



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Bircham Dyson Bell
50 Broadway
London
SW1H 0BL

Your Ref:

Our Ref: TR020002

Date: 18 July 2016

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Acknowledgement of receipt of a section 53 authorisation request

Thank you for your application dated 1 July 2016 requesting rights of entry to land for the purposes of surveying and taking levels under s53 of the Planning Act 2008, as amended (the Act). This authorisation request was received by the Planning Inspectorate on 4 July 2016.

Payment of authorisation fee

The Planning Inspectorate has the discretion to determine the number of authorisation requests made to the Secretary of State under section 53 of the Act. The Planning Inspectorate has initially reviewed your authorisation request and has determined that one request has been made under section 53 of the Act, based on four freehold titles held by a single landowner, as reflected in the authorisation request. The Planning Inspectorate acknowledges receipt of £1000 received by the Planning Inspectorate on 5 July 2016. The Planning Inspectorate confirms that this is the correct payment for the number of section 53 authorisation requests made.

The Planning Inspectorate is currently considering the authorisation request and will notify you shortly whether further information will be requested in order to support the authorisation request.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

**Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State**

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.



The Planning Inspectorate

3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Herbert Smith Freehills LLP
Exchange Street
Primrose Street
London EC2A 2E

Your Ref: 5567/30983750
Our Ref: 20160720_TR020002_17000
228

Date: 20 July 2016

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for authorisation under section 53 of the Planning Act 2008 (as amended)

We wish to confirm that the Planning Inspectorate, on behalf of the Secretary of State, has received a request from **RiverOak Investment Corporation** (the applicant) for authorisation to enter land for the purpose of surveying in connection with the proposed development. This land for which access is sought includes land owned by your client, Stone Hill Park Limited. This does not pre-determine whether the proposed development would be accepted by the Secretary of State for examination, or whether the proposed development would be granted development consent. These are separate procedures.

The applicant has provided us with a copy of the letter sent to you dated 1 July 2016, which informs you that the applicant has made this authorisation request and informing you to provide any comments on this authorisation request to the Planning Inspectorate.

We can also confirm that the Planning Inspectorate, on behalf of the Secretary of State, received on 8 July 2016, the comments on this authorisation request made by you on behalf of Stone Hill Park Limited dated 7 July 2016.

If you wish to make any further comments on this authorisation request to be considered by the Secretary of State, please do so by 10 August 2016. Please note that the Planning Inspectorate will assume that you do not have any further comments to make on this authorisation request, if the Planning Inspectorate has not received any comments from you by 10 August 2016. In which case, the Planning Inspectorate will not contact you again until we write to inform you that the authorisation request has been determined by the Secretary of State.

If you wish to provide comments on this authorisation request, it would assist the

Secretary of State, if you could provide:

- Confirmation that you have an interest in the land together with the nature of your interest, for example, the freehold owner, or tenant. If the information in the applicant's authorisation request about your interest in the land is not correct, please provide the correct details;
- Confirmation that the land as described in the applicant's authorisation request and as shown on the plan marked 'Plan A' is correct. If this is not correct, please provide further details;
- Confirmation that the dates, on which the applicant states that they have contacted you to discuss obtaining access to the land, are correct. If this is not the case, please provide further details;
- An explanation as to why you have not been able to agree voluntarily with the applicant to provide access to the land; and
- If the Secretary of State was minded to grant authorisation, allowing the applicant access to the land, what conditions you would want the Secretary of State to grant this authorisation subject to. It would be helpful if you could comment on the draft conditions proposed by the applicant and included in their authorisation request. It would also assist the Secretary of State if you could describe what the current use of the land is and whether there are any special conditions that would need to be included to take account of the use of the land, for example, any construction activity.

To understand the requirements which applicants must satisfy when seeking authorisation from the Secretary of State for obtaining entry to the land under section 53, the Planning Inspectorate has produced Advice Note 5: Section 53, available on our website:

<http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>.

Please send any comments you wish to make on this authorisation request to the Planning Inspectorate by 10 August 2016, marked for the attention of Richard Hunt. This can either be sent by post, or electronically to: environmentalservices@pins.gsi.gov.uk.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

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The Planning Inspectorate

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Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Avman Engineering Ltd
Hangar 1
Kent International Airport
Manston
CT12 5BL

Your Ref:

Our Ref: 20160720_TR020002_17020
572

Date: 20 July 2016

Dear Sir/ Madam

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for authorisation under section 53 of the Planning Act 2008 (as amended)

We wish to inform you that the Planning Inspectorate, on behalf of the Secretary of State, has received a request from **RiverOak Investment Corporation** (the applicant) for authorisation to enter land for the purpose of surveying in connection with the proposed development. This land for which access is sought includes land identified by the applicant as occupied by you. This does not pre-determine whether the proposed development would be accepted by the Secretary of State for examination, or whether the proposed development would be granted development consent. These are separate procedures.

The applicant has provided us with a copy of the letter sent to you dated 1 July 2016, which informs you that the applicant has made this authorisation request and informing you to provide any comments on this authorisation request to the Planning Inspectorate. We can confirm that any comments you wish to make on this authorisation request, received by 10 August 2016 will be considered by the Secretary of State, before the request is determined.

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- Confirmation that you have an interest in the land together with the nature of your interest, for example, the freehold owner, or tenant. If you do not have an

interest in the land and/or the information in the applicant's authorisation request about your interest in the land is not correct, please provide the correct details;

- Confirmation that the land as described in the applicant's authorisation request and as shown on the plan marked 'Plan A' is correct. If this is not correct, please provide further details;
- Confirmation that the dates, on which the applicant states that they have contacted you to discuss obtaining access to the land, are correct. If this is not the case, please provide further details;
- An explanation as to why you have not been able to agree voluntarily with the applicant to provide access to the land; and
- If the Secretary of State was minded to grant authorisation, allowing the applicant access to the land, what conditions you would want the Secretary of State to grant this authorisation subject to. It would be helpful if you could comment on the draft conditions proposed by the applicant and included in their authorisation request. It would also assist the Secretary of State if you could describe what the current use of the land is and whether there are any special conditions that would need to be included to take account of the use of the land, for example, restrictions during harvesting, any construction activity, or the presence of animals on the land.

To understand the requirements which applicants must satisfy when seeking authorisation from the Secretary of State for obtaining entry to the land under section 53, the Planning Inspectorate has produced Advice Note 5: Section 53, available on our website:

<http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>.

Please send any comments you wish to make on this authorisation request to the Planning Inspectorate by 10 August 2016, marked for the attention of Richard Hunt. This can either be sent by post, or electronically to: environmentalservices@pins.gsi.gov.uk.

If you have any queries, please do not hesitate to contact us.

Yours faithfully

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

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The Planning Inspectorate

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Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Polar Helicopters Ltd
Hanger 10
Kent International Airport
Spitfire Way
Manston
CT12 5FF

Your Ref:

Our Ref: 20160720_TR020002_17020
686

Date: 20 July 2016

Dear Sir/ Madam

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for authorisation under section 53 of the Planning Act 2008 (as amended)

We wish to inform you that the Planning Inspectorate, on behalf of the Secretary of State, has received a request from **RiverOak Investment Corporation** (the applicant) for authorisation to enter land for the purpose of surveying in connection with the proposed development. This land for which access is sought includes land identified by the applicant as occupied by you. This does not pre-determine whether the proposed development would be accepted by the Secretary of State for examination, or whether the proposed development would be granted development consent. These are separate procedures.

The applicant has provided us with a copy of the letter sent to you dated 1 July 2016, which informs you that the applicant has made this authorisation request and informing you to provide any comments on this authorisation request to the Planning Inspectorate. We can confirm that any comments you wish to make on this authorisation request, received by 10 August 2016 will be considered by the Secretary of State, before the request is determined.

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interest in the land and/or the information in the applicant's authorisation request about your interest in the land is not correct, please provide the correct details;

- Confirmation that the land as described in the applicant's authorisation request and as shown on the plan marked 'Plan A' is correct. If this is not correct, please provide further details;
- Confirmation that the dates, on which the applicant states that they have contacted you to discuss obtaining access to the land, are correct. If this is not the case, please provide further details;
- An explanation as to why you have not been able to agree voluntarily with the applicant to provide access to the land; and
- If the Secretary of State was minded to grant authorisation, allowing the applicant access to the land, what conditions you would want the Secretary of State to grant this authorisation subject to. It would be helpful if you could comment on the draft conditions proposed by the applicant and included in their authorisation request. It would also assist the Secretary of State if you could describe what the current use of the land is and whether there are any special conditions that would need to be included to take account of the use of the land, for example, restrictions during harvesting, any construction activity, or the presence of animals on the land.

To understand the requirements which applicants must satisfy when seeking authorisation from the Secretary of State for obtaining entry to the land under section 53, the Planning Inspectorate has produced Advice Note 5: Section 53, available on our website:

<http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>.

Please send any comments you wish to make on this authorisation request to the Planning Inspectorate by 10 August 2016, marked for the attention of Richard Hunt. This can either be sent by post, or electronically to: environmentalservices@pins.gsi.gov.uk.

If you have any queries, please do not hesitate to contact us.

Yours faithfully

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

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The Planning Inspectorate

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2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Taft International Transport
Weatherfield Lodge
Each End
Ash
Canterbury
CT3 2BZ

Your Ref:

Our Ref: 20160720_TR020002_17063
286

Date: 20 July 2016

Dear Sir/ Madam

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for authorisation under section 53 of the Planning Act 2008 (as amended)

We wish to inform you that the Planning Inspectorate, on behalf of the Secretary of State, has received a request from **RiverOak Investment Corporation** (the applicant) for authorisation to enter land for the purpose of surveying in connection with the proposed development. This land for which access is sought includes land identified by the applicant as occupied by you. This does not pre-determine whether the proposed development would be accepted by the Secretary of State for examination, or whether the proposed development would be granted development consent. These are separate procedures.

The applicant has provided us with a copy of the letter sent to you dated 1 July 2016, which informs you that the applicant has made this authorisation request and informing you to provide any comments on this authorisation request to the Planning Inspectorate. We can confirm that any comments you wish to make on this authorisation request, received by 10 August 2016 will be considered by the Secretary of State, before the request is determined.

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interest in the land and/or the information in the applicant's authorisation request about your interest in the land is not correct, please provide the correct details;

- Confirmation that the land as described in the applicant's authorisation request and as shown on the plan marked 'Plan A' is correct. If this is not correct, please provide further details;
- Confirmation that the dates, on which the applicant states that they have contacted you to discuss obtaining access to the land, are correct. If this is not the case, please provide further details;
- An explanation as to why you have not been able to agree voluntarily with the applicant to provide access to the land; and
- If the Secretary of State was minded to grant authorisation, allowing the applicant access to the land, what conditions you would want the Secretary of State to grant this authorisation subject to. It would be helpful if you could comment on the draft conditions proposed by the applicant and included in their authorisation request. It would also assist the Secretary of State if you could describe what the current use of the land is and whether there are any special conditions that would need to be included to take account of the use of the land, for example, restrictions during harvesting, any construction activity, or the presence of animals on the land.

To understand the requirements which applicants must satisfy when seeking authorisation from the Secretary of State for obtaining entry to the land under section 53, the Planning Inspectorate has produced Advice Note 5: Section 53, available on our website:

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Please send any comments you wish to make on this authorisation request to the Planning Inspectorate by 10 August 2016, marked for the attention of Richard Hunt. This can either be sent by post, or electronically to: environmentalservices@pins.gsi.gov.uk.

If you have any queries, please do not hesitate to contact us.

Yours faithfully

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The Planning Inspectorate

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2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Powermain Ltd
Unit 4
Spitfire Way
Manston
CT12 5BU

Your Ref:

Our Ref: 20160720_TR020002_17059
005

Date: 20 July 2016

Dear Sir/ Madam

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for authorisation under section 53 of the Planning Act 2008 (as amended)

We wish to inform you that the Planning Inspectorate, on behalf of the Secretary of State, has received a request from **RiverOak Investment Corporation** (the applicant) for authorisation to enter land for the purpose of surveying in connection with the proposed development. This land for which access is sought includes land identified by the applicant as occupied by you. This does not pre-determine whether the proposed development would be accepted by the Secretary of State for examination, or whether the proposed development would be granted development consent. These are separate procedures.

The applicant has provided us with a copy of the letter sent to you dated 1 July 2016, which informs you that the applicant has made this authorisation request and informing you to provide any comments on this authorisation request to the Planning Inspectorate. We can confirm that any comments you wish to make on this authorisation request, received by 10 August 2016 will be considered by the Secretary of State, before the request is determined.

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If you wish to provide comments on this authorisation request, it would assist the Secretary of State, if you could provide:

- Confirmation that you have an interest in the land together with the nature of your interest, for example, the freehold owner, or tenant. If you do not have an

interest in the land and/or the information in the applicant's authorisation request about your interest in the land is not correct, please provide the correct details;

- Confirmation that the land as described in the applicant's authorisation request and as shown on the plan marked 'Plan A' is correct. If this is not correct, please provide further details;
- Confirmation that the dates, on which the applicant states that they have contacted you to discuss obtaining access to the land, are correct. If this is not the case, please provide further details;
- An explanation as to why you have not been able to agree voluntarily with the applicant to provide access to the land; and
- If the Secretary of State was minded to grant authorisation, allowing the applicant access to the land, what conditions you would want the Secretary of State to grant this authorisation subject to. It would be helpful if you could comment on the draft conditions proposed by the applicant and included in their authorisation request. It would also assist the Secretary of State if you could describe what the current use of the land is and whether there are any special conditions that would need to be included to take account of the use of the land, for example, restrictions during harvesting, any construction activity, or the presence of animals on the land.

To understand the requirements which applicants must satisfy when seeking authorisation from the Secretary of State for obtaining entry to the land under section 53, the Planning Inspectorate has produced Advice Note 5: Section 53, available on our website:

<http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>.

Please send any comments you wish to make on this authorisation request to the Planning Inspectorate by 10 August 2016, marked for the attention of Richard Hunt. This can either be sent by post, or electronically to: environmentalservices@pins.gsi.gov.uk.

If you have any queries, please do not hesitate to contact us.

Yours faithfully

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

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The Planning Inspectorate

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Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Hunglish Ltd
Building 521
Spitfire Way
Manston
CT12 5FF

Your Ref:

Our Ref: 20160720_TR020002_17062
052

Date: 20 July 2016

Dear Sir/ Madam

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for authorisation under section 53 of the Planning Act 2008 (as amended)

We wish to inform you that the Planning Inspectorate, on behalf of the Secretary of State, has received a request from **RiverOak Investment Corporation** (the applicant) for authorisation to enter land for the purpose of surveying in connection with the proposed development. This land for which access is sought includes land identified by the applicant as occupied by you. This does not pre-determine whether the proposed development would be accepted by the Secretary of State for examination, or whether the proposed development would be granted development consent. These are separate procedures.

The applicant has provided us with a copy of the letter sent to you dated 1 July 2016, which informs you that the applicant has made this authorisation request and informing you to provide any comments on this authorisation request to the Planning Inspectorate. We can confirm that any comments you wish to make on this authorisation request, received by 10 August 2016 will be considered by the Secretary of State, before the request is determined.

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If you wish to provide comments on this authorisation request, it would assist the Secretary of State, if you could provide:

- Confirmation that you have an interest in the land together with the nature of your interest, for example, the freehold owner, or tenant. If you do not have an

interest in the land and/or the information in the applicant's authorisation request about your interest in the land is not correct, please provide the correct details;

- Confirmation that the land as described in the applicant's authorisation request and as shown on the plan marked 'Plan A' is correct. If this is not correct, please provide further details;
- Confirmation that the dates, on which the applicant states that they have contacted you to discuss obtaining access to the land, are correct. If this is not the case, please provide further details;
- An explanation as to why you have not been able to agree voluntarily with the applicant to provide access to the land; and
- If the Secretary of State was minded to grant authorisation, allowing the applicant access to the land, what conditions you would want the Secretary of State to grant this authorisation subject to. It would be helpful if you could comment on the draft conditions proposed by the applicant and included in their authorisation request. It would also assist the Secretary of State if you could describe what the current use of the land is and whether there are any special conditions that would need to be included to take account of the use of the land, for example, restrictions during harvesting, any construction activity, or the presence of animals on the land.

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Please send any comments you wish to make on this authorisation request to the Planning Inspectorate by 10 August 2016, marked for the attention of Richard Hunt. This can either be sent by post, or electronically to: environmentalservices@pins.gsi.gov.uk.

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Richard Hunt

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Senior EIA Advisor
on behalf of the Secretary of State

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Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Bircham Dyson Bell
50 Broadway
London
SW1H 0BL

Your Ref: ADW/APH/164652.0001

Our Ref: 20160720_TR02002_17059779

Date: 22 July 2016

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for further information in respect of a section 53 authorisation request

Further to our letter dated 18 July 2016, the Planning Inspectorate is currently reviewing your request for rights to enter land under s.53 of the above act for the purpose of surveying and taking levels as outlined in your application dated 1 July 2016.

The Secretary of State may only authorise entry onto land if the request can be properly justified. In order to assess the request, the Planning Inspectorate requires additional information. Therefore, please can the following information be provided to the Planning Inspectorate.

1. Demonstrating reasonable efforts

- 1.1. The Secretary of State needs to be satisfied that the applicant has made all reasonable efforts to agree access to land for the purpose of undertaking surveys.
- 1.2. The authorisation request includes a schedule of correspondence (Schedule 6) providing information on the steps taken by the applicant, including letters and email correspondence, in order to obtain entry to the land. The Planning Inspectorate notes that email correspondence provided in Schedule 6 (email chain 2) refers to a meeting held between the applicant and the landowner held on 23 March 2016. The Planning Inspectorate requests a note detailing the discussions held at this meeting.

- 1.3. The Planning Inspectorate notes that the applicant's letter dated 1 July 2016 states that the application is of last resort and that the landowner has failed to engage constructively in the process. The Planning Inspectorate requests clarification as to how the applicant has reached this conclusion and why they consider they have been unreasonably refused access. Please can the applicant provide details of what attempts have been made to agree entry between 14 June 2016 and the date of the authorisation request being made to the Secretary of State, as well as any ongoing attempts.
- 1.4. Please can the applicant provide any comments it may have on the letter of 7 July 2016 received from Herbert Smith Freehills, in particular the Planning Inspectorate requests comments on paragraph 6, headed Unreasonable Refusal of Access.

2. Other issues

- 2.1. Notwithstanding the submission of further information to demonstrate reasonable efforts taken, the Planning Inspectorate notes that the application contains several other issues which may require clarification or amendment for which further information may be sought in due course. This includes but is not limited to:
 - a lack of detail in the description of the proposed airport development and the proposed surveys;
 - the reasoning behind the duration for which authorisation is sought and the notice period for obtaining access to the land; and
 - clarification over the land to which access is sought as shown on Plan A.

3. Format of the information to be provided

- 3.1. Please provide electronic copies as well as hard copies of the information requested in this letter. Please note that any personal information relating to third parties provided by the applicant to the Planning Inspectorate will be handled by the Planning Inspectorate in accordance with its obligations under the Data Protection Act 1998 and therefore will not be made available on our website.
- 3.2. Please provide the requested information by **15 August 2016** copying in all persons with interest. Following expiry of this date the Planning Inspectorate will move to make a recommendation to the Secretary of State regarding the authorisation requests, on the basis of the information which has been provided. Alternatively, the Planning Inspectorate may request further information from the applicant and/or the landowners depending on what comments have been provided to the Planning Inspectorate by this date.

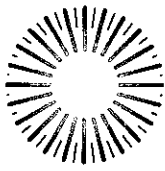
If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State





Richard Hunt
Temple Quay House
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Our ref
5567/30983750
Your ref

Date
10 August 2016

By email and by post

Dear Richard

Former Manston airport: s53 application by Riveroak Investment Corporation

Thank you for your letter of 20 July 2016, inviting comments on the above authorisation request.

As you know, my letter of 7 July 2016 set out Herbert Smith Freehills' concerns in relation to Riveroak's s53 request. I will not repeat the comments made in that letter, but I would be grateful for the issues raised to be taken into account by the Planning Inspectorate in determining the application.

The only additional comments I would like to add on behalf of my client are as follows:

1. **CONDITIONS**

- 1.1 Your letter invites comments on the draft conditions proposed by Riveroak in respect of any authorisation that may be granted.
- 1.2 We consider the proposed conditions to be entirely inadequate as drafted.
- 1.3 The conditions which we consider appropriate in the event that s53 authorisation is granted are those set out in clauses 3 to 6 of the mark-up of the draft licence (dated 6 July 2016) enclosed with our letter to [REDACTED] dated 7 July 2016.
- 1.4 Copies of our letter to [REDACTED] and draft licence were enclosed with our letter to you dated 7 July 2016 (Enclosures E.1 and E.2).
- 1.5 We would also expect to see descriptions of the Phase 1 Survey Works and Phase 2 Survey Works, as provided for in schedules to the draft licence.
- 1.6 The reasons why we consider such conditions and schedules to be appropriate are explained in the footnotes to the draft licence and our letter to [REDACTED] of 7 July 2016. Many of the conditions we propose are standard in other s53 authorisations granted by the Secretary of State. A number of others address issues agreed in principle between

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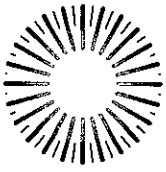
Riveroak and Stone Hill in exchange of correspondence between Bircham Dyson Bell and Herbert Smith Freehills.

2. CURRENT USE OF THE LAND

- 2.1 Your letter requests that information is provided in relation to the current use of the land, and asks whether any special conditions would need to be included to take account of that use.
- 2.2 The majority of the land has not been used since the closure of the airport. However, as acknowledged in Riveroak's application, there are a number of tenants occupying buildings on the land.
- 2.3 It appears from our previous correspondence with Riveroak, and from their application, that access is sought to buildings on the site, including tenanted land and buildings. Riveroak states as paragraph 1.2.1 of their application letter that *"The application [...] does not at present exclude the unregistered occupiers' land listed at paragraph 1.2.3, as Riveroak does not know the extent of their occupation and the need to survey the land without first entering onto the remaining land"*.
- 2.4 Stone Hill does not have the legal right to grant Riveroak access to these tenanted properties to carry out surveys, and it does not appear from the s53 application that Riveroak has engaged in negotiations with the tenants in question. It appears that Riveroak has simply notified the relevant tenants on 1 July 2016 that the s53 application has been made. The letter sent to each tenant states: *"Whilst Riveroak does not anticipate requiring access to any of the buildings which you occupy, it is nevertheless required to inform those with an interest in the land when submitting a s53 application."* The letter goes on to say that: *"This application seeks access over parts of Stone Hill Park Limited's land for the purpose of carrying out surveys [...]"*
- 2.5 We suggest that the Planning Inspectorate should clarify with Riveroak whether it is or is not seeking a s53 authorisation which grants access to the tenanted properties set out in paragraph 1.2.3 of the application letter.
- 2.6 If such access is sought, then it appears that Riveroak has not followed the Planning Inspectorate's guidance in Advice Note Five, which advocates that the permission of all 'persons with interests' is sought on a negotiated basis before a s53 application is made. We are also concerned that it may not have been clear to tenants receiving Riveroak's letter of 1 July 2016 that compulsory access to their properties is being sought.
- 2.7 In addition, the Planning Inspectorate should note that Stone Hill has a contractual arrangement in place with the Department for Transport under which the site may be required for Operation Stack at only a few hours' notice. Clearly, safeguarding the use of the site for this purpose is a matter of national importance. We have proposed drafting to safeguard such use (at clause 3 of the draft licence). However, we suggest that the Planning Inspectorate may wish to invite the Department for Transport to engage in the s53 application process to ensure that they are satisfied that there will be no interference with their interests.

3. OTHER INFORMATION AND CONFIRMATIONS REQUESTED

- 3.1 In addition to commenting on conditions and land use, your letter asks for certain other confirmations and information:



- 3.1.1 I confirm that Stone Hill is the freehold owner of the land over which s53 authorisation is sought;
- 3.1.2 I confirm that the list of dates (as set out in Schedule 6 to the application) on which Riveroak states that contact was made to discuss access to the site is accurate - save that reference is missing to the letter sent by Bircham Dyson Bell dated 23 May 2016. This letter was in fact only received by Herbert Smith Freehills (via email) on 15 June 2016. We have provided the Planning Inspectorate with a copy of this letter, enclosed with our letter to the Planning Inspectorate dated 7 July 2016 (Enclosure D).
- 3.1.3 My client maintains that there has been no unreasonable refusal of access, for the reasons set out in section 6 of our letter to you dated 7 July 2016. The reason that access has not been agreed voluntarily is simply that Riveroak has not engaged meaningfully with Stone Hill over sufficient period of time to conclude an agreement. However, from our letter to [REDACTED] dated 7 July 2016 it should be clear that we are close to reaching agreement on the key terms of the draft licence. For this reason, we respectfully repeat our request that the Planning Inspectorate directs Riveroak to conclude negotiations on a voluntary basis, and that the Planning Inspectorate refuses to entertain the s53 application at the current time.

Yours sincerely,

[REDACTED]
Partner
Herbert Smith Freehills LLP

Mr Richard Hunt
Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Your Ref
5567/30983750
Our Ref
ADW/APH/164652.0001
Date
17 August 2016

By Recorded Delivery, and By Email

Dear Mr Hunt

RIVEROAK INVESTMENT CORPORATION: APPLICATION PURSUANT TO S.53 OF THE PLANNING ACT 2008 IN CONNECTION WITH THE PROPOSED MANSTON AIRPORT

I write in response to your letter dated 22 July 2016 and the queries raised therein. For ease of reference, I have adopted the same numbering for the responses as for the queries raised, and provide these below.

1 Demonstrating reasonable efforts

1.1 No query raised, no response required.

1.2 There is no note of the meeting held with Stone Hill Park Limited ('SHPL') on 23 March 2016. The parties agreed that the fact that a meeting had taken place as well as the content of the meeting would remain subject to confidentiality and RiverOak considers itself to be bound by this provision. However, should SHPL confirm to PINS that it is happy for RiverOak to disclose that a meeting took place and to share the content of the meeting with PINS then RiverOak would be happy to provide further information.

1.3 RiverOak consider that SHPL has failed to engage constructively with RiverOak by, in particular delaying the negotiation of a licence for entry onto the land. Negotiations have now been ongoing for over six months which RiverOak considers is sufficient time to reach an agreement especially in the context of the Planning Act 2008, where the examination of the entire application takes only six months. Correspondence evidencing the delay in negotiations can be found in Schedule 6 of the application made by RiverOak under section 53 of the Planning Act 2008 ('**s.53 application**'), dated 1 July 2016. However, we draw your attention to the following in particular:

1.3.1 On behalf of RiverOak, BDB sent an email to SHPL on 10 February 2016 requesting a meeting to discuss the potential entry onto the land. In an attempt to expedite the arranging of a meeting, four subsequent follow up emails were sent to SHPL's legal advisers, Herbert Smith Freehills. A meeting was finally held on 23 March, a full six weeks after the initial request was made. The reason given for this delay was that a

key member of the client team, [REDACTED] was away on holiday. [REDACTED] did not attend the 23 March meeting.

- 1.3.2 Following the 23 March meeting, a draft licence was sent to SHPL's legal advisers on 8 April 2016. Despite further follow up emails from BDB, no substantive response on the proposed access licence was provided until 5 May, four weeks later. The response did not include a revised licence, but merely follow up queries. A marked up licence was not received until 7 July, three months after the draft had first been issued to SHPL.
- 1.3.3 RiverOak also consider that SHPL are being unreasonable in refusing access, particularly given the nature of the site. As explained in RiverOak's s.53 application, RiverOak is predominantly seeking access to those parts of the site that are wholly unoccupied by lessees and where the land is not used for any purpose. The land in question is predominantly the disused airfield with no private dwellings nearby. In requesting access to this land and no other, it is clear that RiverOak are acting reasonably.
- 1.3.4 SHPL's objection to allowing third parties onto the site appears to be limited to RiverOak. In particular, RiverOak has learnt that SHPL has recently allowed Avia Solutions, an airport consultancy who has recently been appointed by Thanet District Council to report on the viability of the use of the land as an airport, onto the site to carry out their studies. There cannot have been any drawn out negotiations to allow this access as Thanet District Council appointed Avia Solutions very recently, on 25 July 2016 and RiverOak is therefore keen to understand why reasonable access is being denied to them and not to others.
- 1.3.5 We also draw the Planning Inspectorate's attention to the judgement in the case of *R (Innovia Cellophane Ltd and another) v NNB Generation Company Ltd [2011] EWHC 2883 (Admin)*, in which it was held that just because a landowner appeared to be willing to negotiate in good faith did not mean that reasonable efforts had not been exhausted. The High Court held that if this were the case, the landowner would have a ransom over the project as negotiations in 'good faith' could potentially continue almost indefinitely without the landowner actually having any intention of reaching an agreement, and this would clearly be against the spirit of the aim of negotiations. It seems to us that this case is particularly pertinent here: the longer the negotiations between RiverOak and SHPL continue and the more protracted they become, the more this favours SHPL, a rival developer, and it is therefore unclear what incentive they have to progress negotiations in a timely manner.
- 1.3.6 Since 14 June, the following negotiations / liaison have taken place:
- (a) 7 July: marked up licence received by BDB from SHPL's legal advisers; and
 - (b) 10 August: response from BDB to SHPL's legal advisers providing comment on the marked up licence (copy of response and licence attached).



