this part of this class.

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 this part of this class of applications for costs.

In relation to the validity of the **second part** of the costs applications in this class, the ExA notes that they were made within 28 days of the withdrawal of the application for the Order and so again are timely<sup>2</sup>. However, the ExA has not reached a concluded position on the question of whether it has jurisdiction to consider the second part of this class of costs applications. This part relies on allegations of unreasonable behaviour by the respondent party. It is based on each applicant's standing as an IP.

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. It follows that there is a question in relation to jurisdiction over the second part of this class of claims that must be decided before a decision is taken on the merits of this part of this class of costs applications that you have made.

The following IPs with costs applications already under consideration by the ExA have made submissions that rely on both the standing of the costs applicant as an AP and on allegations of unreasonable behaviour [CAPP-006, 011, 013, 014, 015, 017, 018, 019 and 020]. To the extent that these applications for costs also argue that unreasonable behaviour claims can be made in relation to matters arising before a Preliminary Meeting, then aspects of them raise considerations that are relevant to the question of jurisdiction.

A further group of APs have made submissions that rely on allegations of unreasonable behaviour alone and argue that such claims can validly be made in relation to matters arising before a Preliminary Meeting [CAPP-003, 004, 007, 009 & 010]. These submissions are also relevant to the validity and jurisdiction question as to whether such claims can be made.

All of the documents referred to above are available on the National Infrastructure Planning Website documents tab.

In accordance with paragraph 34 of the Costs Guidance and for the reasons set out above, the ExA has decided to address the 'successful objector claim', the jurisdiction question and the question of whether the respondent party's behaviour satisfies the necessary tests for unreasonable behaviour in a rolled-up procedure.

The ExA has asked me to write to the respondent party (copy provided), providing them with an opportunity to make any observations on the following matters:

- **Matter 3:** the 'successful objector' claim for costs, and specifically whether there are any arguments that, if successful, a part award should be made that would be different to or lesser in extent than any award that could possibly be made under Matter 5;
- **Matter 4:** the validity of and jurisdiction to award costs for unreasonable behaviour in these circumstances; and without prejudice to this matter
- **Matter 5:** the unreasonable behaviour alleged in the costs applications in this class and whether these meet the tests for an award set out in the Costs Guidance.