1.4 RiverOak's comments on the letter dated 7 July from Herbert Smith Freehills, are below. References to paragraphs are to paragraphs within that letter, and while RiverOak does not respond to each paragraph in turn, this should not be taken as implicit agreement with the facts stated therein.

1.4.1 Paragraph 2: RiverOak does not agree with the reasoning set out in this section. The test set out in section 53 of the Planning Act 2008 refers to a promoter showing that it is, "***considering a distinct project of real substance***". It follows that the promoter does not have to be in a position where its plans are finalised; indeed, in order for any consultation (non-statutory as well as statutory) to be meaningful, plans cannot be finalised. RiverOak is aware that further detail does need to be provided over the course of the promotion of this project, however it cannot carry out this work fully or appropriately without being granted access to the site, access which is currently being unreasonably denied by SHPL. Nevertheless, and as set out in paragraph 3.3 of the s.53 application, to date RiverOak has undertaken a number of significant steps and incurred substantial expenses which it certainly would not have done if it was not considering a distinct project of real substance, requiring consent under the Planning Act 2008. Such steps include:

- (a) regular liaison and meetings with PINS;
- (b) the appointment and instruction of a team of consultants;
- (c) liaison with relevant statutory bodies, including the Environment Agency and Historic England;
- (d) the submission of a Scoping Report and the publication by PINS of a Scoping Opinion; and
- (e) carrying out of a non-statutory consultation, including on the contents of a masterplan, which is due to close on 5 September 2016.

1.4.2 Paragraphs 3, 4 and 5: RiverOak's previous attempt to develop the site in partnership with Thanet District Council should not be the basis on which this s.53 application should be decided. The only issue currently for consideration by the Planning Inspectorate relates to whether the project being considered by RiverOak is a distinct project of real substance. RiverOak is bringing forward credible proposals for re-opening an airport that has existed on this site since 1916. The issues raised by SHPL, such as funding and the case for compulsory acquisition are not determinative of a decision under section 53. These are matters for the examination process and will be demonstrated by RiverOak at that time.

1.4.3 Paragraphs 6.4 and 6.5: SHPL's legal advisers appear to allege that the fact that RiverOak continue to pursue negotiations with SHPL at the same time as making and progressing their s.53 application demonstrates that the application is premature. This is certainly not the case; and in fact the opposite is true. The fact that RiverOak is attempting to continue negotiations with SHPL whilst pursuing the s.53 application

shows that it is continuing to act reasonably and not that the application has been made prematurely.

2 Other issues

2.1 The applicant notes the Planning Inspectorate's comment that further information may be required in relation to certain details in the future, but as far as it can do, RiverOak makes the following comments in relation to the issues listed, as set out below.

2.1.1 The proposed airport development has been detailed to the extent it can be without further masterplanning work being undertaken. This cannot be appropriately developed further until at least initial surveys of the site can be undertaken.

2.1.2 Similarly, the level of detail contained in the description of surveys to be undertaken contains information based on what can currently be ascertained. Without entering onto the land for at least an initial walkover survey, it is difficult to provide further details at this stage.

2.1.3 Authorisation is now sought for a duration of twelve months in order to ensure that all required surveys, including seasonal surveys, can be undertaken during this period, including follow up surveys that may be required due to information gathered in early surveys. RiverOak wish to ensure that they have sufficient time to carry out these surveys and do not want to risk having to make a further application under section 53 of the Planning Act 2008.

2.1.4 Access is required to the land shown edged in red in Plan A at Schedule 2 of the s.53 application, save for the three areas outlined in green.

We request that the Secretary of State considers this further information sufficient and gives RiverOak the authority to access the land for the purposes and to the extent set out in its s.53 application.

We look forward to hearing from you in this regard.

Yours sincerely


Senior Associate
For and on behalf of Bircham Dyson Bell LLP

cc  Herbert Smith Freehills

enc

[REDACTED]

From: [REDACTED]
Sent: 10 August 2016 11:58
To: [REDACTED]
Cc: BDB Manston Airport Group
Subject: Manston Airport - Licence for Access [BDB-BDB1.FID9912138]
Attachments: s.53 Licence - tracked changes from HSF - BDB comments - 3 August 2016.DOCX;
Technical Note on Phase 1 and 2 Surveys FINAL.DOCX

[REDACTED]

Thank you for your letter of 7 July 2016.

I note your request that our client withdraws its s.53 application. However, given the slow progress of the negotiations concerning access to land which is largely out of use, our client is unprepared to withdraw. However, as your client suggests that it is still content to enter into private negotiations I attach a marked up version of the licence agreement, the contents of which I hope are self-explanatory, and draft lists which will form the basis of Schedule 1 and Schedule 2 to the licence agreement. I would be grateful if you could provide your comments at your very earliest possible convenience given the urgency that our client has to get onto the site. In addition to this please find below responses to the numbered points in your letter of 7 July, to the extent that responses were required.

1. Noted. Lists of Phase 1 and Phase 2 Survey Works are provided with this e-mail.
3. Amec Foster Wheeler is still in the process of considering your client's environmental impact assessment. As you suggest it was anticipated that access to leased buildings would require separate negotiation with the leaseholders.
4. Again, the consideration of your client's development proposals is underway. However, I am sure that you will accept that our client's consultants must carry out their own investigations based on their professional judgment of what is required for the Manston Airport Project.
6. I have been advised by Amec Foster Wheeler that some of the surveys may, in fact, need to be carried out by consultants or contractors. This is dependent on the surveys that are required, and this will not become clear until the completion of the initial walkover surveys. Please see the mark up of the licence agreement for further comments.
13. It will not be necessary for RiverOak employees to be present for all of the surveys. However, it will help to reduce the number of surveys that our client needs to carry out if one RiverOak employee is allowed to accompany Amec Foster Wheeler on some occasions. This will invariably be [REDACTED] who has knowledge of the site which is not shared by Amec Foster Wheeler. This will allow Amec Foster Wheeler to locate points of interest for assessment as quickly as possible.
19. See 3. above.
20. Completion of the licence is out of the control of both parties. However, given that the vast majority of the site is not being used our client is of the opinion (and your client has previously agreed) that a completed licence should be obtainable with both parties acting reasonably. Our client remains unprepared to offer what is effectively a cheque for [REDACTED] with no guarantee that it will get anything in return. The offer in our letter dated 23 May 2016 [REDACTED] regardless of completion and [REDACTED] upon completion) is considered to be a reasonable compromise where both parties have an incentive to reach completion on the agreement.

Please note that I will be away from the office from 12 August until 5 September. I would be grateful if you could respond to our project e-mail address (copied) in my absence.

Regards,

[REDACTED]



[REDACTED] Senior Associate, Government and Infrastructure

[REDACTED]

[REDACTED]

W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP

50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

[HSF Draft: 7 July 2016](#)

[BDB Comments and further comments 3 August 2016](#)

LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

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THIS LICENCE is made on the _____ day of _____ 2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

<u>1.1 Buildings and Structures</u>	<u>Means any buildings or structures within the Property which are leased by the Licensor to third parties</u>
<u>1.2 DCO Application</u>	<u>Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses</u>
<u>1.3 Intrusive Surveys</u>	<u>Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys¹</u>
<u>1.1.4 the Licensor</u>	STONE HILL PARK LIMITED (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
<u>1.2.1.5 the Licensee</u>	RIVEROAK INVESTMENT CORPORATION (Company No. [] whose registered office is at []
<u>1.6 Licensee's Agent</u>	<u>Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee</u>
<u>1.3.1.7 Licence Period</u>	Means the period of <u>126</u> months from and including the date of this Licence
<u>1.4.1.8 Daily Payment</u>	Means the amount of [] inclusive of plus VAT
<u>1.9 Operation Stack</u>	<u>The provision of parking facilities on the Property to alleviate pressure on the arrangements known as 'Operation Stack'</u>
<u>1.5.1.10 Property</u>	Means the property known as Manston Airport, title number K803975, <u>excluding Buildings and Structures</u> , and shown edged red on the Plan annexed to

Commented [HA1]: The Licensee will be a limited company which is in the process of being set up. Details to be provided.

Commented [HA2]: This needs to be broader than just Amec Foster Wheeler. It is likely that external sub-consultants will be required. For instance, there may be a need for specialist unexploded ordnance work which Amec would not carry out.

Commented [HA3]: 12 months will be required to complete seasonal surveys.

¹ A standard s53 authorisation definition

this Licence²

- 1.11 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys, of the property including, but not limited to, the taking of samples of soil, surface water and study of species
- 1.12 Phase 2 Survey Works Means the surveys described in Schedule 2, and "Phase 2 Survey" means one of these listed surveys.
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

3.1 Subject to ~~this clauses 34 and clause 5~~, the Licensor gives to the Licensee's Agent, its workmen, contractors, consultants, agents and employees the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works.

3.2 The Licensee's Agent's right to access the Property pursuant to this Licence shall

3.2.1 ~~cease immediately if there is a breach of the terms of this Licence¹ by the Licensee's Agent and that breach cannot be rectified within seven (7) days, and~~

3.2.2 ~~shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event~~

Commented [HA4]: This does not permit the Licensee to access the Property. We have already mentioned RiverOak's desire to have a maximum of 1 representative access the property on any one day with Amec Foster Wheeler. This will invariably by [REDACTED] who has specialist knowledge of the site which would enable its consultants to locate areas that are of interest to their investigations. This is likely to reduce the number of days of access required which would be in Stone Hill Park Limited's interests.

Commented [HA5]: Additional wording to allow for rectification of minor breaches.

¹ The terms of the leases granted to the occupiers of the site do not allow us to grant access to a third party. For this reason, access to buildings and structures must be excluded from this licence

² This is a standard provision of s53 authorisations.

~~that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack⁴ and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works.~~

Commented [HA6]: To allow for access in the situation where that access would not impede Operation Stack.

4 Licensee's obligations

4.1 The Licensee agrees ~~and undertakes to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.~~

Commented [HA7]: See comment regarding lack of access for Licensee at 3.1

4.2 ~~Before entering the Property [T]he Licensee will give not less than two (2) days' notice to the Licensor of the following:~~

4.2.1 ~~after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor⁵ for the purpose of its own proposed redevelopment of the Property provide to agree with the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey Works to be carried out ;~~

Commented [HA8]: Wording altered to ensure collaboration, rather than allowing the Licensor an effective veto on access.

4.2.2 ~~give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;~~

~~the date(s) and times when access is required in connection with the Survey Works and this Licence grants access only to those named individuals, in accordance with the terms of the agreed programme.~~

4.3 ~~In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, provides evidence that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:~~

Commented [HA9]: Need for further access is subject to a reasonableness requirement. There is no incentive for Amec Foster Wheeler to incur the daily fee for excessive access.

4.3.1 ~~after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor⁵ for the purpose of its own proposed redevelopment of the Property provide to agree with the Licensor a programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out;~~

Commented [HA10]: As for 4.2.1 above

4.3.2 ~~give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access.~~

⁴ As agreed in relation to point 17 of our exchange of letters

⁵ This type of detail is standard for s53 authorisations

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.

Commented [HA11]: See earlier comment. Our client considers this provision both unnecessary, and counter-productive for the purposes of Stone Hill Park Limited.

4.34.5 The Licensee will not enter or permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first confirming providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.

4.44.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.

4.54.7 The Licensee undertakes to ensure that its workmen, contractors, consultant, agents and employees will be the only persons permitted access to the Property and the Licensee agrees to procure that all persons upon the Property pursuant to this Licence will comply with the Licensee's obligations in this Licence. The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey⁶.

4.64.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same⁷ ensure that once the Survey Works have been completed the Property is left secured and in no worse state than existed prior to the beginning of the Licence Period.

4.74.9 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.

4.84.10 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.

4.11 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

⁶ As stated in point 13 of our letter of 7 July, we see no need for this access by Riveroak staff.

⁷ Amended to more closely accord with standard s53 provisions

⁸ As agreed in relation to point 7 of our exchange of letters.

⁹ This is standard in s53 authorisations.

4.12 ~~The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹⁰.~~

Commented [HA12]: Please clarify the level of security that is in place at the site.

4.13 ~~The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works¹¹.~~

4.14 ~~The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out¹².~~

4.15 ~~The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental impact assessment statement and other documentation forming part of the pre-application consultation in connection with the Licensee's DCO Application¹³.~~

Commented [HA13]: Environmental information will be contained in documents other than the ES itself. This amendment to cover this.

~~The Licensee shall ensure that, within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, the Licensor is provided with copies of all survey data collected by the Licensee's Agent¹⁴.~~

Commented [HA14]: This is not a matter that should be dealt with in an access licence. The exchange of data can be negotiated separately if it is thought that this would be beneficial to either side, given the differing nature of the schemes.

4.16 ~~The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.~~

4.94.17 The Licensee undertakes to ensure that not to do any act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

5.1 ~~The Licensor agrees and undertakes to allow the Licensee's Agent, the Licensee's Consultant and employees and authorised agents and sub-consultants access to all such parts of the Property as are identified agreed by the Licensee and Licensor in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works at all times during the Licence Period PROVIDED THAT in agreeing a programme the parties shall take into account and seek to avoid any interference that the Survey Works might cause to surveys being carried out by the Licensee for the purpose of their own proposed redevelopment of the Property¹⁵.~~

¹⁰ This is standard in s53 authorisations.

¹¹ This is standard in s53 authorisations.

¹² This is standard in s53 authorisations.

¹³ As agreed in respect of point 14 of our exchange of letters.

¹⁴ As agreed in respect of point 16 of our exchange of letters.

¹⁵ See point 4 of our letter of 7 July.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.
- 6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement
- 6.3 ~~Any~~The notice to be given ~~referred to in clause 4.2 above to the Licensor pursuant to this Licence~~ may be given by email by sending it to Paul Barber [insert email address] ~~at~~ at the Licensor or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

- 7.1 It is intended that ~~a person that is not a party to this Agreement~~ the Licensee's Agent shall not be entitled to enforce ~~the~~ provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity~~Costs~~

- 8.1 In consideration of the grant of this Licence and on the date of the completion of the Licence, the Licensee agrees to pay to the Licensor (within 28~~10~~ days of demand) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.

Commented [HA15]: A clause of this nature is acceptable but 28 days has been substituted as this more accurately reflects standard business practice.

- 8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored to by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works, and¹⁶

~~8.1-18.2.2~~all losses suffered by the Licensor due to termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such termination arises due to the Licensee's Agent failing to vacate the property in accordance with clause 3.1.2.

¹⁶ As agreed in respect of point 15 of our exchange of letters.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [£xxx]

9.10 Confidentiality

9.10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

10.11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works¹⁷

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁷ Further to point 12 of our letter, please insert details of the Phase 1 Surveys– inserting the level of detail you are willing to be bound by in terms of scope

SCHEDULE 2

Phase 2 Survey Works¹⁵

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁵ Further to point 12 of our letter of 7 July, please insert details of the Phase 2 Surveys you may wish to carry out – inserting the level of detail you are willing to be bound by in terms of scope

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory



Technical note: Manston Airport EIA Survey requirements

1. EIA survey requirements

1.1 Background

- 1.1.1 An Access Licence between Stone Hill Park and Riveroak is currently being drafted allowing access to the Manston Airport site for survey work to be undertaken in relation to the EIA. Stone Hill Park have requested that the surveys are split into two Schedules within the licence agreement: Phase 1 and Phase 2 surveys.
- 1.1.2 Prior to accessing the site, Amec Foster Wheeler will need to prepare a schedule of surveys, associated risk assessments and method statements and programme of visits for consultation with the land owner to ensure that our surveys do not interfere with any of the surveys being undertaken by Stone Hill Park.
- 1.1.3 This consultation prior to access needs to be undertaken for Phase 1 and then again for Phase 2 surveys.
- 1.1.4 In drafting the licence Riveroak are being asked to populate Schedules 1 and 2 of the licence with the surveys identified as either Phase 1 or Phase 2 surveys.
- 1.1.5 Given the potential for delays to be caused by this two Phase survey proposal we are endeavouring to identify the broadest range of Phase 1 surveys to include within the Licence. This paper sets out our suggestions for Schedule 1 and Schedule 2 of the licence.

1.2 Schedule 1

- 1.2.1 Table 1.1 sets out the comprehensive Schedule 1 list of Phase 1 Surveys. Given the seasonal constraints and the delays encountered to date for gaining access to the site, the full suite of ecological surveys is considered highly likely to be required.
- 1.2.2 It is assumed that the licence will be valid for a minimum of 12 months to allow a full year of ecological surveys to be undertaken, without further delay.

Table 1.1 Schedule 1 – Phase 1 Surveys

Survey	Descriptions
Extended Phase 1 Survey	Walkover survey – taking notes and mapping habitats
Reptile Surveys	Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.
Bird Surveys	Walkover surveys using binoculars



Bat Surveys	Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.
Great crested newt surveys (unlikely to be required)	All water bodies to be checked using torches, nets and bottle traps during the evening and morning.
Badger surveys	Walkover survey looking for field signs / evidence of presence.
Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

1.3 Schedule 2

- 1.3.1 Table 1.2 sets out the Schedule 2 list of possible Phase 2 Surveys. Until the initial surveys are undertaken the full scope of further survey work is extremely difficult to predict.
- 1.3.2 It is assumed that the licence will be valid for a minimum of 12 months to allow a full year of ecological surveys to be undertaken, without further delay.

Table 1.2 Schedule 2 – Phase 2 Surveys

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the site for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
Non-intrusive geophysical survey of site	To support identification of archaeological remains
Targeted trial trenching based on outputs of geophysical survey	Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies
Historic building recording	To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys
Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study



Author

Reviewer

.....
[Redacted]

.....
[Redacted]

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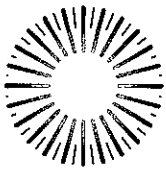
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www.herbertsmithfreehills.com

Our ref
5567/30983750
Your ref
20160720_TR02002_17059779
Date
23 August 2016

By email and by post

Without prejudice

Dear Richard

Former Manston airport: s53 application by Riveroak Investment Corporation

We have now had the opportunity to review the response of Bircham Dyson Bell (dated 17 August 2016) to your letter of 22 July 2016.

We believe that it would be helpful for the Planning Inspectorate to have our comments on that letter – in particular in relation to some of the factual issues raised. However, we will await your confirmation that this would be welcome.

Further licence negotiations

As you are aware, Bircham Dyson Bell provided us with a mark-up of the draft access licence on 10 August 2016. They propose that private negotiations are continued in parallel with the Planning Inspectorate's consideration of their s53 application. For the reasons set out in section 6 of our letter to the Planning Inspectorate dated 7 July 2016, we do not believe that such parallel negotiation accords with the Planning Inspectorate's Advice Note 5.

Without prejudice to the views expressed in our letter of 7 July, we are willing to enter into further negotiations in the event that: (a) the Planning Inspectorate endorses such further negotiation and (b) The Planning Inspectorate confirms that consideration of the s53 application will be temporarily suspended pending such negotiation. We suggest that a 4 week suspension would be appropriate.

Yours sincerely,

Partner

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From: [Environmental Services](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: s53 Application: Former Manston Airport: FAO Richard Hunt [HS-London_11.FID1151940]
Date: 23 August 2016 14:57:14
Attachments: [image2016-08-23-121815.pdf](#)

[REDACTED]

We will be issuing a letter in response to Riveroak and your correspondence in the next few days. For the purposes of continuity, it would be helpful if you provide your responses in relation to that letter.

As previously discussed, it would help if all correspondence was shared with all parties.

With regards to your second point, it is routine practice for applicant's and land owners to conduct parallel negotiations during the s53 process and we would support this approach, since it allows for the potential to achieve an agreement outside of the s53 process. This approach is not precluded by our advice note and more importantly is not precluded by s53 of the Act. With regards to a 4 week suspension, if Riveroak as the applicant wish to suspend their application, we would be supportive of this approach but otherwise we will progress with consideration of the application.

Kind regards

Richard

Dr Richard Hunt
Senior EIA Advisor
Major Applications and Plans

The Planning Inspectorate, Temple Quay House, Temple Quay, Bristol BS1 6PN

Direct Line: 0303 444 5149

Helpline: 0303 444 5000

Email: richard.hunt@pins.gsi.gov.uk

Web: infrastructure.planninginspectorate.gov.uk/ (National Infrastructure Planning)

Web: www.gov.uk/government/organisations/planning-inspectorate (The Planning Inspectorate)

Twitter: [@PINSgov](https://twitter.com/PINSgov)

This communication does not constitute legal advice.

Please view our [Information Charter](#) before sending information to the Planning Inspectorate.

From: [REDACTED]
Sent: 23 August 2016 12:24

To: Environmental Services

Subject: s53 Application: Former Manston Airport: FAO Richard Hunt [HS-London_11.FID1151940]

Please find attached a letter for the attention of Richard Hunt.

Richard - please note that I have not copied this letter to Riveroak's solicitors. I am happy for you to do so, should you wish to.

Kind regards

[REDACTED]

[REDACTED]

Partner

Herbert Smith Freehills LLP

[REDACTED]

www.herbertsmithfreehills.com

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Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Bircham Dyson Bell
50 Broadway
London
SW1H 0BL

Your Ref: ADW/APH/164652.0001

Our Ref: 20160825_TR020002_17598384

Date: 25 August 2016

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Acknowledgement of receipt of further information and request for comments

- 1.1 This letter serves to provide confirmation of receipt of your letter dated 17 August 2016 providing responses to the queries raised by the Planning Inspectorate (the Inspectorate) in our letter addressed to you dated 22 July 2016.
- 1.2 As you are aware, in response to your application pursuant to s53 of the Planning Act 2008 (as amended) the Inspectorate wrote to all persons of interest (letter dated 20 July 2016) notifying them of your application and requesting comments.
- 1.3 The Inspectorate did not receive comments from the following persons of interest:
 - Avman Engineering Ltd
 - Hunglish Ltd
 - Polar Helicopters Ltd
 - Powermain Ltd
 - Taft International Transport
- 1.4 In light of this, the Inspectorate reserves the right not to contact the above persons of interest until we issue a decision over the authorisation request, as per our letter dated 20 July 2016.
- 1.5 The Inspectorate has received a number of submissions from Herbert Smith Freehills on behalf of the landowner, Stone Hill Park Limited, namely:

- 7 July 2016 - Representation on behalf of the landowner to the Planning Inspectorate in response to the Applicant's s53 request;
- 10 August 2016 - Representation on behalf of the landowner to the Planning Inspectorate in response to the Planning Inspectorate's letter requesting comments (enclosed);
- 23 August 2016 - Representation on behalf of the landowner to the Planning Inspectorate in response to the letter from the Applicant dated 17 August 2016.

Request for comments

- 1.6 The Inspectorate would like to invite the applicant to respond to the above representations submitted to the Inspectorate on 10 and 23 August 2016. In particular, the Inspectorate requests:
- An update from the applicant on the ongoing negotiations with the landowner regarding the draft license in response to the statement (10 August 2016) that the landowner considers the conditions are inadequate;
 - Confirmation that the applicant is not seeking access to the tenanted buildings on the application site occupied by the occupiers listed in paragraph 1.3 above or evidence of consultation with those tenants; and
 - Confirmation of any consultation with the Department for Transport (DfT) in relation to survey works and the airport and whether the applicant considers the DfT to be a 'person with interest', given their contractual arrangements with Stone Hill Park Limited regarding Operation Stack.

Format of the information to be provided

- 1.7 Please provide electronic copies as well as hard copies of the information requested in this letter. Please note that any personal information relating to third parties provided by the applicant to the Planning Inspectorate will be handled by the Planning Inspectorate in accordance with its obligations under the Data Protection Act 1998 and therefore will not be made available on our website.
- 1.8 Please provide the requested information by **16 September 2016** copying in all persons with interest. Following expiry of this date the Planning Inspectorate will move to make a recommendation to the Secretary of State regarding the authorisation requests, on the basis of the information which has been provided. Alternatively, the Planning Inspectorate may request further information from the applicant and/or the landowners depending on what comments have been provided to the Planning Inspectorate by this date.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

enc. Email and letter from [REDACTED] dated 10 August 2016.

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.



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Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Herbert Smith Freehills LLP
Exchange Street
Primrose Street
London EC2A 2E

Your Ref: 5567/30983750
Our Ref: 20160825_TR020002_17600788
Date: 25 August 2016

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Acknowledgement of receipt of further information and request for comments

This letter serves to provide confirmation of receipt of your letters dated 10 and 23 August 2016.

Request for comments

The Inspectorate would like to invite Stone Hill Park Limited to respond to the representation submitted to the Inspectorate (dated 17 August 2016) on behalf of the applicant.

In particular, the Inspectorate requests that Stone Hill Park Limited:

- confirms that it is content to disclose with the Inspectorate the content of the meeting held with the applicant on 23 March 2016;
- comments on Bircham Dyson Bell's comment regarding recent access by other third parties to the site; and
- provides further detail to justify why the contractual arrangements it has with the Department of Transport for Operation Stack may inhibit the provision of access to the site being granted.

Format of the information to be provided

Please provide the requested information by **16 September 2016**, copying in the applicant. Following expiry of this date the Planning Inspectorate will move to make a recommendation to the Secretary of State regarding the authorisation requests, on the basis of the information which has been provided. Alternatively, the Planning

Inspectorate may request further information from the applicant and/or the landowners depending on what comments have been provided to the Planning Inspectorate by this date.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

From: [Hunt, Richard](#)
To: [Newman, Stephanie](#); [NIAOSupport](#)
Subject: FW: Manston Airport - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9912138]
Date: 05 September 2016 17:12:36
Attachments: [image001.jpg](#)
[160331_EN010012_Sizewell C Section 53_Authorisation_ISSUED.PDF](#)
[38787990_1.docx](#)
[38787985_2.docx](#)

From: [REDACTED]
Sent: 05 September 2016 15:05
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Manston Airport - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9912138]

Please find attached my response to your email below. Please note that I am copying my response to the Planning Inspectorate.

Kind regards

From: [REDACTED]
Sent: 10 August 2016 11:58
To: [REDACTED]
Cc: BDB Manston Airport Group
Subject: Manston Airport - Licence for Access [BDB-BDB1.FID9912138]

Thank you for your letter of 7 July 2016.

I note your request that our client withdraws its s.53 application. However, given the slow progress of the negotiations concerning access to land which is largely out of use, our client is unprepared to withdraw. However, as your client suggests that it is still content to enter into private negotiations I attach a marked up version of the licence agreement, the contents of which I hope are self-explanatory, and draft lists which will form the basis of Schedule 1 and Schedule 2 to the licence agreement. I would be grateful if you could provide your comments at your very earliest possible convenience given the urgency that our client has to get onto the site. In addition to this please find below responses to the numbered points in your letter of 7 July, to the extent that responses were required.

1. Noted. Lists of Phase 1 and Phase 2 Survey Works are provided with this e-mail.
3. Amec Foster Wheeler is still in the process of considering your client's environmental impact assessment. As you suggest it was anticipated that access to leased buildings would require separate negotiation with the leaseholders.
4. Again, the consideration of your client's development proposals is underway. However, I am sure that you will accept that our client's consultants must carry out their own investigations based on their professional judgment of what is required for the Manston Airport Project.
6. I have been advised by Amec Foster Wheeler that some of the surveys may, in fact, need to be carried out by consultants or contractors. This is dependent on the surveys that are required, and this will not become clear until the completion of the initial walkover surveys. Please see the mark up of the licence agreement for further comments.
13. It will not be necessary for RiverOak employees to be present for all of the surveys. However, it will help to reduce the number of surveys that our client needs to carry out if one RiverOak employee is allowed to accompany Amec Foster Wheeler on some occasions. This will invariably be [REDACTED] who has knowledge of the site which is not shared by Amec Foster Wheeler. This will allow Amec Foster Wheeler to locate points of interest for assessment as quickly as possible.
19. See 3. above.
20. Completion of the licence is out of the control of both parties. However, given that the vast majority of the site is not being used our client is of the opinion (and your client has previously agreed) that a completed licence should be obtainable with both parties acting reasonably. Our client remains unprepared to offer what is effectively a cheque for [REDACTED] with no guarantee that it will get anything in return. The offer in our letter dated 23 May 2016 [REDACTED] regardless of completion and [REDACTED] upon completion) is considered to be a reasonable compromise where both parties have an incentive to reach completion on the agreement.

Please note that I will be away from the office from 12 August until 5 September. I would be grateful if you could respond to our project e-mail address (copied) in my absence.

Regards,

https://console-uk.mimecast.com/mimecast/store?account=CC10A3&file=1185454805&code=aed56e9b56486a61533ee28e13c5337d



██████████ **Senior Associate, Government and Infrastructure**

██████████
██████████
W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL
British Legal Awards 2015 'Property Team of the Year'
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DX28 London Chancery Lane
██████████
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Our ref
5567/30983750
Your ref

Date
05 September 2016

Dear ██████████

Access to former Manston Airport site for the purpose of surveys on behalf of Riveroak

Thank you for your email of 10 August 2016 enclosing comments on the mark-up of the licence enclosed with our letter of 7 July 2016.

In light of Richard Hunt's email of 25 August, which endorses the carrying out of negotiations in parallel with the processing of the s53 application, we are willing to proceed with private negotiations, without prejudice to our objection to the s53 application, and subject to obtaining the undertaking referred to at the end of this letter.

In particular, regardless of the course of negotiations, we maintain our position that Riveroak's proposal is not a 'distinct project of real substance' at the present time, and that on this basis it fails to meet the test for granting authorisation under s53.

Comments on mark-up

I enclose a mark-up of the licence enclosed with your email of 10 August 2016. I have addressed on the face of the licence each of the comments made on the face of your draft. I summarise below the outstanding issues between us and our position on each:

1. **Parent Company Guarantee** – we are willing to accept that the licence is granted to a special purpose company, provided that the licence is subject to a parent company guarantee from Riveroak Investment Corporation.
2. **Access by ██████████** – we do not accept that there is a need for ██████████ or other Riveroak personnel to access the site to carry out the proposed environmental surveys. ██████████ is not an environmental specialist, and ██████████ (Stone Hill Park's site manager) has an intimate knowledge of the site and would be willing to escort and assist Amec's team. We would be willing to add drafting to this effect to the licence.

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Herbert Smith Freehills LLP is a limited liability partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications.

3. **Rectification of breach within 7 days** – we are not content to allow the proposed caveat to clause 3.2.1, which specified that the licence will only be terminated for breach if the breach cannot be rectified within seven days. No such caveat is standard in s53 authorisations as far as we are aware. We believe the reason for this is to ensure that there is a real and significant sanction for non-compliance – otherwise, many of the most important terms of the licence would effectively be unenforceable. For example, if the licensee were to access the site on a day that was not set out in the programme, this is not something capable of being 'rectified' (within 7 days or otherwise).
4. **Operation Stack** – I am hopeful that the drafting I have added at clauses 3.2.2, 3.3, 4.9 and 8.2 will not be controversial. It simply captures a little more detail around the way the licence provisions and obligations are to deal with Operation Stack.
5. **Scope, detail and timescale for surveys** – While we have some sympathy with your concern that you do not wish Stone Hill Park to have an effective veto on the surveys being carried out, equally it does not seem reasonable for Riveroak to be given the right to access the site on any and every day of the year if it so chooses, to carry out surveys the nature of which are specified only at a very high level. We enclose a copy of the s53 authorisation granted in respect of land required for the Sizewell C DCO application. As you will see, the description and timescales for surveys is set out in much greater detail than you have provided. Can I ask you to consider adopting a similar approach, and that you suggest a mechanism whereby there is a restriction on the total number of days that the site is accessed? Can I also ask that in devising the list of surveys to be appended to the licence you take into account the survey information already publicly available in relation to Stone Hill Park's recent planning application. We feel that the blanket right you are seeking is not necessary or proportionate in the circumstances. It may be that we can come to some compromise under which Stone Hill Park maintains a level of control by being unable to "unreasonably" withhold its consent to a proposed programme. We could perhaps set out some parameters of what would constitute reasonableness. I would be grateful if you could put forward some suggestions which would in any event temper the breadth of the right as currently sought.

Undertaking

My client has incurred significant fees to date in licence negotiations and defending against what it considers to be a premature and unnecessary application for compulsory access under section 53. We are content to pursue negotiations on the basis of receiving an undertaking for [REDACTED] regardless of completion, and a further undertaking for our reasonably and properly incurred fees up to an additional [REDACTED] upon completion.

Yours sincerely,

[REDACTED]
Partner
Herbert Smith Freehills LLP

Date
05 September 2016
Letter to



DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

~~HSF Draft: 7 July 2016~~

~~BDB Comments and further comments 3 August 2016~~

HSF Draft: 5 September 2016

LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

11/38787985 2

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THIS LICENCE is made on the day of 2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys¹
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Company No. [] whose registered office is at [])
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Daily Payment Means the amount of [REDACTED] plus VAT
- 1.9 Operation Stack The provision of parking facilities on the Property to alleviate pressure on the arrangements known as 'Operation Stack'
- 1.10 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence²

Comment [HA1]: The Licensee will be a limited company which is in the process of being set up. Details to be provided.

Comment [HSF2]: We are content for the licence to be granted to a special purpose limited company as long as we can insert a parent company guarantee into this licence so that the payments and indemnities are guaranteed. We are happy to provide drafting if this principle is accepted.

Comment [HSF3]: Agreed

Comment [HA4]: This needs to be broader than just Amec Foster Wheeler. It is likely that external sub-consultants will be required. For instance, there may be a need for specialist unexploded ordnance work which Amec would not carry out.

Comment [HSF5]: A 12 month period (rather than 6 months) is acceptable as long as the scope of the surveys can be better defined in the schedules. See comments in our covering letter of 5 September.

¹ A standard s53 authorisation definition

² The terms of the leases granted to the occupiers of the site do not allow us to grant access to a third party. For this reason, access to buildings and structures must be excluded from this licence

- 1.11 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys;
- 1.12 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys;
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
 - 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
 - 2.1.2 the singular includes the plural and vice versa;
 - 2.1.3 any gender includes any other;
 - 2.1.4 the headings are for convenience only and do not affect interpretation; and
 - 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works. The Licensee's Agent's right to access the Property pursuant to this Licence shall:
 - 3.2.1 cease immediately if there is a breach of the terms of this Licence³ by the Licensee or the Licensee's Agent ~~and that breach cannot be rectified within seven (7) days;~~ and
 - 3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the

Comment [HA6]: This does not permit the Licensee to access the Property. We have already mentioned RiverOak's desire to have a maximum of 1 representative access the property on any one day with Amec Foster Wheeler. This will invariably be by [redacted] who has specialist knowledge of the site which would enable its consultants to locate areas that are of interest to their investigations. This is likely to reduce the number of days of access required which would be in Stone Hill Park Limited's interests.

Comment [HSF7]: We do not accept that it is necessary for [redacted] to access the property, for the reasons set out in our covering letter of 5 September

Comment [HSF8]: This qualification is not provided for in s53 authorisations granted to date by PINS, for good reason, and should not be provided for here. See comment in our covering letter of 5 September

Comment [HA9]: Additional wording to allow for rectification of minor breaches.

³ This is a standard provision of s53 authorisations.

Department for Transport for Operation Stack⁴ and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

Comment [HA10]: To allow for access in the situation where that access would not impede Operation Stack.

Comment [HSF11]: Agreed. I have also added a further caveat allowing for suspension due to health, safety and security risks of running the surveys in parallel with Operation Stack, and made provision for the Licensee's Agent to stay on site longer to make good the site for Operation Stack if directed to by the Licensor

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

Comment [HA12]: See comment regarding lack of access for Licensee at 3.1

Comment [HSF13]: See our response earlier.

4.2 The Licensee will :

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out⁵;

Comment [HA14]: Wording altered to ensure collaboration, rather than allowing the Licensor an effective veto on access.

Comment [HSF15]: We understand your concerns, but equally SHP is unhappy giving Riveroak's agents the ability to carry out surveys of any sort on any and potentially every day during a 12 month period – particularly when so much survey information exists already in the public domain. The list of "Phase 1" and "Phase 2" surveys you have provided has little detail. As explained in our covering letter, we feel that a compromise would be to have a more detailed list of surveys and timescales appended to the licence, as has been required by PINS for the Sizewell C s53 authorisation.

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

Comment [HSF16]: See our concern above.

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 2 Survey Works which will prescribe the date(s), times,

Comment [HA17]: Need for further access is subject to a reasonableness requirement. There is no incentive for Amec Foster Wheeler to incur the daily fee for excessive access.

Comment [HA18]: As for 4.2.1 above

Comment [HSF19]: See our concern above in relation to 4.2.1

⁴ As agreed in relation to point 17 of our exchange of letters.
⁵ This type of detail is standard for s53 authorisations.

purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence⁶.

- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence⁷.

Comment [HA20]: See earlier comment. Our client considers this provision both unnecessary, and counter-productive for the purposes of Stone Hill Park Limited.

Comment [HSF21]: See our response earlier

- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.

- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey⁸.

- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.⁹

- ~~4.84.9~~ In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.

Comment [HSF22]: Added for the benefit of both sides, to ensure that the site is made good in such a way that there is no breach of contract with DfT due to the site being unusable or partially unusable for Operation Stack (eg due to trenches etc)

- ~~4.94.10~~ The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.

- ~~4.104.11~~ The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.

⁶ As stated in point 13 of our letter of 7 July, we see no need for this access by Riveroak staff.

⁷ Amended to more closely accord with standard s53 provisions

⁸ As agreed in relation to point 7 of our exchange of letters.

⁹ This is standard in s53 authorisations.

4.144.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

4.124.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹⁰.

Comment [HA23]: Please clarify the level of security that is in place at the site.

4.134.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works¹¹.

Comment [HSF24]: The site is fully secure and patrolled around the clock.

4.144.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out¹².

4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application¹³.

Comment [HA25]: Environmental information will be contained in documents other than the ES itself. This amendment to cover this.

4.154.17 [...]

Comment [HSF26]: Agreed

4.164.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.

Comment [HSF27]: We consider it reasonable for SHP to be given copies of the survey data obtained through access granted. We are puzzled as to why this should not be agreed in the Licence. Nevertheless, depending on the outcome of discussions on the other remaining points this may be something we can concede.

4.174.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.

Comment [HSF28]: See our concern earlier in relation to the proposed drafting of those clauses.

6 General

6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

¹⁰ This is standard in s53 authorisations.

¹¹ This is standard in s53 authorisations.

¹² This is standard in s53 authorisations

¹³ As agreed in respect of point 14 of our exchange of letters.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to Paul Barber [insert email address] at the Licensor or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence and on the date of the completion of the Licence, the Licensee agrees to pay to the Licensor ~~(within 28 days of demand)~~ the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.

Comment [HA29]: A clause of this nature is acceptable but 28 days has been substituted as this more accurately reflects standard business practice.

8.2 The Licensee shall indemnify the Licensor against:

Comment [HSF30]: Agreed

8.2.1 -the costs of restoring any part of the Property which has been damaged and has not been restored to ~~by~~ the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and¹⁴

Comment [HSF31]: Drafting added to deal with licence suspension for Operation Stack as well as termination.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [£xxx]

10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

¹⁴ As agreed in respect of point 15 of our exchange of letters.

11 **Governing Law and Jurisdiction**

- 11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works¹⁵

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Comment [HSF32]: For the reasons explained in our covering letter of 5 September, we are unhappy with the descriptions of the Phase 1 and Phase 2 surveys provided with [REDACTED] email of 10 August, and the absence of any restriction on the number of days that each may be carried out or the total number of days on which the site will be accessed.

¹⁵ Further to point 12 of our letter, please insert details of the Phase 1 Surveys– inserting the level of detail you are willing to be bound by in terms of scope

SCHEDULE 2

Phase 2 Survey Works¹⁶

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁶ Further to point 12 of our letter of 7 July, please insert details of the Phase 2 Surveys you may wish to carry out – inserting the level of detail you are willing to be bound by in terms of scope

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED



.....

Authorised Signatory

AUTHORISATION UNDER SECTION 53 OF THE PLANNING ACT 2008
LAND AT THEBERTON HOUSE ESTATE, THEBERTON, SUFFOLK
PURSUANT TO A REQUEST MADE ON 15 JULY 2015 BY NNB
GENERATION COMPANY (SZC) LIMITED

1. For the purposes of this Authorisation, including the Conditions set out in Annex 1, the following words have the following meanings:

"Act"	The Planning Act 2008 (as amended)
"Applicant"	NNB Generation Company (SZC) Limited Company Number: 9284825
"Authorised persons"	the Applicant and any persons authorised by the Applicant as notified to the Occupier in accordance with Condition 9
"Authorisation date"	the date of this Authorisation
"Authorisation period"	the period from the Authorisation date to the Expiry date (both dates inclusive)
"Authorised surveys"	the intrusive and non-intrusive surveys as described in the Schedule of Surveys contained in Annex 2
"Authorisation plan"	the plan attached to this Authorisation
"Conditions"	the conditions set out in Annex 1
"Expiry date"	31 May 2017 or (if earlier) the date of submission of an application for development consent for the Project pursuant to s37 of the Act
"Land"	land forming part of the Theberton House Estate, being part of the land comprised within title number SK135737 and registered at HM Land Registry with title absolute as shown for identification purposes coloured green on the Authorisation plan but excluding the Potters Farm land

"Landowners"	 
"The Occupier"	means the Landowners, their successors in title, and any such other person as may be notified to the Applicant as being in occupation of the Land or any part thereof
"Potters Farm land"	The area shown in green with black hatching on the Authorisation plan and labelled as 'Potters Farm land' in the key to that plan
"The Project"	the proposed Sizewell C Nuclear Generating Station and associated development

2. In exercise of the power conferred on the Secretary of State for Communities and Local Government ("the Secretary of State") by Section 53(1) of the Act, the Secretary of State authorises the Authorised persons to enter onto the Land for the following purposes:

- a) surveying and taking levels in connection with a proposed application for an order granting development consent for the Project and in order to facilitate compliance with the provisions mentioned in Section 53(1A) of the Act , and
- b) to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals or other matter in it.

3. This Authorisation is granted for the Authorisation period.

4. This Authorisation is given subject to compliance with the Conditions which are necessary to ensure that the Landowners' legitimate interests are protected.

Reasons for the decision are attached.

S Twidle

Sheila Twidle
Head of Environmental Services
For and on behalf of the Secretary of State for Communities and Local Government

31 March 2016

AUTHORISATION UNDER SECTION 53 OF THE PLANNING ACT 2008

AUTHORISATION REQUEST IN RELATION TO THE LAND PURSUANT TO A REQUEST MADE ON 15 JULY 2015 BY THE APPLICANT

REASONS FOR THE DECISION

The Applicant notified the Landowners and Occupiers in letters dated 10 July 2015 and 2 October 2015 that a Section 53 authorisation request had been made to the Planning Inspectorate. This follows the advice in the Planning Inspectorate's Advice Note 5: 'Section 53 – Rights of Entry' (dated April 2015) ('Advice Note 5'). Following requests for further information made by the Planning Inspectorate to the Applicant, and the submissions of further information by the Applicant, the final date for receipt of a response from the Landowners and the Occupiers of Potters Farm to the Planning Inspectorate was 3 December 2015.

The information provided by the Applicant demonstrates that the Applicant has sought to agree access to the Land with the Landowners between October 2012 and May 2015. The Applicant had not sought access to Potters Farm during this time. However the authorisation request did include Potters Farm. The Applicant sought separately to discuss access to Potters Farm with the Occupiers through letters dated 1 October 2015, 7 October 2015, 16 November 2015 and 18 January 2016; and also sent the Occupiers copies of letters addressed to the Planning Inspectorate of 6 November and 18 December 2015. At the present time, no meeting has taken place between the Occupiers and the Applicant and no agreement has been made with the Occupier to access Potters Farm.

Entry to the Land is needed to enable the Applicant to carry out surveys required to inform the Project. The surveys proposed by the applicant cover information that would be required to inform an Environmental Impact Assessment. Allowing further time for further correspondence and negotiation would risk substantially delaying the Project.

The Landowners' stated objections to granting access relate to:

- the lack of progress with the proposed development;
- the need for the Landowners to have access to the necessary professional advice;
- the Landowners requiring an undertaking in respect of their reasonable costs; and
- the Landowners right to refuse access to their land until an appropriate and reasonable costs undertaking is agreed with the applicant.

The Occupiers of Potters Farm object to granting access because they consider they have not to date been provided with sufficient explanation by the Applicant to enable them to understand the implications of the proposed access. Therefore they have difficulty in providing informed comments about the authorisation request to the Planning Inspectorate.

The Secretary of State is satisfied that the applicant has sought to agree access to the Land (excluding the Potters Farm land) with the Landowners over a reasonable period of time (between 2013 and 2015) and on reasonable terms, and that there is nothing in the correspondence to suggest that further negotiations would result in the reaching of an agreement. The Secretary of State is satisfied that entry to the Land is needed to enable the Applicant to carry out surveys required to inform the Project. However, the Secretary of State is not satisfied that the Applicant has demonstrated a genuine requirement to enter the Potters Farm land, nor that evidence has been provided to demonstrate reasonable efforts to agree access with the Occupiers of Potters Farm.

The Secretary of State is satisfied on the basis of the information provided and available that he may authorise the service of a notice under Section 53(1) and Section 53(3A) of the Act for the Land (excluding the Potters Farm land), and that this Authorisation is justified and proportionate in the wider public interest in this particular instance.

S Twidle

Sheila Twidle

Head of Environmental Services

For and on behalf of the Secretary of State for Communities and Local Government

31 March 2016

ANNEX 1

CONDITIONS

1. Interpretation

In these Conditions the following words and expressions shall, unless otherwise stated, have the following meanings:

"Authorisation"	the authorisation granted by the Secretary of State pursuant to the Application to which these Conditions are annexed
"Intrusive surveys"	those Authorised surveys that are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys
"Non-intrusive surveys"	walkover surveys including the taking of measurements and levels by non-intrusive equipment and methods and the taking of photographic records but excluding any works to search and bore
"Notice"	Not less than 14 days written notice of any intended entry to carry out an Authorised survey or any lesser period that may from time to time be agreed in writing by the person on whom the Notice is to be served
"Working day"	any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday
"Working hours"	the hours between 7.00am and 7.00pm of any Working day

2. In these Conditions unless the context otherwise requires:

- a) any gender includes any other gender;
- b) the singular includes the plural and vice versa;
- c) references to persons include natural persons, firms, companies, corporations and their successors in title;
- d) the headings are for convenience only and do not affect interpretation;
- e) any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation from time to time.

General

3. Entry onto the Land is authorised only:

- a) for the Authorised surveys;
- b) for the purposes of surveying and taking levels of the Land and to facilitate compliance with the Environmental Impact Assessment Directive¹, the Habitats Directive² or any European Union instrument which replaces all or any part of these Directives;
- c) on Working days; and
- d) during Working hours (unless for the purpose of carrying out surveys for bats, great crested newts, breeding birds or taking photographs for the purpose of landscape and visual assessments).

4. No Authorised person shall enter the Land otherwise than in accordance with the Authorisation and these Conditions.

5. The Authorised persons' right of entry onto the Land pursuant to the Authorisation shall immediately cease if any Authorised person is in breach of the Authorisation or any of these Conditions.

6. These Conditions are in addition to the provisions of section 53 of the Act (as amended) ("Section 53") but if there is any conflict between the Conditions and the provisions of Section 53 the latter shall prevail.

7. The Occupier retains control, possession and management of the Land and no Authorised person has the right to exclude the Occupier from the Land save where exclusion from the Land or part of the Land is necessary in order to properly carry out the Authorised Surveys or such exclusion is required on

¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time.

² Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time.

grounds of health and safety.

8. Entry onto the Land is authorised only:

- a) provided the activities undertaken in connection with the Authorised survey(s) will not constitute an offence in themselves including an offence under Regulation 41 of the Conservation of Habitats and Species Regulations 2010 (as amended); and
- b) subject to all necessary consents (if any) in relation to carrying out the Authorised survey(s) having first been obtained.

Notice of entry

9. Before any person may enter the Land to carry out an Authorised survey the Applicant must give Notice to the Occupier, such Notice to include the following:

- a) details of the areas, type, purpose and timing of Authorised surveys together with details of how access to the survey site is to be achieved;
- b) details of the type and nature of any equipment and apparatus to be used;
- c) the name and address of any Authorised person who is authorised by the Applicant to enter the land to carry out the Authorised survey and details (including telephone number) of the Authorised person who will have management responsibilities for undertaking the Authorised survey(s);
- d) the date or dates when access is required to carry out the Authorised survey(s) and the period of time for which access is required; and
- e) a copy of Annex 2 to this Authorisation entitled "Survey Requirements for 'The Land'".

Carrying out the Authorised survey(s)

10. In carrying out the Authorised survey(s) the Authorised person shall:

- a) cause as little damage as is possible and upon completion of the final Authorised surveys, or if earlier on the expiry of the Authorisation, shall make good any damage caused to the reasonable satisfaction of the Occupier and remove any apparatus or equipment taken on to the Land by the Authorised person in connection with the Authorised surveys on completion of the same;
- b) not do any act, matter or thing which would or might constitute a breach of any law (including without limitation common law), statute, regulation, rule, order, byelaw or notice, or which would

or might vitiate in whole or in part any insurance effected by or on behalf of the Occupier in respect of the Land from time to time;

- c) at all times take all measures as are reasonably necessary to maintain the same level of security in respect of the Land which would exist but for the undertaking of the Authorised survey(s);
- d) not cause any nuisance, disturbance, annoyance, inconvenience or unreasonable interference to the Occupier or to adjoining and/or neighbouring property and/or to the owners, occupiers or users of such adjoining or neighbouring property;
- e) prior to carrying out Intrusive surveys, to prepare a photographic record of condition of the part of the Land in respect of which the Intrusive surveys are to be carried out;
- f) not display any signs or notices at the Land other than those required pursuant to statute;
- g) not interfere with the existing use of the Land other than to the extent reasonably necessary to carry out the Authorised survey(s);
- h) observe the Occupiers' reasonable health and safety policies and site rules previously notified to the Authorised person in writing;
- i) produce on demand identification and confirmation of their authorisation by the Applicant to carry out the Authorised survey(s) and to inform the Occupiers when leaving the property; and
- j) not to enter onto Potters Farm land.

Authorised persons' equipment

11. Authorised persons may not leave equipment required to undertake cable percussive boreholes, rotary boreholes or sonic boreholes on the Land when it is not in use, but may leave all other monitoring apparatus and equipment in place on the Land until completion of the final Authorised survey or if earlier the expiry of the Authorisation and shall forthwith thereafter remove any such apparatus or equipment.

Insurance

12. The Applicant shall:

- a) subject to provision of written evidence of such requirements, pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Occupier which may have become payable as a result of the Authorisation; and

- b) ensure that those who work on its behalf hold suitable and adequate insurance in respect of public and third party liability and provide proof of said insurance to the Occupier prior to carrying out any Authorised surveys.

ANNEX 2

SCHEDULE OF AUTHORISED SURVEYS

Survey Requirements for 'The Land', Theberton House Estate, Owned by ██████████

This table should be read in conjunction with Sizewell C, Proposed Nuclear Development, Sizewell C EIA Scoping Report, April 2014. Planning Inspectorate Ref: EN010012 and The Planning Inspectorate Scoping Opinion for Sizewell C Proposed Nuclear Development, June 2014						
SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	UXO Survey required?	NEED FOR SURVEY	SURVEYORS
Soils & Agriculture						
Soils & Agriculture	10 days	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted	All access would be on foot using hand held equipment only. Sample locations (1 auger/hectare based on a grid over the land) would be located and recorded using a hand-held Geographic Information System (GIS). The soil profile would be examined at each sample location to a maximum depth of approximately 1.2m by hand with the use of a 5cm diameter soil auger screwed into the ground by hand. Depending on what crop is being grown it would be possible to limit access to tram lines only. Subject to the results of the hand augers it may be necessary to dig a small trial hole (by hand using a spade). All material dug up would be replaced immediately once the profile had been described.	Yes	Access is required in order to understand what agricultural land classification the land is, which will inform the baseline of the assessment to be reported in the Environmental Statement. The approach was described in the Sizewell C EIA Scoping Report (April 2014) (the Scoping Report), Chapter 7, Section 9 (Soils and Agriculture) (paragraphs 7.9.21-7.9.23 and 7.9.25); and endorsed in the Scoping Opinion (paragraph 3.84).	Up to 3 people
Geology and Land Quality						
Geology and Contaminated Land	2 days	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted	A non-intrusive site walkover across the site would be undertaken by surveyors who would take photos and look at the site's characteristics.	No	Access is required in order to inform the Phase 1 Contaminated Land Desktop Study, which will inform the baseline of the assessment to be reported in the Environmental Statement. The approach was described in the Scoping Report, Chapter 7, Section 10 (Geology and Land Quality) (paragraphs 7.10.7, 7.10.16 and 7.10.17); and endorsed in the Scoping Opinion (paragraph 3.89).	Up to 2 people
Terrestrial Historic Environment						
Geophysical Survey	2 weeks	The exact dates would be determined by the crop on the field at the time, as some crops are too 'thick' for a survey to take place	A non-intrusive (walkover) magnetometer survey across the site would be undertaken by surveyors using hand held equipment. Some canes / pegs would be briefly inserted into the ground to ensure that the surveyors follow a straight line and that the lines do not overlap, but these would be removed immediately following completion of the survey.	No	Access is required in order to establish whether the land contains buried archaeology. The results would provide an indication as to the presence / absence of buried archaeology; it would be used to determine the location and extent of any intrusive fieldwork (trial trenching). The approach was described in the Scoping Report, Chapter 7, Section 5 (Terrestrial Historic Environment) (paragraphs 7.5.8 and 7.5.29 to 7.5.32); and endorsed in the Scoping Opinion (paragraph 3.57).	Up to 5 people
Trial trenching	4 months	The survey would be undertaken as soon as crops were removed from the fields and the Geophysical Survey had been completed	A 3-5% trial trenching sample is likely to be required, comprising around 98-163 trenches of 50m by 2m. The locations and extent of the trial trenching would be agreed with Suffolk County Council Archaeological Service (SCC AS) and would be targeted on the geophysical anomalies, along with a few "blank" areas to check the survey has worked. The depth of the trenches would be determined by the depth of the archaeology but would typically be 1m with some small areas of deeper excavation of individual features, if appropriate. Topsoil and subsoil excavated from each trench would be placed separately at a minimum distance of 1m from the edge of the trench; waterlogged trenches would be drained prior to backfilling; topsoil and subsoil would be replaced as separate horizons with the subsoil below the topsoil.	Yes	Access is required in order to confirm the presence/absence of archaeology and allow any archaeology found to be identified in terms of its importance and date. This would enable the magnitude/effect of impact to be assessed and an appropriate mitigation strategy to be agreed with the statutory consultees. The approach was described in the Scoping Report, Chapter 7, Section 5 (Terrestrial Historic Environment) (paragraphs 7.5.8 and 7.5.29 to 7.5.32); and endorsed in the Scoping Opinion (paragraph 3.57).	Up to 20 people. In addition, English Heritage are likely to visit at least once and up to 3 visitors from the County Council's Archaeology Team area likely to visit once a week
Terrestrial Ecology and Ornithology						
Extended Phase 1 Habitat Survey	1 day	As soon as possible once access to the site has been granted - the survey is not seasonally dependant	Non-intrusive site walkover to map habitat types and species within the site boundary. This will involve walking around field boundaries and looking at, but not disturbing hedges and trees and any other uncultivated land which could provide habitat for legally protected and notable species. Equipment will be clipboard, pen/pencil and a handheld GPS device	No	Needed to assess the actual or potential presence of legally protected and notable species at the site and will determine the requirement for additional species specific survey work. Legally protected species refers to species afforded protection by the Wildlife and Countryside act (1991) as amended, the Conservation of Habitats and Species Regulations 2010 and species listed on Section 41 of the Natural Environment and Rural Communities Act 2006. (All the species specific surveys that may be required as an outcome of this survey are detailed below). Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Static Bat Activity Surveys - Required subject to findings of Extended Phase 1 Habitat Survey	6 half hour visits to place and retrieve detectors	Surveys to be carried out monthly between May and October, split over two consecutive years if necessary to meet seasonal requirement.	The monitoring would comprise static bat detectors (size of AA battery) positioned around the site(on suitable trees (non -intrusive) or stand alone posts) location of posts or position on the trees can be discussed and agreed with landowner should he wish, as well as radio-tracking (see below). The static bat detectors would be positioned for month-long recording throughout the survey period with site visits to retrieve data from the devices every month.	No	Given that bats are legally protected under the Wildlife and Countryside Act (1981, as amended) and the Habitat Regulations (2010), surveys are required to understand the bat species that occur on-site, the whereabouts of their main roosting and foraging habitat and key movement corridors. This information would enable us to identify any potential impacts, and required mitigation. Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	Up to 2 people

Survey Requirements for 'The Land', Theberton House Estate, Owned by [REDACTED]

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	UXO Survey required?	NEED FOR SURVEY	SURVEYORS
Bat Radio Tracking Exercise - Required subject to findings of Extended Phase 1 Habitat Survey	4 visits in one week	August 2015	The Radio tracking would either be via (a) tracking individual bats; or (b) tracking larger numbers of bats. Trapping occurs at night on the first day of access. If no bat is trapped there will be another attempt on the second day of access. Trapping involves placing a net over a tree where there are known to be bats, bats are caught, a tracker is placed on them, and they are released. The following day the surveyors will return to site to see where the bat is roosting, and then following and then the bats are 'tracked' by day and night over the subsequent days to see where they roost during the day, and travel by night.	No	The radio-tracking exercise would verify the static monitoring; to provide information on bat behaviours to provide biological context to the static monitoring results. Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	Up to 4 people
Bats Emergence Survey - Required subject to findings of Extended Phase 1 Habitat Survey	3 surveys at each roost - each survey will require a visit at dusk and the following dawn	Surveys to be spread between April and September, split over two consecutive years if necessary to meet seasonal requirement.	Dawn and dusk surveys involves watching for bats leaving and returning to their roosts respectively, allowing for the identification of roost sites, confirmation of species type, population estimates etc.	No	Any development that could impact on bats requires survey work to be carried out and an impact assessment conducted. Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	4 people
Reptile Survey - Required subject to findings of Extended Phase 1 Habitat Survey	20 visits	Surveys to be carried out in April, May and September, over two consecutive years if necessary to meet seasonal requirement.	For reptile surveys reptile refugia (squares of carpeting) would be placed in areas of suitable habitat within the site boundary (not on cultivated land) and left in-situ for the survey period. These would be checked for the presence of reptiles on each visit and removed once the survey is completed. A vehicle (small 4x4 which will keep off any cultivated land) may be required to bring the equipment on to site. The 20 reptile surveys visits will take place on fine days (avoiding periods of heavy rain) in April, May and September with the 20 days being spread over these months, depending on the weather. Each visit would take place during daylight hours (most likely to be mid-morning or early afternoon) and each visit will take 3-4 hours to complete.	No	If the potential for reptiles exists surveys will firstly confirm whether reptiles are present or absent and secondly estimate an approximate population size in order to inform mitigation. Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Great Crested Newt Surveys - Required subject to findings of Extended Phase 1 Habitat Survey	6 surveys requiring a visit in the evening to place equipment and the following morning to remove equipment. The evening/nocturnal visits and the subsequent morning visit will take approximately 1 hour for each pond or other water body that are present.	Mid March to early July. Surveys will be spread at least 1 week apart, and at least two of the visits have to be in the period Mid April to Mid May. Surveys will need to be carried out over two consecutive years if necessary to meet seasonal requirement.	Surveys undertaken by a licenced surveyor. As newts are largely nocturnal, surveying is best conducted at night, and during the breeding period of mid March to early July. Four visits are required to determine presence or absence however a total of six surveys will be carried out to estimate the population size. A minimum of 50% of these visits must take place between mid April and mid May. Survey techniques used: Egg search - visual survey Torching - High power torches are used to shine into the pond at night when newts are most active Netting - A long-handled dip net is used to search for newts Bottle trapping - Plastic bottle traps are submerged in the water at dusk, and checked and removed the following morning. Bottle trapping can only be used when the night-time temperature is suitable. Newts swim into the traps and are unable to exit until released. Each survey will require an evening visit to place bottle traps in the pond and shine a torch across the water of the pond when its dark, and a follow up visit early the following morning to remove the bottle traps and release any newts captured. All survey materials will be removed in the morning and brought back to site on the next evening visit. Terrestrial search - Refugia such as logs, rubble, discarded carpet and wood are carefully inspected underneath and then replaced. This is best done during the daytime and can be done out of the breeding season (March to May)	No	Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2-4 people
National Vegetations Classification - Required subject to findings of Extended Phase 1 Habitat Survey	2 days	April - September 2016	The NVC survey is a botanical survey and will involve a person with a clipboard placing a 2m by 2m square frame on the ground and recording the plant species growing within it together with there % abundance within the square frame. It is likely that photographs will be taken and these will be published in the Environmental Statement. The survey would not trample any agricultural crops and is likely to be restricted to woodland and areas of permanent grassland.	No	Detailed vegetation information is required to determine plant communities which also provides essential information on the value of wildlife resources found at a particular site. Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people

Survey Requirements for 'The Land', Theberton House Estate, Owned by [REDACTED]

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	UXO Survey required?	NEED FOR SURVEY	SURVEYORS
Breeding Birds Survey - Required subject to findings of Extended Phase 1 Habitat Survey	3 days	April, May & June 2016 split over 2 consecutive years if necessary to meet seasonal requirement.	Surveys consisting of two to ten visits recording and mapping all bird species seen or heard along with any relevant behaviour such as gathering nesting material, territorial calling, fighting or feeding young. The breeding bird survey will comprise three visits once a month in April May and June. Each survey would take place from just after dawn until 9 or 10 am in the morning. It involves a surveyor with binoculars plotting all observations of birds seen or heard on a map.	No	Survey is required as An emphasis is placed on the suitability of the site for Schedule 1 and UKBAP species and also species of conservation concern Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	3 people
Overwintering Bird Survey - Required subject to findings of Extended Phase 1 Habitat Survey	4 days	November 2015 - February 2016	Surveys consist of at least four visits undertaken between September and March (key months of December, January to February) to record any notable assemblages of feeding and/or roosting bird species. The wintering bird survey will involve four visits once a month in Nov, Dec Jan and Feb and will take place from 8am until 11 or 12 am. It involves a surveyor with binoculars plotting all observations of birds seen or heard on a map.	No	To record any notable assemblages of feeding and/or roosting bird species. Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	3 people
Invertebrates Survey - Required subject to findings of Extended Phase 1 Habitat Survey	3 days	May, July and September 2015 split over 2 consecutive years if necessary to meet seasonal requirement.	The survey will involve a combination of different sampling methodologies ie light traps, malaise traps, suction sampling and pitfall trapping. The use of light traps will be to catch moth species. This will involve setting up a light trap powered by a small petrol generator in the evening and them coming back in the morning to identify the moths caught. The light traps would be set at a sufficient distance from any residential dwelling to avoid any noise or light nuisance.	No	Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Otter and Water Vole Surveys - Required subject to findings of Extended Phase 1 Habitat Survey	2 days	A single survey in the period between April to September 2016.	Water Vole: Water Vole presence can be determined by field signs during the breeding season, when they are most active above ground. The survey period is weather dependent but runs approximately from April to September. Field signs include droppings and latrines, burrows, grazed lawns around burrow entrances, and feeding remains. Otter: Otters avoid disturbance and are largely nocturnal, therefore surveys have to be carried out by searching for signs such as footprints and spraints (droppings) and recording habitat features and weather conditions at the time of survey. Surveys can be undertaken at any time of year. Otter and water vole surveys will only be required if there are water filled ditches or watercourses within the land identified. If required the surveys will involve walking the water features and looking for evidence of either species. Each survey would take up to a day's duration and would occur within the hours of daylight (9am to 5pm). A single visit will be carried out in April with a further visit in July/August/Sept if required. No equipment is required.	No	Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Badger bait-marking - Required subject to findings of Extended Phase 1 Habitat Survey	Up to 3 weeks for 3-4 hours each visits	January to March 2016	The badger survey would have two parts. The first is simply a walkover to plot the location of setts and latrines (dung pits) on a map. This is likely to take 2 days to complete. The second element depends on the number of badger setts identified. If there is more than one large active sett then its important to work out the relationship between the sets. This is undertaken by placing bait (peanut butter) with small coloured plastic pellets at the entrance to each sett, each sett being baited with a specific colour of pellets. The pellets are passed via the dung and then the latrines are checked to see how the coloured pellets are distributed and from this an understanding is built up of the territory boundaries. It will take 1 day to lay out the bait with another 2-3 days at regular intervals (up to a fortnight apart) to replenish the bait and check its distribution in latrines.	No	Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Hedgerow Survey - Required subject to findings of Extended Phase 1 Habitat Survey	1 day	A single survey between May - August 2016.	The hedgerow structure, setting, associated features and wood and ground flora components are all surveyed. Data collected is examined against set criteria to assess the importance of each hedgerow. This would involve two people with a clipboard and would take a day to complete. It is likely that photographs will be taken and these will be published in the Environmental Statement that will be produced as part of the EIA into the proposed development.	No	Described in Scoping Report , Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1, and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	

Landscape and Visual

Survey Requirements for 'The Land', Theberton House Estate, Owned by ██████████

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	UXO Survey required?	NEED FOR SURVEY	SURVEYORS
Site walkover	2 weeks	Access is sought for as soon as possible once access to the site has been granted	The visit would be used to identify and agree the viewpoints to be included within the landscape and visual assessment with relevant statutory consultees. The visit would be largely restricted to public rights of way, permissive routes, access land, highways and settlement edges, although some access to private land may be required. The visits would be timed to coincide with good weather with clear skies. Access would be via foot and surveyors would use GPS and cameras only.	No	The walkover survey is required in order to assess, describe and document the local landscape character, as well as record views and the general visual environment. Photographs would be taken in order to document the visit and views with trees in leaf. The main focus of photographs would be the Main Development Site, the construction phase works areas, as well as 360 panoramic views to capture the whole scene. These photographs may be used in the Environmental Statement. The approach is described in the Scoping Report, Chapter 7, Section 3 (Landscape and Visual) (paragraph 7.3.6 , 7.3.10, 7.3.20 and 7.3.21); and endorsed in the Scoping Opinion (paragraph 3.45).	2 surveyors (LDA Design); 2 employees from EDF Energy; and up to 6 statutory consultees

Survey Requirements for 'The Land', Theberton House Estate, Owned by [REDACTED]

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	UXO Survey required?	NEED FOR SURVEY	SURVEYORS
Photography	1 day - 1 night	Late November - Early December 2015	The site visit is required in order to undertake verified photography at the agreed representative viewpoints with trees out of leaf, at during both the day and dusk/night time. The surveyor would assess the class, condition, health and short term management of all trees that would be directly or indirectly affected, as well as photographing the key features within the site (e.g. hedgerows and any views with visual connections with Listed Buildings). Photographs would be taken along the perimeter edges of the field (where trees and hedgerows are located).	No	Verified photographs are required in order to prepare wireframe and photomontage views, taken to strict professional standards and in good weather/clear conditions. The location of the viewpoints would be verified and agreed in advance (see above). Trees are required to be out of leaf to illustrate the 'worst case' scenario in terms of visibility. The approach is described in the Scoping Report, Chapter 7, Section 3 (Landscape and Visual) (paragraph 7.3.6 , 7.3.10, 7.3.20 and 7.3.21); and endorsed in the Scoping Opinion (paragraph 3.45).	1 person
External Lighting site visit	1 day - 1 night	Access is sought for as soon as possible once access to the site has been granted	A site walkover is required during the daytime, at dusk as well as at night time in order to establish likely sources of light and zones of concern. The surveyor would document and record baseline conditions and photographs would be taken, which may be used in the Environmental Statement.	No	The surveys are required in order to establish the baseline information to inform the evolution of the design. The approach is described in the Scoping Report, Chapter 7, Section 3 (Landscape and Visual) (paragraph 7.3.6 and 7.3.48) and endorsed in the Scoping Opinion (paragraph 3.49).	2 people
Topographical	2 weeks	Access is sought for as soon as possible once access to the site has been granted	A topographical and utilities survey of the entire site would be undertaken using a land rover and handheld equipment.	No	A survey is required to understand the context of the site and to develop the next stages of design, which are necessary in order to undertake the assessments and identify the development for which consent would be sought.	Up to 4 surveyors
Noise and Vibration						
Baseline noise survey	Up to 2 weeks continuous monitoring, plus 1 day set up and 1 day dismantling at the beginning and end. 10 days of sufficient data will be required	Q3 or 4 2015. Exact days can be dependant on weather and other external factors (such as noisy farming practices which could be discussed with the landowner)	Surveyors would need to set up (and at the end take away) noise monitors at 2-3 locations around the site, in particular close to Potters Farm. NNB would be happy to discuss the precise locations with the landowner. The meters would stay on site for the duration of the survey. The devices are approx 1m2 and 1.5m high.	No	The data is needed in order to help establish baseline noise conditions at the site, in the vicinity of key receptors. Described in Scoping Report, Chapter 7, Section 7 and in particular paragraph 7.7.3 and 7.7.7. Endorsed in Scoping Opinion 3.66	2 people
Air Quality						
Baseline air quality (dust) survey	Up to 6 months monitoring, with access every 2-4 weeks to collect samples/download data.	Dust monitoring equipment will be installed shortly after any site access has been secured - assuming access secured in summer 2015.	Surveyors would need to set up to 5 dust deposition gauges around field boundaries at locations between Eastbridge and the construction area. These would be attached to stakes placed into the ground. Monthly site visits would be required to collect samples/download data. The landowner could have a say on precisely where the receptors are located. Access may be required throughout the duration of the surveying in case the receptors need repairing / replacing. We will need to be informed about potential harvesting as this could significantly impact the surveying. Set up and dismantling will take 1 day and no power supply will be required.	No	The data is required to establish baseline dust deposition levels at the site to inform the assessment of potential impacts. Described in Scoping Report, Chapter 7, Section 8 and in particular paragraph 7.7.16 and 7.8.25. Endorsed in Scoping Opinion 3.73	Up to 2 people
Ground Investigations						
Cable percussive boreholes	2 months	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted for a period of 2 months	The surveyor would drill up to 7 no. 125mm diameter, 20m deep boreholes within the southern fields and 7 no. 250mm diameter, 20m deep boreholes within the northern fields using cable percussive techniques. The activities would require equipment including a cable percussive rig, a land rover, a water browser and tractor, which would be left on site during the survey period in a locked container. The boreholes that do not include any piezometer or other water monitoring device would be restored by backfilling.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7, Section 11 (paragraphs 7.11.1 and 7.11.3); and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 5 people
Rotary boreholes	2 months	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted for a period of 2 months	The surveyors would drill up to 3 no. 150mm diameter boreholes within the southern fields to depths of up to 30m below ground level using rotary drilling techniques. The activities would require equipment including a rotary drilling rig, a land rover, a water browser and tractor, which would be left on site during the survey period in a locked container. The boreholes that do not include any piezometer or other water monitoring device would be restored by backfilling.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7, Section 11 (paragraphs 7.11.1 and 7.11.3); and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 5 people
Sonic boreholes	2 months	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted for a period of 2 months	The surveyors would drill up to 4 no. 125mm diameter boreholes in each of the northern fields to depths of up to 50m below ground level using sonic drilling techniques. The activities would require equipment including a sonic drilling rig, a land rover, a water browser and tractor, which would be left on site during the survey period in a locked container. The boreholes that do not include any piezometer or other water monitoring device would be restored by backfilling.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7, Section 11 (paragraphs 7.11.1 and 7.11.3); and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 5 people

Survey Requirements for 'The Land', Theberton House Estate, Owned by ██████████

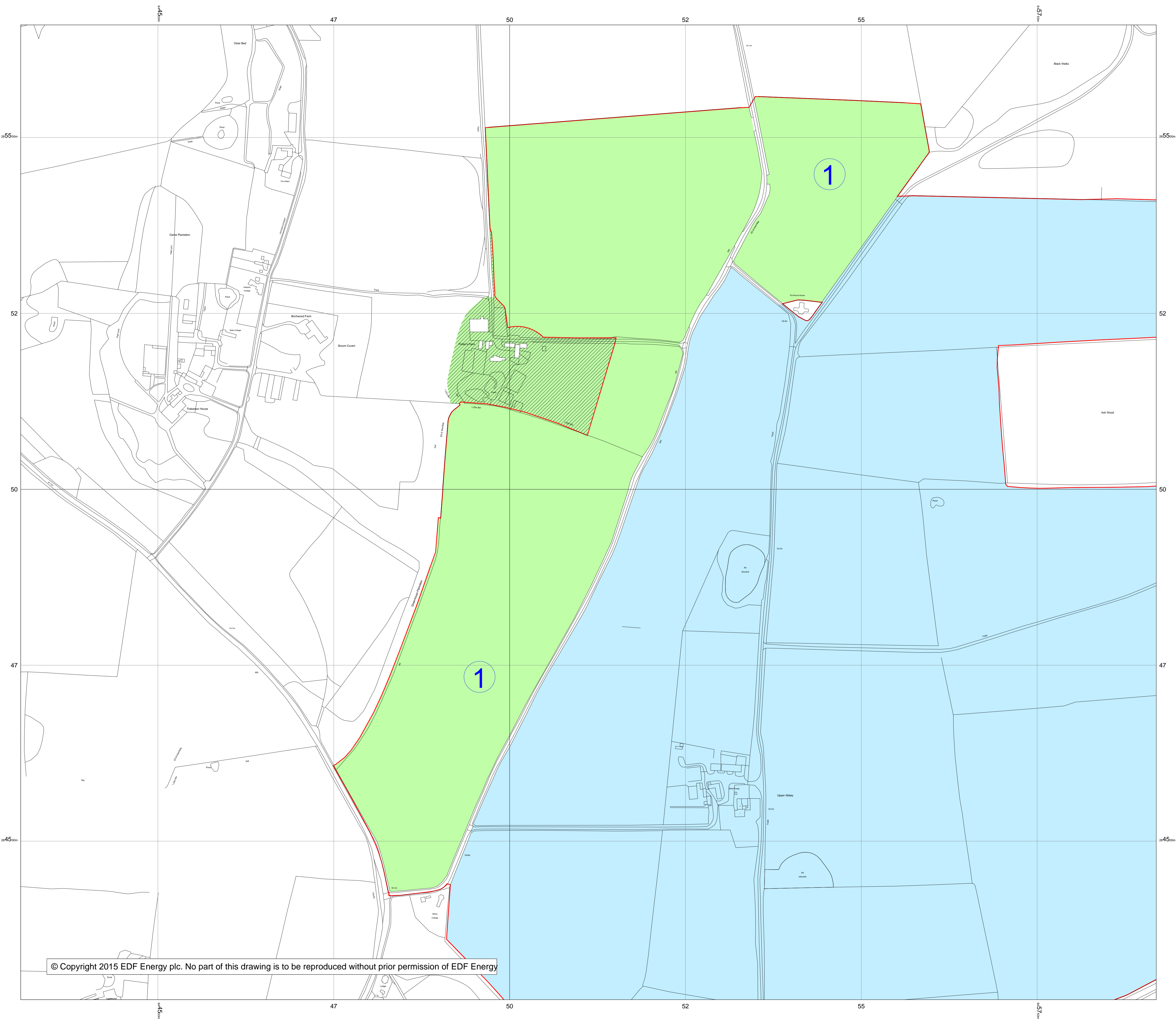
SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	UXO Survey required?	NEED FOR SURVEY	SURVEYORS
Piezometers	Up to 12 months continuous monitoring, plus set up and dismantling	The survey is not seasonally dependant, and would be undertaken once the boreholes were in place	Up to 3 piezometers spread evenly across the southern fields and 3 in each of the northern fields. The activities would require fences (2mx2m) to be left around the piezometers for the period of groundwater monitoring, with access to be made via a land rover. Access (with a land rover) would be required on a monthly basis to monitor the piezometers.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7, Section 11 (paragraphs 7.11.1 and 7.11.3); and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 3 surveyors
Groundwater monitoring	Up to 12 months 1-2 days to install the devices and then monthly visits to record the data	The survey is not seasonally dependant, and would be undertaken once the boreholes were in place	Groundwater monitoring equipment would be installed within selected boreholes, which would comprise up to 3 within the southern fields and 3 within each of the northern fields. Readings would be taken on a monthly basis in order to monitor the level and quality of the groundwater.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7, Section 11 (paragraphs 7.11.1 and 7.11.3); and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 3 people
Flood Risk and Drainage						
Infiltration tests	1 week	At the same time as groundwater monitoring and piezometers are installed	The first set of 9 trial pits, 2 in each northern field and 5 in the southern fields (each 1x1x3m) are required in order to check for groundwater levels and ensure that the ground is not normally saturated so that water which percolates into the ground either directly through the surface or via drainage pipes has somewhere to drain. The second set would be smaller (300 mm square pits down to a similar level) which is filled with water on day one. The water level is confirmed through checks the subsequent day and the pit is then refilled in order to identify the percolation results and the ability of the strata to drain away inflow.	Yes	The pits are required in order to establish the feasibility of using soakaways (methodology consistent with standard BRE Digest 365), which will provide greater confidence in the feasibility of the drainage strategy to drain any surface water arising as a result of the Project.	Up to 5 people
Transport						
Site walkover	1 day	Access is sought for as soon as possible once access to the site has been granted	Site walkover only to support transport related design work relating to the accommodation campus and Eastbridge Road	No	Up to 3 people	1-2 days

THE AUTHORISATION PLAN



Key

- Land for which rights are sought
 - Land under the control of a group company of NNB GenCo (Nuclear Generation Limited)
 - Potters Farm land
 - Proposed Extent of Development Site and Works
 - 1 Title SK135737 (in part)
- Post Code: IP16 4RL



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DRAWING TITLE

Plan A

PROJECT DRAWING REFERENCE NO.	REVISION	SCALE	DATE
	v8.0	1:2500 @ A1	23/09/2015

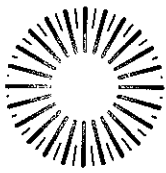
DOCUMENT

Plan A

DRAWING SECURITY CLASSIFICATION

PROTECTIVE MARKING REQUIRED

NOT PROTECTIVELY MARKED



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DX28 London Chancery Lane

www.herbertsmithfreehills.com

Our ref
5567/30983750
Your ref

Date
16 September 2016

By email and by post

Dear Richard

Former Manston airport: s53 application by Riveroak Investment Corporation

Thank you for your letter of 25 August 2016 and your email of 23 August.

1. LICENCE NEGOTIATIONS

We note the Planning Inspectorate's support for parallel negotiations during the s53 process. We have responded to Bircham Dyson Bell's email of 10 August, enclosing a mark-up of the licence (copied to you on 5 September 2016). We assume that the Planning Inspectorate intends to monitor the course of such negotiations in 'real time' and that you will therefore expect to be copied in on all future correspondence.

Please note that we are engaging in such negotiation without prejudice to the points made in our previous representations to the Planning Inspectorate. In particular, regardless of the course of negotiations, we remain of the view that the tests for a s53 application are not met, for the reasons set out in sections 1 – 5 of our letter dated 7 July 2016.

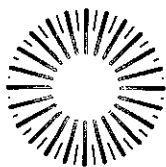
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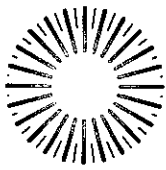


from Riveroak's request for access during a 12 month period, for the purpose of carrying out a wide range of intrusive surveys. To compare the two requests, and criticise Stone Hill Park's willingness to host this brief tour at short notice, is unfair. Like any private land owner, Stone Hill Park has the right to discriminate between requests for access to its land by different persons and to agree terms as it sees fit.

- (iii) **Operation Stack** – Under a contractual arrangement between Stone Hill Park and the Department of Transport, the whole of the former Manston airport site may be used for the purpose of parking large numbers of HGVs at short notice if necessary for "Operation Stack". Operation Stack is a procedure used by Kent Police and the Port of Dover to park HGVs when services across the English Channel are disrupted, for example by bad weather, industrial action, fire or derailments in the tunnel. The site has not yet been used by Operation Stack but has been put on alert more than once. The exact terms of the arrangement between the Department for Transport and Stone Hill Park are subject to duties of confidentiality. However, in principle, it is clear that in the event that the site is needed for Operation Stack, any survey equipment and survey personnel that prevent full use of the site by HGVs would need to be removed swiftly to avoid: (a) putting Stone Hill Park in breach of its contractual obligations and (b) disruption to nationally important transport arrangements. In theory, there might be some surveys that could be carried out while the site is being used to park hundreds/thousands of HGVs. However, we imagine that such surveys would be few, and also that there are likely to be safety issues with such dual use of the site. For this reason, we consider that a temporary suspension of access during Operation Stack is most appropriate. However, we could accept a caveat that such suspension would only come into force in relation to surveys which in the Licensor's reasonable opinion, would cause an obstruction to Operation Stack or where the carrying out of surveys during Operation Stack would in the Licensor's reasonable opinion give rise to health, safety or security risks. We have proposed drafting along these lines in our mark-up of the licence dated 5 September 2016. We have also added drafting which requires that any damage to the site be remediated by the Licensee prior to vacating the site for Operation Stack if the Licensor reasonably believes that this is necessary. We are envisaging here the possibility of intrusive works such as trenching, which may need to be made good before HGVs can park on the site.

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Yours sincerely,

[REDACTED]

Partner
Herbert Smith Freehills LLP



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Our ref
5567/30983750
Your ref

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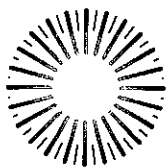
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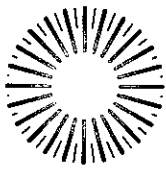


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Partner
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Mr Richard Hunt
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Temple Quay House
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Bristol
BS1 6PN

Your Ref
5567/30983750
Our Ref
ADW/APH/164652.0001
Date
16 September 2016

By Recorded Delivery, and By Email

Dear Mr Hunt

RIVEROAK INVESTMENT CORPORATION: APPLICATION PURSUANT TO S.53 OF THE PLANNING ACT 2008 IN CONNECTION WITH THE PROPOSED MANSTON AIRPORT

We write in response to your letter dated 25 August 2016 and the queries raised therein. For ease of reference, we respond to your queries under a number of different headings as set out below.

1 Comments from persons of interest

1.1 We note the Planning Inspectorate's ('PINS') comments that the following persons with an interest in land did not make any submissions following notification of the section 53 application ('s.53 application'):

- 1.1.1 Avman Engineering Ltd;
- 1.1.2 Hunglish Ltd;
- 1.1.3 Polar Helicopters Ltd;
- 1.1.4 Powermain Ltd; and
- 1.1.5 Taft International Transport.

1.2 For the avoidance of doubt, and as indicated and evidenced in the s.53 application, we confirm that notification of the application was also sent to these persons with an interest in land by RiverOak on 1 July together with a copy of the s.53 application itself.

2 10 August submission made on behalf of Stone Hill Park Limited (SHPL)

2.1 We do not agree that the proposed conditions attached to the licence are inadequate. Even so, RiverOak has agreed to many of SHPL's requested amendments through voluntary negotiations, as evidenced by the correspondence and draft licence enclosed with this letter

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sent to SHPL's legal advisers on 10 August and provided to PINS by us as part of the 1 August submission.

2.2 RiverOak has also agreed to a number of further changes requested by SHPL's legal advisers by email dated 5 September 2016 (a copy of this correspondence as well as the response to it dated 16 September and the accompanying draft s.53 licences are included). These changes include, at clause 3.1 the agreement not to allow [REDACTED] of RiverOak access to the site. While we think it is unreasonable to single out an individual in that regard, we have agreed that [REDACTED] of SHPL can accompany RiverOak's consultants on the site visits to provide the equivalent site knowledge.

2.3 Despite many concessions, RiverOak considers that there remain conditions that have been requested by SHPL which are unreasonable, in particular the following:

2.3.1 Clause 3.2.1: SHPL wish to terminate the licence for any breach whatsoever, even if it could be easily rectified. We have previously proposed that termination could be possible if a breach was notified and not rectified within 7 days. This was also refused on the basis that not all breaches are capable of rectification. We have therefore added a further amendment which takes account of the situation where rectification does not appear possible, and also provides a 7 day period for rectification where it is possible.

2.3.2 Clause 4.3: SHPL have an effective veto on access to the site by being able to challenge RiverOak's evidence that such access is required; we believe this to be unreasonable and amendments have been made to reflect a collaborative working approach instead.

2.3.3 Schedule 1: SHPL have continually asserted that the detail of the surveys required that have been provided by RiverOak are not sufficient and they have sought further detail and a limit on the number of days of access that the licence will permit. RiverOak's environmental consultants have consistently stated that they are not able to provide the detail sought as they have not had any access to the airport site and have very limited knowledge of what they might find on what is a very large site. However, RiverOak are prepared to offer a compromise which would limit access to the site to 60 days which should allow all survey work to be completed.

2.4 RiverOak is seeking access predominantly to those parts of the site that are not tenanted. However, as it has previously stated in its s.53 application and submission dated 17 August, it cannot guarantee that it will not require access to those parts of the site in which those listed at paragraph 1.1 above have an interest. There are two main reasons for this:

2.4.1 those referred to interests are not contained in registered leases and therefore the extent of their interest is not yet fully known; and

2.4.2 until RiverOak has access to the site it cannot ascertain whether it will be necessary to survey the land comprised in those interests.



- 2.5 As mentioned in the s.53 application and confirmed in paragraph 1.2 above, RiverOak has notified these persons with an interest in land of the s.53 application and PINS has done so too. No response has been received from these persons and although that cannot be taken to show that they do not object to land in which they have an interest being accessed, it does demonstrate that they have been given an opportunity to comment on the s.53 application. RiverOak also asks PINS to note that it is unlikely that access will be required to any buildings that are occupied. Access to buildings will only be necessary where there is a need to carry out environmental surveys within them, and where buildings are occupied that need is extremely unlikely. If access to buildings is required it would be to undertake surveys as part of the biodiversity, historic environment and land quality assessments in order to establish the baseline conditions for assessment. Such works would be non-intrusive and would require the collection of photographs and written notes only.
- 2.6 Should PINS not be persuaded to grant RiverOak access to those parts of the site in which those listed in paragraph 1.1 above have an interest, RiverOak would accept, at this stage, being granted access to the remainder of the site only, with a view to negotiating access to the outstanding areas should that be necessary.
- 2.7 However, when considering this issue RiverOak asks PINS to note that even if the individual companies with an interest in land grant RiverOak access to their area of the site voluntarily, SHPL, as freeholder of that area, may still be able to refuse RiverOak access to the area, depending on the terms of the leases. RiverOak would therefore ask that PINS grant access in respect of SHPL's interest in the whole of the site as requested in the s.53 application.

3 23 August submission made on behalf of Stone Hill Park Limited (SHPL)

- 3.1 We note the correspondence between SHPL and PINS on 23 August and confirm that RiverOak is in agreement with PINS that voluntary negotiations between RiverOak and SHPL should continue.
- 3.2 Given the slow progress of negotiations thus far, RiverOak also confirms that it will not be withdrawing or suspending its s.53 application in the interim.

4 Negotiations with SHPL

- 4.1 As stated in our submission on 17 August, an email enclosing the marked up licence with proposed amendments and further comments was sent to SHPL's legal advisers on 10 August. A response was received by Bircham Dyson Bell on 5 September and has been reviewed. A copy of the response provided to SHPL's legal advisers is enclosed with this letter, but the salient points of agreement and disagreement are set out above at paragraphs 2.2 and 2.3 above.

5 Access to the tenanted buildings

- 5.1 RiverOak's position on access to the tenanted buildings is addressed at paragraphs 2.3 to 2.5 above.

6 Consultation with the Department for Transport (DfT)

- 6.1 Although RiverOak has met the DfT in the context of this project, it has not entered into any negotiations with it in relation to its use of the land as a result of Operation Stack, since it does not have an interest in the land. RiverOak is not privy to the contractual arrangement that governs the DfT's use of the land but it understands that the DfT has yet to access the land for Operation Stack in practice and is restricted to the tarmacked area of the land (essentially comprising the main runway and approaches).
- 6.2 RiverOak is confident that the carrying out of surveys on the site will have no effect on Operation Stack and therefore on the DfT's interest in the land, and has accepted SHPL's drafting to accommodate Operation Stack being invoked in any case. RiverOak would be content for such a provision to be carried over into a s.53 consent.

7 Conclusion

- 7.1 In light of the above information, RiverOak asks PINS to grant the s.53 application. In particular, PINS is asked to note that the land to which RiverOak is seeking access remains mainly unused, save for the few buildings referred to above, as confirmed by SHPL's own lawyers at paragraph 2.2 of their letter to PINS dated 10 August.
- 7.2 Furthermore, as explained at paragraphs 2.3 to 2.5 above, RiverOak is unlikely to require access to occupied buildings and there is therefore likely to be no disruption to occupiers of the land and buildings. In addition, the large size of the site and minimal occupation of it needed by those carrying out RiverOak's surveys demonstrate that the overall effect on the site of carrying out the environmental surveys will be negligible.
- 7.3 RiverOak has made many compromises in order to reach agreement with SHPL, but agreement has still yet to happen. A landowner determined to thwart a project can sustain negotiations indefinitely, and we believe that the point has been reached where fruitful negotiations have been exhausted and that compulsory powers should be granted.
- 7.4 We trust that the Secretary of State considers this further information sufficient and that RiverOak is therefore given the authority to access the land for the purposes and to the extent set out in its s.53 application. For the avoidance of doubt, a clean copy of the draft licence, which reflects many of the negotiations between the parties to date is also enclosed, and RiverOak confirms that it would be content to be granted access to the land subject to the terms contained therein.

We look forward to hearing from you.

Yours sincerely


Senior Associate
For and on behalf of Bircham Dyson Bell LLP

cc  Herbert Smith Freehills

enc

Enclosure 1: Correspondence

Bircham Dyson Bell to Herbert Smith Freehills

10 August 2016

[REDACTED]

From: [REDACTED]
Sent: 10 August 2016 11:58
To: [REDACTED]
Cc: BDB Manston Airport Group
Subject: Manston Airport - Licence for Access [BDB-BDB1.FID9912138]
Attachments: s.53 Licence - tracked changes from HSF - BDB comments - 3 August 2016.DOCX;
Technical Note on Phase 1 and 2 Surveys FINAL.DOCX

[REDACTED]

Thank you for your letter of 7 July 2016.

I note your request that our client withdraws its s.53 application. However, given the slow progress of the negotiations concerning access to land which is largely out of use, our client is unprepared to withdraw. However, as your client suggests that it is still content to enter into private negotiations I attach a marked up version of the licence agreement, the contents of which I hope are self-explanatory, and draft lists which will form the basis of Schedule 1 and Schedule 2 to the licence agreement. I would be grateful if you could provide your comments at your very earliest possible convenience given the urgency that our client has to get onto the site. In addition to this please find below responses to the numbered points in your letter of 7 July, to the extent that responses were required.

1. Noted. Lists of Phase 1 and Phase 2 Survey Works are provided with this e-mail.
3. Amec Foster Wheeler is still in the process of considering your client's environmental impact assessment. As you suggest it was anticipated that access to leased buildings would require separate negotiation with the leaseholders.
4. Again, the consideration of your client's development proposals is underway. However, I am sure that you will accept that our client's consultants must carry out their own investigations based on the their professional judgment of what is required for the Manston Airport Project.
6. I have been advised by Amec Foster Wheeler that some of the surveys may, in fact, need to be carried out by consultants or contractors. This is dependent on the surveys that are required, and this will not become clear until the completion of the initial walkover surveys. Please see the mark up of the licence agreement for further comments.
13. It will not be necessary for RiverOak employees to be present for all of the surveys. However, it will help to reduce the number of surveys that our client needs to carry out if one RiverOak employee is allowed to accompany Amec Foster Wheeler on some occasions. This will invariably be [REDACTED] who has knowledge of the site which is not shared by Amec Foster Wheeler. This will allow Amec Foster Wheeler to locate points of interest for assessment as quickly as possible.
19. See 3. above.
20. Completion of the licence is out of the control of both parties. However, given that the vast majority of the site is not being used our client is of the opinion (and your client has previously agreed) that a completed licence should be obtainable with both parties acting reasonably. Our client remains unprepared to offer what is effectively a cheque for [REDACTED] with no guarantee that it will get anything in return. The offer in our letter dated 23 May 2016 (\$[REDACTED] regardless of completion and [REDACTED] upon completion) is considered to be a reasonable compromise where both parties have an incentive to reach completion on the agreement.

Please note that I will be away from the office from 12 August until 5 September. I would be grateful if you could respond to our project e-mail address (copied) in my absence.

Regards,

[REDACTED]



[REDACTED] Senior Associate, Government and Infrastructure

[REDACTED]
[REDACTED]

W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP

50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

[HSF Draft: 7 July 2016](#)

[BDB Comments and further comments 3 August 2016](#)

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

50 Broadway London T +44 (0)20 7227 7000
SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria W www.bdb-law.co.uk

THIS LICENCE is made on the day of 2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

1.1	<u>Buildings and Structures</u>	<u>Means any buildings or structures within the Property which are leased by the Licensor to third parties</u>
1.2	<u>DCO Application</u>	<u>Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses</u>
1.3	<u>Intrusive Surveys</u>	<u>Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys¹</u>
1.4	the Licensor	STONE HILL PARK LIMITED (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
1.5	the Licensee	RIVEROAK INVESTMENT CORPORATION (Company No. [] whose registered office is at [])
1.6	<u>Licensee's Agent</u>	<u>Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee</u>
1.7	Licence Period	Means the period of <u>12</u> months from and including the date of this Licence
1.8	<u>Daily Payment</u>	Means the amount of ██████ , plus VAT
1.9	<u>Operation Stack</u>	<u>The provision of parking facilities on the Property to alleviate pressure on the arrangements known as Operation Stack</u>
1.10	Property	Means the property known as Manston Airport, title number K803975, <u>excluding Buildings and Structures</u> , and shown edged red on the Plan annexed to this Licence ²

Commented [HA1]: The Licensee will be a limited company which is in the process of being set up. Details to be provided.

Commented [HA2]: This needs to be broader than just Amec Foster Wheeler. It is likely that external sub-consultants will be required. For instance, there may be a need for specialist unexploded ordnance work which Amec would not carry out.

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Commented [HA3]: 12 months will be required to complete seasonal surveys.

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¹ A standard s53 authorisation definition

² The terms of the leases granted to the occupiers of the site do not allow us to grant access to a third party. For this reason, access to buildings and structures must be excluded from this licence

1.11 Phase 1 Survey Works

Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys.

Means the surveys described in Schedule 2, and "Phase 2 Survey" means one of these listed surveys.

1.12 Phase 2 Survey Works

Means the Phase 1 Survey Works and the Phase 2 Survey Works

1.13 Survey Works

Deleted: of the property including, but not limited to, the taking of samples of soil, surface water and study of species

2 Interpretation

2.1 In interpreting this Licence, and for the avoidance of doubt:

- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

3.2 Subject to this clause, 3 and clause 5, the Licensor gives to the Licensee s Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works. The Licensee's Agent's right to access the Property pursuant to this Licence shall.

3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee's Agent and that breach cannot be rectified within seven (7) days. and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack⁴ and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works.

Commented [HA4]: This does not permit the Licensee to access the Property. We have already mentioned RiverOak's desire to have a maximum of 1 representative access the property on any one day with Amec Foster Wheeler. This will invariably by [REDACTED] who has specialist knowledge of the site which would enable its consultants to locate areas that are of interest to their investigations. This is likely to reduce the number of days of access required which would be in Stone Hill Park Limited's interests.

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Deleted: its workmen, contractors, consultants, agents and employees

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Commented [HA5]: Additional wording to allow for rectification of minor breaches.

Commented [HA6]: To allow for access in the situation where that access would not impede Operation Stack.

³ This is a standard provision of s53 authorisations.

⁴ As agreed in relation to point 17 of our exchange of letters.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

Commented [HA7]: See comment regarding lack of access for Licensee at 3.1

Deleted: and undertakes

4.2 The Licensee will:

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4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out⁵;

Deleted: give not less than two (2) days' notice to the Licensor of the following

Commented [HA8]: Wording altered to ensure collaboration, rather than allowing the Licensor an effective veto on access.

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4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

Deleted: the date(s) and times when access is required in connection with the Survey Works

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4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

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4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out.

Commented [HA10]: As for 4.2.1 above

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4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.

Commented [HA11]: See earlier comment. Our client considers this provision both unnecessary, and counter-productive for the purposes of Stone Hill Park Limited.

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4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third

⁵ This type of detail is standard for s53 authorisations.

⁶ As stated in point 13 of our letter of 7 July, we see no need for this access by Riveroak staff.

party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence⁷.

- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey⁸.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same⁹.
- 4.9 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.10 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.11 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.
- 4.12 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹⁰.
- 4.13 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works¹¹.
- 4.14 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out¹².
- 4.15 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an

Deleted: The Licensee undertakes to ensure that its workmen, contractors, consultant, agents and employees will be the only persons permitted access to the Property and the Licensee agrees to procure that all persons upon the Property pursuant to this Licence will comply with the Licensee's obligations in this Licence.

Deleted: ensure that once the Survey Works have been completed the Property is left secured and in no worse state than existed prior to the beginning of the Licence Period

Commented [HA12]: Please clarify the level of security that is in place at the site.

⁷ Amended to more closely accord with standard s53 provisions

⁸ As agreed in relation to point 7 of our exchange of letters

⁹ This is standard in s53 authorisations

¹⁰ This is standard in s53 authorisations

¹¹ This is standard in s53 authorisations

¹² This is standard in s53 authorisations

environmental statement and other documentation forming part of the Licensee's DCO Application¹³.

4.16 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.

4.17 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2 and 4.3 above as being reasonably necessary for the Survey Works.

6 General

6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts or omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to Paul Barber [insert email address] at the Licensor or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence and on the date of the completion of the Licence, the Licensee agrees to pay to the Licensor (within 28 days of demand) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.

8.2 The Licensee shall indemnify the Licensor against

Commented [HA13]: Environmental information will be contained in documents other than the ES itself. This amendment to cover this.

Deleted: impact assessment

Deleted: pre-application consultation in connection with the

Deleted: <#>The Licensee shall ensure that, within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.¹⁴

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Deleted: , the Licensee's Consultant and employees and authorised agents and sub-consultants

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Deleted: PROVIDED THAT in agreeing a programme the parties shall take into account and seek to avoid any interference that the Survey Works might cause to surveys being carried out by the Licensee for the purpose of their own proposed redevelopment of the Property¹⁵.

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Commented [HA15]: A clause of this nature is acceptable but 28 days has been substituted as this more accurately reflects standard business practice.

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¹³ As agreed in respect of point 14 of our exchange of letters.

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored to by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works; and¹⁶

8.2.2 all losses suffered by the Licensor due to termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such termination arises due to the Licensee's Agent failing to vacate the property in accordance with clause 3.1.2.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [£xxx]

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10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

¹⁶ As agreed in respect of point 15 of our exchange of letters.

SCHEDULE 1

Phase 1 Survey Works¹⁷

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁷ Further to point 12 of our letter, please insert details of the Phase 1 Surveys– inserting the level of detail you are willing to be bound by in terms of scope

SCHEDULE 2

Phase 2 Survey Works¹⁸

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application.

¹⁸ Further to point 12 of our letter of 7 July, please insert details of the Phase 2 Surveys you may wish to carry out – inserting the level of detail you are willing to be bound by in terms of scope

IN WITNESS whereof the parties have set their hands on the date first above written

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¶

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory



Technical note: Manston Airport EIA Survey requirements

1. EIA survey requirements

1.1 Background

- 1.1.1 An Access Licence between Stone Hill Park and Riveroak is currently being drafted allowing access to the Manston Airport site for survey work to be undertaken in relation to the EIA. Stone Hill Park have requested that the surveys are split into two Schedules within the licence agreement: Phase 1 and Phase 2 surveys.
- 1.1.2 Prior to accessing the site, Amec Foster Wheeler will need to prepare a schedule of surveys, associated risk assessments and method statements and programme of visits for consultation with the land owner to ensure that our surveys do not interfere with any of the surveys being undertaken by Stone Hill Park.
- 1.1.3 This consultation prior to access needs to be undertaken for Phase 1 and then again for Phase 2 surveys.
- 1.1.4 In drafting the licence Riveroak are being asked to populate Schedules 1 and 2 of the licence with the surveys identified as either Phase 1 or Phase 2 surveys.
- 1.1.5 Given the potential for delays to be caused by this two Phase survey proposal we are endeavouring to identify the broadest range of Phase 1 surveys to include within the Licence. This paper sets out our suggestions for Schedule 1 and Schedule 2 of the licence.

1.2 Schedule 1

- 1.2.1 Table 1.1 sets out the comprehensive Schedule 1 list of Phase 1 Surveys. Given the seasonal constraints and the delays encountered to date for gaining access to the site, the full suite of ecological surveys is considered highly likely to be required.
- 1.2.2 It is assumed that the licence will be valid for a minimum of 12 months to allow a full year of ecological surveys to be undertaken, without further delay.

Table 1.1 Schedule 1 – Phase 1 Surveys

Survey	Descriptions
Extended Phase 1 Survey	Walkover survey – taking notes and mapping habitats
Reptile Surveys	Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.
Bird Surveys	Walkover surveys using binoculars

Bat Surveys	Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.
Great crested newt surveys (unlikely to be required)	All water bodies to be checked using torches, nets and bottle traps during the evening and morning.
Badger surveys	Walkover survey looking for field signs / evidence of presence.
Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

1.3 Schedule 2

- 1.3.1 Table 1.2 sets out the Schedule 2 list of possible Phase 2 Surveys. Until the initial surveys are undertaken the full scope of further survey work is extremely difficult to predict.
- 1.3.2 It is assumed that the licence will be valid for a minimum of 12 months to allow a full year of ecological surveys to be undertaken, without further delay.

Table 1.2 Schedule 2 – Phase 2 Surveys

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the site for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
Non-intrusive geophysical survey of site	To support identification of archaeological remains
Targeted trial trenching based on outputs of geophysical survey	Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies
Historic building recording	To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys
Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study



Author

Reviewer

.....
[Redacted]

.....
[Redacted]

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Enclosure 2: Correspondence

Herbert Smith Freehills to Bircham Dyson Bell

5 September 2016

[REDACTED]

From: [REDACTED]
Sent: 05 September 2016 15:05
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Manston Airport - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9912138]
Attachments: 160331_EN010012_Sizewell C_Section_53_Authorisation_ISSUED.PDF; 38787990_1.docx; 38787985_2.docx

[REDACTED]

Please find attached my response to your email below. Please note that I am copying my response to the Planning Inspectorate.

Kind regards

[REDACTED]

From: [REDACTED]
Sent: 10 August 2016 11:58
To: [REDACTED]
Cc: BDB Manston Airport Group
Subject: Manston Airport - Licence for Access [BDB-BDB1.FID9912138]

[REDACTED]

Thank you for your letter of 7 July 2016.

I note your request that our client withdraws its s.53 application. However, given the slow progress of the negotiations concerning access to land which is largely out of use, our client is unprepared to withdraw. However, as your client suggests that it is still content to enter into private negotiations I attach a marked up version of the licence agreement, the contents of which I hope are self-explanatory, and draft lists which will form the basis of Schedule 1 and Schedule 2 to the licence agreement. I would be grateful if you could provide your comments at your very earliest possible convenience given the urgency that our client has to get onto the site. In addition to this please find below responses to the numbered points in your letter of 7 July, to the extent that responses were required.

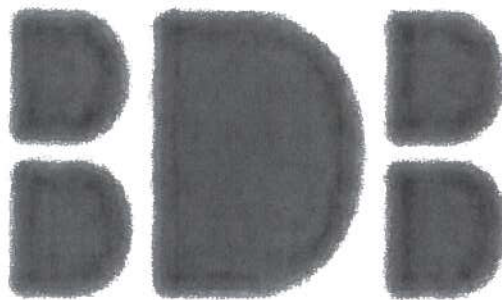
1. Noted. Lists of Phase 1 and Phase 2 Survey Works are provided with this e-mail.
3. Amec Foster Wheeler is still in the process of considering your client's environmental impact assessment. As you suggest it was anticipated that access to leased buildings would require separate negotiation with the leaseholders.
4. Again, the consideration of your client's development proposals is underway. However, I am sure that you will accept that our client's consultants must carry out their own investigations based on their professional judgment of what is required for the Manston Airport Project.
6. I have been advised by Amec Foster Wheeler that some of the surveys may, in fact, need to be carried out by consultants or contractors. This is dependent on the surveys that are required, and this will not become clear until the completion of the initial walkover surveys. Please see the mark up of the licence agreement for further comments.
13. It will not be necessary for RiverOak employees to be present for all of the surveys. However, it will help to reduce the number of surveys that our client needs to carry out if one RiverOak employee is allowed to accompany Amec Foster Wheeler on some occasions. This will invariably be [REDACTED] who has knowledge of the site which is not shared by Amec Foster Wheeler. This will allow Amec Foster Wheeler to locate points of interest for assessment as quickly as possible.
19. See 3. above.

20. Completion of the licence is out of the control of both parties. However, given that the vast majority of the site is not being used our client is of the opinion (and your client has previously agreed) that a completed licence should be obtainable with both parties acting reasonably. Our client remains unprepared to offer what is effectively a cheque for [REDACTED] with no guarantee that it will get anything in return. The offer in our letter dated 23 May 2016 [REDACTED] regardless of completion and [REDACTED] upon completion) is considered to be a reasonable compromise where both parties have an incentive to reach completion on the agreement.

Please note that I will be away from the office from 12 August until 5 September. I would be grateful if you could respond to our project e-mail address (copied) in my absence.

Regards,

[REDACTED]



BIRCHAM DYSON BELL

[REDACTED] Senior Associate, Government and Infrastructure

[REDACTED]
[REDACTED]
W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL
British Legal Awards 2015 'Property Team of the Year'
Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

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AUTHORISATION UNDER SECTION 53 OF THE PLANNING ACT 2008
LAND AT THEBERTON HOUSE ESTATE, THEBERTON, SUFFOLK
PURSUANT TO A REQUEST MADE ON 15 JULY 2015 BY NNB
GENERATION COMPANY (SZC) LIMITED

1. For the purposes of this Authorisation, including the Conditions set out in Annex 1, the following words have the following meanings:

"Act"	The Planning Act 2008 (as amended)
"Applicant"	NNB Generation Company (SZC) Limited Company Number: 9284825
"Authorised persons"	the Applicant and any persons authorised by the Applicant as notified to the Occupier in accordance with Condition 9
"Authorisation date"	the date of this Authorisation
"Authorisation period"	the period from the Authorisation date to the Expiry date (both dates inclusive)
"Authorised surveys"	the intrusive and non-intrusive surveys as described in the Schedule of Surveys contained in Annex 2
"Authorisation plan"	the plan attached to this Authorisation
"Conditions"	the conditions set out in Annex 1
"Expiry date"	31 May 2017 or (if earlier) the date of submission of an application for development consent for the Project pursuant to s37 of the Act
"Land"	land forming part of the Theberton House Estate, being part of the land comprised within title number SK135737 and registered at HM Land Registry with title absolute as shown for identification purposes coloured green on the Authorisation plan but excluding the Potters Farm land

"Landowners"



"The Occupier"

means the Landowners, their successors in title, and any such other person as may be notified to the Applicant as being in occupation of the Land or any part thereof

"Potters Farm land"

The area shown in green with black hatching on the Authorisation plan and labelled as 'Potters Farm land' in the key to that plan

"The Project"

the proposed Sizewell C Nuclear Generating Station and associated development

2. In exercise of the power conferred on the Secretary of State for Communities and Local Government ("the Secretary of State") by Section 53(1) of the Act, the Secretary of State authorises the Authorised persons to enter onto the Land for the following purposes:

- a) surveying and taking levels in connection with a proposed application for an order granting development consent for the Project and in order to facilitate compliance with the provisions mentioned in Section 53(1A) of the Act , and
- b) to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals or other matter in it.

3. This Authorisation is granted for the Authorisation period.

4. This Authorisation is given subject to compliance with the Conditions which are necessary to ensure that the Landowners' legitimate interests are protected.

Reasons for the decision are attached.

S Twidle

Sheila Twidle
Head of Environmental Services
For and on behalf of the Secretary of State for Communities and Local Government

31 March 2016

AUTHORISATION UNDER SECTION 53 OF THE PLANNING ACT 2008
AUTHORISATION REQUEST IN RELATION TO THE LAND PURSUANT TO
A REQUEST MADE ON 15 JULY 2015 BY THE APPLICANT

REASONS FOR THE DECISION

The Applicant notified the Landowners and Occupiers in letters dated 10 July 2015 and 2 October 2015 that a Section 53 authorisation request had been made to the Planning Inspectorate. This follows the advice in the Planning Inspectorate's Advice Note 5: 'Section 53 – Rights of Entry' (dated April 2015) ('Advice Note 5'). Following requests for further information made by the Planning Inspectorate to the Applicant, and the submissions of further information by the Applicant, the final date for receipt of a response from the Landowners and the Occupiers of [REDACTED] to the Planning Inspectorate was 3 December 2015.

The information provided by the Applicant demonstrates that the Applicant has sought to agree access to the Land with the Landowners between October 2012 and May 2015. The Applicant had not sought access to [REDACTED] during this time. However the authorisation request did include [REDACTED]. The Applicant sought separately to discuss access to [REDACTED] with the Occupiers through letters dated 1 October 2015, 7 October 2015, 16 November 2015 and 18 January 2016; and also sent the Occupiers copies of letters addressed to the Planning Inspectorate of 6 November and 18 December 2015. At the present time, no meeting has taken place between the Occupiers and the Applicant and no agreement has been made with the Occupier to access [REDACTED].

Entry to the Land is needed to enable the Applicant to carry out surveys required to inform the Project. The surveys proposed by the applicant cover information that would be required to inform an Environmental Impact Assessment. Allowing further time for further correspondence and negotiation would risk substantially delaying the Project.

The Landowners' stated objections to granting access relate to:

- the lack of progress with the proposed development;
- the need for the Landowners to have access to the necessary professional advice;
- the Landowners requiring an undertaking in respect of their reasonable costs; and
- the Landowners right to refuse access to their land until an appropriate and reasonable costs undertaking is agreed with the applicant.

The Occupiers of [REDACTED] object to granting access because they consider they have not to date been provided with sufficient explanation by the Applicant to enable them to understand the implications of the proposed access. Therefore they have difficulty in providing informed comments about the authorisation request to the Planning Inspectorate.

The Secretary of State is satisfied that the applicant has sought to agree access to the Land (excluding the [REDACTED] land) with the Landowners over a reasonable period of time (between 2013 and 2015) and on reasonable terms, and that there is nothing in the correspondence to suggest that further negotiations would result in the reaching of an agreement. The Secretary of State is satisfied that entry to the Land is needed to enable the Applicant to carry out surveys required to inform the Project. However, the Secretary of State is not satisfied that the Applicant has demonstrated a genuine requirement to enter the [REDACTED] land, nor that evidence has been provided to demonstrate reasonable efforts to agree access with the Occupiers of [REDACTED]

The Secretary of State is satisfied on the basis of the information provided and available that he may authorise the service of a notice under Section 53(1) and Section 53(3A) of the Act for the Land (excluding the [REDACTED] land), and that this Authorisation is justified and proportionate in the wider public interest in this particular instance.

S Twidle

Sheila Twidle

Head of Environmental Services

For and on behalf of the Secretary of State for Communities and Local Government

31 March 2016

ANNEX 1

CONDITIONS

1. Interpretation

In these Conditions the following words and expressions shall, unless otherwise stated, have the following meanings:

"Authorisation"	the authorisation granted by the Secretary of State pursuant to the Application to which these Conditions are annexed
"Intrusive surveys"	those Authorised surveys that are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys
"Non-intrusive surveys"	walkover surveys including the taking of measurements and levels by non-intrusive equipment and methods and the taking of photographic records but excluding any works to search and bore
"Notice"	Not less than 14 days written notice of any intended entry to carry out an Authorised survey or any lesser period that may from time to time be agreed in writing by the person on whom the Notice is to be served
"Working day"	any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday
"Working hours"	the hours between 7.00am and 7.00pm of any Working day

2. In these Conditions unless the context otherwise requires:

- a) any gender includes any other gender;
- b) the singular includes the plural and vice versa;
- c) references to persons include natural persons, firms, companies, corporations and their successors in title;
- d) the headings are for convenience only and do not affect interpretation;
- e) any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation from time to time.

General

3. Entry onto the Land is authorised only:

- a) for the Authorised surveys;
- b) for the purposes of surveying and taking levels of the Land and to facilitate compliance with the Environmental Impact Assessment Directive¹, the Habitats Directive² or any European Union instrument which replaces all or any part of these Directives;
- c) on Working days; and
- d) during Working hours (unless for the purpose of carrying out surveys for bats, great crested newts, breeding birds or taking photographs for the purpose of landscape and visual assessments).

4. No Authorised person shall enter the Land otherwise than in accordance with the Authorisation and these Conditions.

5. The Authorised persons' right of entry onto the Land pursuant to the Authorisation shall immediately cease if any Authorised person is in breach of the Authorisation or any of these Conditions.

6. These Conditions are in addition to the provisions of section 53 of the Act (as amended) ("Section 53") but if there is any conflict between the Conditions and the provisions of Section 53 the latter shall prevail.

7. The Occupier retains control, possession and management of the Land and no Authorised person has the right to exclude the Occupier from the Land save where exclusion from the Land or part of the Land is necessary in order to properly carry out the Authorised Surveys or such exclusion is required on

¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time.

² Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time.

grounds of health and safety.

8. Entry onto the Land is authorised only:

- a) provided the activities undertaken in connection with the Authorised survey(s) will not constitute an offence in themselves including an offence under Regulation 41 of the Conservation of Habitats and Species Regulations 2010 (as amended); and
- b) subject to all necessary consents (if any) in relation to carrying out the Authorised survey(s) having first been obtained.

Notice of entry

9. Before any person may enter the Land to carry out an Authorised survey the Applicant must give Notice to the Occupier, such Notice to include the following:

- a) details of the areas, type, purpose and timing of Authorised surveys together with details of how access to the survey site is to be achieved;
- b) details of the type and nature of any equipment and apparatus to be used;
- c) the name and address of any Authorised person who is authorised by the Applicant to enter the land to carry out the Authorised survey and details (including telephone number) of the Authorised person who will have management responsibilities for undertaking the Authorised survey(s);
- d) the date or dates when access is required to carry out the Authorised survey(s) and the period of time for which access is required; and
- e) a copy of Annex 2 to this Authorisation entitled "Survey Requirements for 'The Land'".

Carrying out the Authorised survey(s)

10. In carrying out the Authorised survey(s) the Authorised person shall:

- a) cause as little damage as is possible and upon completion of the final Authorised surveys, or if earlier on the expiry of the Authorisation, shall make good any damage caused to the reasonable satisfaction of the Occupier and remove any apparatus or equipment taken on to the Land by the Authorised person in connection with the Authorised surveys on completion of the same;
- b) not do any act, matter or thing which would or might constitute a breach of any law (including without limitation common law), statute, regulation, rule, order, byelaw or notice, or which would

or might vitiate in whole or in part any insurance effected by or on behalf of the Occupier in respect of the Land from time to time;

- c) at all times take all measures as are reasonably necessary to maintain the same level of security in respect of the Land which would exist but for the undertaking of the Authorised survey(s);
- d) not cause any nuisance, disturbance, annoyance, inconvenience or unreasonable interference to the Occupier or to adjoining and/or neighbouring property and/or to the owners, occupiers or users of such adjoining or neighbouring property;
- e) prior to carrying out Intrusive surveys, to prepare a photographic record of condition of the part of the Land in respect of which the Intrusive surveys are to be carried out;
- f) not display any signs or notices at the Land other than those required pursuant to statute;
- g) not interfere with the existing use of the Land other than to the extent reasonably necessary to carry out the Authorised survey(s);
- h) observe the Occupiers' reasonable health and safety policies and site rules previously notified to the Authorised person in writing;
- i) produce on demand identification and confirmation of their authorisation by the Applicant to carry out the Authorised survey(s) and to inform the Occupiers when leaving the property; and
- j) not to enter onto [REDACTED] land.

Authorised persons' equipment

11. Authorised persons may not leave equipment required to undertake cable percussive boreholes, rotary boreholes or sonic boreholes on the Land when it is not in use, but may leave all other monitoring apparatus and equipment in place on the Land until completion of the final Authorised survey or if earlier the expiry of the Authorisation and shall forthwith thereafter remove any such apparatus or equipment.

Insurance

12. The Applicant shall:

- a) subject to provision of written evidence of such requirements, pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Occupier which may have become payable as a result of the Authorisation; and

- b) ensure that those who work on its behalf hold suitable and adequate insurance in respect of public and third party liability and provide proof of said insurance to the Occupier prior to carrying out any Authorised surveys.

ANNEX 2

SCHEDULE OF AUTHORISED SURVEYS

Survey Requirements for 'The Land', [REDACTED]

This table should be read in conjunction with Sizewell C Proposed Nuclear Development Sizewell C EIA Scoping Report, April 2014 Planning Inspectorate Ref. EN010012 and The Planning Inspectorate Scoping Opinion for Sizewell C Proposed Nuclear Development, June 2014

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	LUXO Survey required?	NEED FOR SURVEY	SURVEYORS
Soils & Agriculture						
Soils & Agriculture	10 days	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted	All access would be on foot using hand held equipment only Sample locations (1 auger hectare based on a grid over the land) would be located and recorded using a hand-held Geographic Information System (GIS) The soil profile would be examined at each sample location to a maximum depth of approximately 1.2m by hand with the use of a 5cm diameter soil auger screwed into the ground by hand. Depending on what crop is being grown it would be possible to limit access to tram lines only Subject to the results of the hand augers it may be necessary to dig a small trial hole (by hand using a spade). All material dug up would be replaced immediately once the profile had been described.	Yes	Access is required in order to understand what agricultural land classification the land is which will inform the baseline of the assessment to be reported in the Environmental Statement. The approach was described in the Sizewell C EIA Scoping Report (April 2014) (the Scoping Report) Chapter 7 Section 9 (Soils and Agriculture) (paragraphs 7 9 21 - 7 9 23 and 7 9 25) and endorsed in the Scoping Opinion (paragraph 3 84)	Up to 3 people
Geology and Land Quality						
Geology and Contaminated Land	2 days	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted	A non-intrusive site walkover across the site would be undertaken by surveyors who would take photos and look at the site's characteristics	No	Access is required in order to inform the Phase 1 Contaminated Land Desktop Study which will inform the baseline of the assessment to be reported in the Environmental Statement. The approach was described in the Scoping Report, Chapter 7 Section 10 (Geology and Land Quality) (paragraphs 7 10 7, 7 10 16 and 7 10 17) and endorsed in the Scoping Opinion (paragraph 3 89)	Up to 2 people
Terrestrial Historic Environment						
Geophysical Survey	2 weeks	The exact dates would be determined by the crop on the field at the time as some crops are too thick for a survey to take place	A non-intrusive (walkover) magnetometer survey across the site would be undertaken by surveyors using hand held equipment. Some canes / pegs would be brailly inserted into the ground to ensure that the surveyors follow a straight line and that the lines do not overlap, but these would be removed immediately following completion of the survey	No	Access is required in order to establish whether the land contains buried archaeology. The results would provide an indication as to the presence / absence of buried archaeology. It would be used to determine the location and extent of any intrusive (trial) trenching. The approach was described in the Scoping Report, Chapter 7 Section 5 (Terrestrial Historic Environment) (paragraphs 7 5 8 and 7 5 29 to 7 5 32) and endorsed in the Scoping Opinion (paragraph 3 57)	Up to 5 people
Trial trenching	4 months	The survey would be undertaken as soon as crops were removed from the fields and the Geophysical Survey had been completed	A 3.5% trial trenching sample is likely to be required, comprising around 98-183 trenches of 50m by 2m. The locations and extent of the trial trenching would be agreed with Suffolk County Council Archaeological Service (SCC AS) and would be targeted on the geophysical anomalies along with a few "blank" areas to check the survey has worked. The depth of the trenches would be determined by the depth of the archaeology but would typically be 1m with some small areas of deeper excavation of individual features. If appropriate Topsoil and subsoil excavated from each trench would be placed separately at a minimum distance of 1m from the edge of the trench. Waterlogged trenches would be drained prior to backfilling. Topsoil and subsoil would be replaced as separate horizons with the subsoil below the topsoil	Yes	Access is required in order to confirm the presence absence of archaeology and allow any archaeology found to be identified in terms of its importance and date. This would enable the magnitude-effect of impact to be assessed and an appropriate mitigation strategy to be agreed with the statutory consultees. The approach was described in the Scoping Report, Chapter 7 Section 5 (Terrestrial Historic Environment) (paragraphs 7 5 8 and 7 5 29 to 7 5 32) and endorsed in the Scoping Opinion (paragraph 3 57)	Up to 20 people. In addition, English Heritage are likely to visit at least once and up to 3 visitors from the County Council's Archaeology Team area likely to visit once a week
Terrestrial Ecology and Ornithology						
Extended Phase 1 Habitat Survey	1 day	As soon as possible once access to the site has been granted - the survey is not seasonally dependant	Non-intrusive site walkover to map habitat types and species within the site boundary. This will involve walking around field boundaries and looking at, but not disturbing hedges and trees and any other uncultivated land which could provide habitat for legally protected and notable species. Equipment will be clipboard, pen/pencil and a handheld GPS device	No	Needed to assess the actual or potential presence of legally protected and notable species at the site and will determine the requirement for additional species specific survey work. Legally protected species refers to species afforded protection by the Wildlife and Countryside Act (1991) as amended, the Conservation of Habitats and Species Regulations 2010 and species listed on Section 41 of the Natural Environment and Rural Communities Act 2006 (All the species specific surveys that may be required as an outcome of this survey are detailed below). Described in Scoping Report, Chapter 7 Section 2 Terrestrial Ecology and Ornithology in particular paragraph 7 2 5 table 7 2 1 and paragraph 7 2 11. Endorsed in Scoping Opinion paragraph 3 38	2 people
Static Bat Activity Surveys - Required subject to findings of Extended Phase 1 Habitat Survey	6 half hour visits to place and retrieve detectors	Surveys to be carried out monthly between May and October, split over two consecutive years if necessary to meet seasonal requirement	The monitoring would comprise static bat detectors (size of AA battery) positioned around the site, on suitable trees (non-intrusive) or stand alone posts. Location of posts or position on the trees can be discussed and agreed with landowner should he wish, as well as radio-tracking (see below). The static bat detectors would be positioned for month-long recording throughout the survey period with site visits to retrieve data from the devices every month	No	Given that bats are legally protected under the Wildlife and Countryside Act (1991 as amended) and the Habitat Regulations (2010), surveys are required to understand the bat species that occur on site, the whereabouts of their main roosting and foraging habitat and key movement corridors. This information would enable us to identify any potential impacts and required mitigation. Described in Scoping Report, Chapter 7 Section 2 Terrestrial Ecology and Ornithology in particular paragraph 7 2 5 table 7 2 1 and paragraph 7 2 11. Endorsed in Scoping Opinion paragraph 3 38	Up to 2 people

Survey Requirements for 'The Land': [REDACTED]

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	LUXO Survey required?	NEED FOR SURVEY	SURVEYORS
Bat Radio Tracking Exercise - Required subject to findings of Extended Phase 1 Habitat Survey	4 visits in one week	August 2015	The Radio tracking would either be via (a) tracking individual bats or (b) tracking larger numbers of bats. Trapping occurs at night on the first day of access. If no bat is trapped there will be another attempt on the second day of access. Trapping involves placing a net over a tree where there are known to be bats. Bats are caught, a tracker is placed on them and they are released. The following day the surveyors will return to site to see where the bat is roosting and then following and then the bats are 'tracked' by day and night over the subsequent days to see where they roost during the day and travel by night.	No	The radio-tracking exercise would verify the static monitoring to provide information on bat behaviours to provide biological context to the static monitoring results. Described in Scoping Report Chapter 7 Section 2 Terrestrial Ecology and Ornithology in particular paragraph 7.2.5 table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	Up to 4 people
Bats Emergence Survey - Required subject to findings of Extended Phase 1 Habitat Survey	3 surveys at each roost each survey will require a visit at dusk and the following dawn	Surveys to be spread between April and September split over two consecutive years if necessary to meet seasonal requirement	Down and dusk surveys involves watching for bats leaving and returning to their roosts respectively allowing for the identification of roost sites confirmation of species type population estimates etc.	No	Any development that could impact on bats requires survey work to be carried out and an impact assessment conducted. Described in Scoping Report Chapter 7 Section 2 Terrestrial Ecology and Ornithology in particular paragraph 7.2.5 table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	4 people
Reptile Survey - Required subject to findings of Extended Phase 1 Habitat Survey	20 visits	Surveys to be carried out in April, May and September over two consecutive years if necessary to meet seasonal requirement	For reptile surveys reptile refugia (squares of carpeting) would be placed in areas of suitable habitat within the site boundary (not on cultivated land) and left in-situ for the survey period. These would be checked for the presence of reptiles on each visit and removed once the survey is completed. A vehicle (small 4x4 which will keep off any cultivated land) may be required to bring the equipment on to site. The 20 reptile surveys visits will take place on fine days (avoiding periods of heavy rain) in April, May and September with the 20 days being spread over these months depending on the weather. Each visit would take place during daylight hours (most likely to be mid-morning or early afternoon) and each visit will take 3-4 hours to complete.	No	If the potential for reptiles exists surveys will firstly confirm whether reptiles are present or absent and secondly estimate an approximate population size in order to inform mitigation. Described in Scoping Report Chapter 7 Section 2 Terrestrial Ecology and Ornithology in particular paragraph 7.2.5 table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Great Crested Newt Surveys - Required subject to findings of Extended Phase 1 Habitat Survey	8 surveys requiring a visit in the evening to place equipment and the following morning to remove equipment. The evening/nighttime visits and the subsequent morning visit will take approximately 1 hour for each pond or other water body that are present	Mid March to early July. Surveys will be spread at least 1 week apart and at least two of the visits have to be in the period Mid April to Mid May. Surveys will need to be carried out over two consecutive years if necessary to meet seasonal requirement	Surveys undertaken by a licenced surveyor. As newts are largely nocturnal surveying is best conducted at night, and during the breeding period of mid March to early July. Four visits are required to determine presence or absence however a total of six surveys will be carried out to estimate the population size. A minimum of 50% of these visits must take place between mid April and mid May. Survey techniques used: Egg search - visual survey Torching - High power torches are used to shine into the pond at night when newts are most active Netting - A long-handled dip net is used to search for newts Bottle trapping - Plastic bottle traps are submerged in the water at dusk and checked and removed the following morning. Bottle trapping can only be used when the night-time temperature is suitable. Newts swim into the traps and are unable to exit until released. Each survey will require an evening visit to place bottle traps in the pond and shine a torch across the water of the pond when it is dark, and a follow up visit early the following morning to remove the bottle traps and release any newts captured. All survey materials will be removed in the morning and brought back to site on the next evening visit. Terrestrial search - Refugia such as logs rubble discarded carpet and wood are carefully inspected underneath and then replaced. This is best done during the daytime and can be done out of the breeding season (March to May)	No	Described in Scoping Report Chapter 7 Section 2 Terrestrial Ecology and Ornithology in particular paragraph 7.2.5 table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2-4 people
National Vegetation Classification - Required subject to findings of Extended Phase 1 Habitat Survey	2 days	April - September 2016	The NVC survey is a botanical survey and will involve a person with a clipboard placing a 2m by 2m square frame on the ground and recording the plant species growing within it together with their % abundance within the square frame. It is likely that photographs will be taken and these will be published in the Environmental Statement. The survey would not trample any agricultural crops and is likely to be restricted to woodland and areas of permanent grassland.	No	Detailed vegetation information is required to determine plant communities which also provides essential information on the value of wildlife resources found at a particular site. Described in Scoping Report Chapter 7 Section 2 Terrestrial Ecology and Ornithology in particular paragraph 7.2.5 table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people

Survey Requirements for 'The Land', [REDACTED] [REDACTED] [REDACTED]

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	LMO Survey required?	NEED FOR SURVEY	SURVEYORS
Breeding Birds Survey - Required subject to findings of Extended Phase 1 Habitat Survey	3 days	April - May & June 2016 split over 2 consecutive years if necessary to meet seasonal requirement	Surveys consist of two to ten visits recording and mapping all bird species seen or heard along with any relevant behaviour such as gathering nesting material, territorial calling, fighting or feeding young. The breeding bird survey will comprise three visits once a month in April, May and June. Each survey would take place from just after dawn until 9 or 10 am in the morning. It involves a surveyor with binoculars plotting all observations of birds seen or heard on a map.	No	Survey is required as an emphasis is placed on the sustainability of the site for Schedule 1 and UKBAP species and also species of conservation concern. Described in Scoping Report, Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	3 people
Overwintering Bird Survey - Required subject to findings of Extended Phase 1 Habitat Survey	4 days	November 2015 - February 2016	Surveys consist of at least four visits undertaken between September and March (key months of December, January to February) to record any notable assemblages of feeding and/or roosting bird species. The wintering bird survey will involve four visits once a month in Nov, Dec, Jan and Feb and will take place from 8am until 11 or 12 am. It involves a surveyor with binoculars plotting all observations of birds seen or heard on a map.	No	To record any notable assemblages of feeding and/or roosting bird species. Described in Scoping Report, Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	3 people
Invertebrates Survey - Required subject to findings of Extended Phase 1 Habitat Survey	3 days	May - July and September 2015 split over 2 consecutive years if necessary to meet seasonal requirement	The survey will involve a combination of different sampling methodologies ie light traps, malaise traps, suction sampling and pitfall trapping. The use of light traps will be to catch moth species. This will involve setting up a light trap powered by a small petrol generator in the evening and then coming back in the morning to identify the moths caught. The light traps would be set at a sufficient distance from any residential dwelling to avoid any noise or light nuisance.	No	Described in Scoping Report, Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Otter and Water Vole Surveys - Required subject to findings of Extended Phase 1 Habitat Survey	2 days	A single survey in the period between April to September 2016	Water Vole - Water Vole presence can be determined by field signs during the breeding season when they are most active above ground. The survey period is weather dependent but runs approximately from April to September. Field signs include droppings and latrines, burrows, grazed lawns around burrow entrances and feeding remains. Otter - Otters avoid disturbance and are largely nocturnal, therefore surveys have to be carried out by searching for signs such as footprints and spraints (droppings) and recording habitat features and weather conditions at the time of survey. Surveys can be undertaken at any time of year. Otter and water vole surveys will only be required if there are water filled ditches or watercourses within the land identified. If required the surveys will involve walking the water features and looking for evidence of either species. Each survey would take up to a day's duration and would occur within the hours of daylight (8am to 5pm). A single visit will be carried out in April with a further visit in July/August/Sept if required. No equipment is required.	No	Described in Scoping Report, Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Badger bait-marking - Required subject to findings of Extended Phase 1 Habitat Survey	Up to 3 weeks for 3-4 hours each visit	January to March 2016	The badger survey would have two parts. The first is simply a walkover to plot the location of setts and latrines (dung pits) on a map. This is likely to take 2 days to complete. The second element depends on the number of badger setts identified. If there is more than one large active sett then it is important to work out the relationship between the setts. This is undertaken by placing bait (peanut butter) with small coloured plastic pellets at the entrance to each sett, each sett being baited with a specific colour of pellets. The pellets are passed via the dung and then the latrines are checked to see how the coloured pellets are distributed and from this an understanding is built up of the territory boundaries. It will take 1 day to lay out the bait with another 2-3 days at regular intervals (up to a fortnight apart) to replenish the bait and check its distribution in latrines.	No	Described in Scoping Report, Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	2 people
Hedgerow Survey - Required subject to findings of Extended Phase 1 Habitat Survey	1 day	A single survey between May - August 2016	The hedgerow structure, setting, associated features and wood and ground flora components are all surveyed. Data collected is examined against set criteria to assess the importance of each hedgerow. This would involve two people with a clipboard and would take a day to complete. It is likely that photographs will be taken and these will be published in the Environmental Statement that will be produced as part of the EIA into the proposed development.	No	Described in Scoping Report, Chapter 7, Section 2, Terrestrial Ecology and Ornithology in particular paragraph 7.2.5, table 7.2.1 and paragraph 7.2.11. Endorsed in Scoping Opinion paragraph 3.38.	

Landscape and Visual

Survey Requirements for 'The Land', [REDACTED]

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	L100 Survey required?	NEED FOR SURVEY	SURVEYORS
Site walkover	2 weeks	Access is sought for as soon as possible once access to the site has been granted	The visit would be used to identify and agree the viewpoints to be included within the landscape and visual assessment with relevant statutory consultees. The visit would be largely restricted to public rights of way permissive routes access land highways and settlement edges although some access to private land may be required. The visits would be timed to coincide with good weather with clear skies. Access would be via foot and surveyors would use GPS and cameras only.	No	The walkover survey is required in order to assess describe and document the local landscape character as well as record views and the general visual environment. Photographs would be taken in order to document the visit and views with trees in leaf. The main focus of photographs would be the Main Development Site the construction phase works areas as well as 360 panoramic views to capture the whole scene. These photographs may be used in the Environmental Statement. The approach is described in the Scoping Report, Chapter 7, Section 3 (Landscape and Visual) (paragraph 7.3.6, 7.3.10, 7.3.20 and 7.3.21) and endorsed in the Scoping Opinion (paragraph 3.45).	2 surveyors (LDA Design), 2 employees from EDF Energy and up to 6 statutory consultees

Survey Requirements for 'The Land', [REDACTED]

SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	UXD Survey required?	NEED FOR SURVEY	SURVEYORS
Photography	1 day - 1 night	Late November - Early December 2015	The site visit is required in order to undertake verified photography at the agreed representative viewpoints with trees out of leaf, at during both the day and dusk/night time. The surveyor would assess the class, condition, health and short term management of all trees that would be directly or indirectly affected, as well as photographing the key features within the site (e.g. hedgerows and any views with visual connections with Listed Buildings). Photographs would be taken along the perimeter edges of the field (where trees and hedgerows are located).	No	Verified photographs are required in order to prepare wireframe and photomontage views, taken to strict professional standards and in good weather/clear conditions. The location of the viewpoints would be verified and agreed in advance (see above). Trees are required to be out of leaf to illustrate the 'worst case' scenario in terms of visibility. The approach is described in the Scoping Report, Chapter 7 Section 3 (Landscape and Visual) (paragraph 7.3.6, 7.3.10, 7.3.20 and 7.3.21) and endorsed in the Scoping Opinion (paragraph 3.45).	1 person
External Lighting site visit	1 day - 1 night	Access is sought for as soon as possible once access to the site has been granted.	A site walkover is required during the daytime, at dusk as well as at night time in order to establish likely sources of light and zones of concern. The surveyor would document and record baseline conditions and photographs would be taken, which may be used in the Environmental Statement.	No	The surveys are required in order to establish the baseline information to inform the evolution of the design. The approach is described in the Scoping Report, Chapter 7 Section 3 (Landscape and Visual) (paragraph 7.3.6 and 7.3.48) and endorsed in the Scoping Opinion (paragraph 3.49).	2 people
Topographical	2 weeks	Access is sought for as soon as possible once access to the site has been granted.	A topographical and utilities survey of the entire site would be undertaken using a land rover and handheld equipment.	No	A survey is required to understand the context of the site and to develop the next stages of design, which are necessary in order to undertake the assessments and identify the development for which consent would be sought.	Up to 4 surveyors
Noise and Vibration						
Baseline noise survey	Up to 2 weeks continuous monitoring, plus 1 day set up and 1 day dismantling at the beginning and end. 10 days of sufficient data will be required.	03 or 4 2015. Exact days can be dependant on weather and other external factors (such as noisy farming practices which could be discussed with the landowner.)	Surveyors would need to set up (and at the end take away) noise monitors at 2-3 locations around the site, in particular close to [REDACTED]. NNB would be happy to discuss the precise locations with the landowner. The meters would stay on site for the duration of the survey. The devices are approx 1m2 and 1.5m high.	No	The data is needed in order to help establish baseline noise conditions at the site in the vicinity of key receptors. Described in Scoping Report, Chapter 7 Section 7 and in particular paragraph 7.7.3 and 7.7.7. Endorsed in Scoping Opinion 3.66.	2 people
Air Quality						
Baseline air quality (dust) survey	Up to 6 months monitoring, with access every 2-4 weeks to collect samples/download data.	Dust monitoring equipment will be installed shortly after any site access has been secured - assuming access secured in summer 2015.	Surveyors would need to set up 5 dust deposition gauges around field boundaries at locations between Eastside and the construction area. These would be attached to stakes placed into the ground. Monthly site visits would be required to collect samples/download data. The landowner could have a say on precisely where the receptors are located. Access may be required throughout the duration of the surveying in case the receptors need repairing/replacing. We will need to be informed about potential harvesting as this could significantly impact the surveying. Set up and dismantling will take 1 day and no power supply will be required.	No	The data is required to establish baseline dust deposition levels at the site to inform the assessment of potential impacts. Described in Scoping Report, Chapter 7 Section 8 and in particular paragraph 7.7.16 and 7.8.25. Endorsed in Scoping Opinion 3.73.	Up to 2 people
Ground Investigations						
Cable percussive boreholes	2 months	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted for a period of 2 months.	The surveyor would drill up to 7 no. 125mm diameter, 20m deep boreholes within the northern fields and 7 no. 250mm diameter, 20m deep boreholes within the southern fields using cable percussive techniques. The activities would require equipment including a land rover, a water browser and tractor, which would be left on site during the survey period in a locked container. The boreholes that do not include any piezometer or other water monitoring device would be restored by backfilling.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7 Section 11 (paragraphs 7.11.1 and 7.11.3) and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 5 people
Rotary boreholes	2 months	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted for a period of 2 months.	The surveyors would drill up to 3 no. 150mm diameter boreholes within the southern fields to depths of up to 30m below ground level using rotary drilling techniques. The activities would require equipment including a rotary drilling rig, a land rover, a water browser and tractor, which would be left on site during the survey period in a locked container. The boreholes that do not include any piezometer or other water monitoring device would be restored by backfilling.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7 Section 11 (paragraphs 7.11.1 and 7.11.3) and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 5 people
Sonic boreholes	2 months	The survey is not seasonally dependant, however access is sought for as soon as possible once access to the site has been granted for a period of 2 months.	The surveyors would drill up to 4 no. 125mm diameter boreholes in each of the northern fields to depths of up to 50m below ground level using sonic drilling techniques. The activities would require equipment including a sonic drilling rig, a land rover, a water browser and tractor, which would be left on site during the survey period in a locked container. The boreholes that do not include any piezometer or other water monitoring device would be restored by backfilling.	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7 Section 11 (paragraphs 7.11.1 and 7.11.3) and endorsed in the Scoping Opinion (paragraph 3.92).	Up to 5 people

Survey Requirements for 'The Land', [REDACTED] [REDACTED] [REDACTED]






SURVEY	DURATION (DAYS)	PROVISIONAL DATES	ACTIVITIES	LXD Survey required?	NEED FOR SURVEY	SURVEYORS
Piezometers	Up to 12 months continuous monitoring plus set up and dismantling	The survey is not seasonally dependant, and would be undertaken once the boreholes were in place	Up to 3 piezometers spread evenly across the southern fields and 3 in each of the northern fields. The activities would require fences (2m x 2m) to be left around the piezometers for the period of groundwater monitoring with access to be made via a land rover. Access (with a land rover) would be required on a monthly basis to monitor the piezometers	Yes	The Information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7 Section 11 (paragraphs 7.11.1 and 7.11.3) and endorsed in the Scoping Opinion (paragraph 3.92)	Up to 3 surveyors
Groundwater monitoring	Up to 12 months 1-2 days to install the devices and then monthly visits to record the data	The survey is not seasonally dependant, and would be undertaken once the boreholes were in place	Groundwater monitoring equipment would be installed within selected boreholes which would comprise up to 3 within the southern fields and 3 within each of the northern fields. Readings would be taken on a monthly basis in order to monitor the level and quality of the groundwater	Yes	The information is required in order to understand the ground conditions in the area which would inform the design evolution of the Project in terms of land use. The approach is described in Scoping Report, Chapter 7 Section 11 (paragraphs 7.11.1 and 7.11.3) and endorsed in the Scoping Opinion (paragraph 3.92)	Up to 3 people
Flood Risk and Drainage						
Infiltration tests	1 week	At the same time as groundwater monitoring and piezometers are installed	The first set of 9 trial pits (2 in each northern field and 5 in the southern fields (each 1.1 x 3m) are required in order to check for groundwater levels and ensure that the ground is not normally saturated so that water which percolates into the ground either directly through the surface or via drainage pipes has somewhere to drain. The second set would be smaller (300 mm square pits down to a similar level) which is filled with water on day one. The water level is confirmed through checks the subsequent day and the pit is then refilled in order to identify the percolation results and the ability of the strata to drain away inflow	Yes	The pits are required in order to establish the feasibility of using soakaways (methodology consistent with standard BRE Digest 365) which will provide greater confidence in the feasibility of the drainage strategy to drain any surface water arising as a result of the Project	Up to 5 people
Transport						
Site walkover	1 day	Access is sought for as soon as possible once access to the site has been granted	Site walkover only to support transport related design work relating to the accommodation campus and [REDACTED] [REDACTED]	No	Up to 3 people	1-2 days

THE AUTHORISATION PLAN

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Key

-  Land for which rights are sought
-  Land under the control of a group company of NIB GenCo (Nuclear Generation Limited)
-  Potters Farm land
-  Proposed Extent of Development Site and Works
-  Title SK135737 (in part)
- Post Code IP16 4RL



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Plan A

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Plan A

-  PROTECTIVE MARKING REQUIRED
-  NOT PROTECTIVELY MARKED

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Our ref
5567/30983750
Your ref

Date
05 September 2016

Dear ██████████

Access to former Manston Airport site for the purpose of surveys on behalf of Riveroak

Thank you for your email of 10 August 2016 enclosing comments on the mark-up of the licence enclosed with our letter of 7 July 2016.

In light of Richard Hunt's email of 25 August, which endorses the carrying out of negotiations in parallel with the processing of the s53 application, we are willing to proceed with private negotiations, without prejudice to our objection to the s53 application, and subject to obtaining the undertaking referred to at the end of this letter.

In particular, regardless of the course of negotiations, we maintain our position that Riveroak's proposal is not a 'distinct project of real substance' at the present time, and that on this basis it fails to meet the test for granting authorisation under s53.

Comments on mark-up

I enclose a mark-up of the licence enclosed with your email of 10 August 2016. I have addressed on the face of the licence each of the comments made on the face of your draft. I summarise below the outstanding issues between us and our position on each:

1. **Parent Company Guarantee** – we are willing to accept that the licence is granted to a special purpose company, provided that the licence is subject to a parent company guarantee from Riveroak Investment Corporation.
2. **Access by ██████████** – we do not accept that there is a need for ██████████ or other Riveroak personnel to access the site to carry out the proposed environmental surveys. ██████████ is not an environmental specialist, and ██████████ (Stone Hill Park's site manager) has an intimate knowledge of the site and would be willing to escort and assist Amec's team. We would be willing to add drafting to this effect to the licence.

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Herbert Smith Freehills LLP is a limited liability partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications.

3. **Rectification of breach within 7 days** – we are not content to allow the proposed caveat to clause 3.2.1, which specified that the licence will only be terminated for breach if the breach cannot be rectified within seven days. No such caveat is standard in s53 authorisations as far as we are aware. We believe the reason for this is to ensure that there is a real and significant sanction for non-compliance – otherwise, many of the most important terms of the licence would effectively be unenforceable. For example, if the licensee were to access the site on a day that was not set out in the programme, this is not something capable of being 'rectified' (within 7 days or otherwise).
4. **Operation Stack** – I am hopeful that the drafting I have added at clauses 3.2.2, 3.3, 4.9 and 8.2 will not be controversial. It simply captures a little more detail around the way the licence provisions and obligations are to deal with Operation Stack.
5. **Scope, detail and timescale for surveys** – While we have some sympathy with your concern that you do not wish Stone Hill Park to have an effective veto on the surveys being carried out, equally it does not seem reasonable for Riveroak to be given the right to access the site on any and every day of the year if it so chooses, to carry out surveys the nature of which are specified only at a very high level. We enclose a copy of the s53 authorisation granted in respect of land required for the Sizewell C DCO application. As you will see, the description and timescales for surveys is set out in much greater detail than you have provided. Can I ask you to consider adopting a similar approach, and that you suggest a mechanism whereby there is a restriction on the total number of days that the site is accessed? Can I also ask that in devising the list of surveys to be appended to the licence you take into account the survey information already publicly available in relation to Stone Hill Park's recent planning application. We feel that the blanket right you are seeking is not necessary or proportionate in the circumstances. It may be that we can come to some compromise under which Stone Hill Park maintains a level of control by being unable to "unreasonably" withhold its consent to a proposed programme. We could perhaps set out some parameters of what would constitute reasonableness. I would be grateful if you could put forward some suggestions which would in any event temper the breadth of the right as currently sought.

Undertaking

My client has incurred significant fees to date in licence negotiations and defending against what it considers to be a premature and unnecessary application for compulsory access under section 53. We are content to pursue negotiations on the basis of receiving an undertaking for [REDACTED] regardless of completion, and a further undertaking for our reasonably and properly incurred fees up to an additional [REDACTED] upon completion.

Yours sincerely,

[REDACTED]

Partner
Herbert Smith Freehills LLP

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

HSF Draft: 5 September 2016

Deleted: HSF Draft: 7 July 2016¶
BDB Comments and further comments 3 August 2016¶

LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ

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THIS LICENCE is made on the day of 2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys¹
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Company No. [] whose registered office is at [])
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors acting on behalf of the Licensee
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Daily Payment Means the amount of [REDACTED] plus VAT
- 1.9 Operation Stack The provision of parking facilities on the Property to alleviate pressure on the arrangements known as 'Operation Stack'
- 1.10 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence²

Commented [HA1]: The Licensee will be a limited company which is in the process of being set up. Details to be provided.

Commented [HSF2]: We are content for the licence to be granted to a special purpose limited company as long as we can insert a parent company guarantee into this licence so that the payments and indemnities are guaranteed. We are happy to provide drafting if this principle is accepted.

Commented [HSF3]: Agreed

Commented [HA4]: This needs to be broader than just Amec Foster Wheeler. It is likely that external sub-consultants will be required. For instance, there may be a need for specialist unexploded ordnance work which Amec would not carry out.

Commented [HSF5]: A 12 month period (rather than 6 months) is acceptable as long as the scope of the surveys can be better defined in the schedules. See comments in our covering letter of 5 September.

¹ A standard s53 authorisation definition

² The terms of the leases granted to the occupiers of the site do not allow us to grant access to a third party. For this reason, access to buildings and structures must be excluded from this licence

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- 1.11 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys;
- 1.12 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys;
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

2.1 In interpreting this Licence, and for the avoidance of doubt:

- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works. The Licensee's Agent's right to access the Property pursuant to this Licence shall:

- 3.2.1 cease immediately if there is a breach of the terms of this Licence³ by the Licensee or the Licensee's Agent; and
- 3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack⁴ and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of

Commented [HA6]: This does not permit the Licensee to access the Property. We have already mentioned RiverOak's desire to have a maximum of 1 representative access the property on any one day with Amec Foster Wheeler. This will invariably be by [REDACTED] who has specialist knowledge of the site which would enable its consultants to locate areas that are of interest to their investigations. This is likely to reduce the number of days of access required which would be in Stone Hill Park Limited's interests.

Commented [HSF7]: We do not accept that it is necessary for [REDACTED] to access the property, for the reasons set out in our covering letter of 5 September

Commented [HA9]: Additional wording to allow for rectification of minor breaches.

Deleted: and that breach cannot be rectified within seven (7) days

Commented [HA10]: To allow for access in the situation where that access would not impede Operation Stack.

Commented [HSF11]: Agreed. I have also added a further caveat allowing for suspension due to health, safety and security risks of running the surveys in parallel with Operation Stack, and made provision for the Licensee's Agent to stay on site longer to make good the site for Operation Stack if directed to by the Licensor

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³ This is a standard provision of s53 authorisations.

⁴ As agreed in relation to point 17 of our exchange of letters.

~~the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.~~

~~3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.~~

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

Commented [HA12]: See comment regarding lack of access for Licensee at 3.1

Commented [HSF13]: See our response earlier.

4.2 The Licensee will :

4.2.1 ~~after~~ consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out⁵;

Commented [HA14]: Wording altered to ensure collaboration, rather than allowing the Licensor an effective veto on access.

Commented [HSF15]: We understand your concerns, but equally SHP is unhappy giving Riveroak's agents the ability to carry out surveys of any sort on any and potentially every day during a 12 month period – particularly when so much survey information exists already in the public domain. The list of "Phase 1" and "Phase 2" surveys you have provided has little detail. As explained in our covering letter, we feel that a compromise would be to have a more detailed list of surveys and timescales appended to the licence, as has been required by PINS for the Sizewell C s53 authorisation.

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

Commented [HSF16]: See our concern above.

Commented [HA17]: Need for further access is subject to a reasonableness requirement. There is no incentive for Amec Foster Wheeler to incur the daily fee for excessive access.

Commented [HA18]: As for 4.2.1 above

Commented [HSF19]: See our concern above in relation to 4.2.1

4.3.1 ~~after~~ consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out;

4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

⁵ This type of detail is standard for s53 authorisations.

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence⁶.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence⁷.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey⁸.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.⁹
- 4.9 ~~In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.~~
- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

Commented [HA20]: See earlier comment. Our client considers this provision both unnecessary, and counter-productive for the purposes of Stone Hill Park Limited.

Commented [HSF21]: See our response earlier

Deleted: .

Commented [HSF22]: Added for the benefit of both sides, to ensure that the site is made good in such a way that there is no breach of contract with DfT due to the site being unusable or partially unusable for Operation Stack (eg due to trenches etc)

⁶ As stated in point 13 of our letter of 7 July, we see no need for this access by Riveroak staff.

⁷ Amended to more closely accord with standard s53 provisions

⁸ As agreed in relation to point 7 of our exchange of letters.

⁹ This is standard in s53 authorisations.

Deleted: 2 14237431.5

4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹⁰.

Commented [HA23]: Please clarify the level of security that is in place at the site.

Commented [HSF24]: The site is fully secure and patrolled around the clock.

4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works¹¹.

4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out¹².

4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application¹³.

Commented [HA25]: Environmental information will be contained in documents other than the ES itself. This amendment to cover this.

4.17

Commented [HSF26]: Agreed

4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.

Commented [HSF27]: We consider it reasonable for SHP to be given copies of the survey data obtained through access granted. We are puzzled as to why this should not be agreed in the Licence. Nevertheless, depending on the outcome of discussions on the other remaining points this may be something we can concede.

4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.

Commented [HSF28]: See our concern earlier in relation to the proposed drafting of those clauses.

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6 General

6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [redacted] [insert email address] at the Licensor or to any other person as the Licensor may inform the Licensee of from time to time.

¹⁰ This is standard in s53 authorisations.

¹¹ This is standard in s53 authorisations.

¹² This is standard in s53 authorisations

¹³ As agreed in respect of point 14 of our exchange of letters.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence and on the date of the completion of the Licence, the Licensee agrees to pay to the Licensor (within 28 days of demand) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.

Commented [HA29]: A clause of this nature is acceptable but 28 days has been substituted as this more accurately reflects standard business practice.

Commented [HSF30]: Agreed

8.2 The Licensee shall indemnify the Licensor against:

Commented [HSF31]: Drafting added to deal with licence suspension for Operation Stack as well as termination.

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored to the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and¹⁴

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8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

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9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [Exxx]

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10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

¹⁴ As agreed in respect of point 15 of our exchange of letters.

SCHEDULE 1

Phase 1 Survey Works¹⁵

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Commented [HSF32]: For the reasons explained in our covering letter of 5 September, we are unhappy with the descriptions of the Phase 1 and Phase 2 surveys [REDACTED] email of 10 August, and the absence of any restriction on the number of days that each may be carried out or the total number of days on which the site will be accessed.

¹⁵ Further to point 12 of our letter, please insert details of the Phase 1 Surveys– inserting the level of detail you are willing to be bound by in terms of scope

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SCHEDULE 2

Phase 2 Survey Works¹⁶

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁶ Further to point 12 of our letter of 7 July, please insert details of the Phase 2 Surveys you may wish to carry out – inserting the level of detail you are willing to be bound by in terms of scope

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory



BIRCHAM DYSON BELL

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SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria W www.bdb-law.co.uk

Enclosure 3: Correspondence

Bircham Dyson Bell to Herbert Smith Freehills

16 September 2016

[REDACTED]

From: [REDACTED]
Sent: 16 September 2016 11:21
To: [REDACTED]
Cc: 'Hunt, Richard'; BDB Manston Airport Group
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]
Attachments: Letter to Herbert Smith Freehills LLP dated 16 September 2016.pdf; Licence - survey access - Manston Airport - 14.9.16.DOCX

[REDACTED]

Please find attached a letter responding to your letter of 5 September together with a revised draft of the licence for access. Note that this response has been copied to Richard Hunt at PINS.

Regards,

[REDACTED]



[REDACTED] Senior Associate, Government and Infrastructure

[REDACTED]
[REDACTED]
W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL
British Legal Awards 2015 'Property Team of the Year'
Legal 500 UK Awards 2015 'Public Sector Firm of the Year'



BIRCHAM DYSON BELL

[REDACTED]
Herbert Smith Freehills LLP
Exchange House
Primrose Street
London
EC2A 2EG

Your Ref
5567/30983750
Our Ref
APH/ADW/165443.0001
Date
16 September 2016

Dear [REDACTED]

Access to Former Manston Airport site in preparation for DCO application

Thank you for your letter of 5 September and the associated attachments.

I will address each of the comments raised in your letter in turn, using the numbering from that letter. You will note that I have removed some of the comments which related to matters that I now believe have been agreed. However, all tracked amendments have been retained.

- 1 **Parent Company Guarantee** – Our client is content that RiverOak Investment Corporation remains as the Licensee.
- 2 **Access for [REDACTED]** – Our client is content that wording is added such that [REDACTED] will make himself available to escort and assist Amec when specialist knowledge is required. I have added some suggested wording to the draft at 4.2.1, 4.3.1 and 5.2.
- 3 **Rectification of breach within 7 days** – Given the number of s.53 authorisations that have been granted we do not believe that it would be possible to identify a standard caveat. However, we note your point and believe that the suggested amendment will satisfy both parties in that it addresses both those breaches that cannot be remedied and those that are capable of remedy.
- 4 **Operation Stack** – The additional wording at 3.2.2, 3.3, 4.9 and 8.2 is acceptable to our client.
- 5 **Scope, detail and timescale for surveys** – While we note the additional detail that accompanied the s.53 authorisation in connection with Sizewell C we feel the need to differentiate the circumstances surrounding that application from the case concerning Manston. Our client's advisors have no knowledge of the site and have had no access to it whatsoever. The site itself is a vast site which was used as an airport for a century by both military and

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BIRCHAM DYSON BELL

civilian operations. There is a far greater level of environmental risk involved on former airport land than there is on the farmland that was the subject of the Sizewell C application. Our client's consultants are not being obstructive by providing limited detail of the surveys required, and you can be assured that the scope of the surveys will not exceed the scope of section 53 of the Planning Act 2008 (as amended). They are necessarily keeping their options open as they do not know what they will find when they get on site. Your client should derive comfort from the fact that it is not in our client's best interest for its environmental consultants to spend any more time on the site than is necessary, as there is an associated cost element. In addition, the site is largely unused at the present time and our client fails to see how the carrying out of environmental surveys, with the appropriate protections for your client that have been included in the draft licence, can be so objectionable to your client. As previously stated our client cannot give your client an effective veto over entry onto the site under the licence and this would include any 'unreasonable' withholding of consent by your client. We would be content for you to offer some form of words that would define reasonableness, but with the proviso that our client would not be willing to accept any wording that would limit the ability of its consultants to carry out the surveys necessary to produce a robust EIA of our client's proposed scheme without delay. Additionally, our client is prepared to offer to limit the number of days on which it obtains access to the site to 60.

Our client is content for us to continue negotiations on the basis that Bircham Dyson Bell provides an undertaking for Herbert Smith Freehill's fees for [REDACTED] regardless of completion of the licence, and a further undertaking for its reasonably and properly incurred fees in relation to the negotiation of the licence up to an additional [REDACTED], to be paid upon completion.

Yours sincerely

[REDACTED]
[REDACTED]
Senior Associate
For and on behalf of Bircham Dyson Bell LLP

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

HSF Draft: 5 September 2016 with additional BDB amendments
from 14 Sep 16

Deleted: HSF Draft: 7 July 2016
BDB Comments and further comments 3 August 2016

LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ

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... [1]

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THIS LICENCE is made on the day of 2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys¹
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Company No. [] whose registered office is at []
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors acting on behalf of the Licensee
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Daily Payment Means the amount of [REDACTED] plus VAT
- 1.9 Operation Stack The provision of parking facilities on the Property to alleviate pressure on the arrangements known as 'Operation Stack'
- 1.10 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence²

Commented [HSF1]: A 12 month period (rather than 6 months) is acceptable as long as the scope of the surveys can be better defined in the schedules. See comments in our covering letter of 5 September.

¹ A standard s53 authorisation definition

² The terms of the leases granted to the occupiers of the site do not allow us to grant access to a third party. For this reason, access to buildings and structures must be excluded from this licence

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1.11 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys;

1.12 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys;

1.13 [Site Manager](#)
Means [REDACTED]

1.14 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

2.1 In interpreting this Licence, and for the avoidance of doubt:

2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;

2.1.2 the singular includes the plural and vice versa;

2.1.3 any gender includes any other;

2.1.4 the headings are for convenience only and do not affect interpretation; and

2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works. The Licensee's Agent's right to access the Property pursuant to this Licence shall:

3.2.1 cease immediately if there is a breach of the terms of this Licence³ by the Licensee or the Licensee's Agent and that breach either

(a) is incapable of remedy; or

Deleted: and that breach cannot be rectified within seven (7) days

³ This is a standard provision of s53 authorisations.

(b) cannot be rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack⁴ and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will :

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out⁵, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

⁴ As agreed in relation to point 17 of our exchange of letters.

⁵ This type of detail is standard for s53 authorisations.

Commented [HA3]: Additional wording to allow for rectification of minor breaches.

Commented [HA4R3]: Amended to provide for situation where rectification is not possible.

Commented [HA5]: To allow for access in the situation where that access would not impede Operation Stack.

Commented [HSF6]: Agreed. I have also added a further caveat allowing for suspension due to health, safety and security risks of running the surveys in parallel with Operation Stack, and made provision for the Licensee's Agent to stay on site longer to make good the site for Operation Stack if directed to by the Licensor

Commented [HA7]: Wording altered to ensure collaboration, rather than allowing the Licensor an effective veto on access.

Commented [HSF8]: We understand your concerns, but equally SHP is unhappy giving Riveroak's agents the ability to carry out surveys of any sort on any and potentially every day during a 12 month period – particularly when so much survey information exists already in the public domain. The list of "Phase 1" and "Phase 2" surveys you have provided has little detail. As explained in our covering letter, we feel that a compromise would be to have a more detailed list of surveys and timescales appended to the licence, as has been required by PINS for the Sizewell C s53 authorisation.

Commented [HSF9]: See our concern above.

Commented [HA10]: Need for further access is subject to a reasonableness requirement. There is no incentive for Amec Foster Wheeler to incur the daily fee for excessive access.

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4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

Commented [HA11]: As for 4.2.1 above

Commented [HSF12]: See our concern above in relation to 4.2.1

4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence⁶.

4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence⁷.

4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.

4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey⁸.

4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.⁹

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4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.

⁶ As stated in point 13 of our letter of 7 July, we see no need for this access by Riveroak staff.

⁷ Amended to more closely accord with standard s53 provisions

⁸ As agreed in relation to point 7 of our exchange of letters.

⁹ This is standard in s53 authorisations.

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4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.

4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.

4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹⁰.

Commented [HA13]: Please clarify the level of security that is in place at the site.

Commented [HSF14]: The site is fully secure and patrolled around the clock.

4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works¹¹.

4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out¹².

4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application¹³.

4.17 ~~LI~~

Commented [HSF15]: We consider it reasonable for SHP to be given copies of the survey data obtained through access granted. We are puzzled as to why this should not be agreed in the Licence. Nevertheless, depending on the outcome of discussions on the other remaining points this may be something we can concede.

4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.

4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.

Commented [HSF16]: See our concern earlier in relation to the proposed drafting of those clauses.

Deleted:

5.2 ~~The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.~~

¹⁰ This is standard in s53 authorisations.

¹¹ This is standard in s53 authorisations.

¹² This is standard in s53 authorisations.

¹³ As agreed in respect of point 14 of our exchange of letters.

Deleted: 14237431.5 . 3

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.
- 6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement
- 6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to Paul Barber [insert email address] at the Licensor or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

- 7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

- 8.1 In consideration of the grant of this Licence and on the date of the completion of the Licence, the Licensee agrees to pay to the Licensor (within 28 days of demand) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 ~~the costs of restoring any part of the Property which has been damaged and has not been restored to the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and~~¹⁴.

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Deleted: by

8.2.2 all losses suffered by the Licensor due to ~~breach or~~ termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such ~~breach or~~ termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 ~~or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.~~

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¹⁴ As agreed in respect of point 15 of our exchange of letters.
11/38787985 2

Deleted: 2 14237431.5

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [£xxx]

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10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works¹⁵

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Commented [HSF17]: For the reasons explained in our covering letter of 5 September, we are unhappy with the descriptions of the Phase 1 and Phase 2 surveys provided with Alex Hallatt's email of 10 August, and the absence of any restriction on the number of days that each may be carried out or the total number of days on which the site will be accessed.

¹⁵ Further to point 12 of our letter, please insert details of the Phase 1 Surveys– inserting the level of detail you are willing to be bound by in terms of scope

11/38787985 2

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SCHEDULE 2

Phase 2 Survey Works¹⁶

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁶ Further to point 12 of our letter of 7 July, please insert details of the Phase 2 Surveys you may wish to carry out – inserting the level of detail you are willing to be bound by in terms of scope

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory



BIRCHAM DYSON BELL

11/38787985_2

1

50 Broadway London T +44 (0)20 7227 7000
SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria W www.bdb-law.co.uk

Enclosure 4: Draft s.53 licence

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys¹
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Company No. [] whose registered office is at []
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Daily Payment Means the amount of [] plus VAT
- 1.9 Operation Stack The provision of parking facilities on the Property to alleviate pressure on the arrangements known as 'Operation Stack'
- 1.10 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence²

¹ A standard s53 authorisation definition

² The terms of the leases granted to the occupiers of the site do not allow us to grant access to a third party. For this reason, access to buildings and structures must be excluded from this licence

- 1.11 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys;
- 1.12 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys;
- 1.13 Site Manager Means [REDACTED]
- 1.14 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

2.1 In interpreting this Licence, and for the avoidance of doubt:

- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works. The Licensee's Agent's right to access the Property pursuant to this Licence shall:

- 3.2.1 cease immediately if there is a breach of the terms of this Licence³ by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or

³ This is a standard provision of s53 authorisations.

(b) cannot be rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack⁴ and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will :

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out⁵, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

⁴ As agreed in relation to point 17 of our exchange of letters.

⁵ This type of detail is standard for s53 authorisations.

- 4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;
- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence⁶.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence⁷.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey⁸.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.⁹
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.

⁶ As stated in point 13 of our letter of 7 July, we see no need for this access by Riveroak staff.

⁷ Amended to more closely accord with standard s53 provisions

⁸ As agreed in relation to point 7 of our exchange of letters.

⁹ This is standard in s53 authorisations.

- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.
- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹⁰.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works¹¹.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out¹².
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application¹³.
- 4.17 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
- 4.18 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

- 5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.
- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

¹⁰ This is standard in s53 authorisations.

¹¹ This is standard in s53 authorisations.

¹² This is standard in s53 authorisations

¹³ As agreed in respect of point 14 of our exchange of letters.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.
- 6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement
- 6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [REDACTED] [insert email address] at the Licensor or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

- 7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

- 8.1 In consideration of the grant of this Licence and on the date of the completion of the Licence, the Licensee agrees to pay to the Licensor (within 28 days of demand) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.
- 8.2 The Licensee shall indemnify the Licensor against:
- 8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored to the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and¹⁴
 - 8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

¹⁴ As agreed in respect of point 15 of our exchange of letters.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [£xxx]

10 Confidentiality

- 10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

- 11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works¹⁵

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Extended Phase 1 Survey	Walkover survey – taking notes and mapping habitats
Reptile Surveys	Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.
Bird Surveys	Walkover surveys using binoculars
Bat Surveys	Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.
Great crested newt surveys (unlikely to be required)	All water bodies to be checked using torches, nets and bottle traps during the evening and morning.
Badger surveys	Walkover survey looking for field signs / evidence of presence.
Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

¹⁵ Further to point 12 of our letter, please insert details of the Phase 1 Surveys– inserting the level of detail you are willing to be bound by in terms of scope

SCHEDULE 2

Phase 2 Survey Works¹⁶

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the site for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
Non-intrusive geophysical survey of site	To support identification of archaeological remains
Targeted trial trenching based on outputs of geophysical survey	Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies
Historic building recording	To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys
Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study

¹⁶ Further to point 12 of our letter of 7 July, please insert details of the Phase 2 Surveys you may wish to carry out – inserting the level of detail you are willing to be bound by in terms of scope

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory



HERBERT
SMITH
FREEHILLS

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Herbert Smith Freehills LLP
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DX28 London Chancery Lane

www.herbertsmithfreehills.com

Our ref
5567/30983750
Your ref
20160720_TR02002_17059779
Date
05 October 2016

By email and by post

Without prejudice

Dear Richard

Former Manston airport: s53 application by Riveroak Investment Corporation

I have today copied to you my response to Bircham Dyson Bell's latest draft of the access licence (provided to me on 16 September).

As you will see, we are now close to reaching agreement with Riveroak on the terms of a private access licence.

The licence enclosed with our letter to Bircham Dyson Bell represents the terms on which Stone Hill Park is willing to contract with Riveroak, in preference to imposition of a s53 authorisation.

However, we wish to make clear to the Planning Inspectorate that the significant concessions made go beyond the terms on which Stone Hill Park would wish to allow entry onto its property were it free to exercise its right as land owner to negotiate terms at its commercial discretion.

Stone Hill Park maintains its view that Riveroak's DCO proposals do not constitute a "distinct project of real substance" for the purpose of s53 Planning Act 2008. This view has been confirmed by the recent publication of the Avia Solutions report, commissioned by Thanet Council, which concluded that: "*airport operations at Manston are unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031.*" I enclose a full copy of that report for your consideration, as it is highly relevant to your consideration of whether the Secretary of State has vires to grant a s53 authorisation to Riveroak in respect of the Manston site.

The report was prepared to assist the Council's preparation of its next Local Plan, looking forward to 2031. As stated in the Executive Summary, despite being based on "*relatively favourable assumptions*", Avia has concluded that Manston airport is "*most unlikely*" to represent a "*viable investment opportunity even in the longer term (post 2040).*" The Leader of Thanet Council, Chris

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Wells, who had previously supported re-opening of the airport, has publicly accepted that designation of the site in the Local Plan for airport use cannot be supported by the evidence.

In making any recommendation to the Secretary of State, we would urge the Planning Inspectorate to consider this significant development.

There is no national policy support for aviation at Manston, no likelihood of any support in local planning policy through the Local Plan, and compelling evidence that development of an airport at Manston is unviable. To set the bar for a 'distinct project of real substance' so low that it authorises access to private land in these circumstances would in our view be to set a dangerous precedent, and would be a decision open to legal challenge.

Nevertheless, we assume that the Inspectorate will not be willing to give its view on this issue in advance of making a Recommendation to the Secretary of State. Unfortunately this means that Stone Hill Park will need to take a view as to whether it prefers to complete a private licence with Riveroak on less than ideal terms, or risk imposition of a s53 authorisation (in the event that the Inspectorate disagrees with our view that Riveroak's project does not meet the test for s53 authorisation).

In the interests of fairness, we ask that at the appropriate time you provide both sides with a deadline by which licence negotiations must be concluded – and against which you will judge the reasonableness or unreasonableness of the parties in making your Recommendation. This will allow time for the parties to settle their final positions and for Stone Hill Park to make the necessary judgement as to what is in its best interests.

Yours sincerely,

Partner

From: [Hunt, Richard](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]
Date: 06 October 2016 12:10:59
Attachments: [image2016-10-05-105236.pdf](#)
[39066644_2.docx](#)
[image001.png](#)

From: [REDACTED]
Sent: 05 October 2016 11:04
To: [REDACTED]
Cc: Hunt, Richard
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

Dear [REDACTED]

Please find attached our response to your mark-up and letter of 16th September.

Kind regards

[REDACTED]

[REDACTED]

Partner
Herbert Smith Freehills LLP

[REDACTED]

www.herbertsmithfreehills.com

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BREXIT: CHARTING A NEW COURSE - for in-depth, sector-by-sector analysis navigate to hsf.com/Brexit

From: [REDACTED]
Sent: 16 September 2016 11:21
To: [REDACTED]
Cc: 'Hunt, Richard'; BDB Manston Airport Group
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

[REDACTED]

Please find attached a letter responding to your letter of 5 September together with a revised draft of the licence for access. Note that this response has been copied to Richard Hunt at PINS.

Regards,

[REDACTED]

[REDACTED] **Senior Associate, Government and Infrastructure**
[REDACTED]


W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'
Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

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SMITH
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F +44 (0)20 7098 4858

[REDACTED]
DX28 London Chancery Lane
[REDACTED]
www.herbertsmithfreehills.com

Our ref
5567/30983750
Your ref

Date
05 October 2016

Dear Alex

Without prejudice and subject to contract

Access to former Manston Airport site for the purpose of surveys on behalf of Riveroak

Thank you for your letter of 16 September, enclosing a mark-up of the proposed licence.

Without prejudice to the points made in our previous correspondence with the Planning Inspectorate in relation to the s53 process, I enclose a return mark-up.

The revisions made should be largely self-explanatory. Key points to note:

1. We accept your proposal to limit the total number of survey days to 60, and on this basis we accept that the nature of the surveys may be described widely. The wording I have included in Schedules 1 and 2 to describe the surveys is taken from the Amec technical note provided to us on 10 August 2016.
2. In light of this very significant concession, we feel it is reasonable to reinsert the condition we proposed previously (clause 4.17) requiring copies of survey data collected to be provided to Stone Hill Park.
3. The previous drafting was ambiguous as to when the daily rate applied: only for days on which Amec personnel are on site (up to 60 days now), or on any day on which survey equipment is on site monitoring the environment (up to 12 months)? Payment of a daily rate would also require active monitoring and invoicing on a piecemeal basis, which seems less than ideal from my client's point of view. We therefore propose instead a flat payment of [REDACTED] payable upon entry to cover the entirety of the survey period. This equates to 60 days of access at [REDACTED] per day, or [REDACTED] per day for every day of the 12 month monitoring period.

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4. We have specified in the drafting that [REDACTED] is payable for legal fees, as this was the sum previously agreed with you, but we will need to review our file at the time of signing to confirm the actual fees incurred, which Stone Hill Park will expect to be reimbursed.

To be clear, the significant concessions made in the enclosed mark-up and in previous negotiations go beyond the terms on which Stone Hill Park would wish to allow entry onto its property were it free to exercise its right as land owner to negotiate terms at its commercial discretion.

The enclosed licence represents the terms on which Stone Hill Park is willing to contract with Riveroak in preference to imposition of a s53 authorisation.

However, Stone Hill Park maintains its view that Riveroak's DCO proposals do not constitute a "distinct project of real substance" for the purpose of s53 Planning Act 2008. This view has been confirmed by the recent publication of the Avia Solutions report, commissioned by Thanet Council, which concluded that: "airport operations at Manston are unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031." We will be drawing this report to the attention of the Planning Inspectorate.

Yours sincerely,

[REDACTED]
[REDACTED]
Partner
Herbert Smith Freehills LLP

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

THIS LICENCE is made on the

day of

2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Company No. [] whose registered office is at [] Query: I cannot find this entity listed at Companies House
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee, who for the avoidance of doubt shall not include [] or any employee of the Licensor or any of its affiliated companies
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- Daily Payment Means the amount of [] plus VAT
- 1.8 Operation Stack The provision of parking facilities on the Property as agreed between the Licensor and the Department for Transport to alleviate pressure on the arrangements known as facilitate 'Operation Stack' when declared by Kent Police;
- 1.9 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and

shown edged red on the Plan annexed to this Licence

- 1.10 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys;
- 1.11 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys;
- 1.12 Site Manager Means Paul Barber, or such alternative employee of the Licensor who has knowledge of the Property
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works during the Licence Period PROVIDED THAT the total number of days on which personnel of the Licensee's Agent access the Property shall not exceed 60 days and~~the~~ Licensee's Agent's right to access the Property pursuant to this Licence shall:
- 3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or
- (b) ~~cannot be~~ has not been rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will:

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a

programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property)during such surveys;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.
- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or

neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out.
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application.
- 4.17 The Licensee shall ensure that within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, and at least 10 days before it is made publicly available in any form, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.[...]
- 4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
- 4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

- 5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.
- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts

¹ This is standard in s53 authorisations.

of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [REDACTED] ~~[_insert_email_address_] at the Licensor~~ or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence ~~and on the date of the completion of the Licence,~~ the Licensee agrees to pay to the Licensor (within 28 days of first accessing the Property pursuant to this Licence~~demand~~) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence. [REDACTED]

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored ~~to~~by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of ~~£xxx~~ [REDACTED]

10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

- 11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

<u>Survey</u>	<u>Descriptions</u>
<u>Extended Phase 1 Survey</u>	<u>Walkover survey – taking notes and mapping habitats</u>
<u>Reptile Surveys</u>	<u>Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.</u>
<u>Bird Surveys</u>	<u>Walkover surveys using binoculars</u>
<u>Bat Surveys</u>	<u>Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.</u>
<u>Great crested newt surveys (unlikely to be required)</u>	<u>All water bodies to be checked using torches, nets and bottle traps during the evening and morning.</u>
<u>Badger surveys</u>	<u>Walkover survey looking for field signs / evidence of presence.</u>
<u>Land quality Phase 1 desktop study, including a site walkover</u>	<u>A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.</u>
<u>Heritage site walkover</u>	<u>Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.</u>
<u>Surface and Ground Water</u>	<u>Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure</u>
<u>Topographical surveys</u>	<u>Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments</u>

SCHEDULE 2

Phase 2 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

<u>Survey</u>	<u>Descriptions</u>
<u>Dormouse surveys</u>	<u>Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.</u>
<u>Unexploded Ordnance (UXO) Surveys</u>	<u>Access to the Property for UXO specialists to provide clearance before any Phase 2 intrusive surveys</u>
<u>Water Quality monitoring</u>	<u>To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.</u>
<u>Non-intrusive geophysical survey of site</u>	<u>To support identification of archaeological remains</u>
<u>Targeted trial trenching based on outputs of geophysical survey</u>	<u>Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies</u>
<u>Historic building recording</u>	<u>To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys</u>
<u>Land quality Phase 2 intrusive investigations</u>	<u>Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study</u>

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory

STONE HILL PARK LIMITED
Innovation House
Innovation Way
Discovery Park
Sandwich
CT13 9FF
Registered number: 09223403
Telephone: [REDACTED]

6th October 2016

Dear Richard,

I confirm that Stone Hill Park Ltd has appointed Herbert Smith Freehills ("HSF") as its legal advisers and representatives in respect of the above site.

I further confirm that we have been forwarded by HSF all correspondence received from the Planning Inspectorate in relation to the s53 process.

I hope that this letter is sufficient for your purposes, but please do contact me if you require any further information.

Yours sincerely

[REDACTED]
MANAGING DIRECTOR



BIRCHAM DYSON BELL

[REDACTED]
Partner
Herbert Smith Freehills
Exchange House
Primrose Street
London EC2A 2EG

Your Ref

Our Ref
APH/ADW/165443.0001

Date
7 October 2016

Dear [REDACTED]

Manston Airport: s53 application and licence negotiation

Thank you for your letter of 5 October 2016. I have taken instructions and the latest draft licence is acceptable to our clients. Please find attached a mark-up that simply accepts all your changes and adds the company information for RiverOak Investment Corporation.

Given the difficulties that we have had in getting this far, you will understand that we are maintaining our section 53 application until we actually set foot on your clients' land, whereupon we will immediately withdraw it. We will respond to PINS in this vein and also respond to your letter to PINS of 5 October.

Please return the engrossed licence and we will do the same.

Yours sincerely

[REDACTED]
[REDACTED]
Senior Associate
For and on behalf of Bircham Dyson Bell LLP
[REDACTED]
[REDACTED]

14794181.1

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DX 2317 Victoria W www.bdb-law.co.uk



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DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

THIS LICENCE is made on the

day of

2016

1 Definitions

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- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Delaware Company No. 3028870[—]) whose registered office is at 1209 Orange Street, Wilmington, Delaware DE 19802, USA[—] [Query: I cannot find this entity listed at Companies House]
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors. acting on behalf of the Licensee, who for the avoidance of doubt shall not include [REDACTED] or any employee of the Licensor or any of its affiliated companies
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Operation Stack The provision of parking facilities on the Property as agreed between the Licensor and the Department for Transport to facilitate 'Operation Stack' when declared by Kent Police;
- 1.9 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and

shown edged red on the Plan annexed to this Licence

- 1.10 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys
- 1.11 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys
- 1.12 Site Manager Means [REDACTED] or such alternative employee of the Licensor who has knowledge of the Property
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works during the Licence Period PROVIDED THAT the total number of days on which personnel of the Licensee's Agent access the Property shall not exceed 60 days and the Licensee's Agent's right to access the Property pursuant to this Licence shall:
- 3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or
- (b) has not been rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will:

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a

programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property)during such surveys;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.
- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or

neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out.
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application.
- 4.17 The Licensee shall ensure that within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, and at least 10 days before it is made publicly available in any form, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.
- 4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
- 4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

- 5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.
- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts

¹ This is standard in s53 authorisations.

of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [REDACTED] or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence, the Licensee agrees to pay to the Licensor (within 28 days of first accessing the Property pursuant to this Licence) £30,000.

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [REDACTED]

10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance

with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Extended Phase 1 Survey	Walkover survey – taking notes and mapping habitats
Reptile Surveys	Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.
Bird Surveys	Walkover surveys using binoculars
Bat Surveys	Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.
Great crested newt surveys (unlikely to be required)	All water bodies to be checked using torches, nets and bottle traps during the evening and morning.
Badger surveys	Walkover survey looking for field signs / evidence of presence.
Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

SCHEDULE 2

Phase 2 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the Property for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
Non-intrusive geophysical survey of site	To support identification of archaeological remains
Targeted trial trenching based on outputs of geophysical survey	Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies
Historic building recording	To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys
Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

THIS LICENCE is made on the

day of

2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Delaware Company No. 3028870) whose registered office is at 1209 Orange Street, Wilmington, Delaware DE 19802, USA
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee, who for the avoidance of doubt shall not include [REDACTED] or any employee of the Licensor or any of its affiliated companies
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Operation Stack The provision of parking facilities on the Property as agreed between the Licensor and the Department for Transport to facilitate 'Operation Stack' when declared by Kent Police;
- 1.9 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence

- 1.10 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys
- 1.11 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys
- 1.12 Site Manager Means [REDACTED] or such alternative employee of the Licensor who has knowledge of the Property
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works during the Licence Period PROVIDED THAT the total number of days on which personnel of the Licensee's Agent access the Property shall not exceed 60 days and the Licensee's Agent's right to access the Property pursuant to this Licence shall:
- 3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or
- (b) has not been rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will:

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a

programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property)during such surveys;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.
- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or

neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out.
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application.
- 4.17 The Licensee shall ensure that within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, and at least 10 days before it is made publicly available in any form, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.
- 4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
- 4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

- 5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.
- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts

¹ This is standard in s53 authorisations.

of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [REDACTED] or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence, the Licensee agrees to pay to the Licensor (within 28 days of first accessing the Property pursuant to this Licence) [REDACTED]

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [REDACTED]

10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance

with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Extended Phase 1 Survey	Walkover survey – taking notes and mapping habitats
Reptile Surveys	Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.
Bird Surveys	Walkover surveys using binoculars
Bat Surveys	Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.
Great crested newt surveys (unlikely to be required)	All water bodies to be checked using torches, nets and bottle traps during the evening and morning.
Badger surveys	Walkover survey looking for field signs / evidence of presence.
Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

SCHEDULE 2

Phase 2 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the Property for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
Non-intrusive geophysical survey of site	To support identification of archaeological remains
Targeted trial trenching based on outputs of geophysical survey	Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies
Historic building recording	To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys
Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

Bircham Dyson Bell
50 Broadway
London
SW1H 0BL

Your Ref: ADW/APH/164652.0001

Our Ref: TR020002_18082572

(by email)

Date: 7 October 2016

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for further information

This letter serves to provide confirmation of receipt of your letter dated 16 September 2016 providing responses to the queries raised by the Planning Inspectorate (the Inspectorate) in our letter addressed to you dated 25 August 2016.

Ministry of Defence infrastructure

At our project update meeting of the 16 September 2016, you drew to our attention that there is infrastructure owned by the Ministry of Defence (MoD) located within the land for which rights of entry are sought¹. Please clarify and/or confirm:

- whether you consider the MoD to be a 'person with interest';
- the extent of their land interest within the site and where this is identified on Plan A of your application and the land registry plans;
- whether survey access is required to the MoD infrastructure;
- whether the MoD has been consulted regarding the proposed survey access;
- whether the proposed surveys have potential to interfere with any safeguarding zone set by the MoD; and
- whether there are any other persons with interest present within the site that have a bearing on the s53 authorisation process.

¹ See representations from the MoD to Thanet District Council regarding the Stone Hill Park Limited application OL/TH/16/0550: Comprehensive Redevelopment of Manston Airport site for a Range of Uses Including Residential and Supporting Uses, Employment, etc. <https://planning.thanet.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Plans

The Planning Inspectorate requests that applications are accompanied by plans identifying the land for which authorisation to enter is sought. Your attention is drawn to section A6 of Advice Note five 'Section 53: Rights of Entry (Planning Act 2008)' which states that:

"A plan, marked as 'Plan A', should be provided [...]. Plan A should show the following information:

- outlined in red: the extent of the development and works;*
- identified in blue: any land owned or under the control of the applicant, or provide confirmation that there is no land owned or under the control of the applicant shown on Plan A; and*
- identified in green: land for which rights of entry are sought, if subsequently authorised by the Secretary of State.*

A6.2 Plan A should be no larger than A0 size, drawn to an identified scale (not smaller than 1:2500) and show the direction of north.

A6.3 Where any part of the land identified in green on Plan A is registered, the boundary of the registered title number(s) should be clearly shown on Plan A and allocated a parcel number. The boundary of the registered title numbers shown on Plan A should match exactly the boundary of the title number shown on the official copy of the title plan. [...] The allocated parcel number(s) and registered title number(s) should be clearly cross-referenced to the Table, [i.e. the Table identifying the persons with interest, described in paragraph A5] and up-to-date official copies of the land registry documents should be provided to the Planning Inspectorate".

The Inspectorate notes that no parcel numbers or title numbers are provided on Plan A provided in Schedule 2 of the original application or areas excluded from survey (e.g. leasehold interests). Furthermore, it appears that the red line 'Section 53 application boundary' does not match exactly the boundaries of the title numbers shown on the official copies of the title plans (provided in Schedule 3 of the original application). In addition, Plan A was drawn to a scale of 1:7500 (smaller than the advised scale) and was provided on A3 sized paper (although it was designed to be printed on A1 sized paper) thereby affecting legibility.

The Inspectorate therefore requests that a revised copy of Plan A is provided, which is prepared in accordance with the guidance set out in Advice Note five.

RiverOak Investment Corporation

The Inspectorate requests that a full postal address is provided for the applicant. If the applicant is a corporate entity, please provide the full postal address and registration number. If the applicant is an individual(s), we request the full postal address and confirmation of any trading name used by that individual that would be the persons authorised to enter the land.

Details of the proposed surveys and works

The Inspectorate requests that the applicant provides an update on the scope of the proposed surveys (which were highlighted as being consulted on in Schedule 4 of the application), in particular whether these have now been formally agreed with the relevant regulatory/ environmental bodies.

Request for comment

In light of the ongoing voluntary negotiations regarding a licence agreement, the Applicant is requested to confirm whether these discussions have given rise to any further amendments to their proposed s53 licence in Enclosure 4 of their letter of 16 September 2016. Since a s53 authorisation would be a matter of public record, the Applicant should also confirm whether clause 10 of Enclosure 4 regarding confidentiality is required.

Format of the information to be provided

Please provide electronic copies as well as hard copies of the information requested in this letter. Please note that any personal information relating to third parties provided by the applicant to the Planning Inspectorate will be handled by the Planning Inspectorate in accordance with its obligations under the Data Protection Act 1998 and therefore will not be made available on our website.

Please provide the requested information by **28 October 2016** copying in all persons with interest. Following expiry of this date the Planning Inspectorate will move to make a recommendation to the Secretary of State regarding the authorisation requests, on the basis of the information which has been provided. Alternatively, the Planning Inspectorate may request further information from the applicant and/or the persons with interest depending on what comments have been provided to the Planning Inspectorate by this date.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

**Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State**

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: environmentalservices@pins.gsi.gov.uk

[REDACTED]
Herbert Smith Freehills LLP
Exchange Street
Primrose Street
London EC2A 2E

Your Ref: 5567/30983750

Our Ref: TR020002_18082335

Date: 7 October 2016

(by email)

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Acknowledgement of receipt of further information and request for comment

This letter serves to provide confirmation of receipt of your letter dated 16 September 2016.

Request for further information

The Inspectorate welcomes the ongoing dialogue between Stone Hill Park Limited and RiverOak Investment Corporation Limited regarding licence conditions relating to voluntary access to the site. Please confirm the current status of these discussions.

Request for comment

The Inspectorate invites Stone Hill Park Limited to respond to the Applicant's letter of 16 September 2016, with particular reference to Section 6 (Consultation with the Department for Transport); and Enclosure 4 draft s53 licence.

Stone Hill Park Limited is also invited to make comment on any of the application materials circulated, up to and including the 28 October 2016.

Format of the information to be provided

Please provide the requested information by **28 October 2016**, copying in the applicant. Following expiry of this date the Planning Inspectorate will move to make a recommendation to the Secretary of State regarding the authorisation requests, on the basis of the information which has been provided. Alternatively, the Planning Inspectorate may request further information from the applicant and/or the persons with interest depending on what comments have been provided to the Planning

Inspectorate by this date.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

From: [Hunt, Richard](#)
To: [NIAOSupport](#)
Subject: FW: s53: Manston airport - Avia Solutions report [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]
Date: 07 October 2016 15:13:06
Attachments: [Response to PINS re s53 October 2016.pdf](#)

From: [REDACTED]
Sent: 07 October 2016 13:46
To: Hunt, Richard
Cc: [REDACTED]
Subject: RE: s53: Manston airport - Avia Solutions report [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

Richard,

Please find attached a letter in response to Herbert Smith Freehills' letter of 5 October in connection with RiverOak's s.53 application.

Regards,

[REDACTED]



[REDACTED] **Senior Associate, Government and Infrastructure**
[REDACTED]
[REDACTED]
[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

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Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

From: [REDACTED]
Sent: 05 October 2016 14:57
To: 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk) <Richard.Hunt@pins.gsi.gov.uk>
Cc: [REDACTED]
Subject: s53: Manston airport - Avia Solutions report [HS-London_11.FID1151940]

Dear Richard

Please find attached a letter in relation to the s53 process, and the recent release of the Avia Solutions report by Thanet District Council. A copy of the report, together with the Council's statement on it, can be found via the link below. A hard copy is also in the post to you.

<https://www.thanet.gov.uk/the-thanet-magazine/press-releases/2016/october/manston-airport-viability-report/>

Please note, I am copying this email to [REDACTED] of BDB for his information.

Kind regards

[REDACTED]

[REDACTED]

Partner

Herbert Smith Freehills LLP

[REDACTED]

www.herbertsmithfreehills.com

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Dr Richard Hunt
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 8PN

Your Ref
TR020002
Our Ref
ADW/APH/165443.0001
Date
7 October 2016

Dear Richard

Manston Airport: s53 application

This letter is in response to the letter dated 5 October 2016 from Stone Hill Park Ltd's solicitors.

We have today agreed the terms of the licence and returned it to Stone Hill Park Ltd's lawyers. We believe that many of its terms remain unreasonable but in the interests of progressing towards an application for development consent we are entering into the licence on the terms offered.

The unreasonable terms include:

- cost - Stone Hill Park's lawyers are demanding more than [REDACTED] for the privilege of accessing their unused land at no inconvenience to them (clauses 8.1 and 9);
- singling out an individual to be prevented from accessing the land (clause 1.6); and
- requiring RiverOak to release the data acquired to them when they have refused to release the data used in compiling their own Environmental Statement (clause 4.17).

We are agreeing to the licence even though we believe the latest terms are designed to prolong the negotiation and the section 53 application. Owing to this, we wish to maintain our section 53 application until we confirm that we have actually entered the land under the licence, as we are not convinced the path from agreeing the licence to entering the land will be an untroubled one.

We must therefore address the allegations made in the 5 October letter.

Paragraph 5: the AviaSolutions report issued on 4 October is not relevant to RiverOak's proposals since it clearly says at footnote 2 on page 14: "For the avoidance of doubt, AviaSolutions therefore does not offer any opinion about the reasonableness or otherwise of RiverOak's commercial plans for the airport."

The third paragraph on the second page of the letter says as follows:

- “there is no national policy support for aviation at Manston”. Support for specific projects is very rare – no transport project is specifically supported in a National Policy Statement. To the extent that it is still extant, the 2003 Air Transport White Paper¹ does support development at Manston at paragraphs 11.11 and 11.95-11.98.
- “there is no likelihood of any support in local planning policy through the Local Plan”. The current Local Plan strongly supports airport development at Manston and it will remain in place until it is replaced, which may well be after the decision on a DCO application. The process for revising the Local Plan is at a very early stage and RiverOak is confident of demolishing the weak evidence on airport viability contained in the AviaSolutions report; there is also no evidence that an alternative use is viable other than Stone Hill Park Ltd’s as yet incomplete application.

The AviaSolutions report was produced in haste and largely consists of opinion, with little evidence and no references or bibliography and we are confident that our own research will carry much more weight. The report does, however, contain numerous photographs obtained while accessing the site and buildings on it. This puts Stone Hill Park Ltd in a bind because the more they dismiss the site access readily granted to AviaSolutions as a cursory visit to contrast it with our request, the more they damage the credibility of the report.

We remain of the view that the two tests for granting s53 powers, one in statute and one in guidance, are met.

The test in statute is that the project the applicant is considering a 'distinct project of real substance genuinely requiring entry onto the land' (s53(2)(a)). The only part of that disputed by Stone Hill Park Ltd is that it is of real substance. This is a multimillion pound project to develop a large site and there is no doubt that RiverOak are intent on applying for it. RiverOak have conducted a non-statutory consultation and applied for and received a scoping opinion (two features referred to under the real substance test in PINS' own Advice Note 5). They have not conducted a statutory consultation yet because they consider there would be insufficient preliminary environmental information available due to lack of access to the land for the consultation to be meaningful. An external report (especially one that explicitly does not comment on RiverOak's plans) is irrelevant as to whether the project has 'real substance'.

The other test, in DCLG guidance on fees, is that the applicant considers they have been unreasonably refused access. The continued unreasonable demands of Stone Hill Park, outlined above and in previous correspondence, clearly demonstrate that reasonable efforts have been exhausted. Agreeing the licence now does not mean that the terms of it are necessarily reasonable, nor that access has been granted, and we therefore maintain our section 53 application until access to the land is actually obtained, whereupon we will immediately notify PINS and Stone Hill Park Ltd that it is withdrawn.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272086/6046.pdf



Incidentally we do not consider that there needs to be a deadline by which final comments should be received, and we request that you should simply make a recommendation and decision as soon as possible.

Yours sincerely

[Redacted signature]

Senior Associate
For and on behalf of Bircham Dyson Bell LLP

[Redacted contact information]

cc [Redacted] Herbert Smith Freehills

From: [Newman, Stephanie](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]
Date: 18 October 2016 15:18:24
Attachments: [image003.png](#)
[Letter - HSF 7 10 16.pdf.PDF](#)
[Tracked Licence October 2016.docx](#)
[Clean Licence October 2016.docx](#)

From: Hunt, Richard
Sent: 18 October 2016 15:12
To: Newman, Stephanie; Susannah Guest
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

From: [REDACTED]
Sent: 18 October 2016 14:29
To: [REDACTED]
Cc: [REDACTED]; Hunt, Richard
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

It has now been some time since we sent the e-mail below agreeing to the form of licence that your client had proposed two days earlier. Please can you confirm that your client is now content to proceed? There has already been an unacceptable delay given that our client has not made any substantive amendments to the draft licence.

Regards,

[REDACTED]

| |

[REDACTED] **Senior Associate, Government and Infrastructure**

[REDACTED]
[REDACTED]
[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

From: [REDACTED]
Sent: 07 October 2016 10:56
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

Please find attached our response to your letter of 5 October and related attachments.

Regards,

[REDACTED]

[REDACTED]

[REDACTED] **Senior Associate, Government and Infrastructure**

[REDACTED]

[REDACTED]

[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP

50 Broadway London SW1H 0BL

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Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

From: [REDACTED]
Sent: 05 October 2016 11:04
To: [REDACTED]
Cc: 'Hunt, Richard' <Richard.Hunt@pins.gsi.gov.uk>
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

Dear [REDACTED]

Please find attached our response to your mark-up and letter of 16th September.

Kind regards

[REDACTED]

[REDACTED]

Partner

Herbert Smith Freehills LLP

[REDACTED]

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From: [REDACTED]
Sent: 16 September 2016 11:21
To: [REDACTED]
Cc: 'Hunt, Richard'; BDB Manston Airport Group
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

[REDACTED]

Please find attached a letter responding to your letter of 5 September together with a revised draft of the licence for access. Note that this response has been copied to Richard Hunt at PINS.

Regards,

[REDACTED]

██████████ **Senior Associate, Government and Infrastructure**

██████████
██████████
W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

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[REDACTED]
Partner
Herbert Smith Freehills
Exchange House
Primrose Street
London EC2A 2EG

Your Ref

Our Ref
APH/ADW/165443.0001

Date
7 October 2016

Dear [REDACTED]

Manston Airport: s53 application and licence negotiation

Thank you for your letter of 5 October 2016. I have taken instructions and the latest draft licence is acceptable to our clients. Please find attached a mark-up that simply accepts all your changes and adds the company information for RiverOak Investment Corporation.

Given the difficulties that we have had in getting this far, you will understand that we are maintaining our section 53 application until we actually set foot on your clients' land, whereupon we will immediately withdraw it. We will respond to PINS in this vein and also respond to your letter to PINS of 5 October.

Please return the engrossed licence and we will do the same.

Yours sincerely

[REDACTED]

Senior Associate
For and on behalf of Bircham Dyson Bell LLP

[REDACTED]

14794181.1

50 Broadway London T +44 (0)20 7227 7000
SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria W www.bdb-law.co.uk

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

THIS LICENCE is made on the

day of

2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** ([Delaware](#) Company No. [3028870](#)) whose registered office is at [1209 Orange Street, Wilmington, Delaware DE 19802, USA](#) [[Query: I cannot find this entity listed at Companies House](#)]
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors. acting on behalf of the Licensee, who for the avoidance of doubt shall not include [REDACTED] or any employee of the Licensor or any of its affiliated companies
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Operation Stack The provision of parking facilities on the Property as agreed between the Licensor and the Department for Transport to facilitate 'Operation Stack' when declared by Kent Police;
- 1.9 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and

shown edged red on the Plan annexed to this Licence

- 1.10 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys
- 1.11 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys
- 1.12 Site Manager Means [REDACTED] or such alternative employee of the Licensor who has knowledge of the Property
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works during the Licence Period PROVIDED THAT the total number of days on which personnel of the Licensee's Agent access the Property shall not exceed 60 days and the Licensee's Agent's right to access the Property pursuant to this Licence shall:
- 3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or
- (b) has not been rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will:

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a

programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property)during such surveys;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.
- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or

neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out.
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application.
- 4.17 The Licensee shall ensure that within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, and at least 10 days before it is made publicly available in any form, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.
- 4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
- 4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

- 5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.
- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts

¹ This is standard in s53 authorisations.

of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [REDACTED] or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence, the Licensee agrees to pay to the Licensor (within 28 days of first accessing the Property pursuant to this Licence) [REDACTED]

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [REDACTED]

10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance

with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Extended Phase 1 Survey	Walkover survey – taking notes and mapping habitats
Reptile Surveys	Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.
Bird Surveys	Walkover surveys using binoculars
Bat Surveys	Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.
Great crested newt surveys (unlikely to be required)	All water bodies to be checked using torches, nets and bottle traps during the evening and morning.
Badger surveys	Walkover survey looking for field signs / evidence of presence.
Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

SCHEDULE 2

Phase 2 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the Property for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
Non-intrusive geophysical survey of site	To support identification of archaeological remains
Targeted trial trenching based on outputs of geophysical survey	Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies
Historic building recording	To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys
Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

THIS LICENCE is made on the

day of

2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Delaware Company No. 3028870) whose registered office is at 1209 Orange Street, Wilmington, Delaware DE 19802, USA
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee, who for the avoidance of doubt shall not include [REDACTED] or any employee of the Licensor or any of its affiliated companies
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Operation Stack The provision of parking facilities on the Property as agreed between the Licensor and the Department for Transport to facilitate 'Operation Stack' when declared by Kent Police;
- 1.9 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence

- 1.10 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys
- 1.11 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys
- 1.12 Site Manager Means [REDACTED] or such alternative employee of the Licensor who has knowledge of the Property
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works during the Licence Period PROVIDED THAT the total number of days on which personnel of the Licensee's Agent access the Property shall not exceed 60 days and the Licensee's Agent's right to access the Property pursuant to this Licence shall:
- 3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or
- (b) has not been rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will:

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a

programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property)during such surveys;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
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- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.
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- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or

neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out.
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application.
- 4.17 The Licensee shall ensure that within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, and at least 10 days before it is made publicly available in any form, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.
- 4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
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- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

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- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts

¹ This is standard in s53 authorisations.

of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [REDACTED] or to any other person as the Licensor may inform the Licensee of from time to time.

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7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

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8.1 In consideration of the grant of this Licence, the Licensee agrees to pay to the Licensor (within 28 days of first accessing the Property pursuant to this Licence) [REDACTED]

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

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On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [REDACTED]

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10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance

with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

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Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

SCHEDULE 2

Phase 2 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the Property for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
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Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory

From: [Newman, Stephanie](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]
Date: 18 October 2016 15:18:12
Attachments: [image002.png](#)

From: Hunt, Richard
Sent: 18 October 2016 15:12
To: Newman, Stephanie; Susannah Guest
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

From: [REDACTED]
Sent: 18 October 2016 15:08
To: [REDACTED]
Cc: [REDACTED] Hunt, Richard
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

As we have made clear in our letter to the Planning Inspectorate of 5 October, copied to you, my client is considering its position. As explained, the agreed form of licence is preferable to the imposition of a s53 authorisation. However, we remain fundamentally of the view that the tests for imposition of a s53 authorisation are not met. This view has been strengthened by the publication of the Avia Solutions report. My client is seeking further professional advice in relation to its position in light of recent developments.

We will be responding to the Planning Inspectorate by 28 October, in which response we expect to clarify our position.

Kind regards

[REDACTED]

From: [REDACTED]
Sent: 18 October 2016 14:29
To: [REDACTED]
Cc: [REDACTED] 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

It has now been some time since we sent the e-mail below agreeing to the form of licence that your client had proposed two days earlier. Please can you confirm that your client is now content to proceed? There has already been an unacceptable delay given that our client has not made any substantive amendments to the draft licence.

Regards,

[REDACTED]

| |

██████████ Senior Associate, Government and Infrastructure

██████████

██████████

[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

From: ██████████

Sent: 07 October 2016 10:56

To: ██████████

Cc: ██████████

Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

██████████

Please find attached our response to your letter of 5 October and related attachments.

Regards,

██████████

| |

██████████ Senior Associate, Government and Infrastructure

██████████

██████████

[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

From: ██████████

Sent: 05 October 2016 11:04

To: ██████████

██████████

Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

Dear ██████████

Please find attached our response to your mark-up and letter of 16th September.

Kind regards

██████████

██████████

Partner
Herbert Smith Freehills LLP

[REDACTED]
www.herbertsmithfreehills.com

Click [here](#) to read and subscribe to our development blog

BREXIT: CHARTING A NEW COURSE - for in-depth, sector-by-sector analysis navigate to hsf.com/Brexit

From: [REDACTED]
Sent: 16 September 2016 11:21
To: [REDACTED]
Cc: [REDACTED] BDB Manston Airport Group
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

[REDACTED]

Please find attached a letter responding to your letter of 5 September together with a revised draft of the licence for access. Note that this response has been copied to Richard Hunt at PINS.

Regards,

[REDACTED]

[REDACTED] **Senior Associate, Government and Infrastructure**

[REDACTED]

[REDACTED]

W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

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From: [Newman, Stephanie](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]
Date: 18 October 2016 15:25:35
Attachments: [image002.png](#)

From: Hunt, Richard
Sent: 18 October 2016 15:24
To: Newman, Stephanie
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

From: [REDACTED]
Sent: 18 October 2016 15:22
To: [REDACTED]
Cc: [REDACTED] Hunt, Richard
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

I would be grateful if you could clarify whether your client is content to grant the consensual licence for access (which we have continued to negotiate separately to the s.53 process). Your letter of 5 October offered terms on which your client was prepared to grant a licence. Our client has agreed to those terms in their entirety. Is it now your client's position that it will not grant a licence on those terms?

Regards,

[REDACTED]



[REDACTED] **Senior Associate, Government and Infrastructure**
[REDACTED]
[REDACTED]
[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

From: [REDACTED]
Sent: 18 October 2016 15:08
To: [REDACTED]
Cc: [REDACTED] 'Hunt, Richard'
(Richard.Hunt@pins.gsi.gov.uk) <Richard.Hunt@pins.gsi.gov.uk>
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

As we have made clear in our letter to the Planning Inspectorate of 5 October, copied to you, my

client is considering its position. As explained, the agreed form of licence is preferable to the imposition of a s53 authorisation. However, we remain fundamentally of the view that the tests for imposition of a s53 authorisation are not met. This view has been strengthened by the publication of the Avia Solutions report. My client is seeking further professional advice in relation to its position in light of recent developments.

We will be responding to the Planning Inspectorate by 28 October, in which response we expect to clarify our position.

Kind regards

[REDACTED]

From: [REDACTED]
Sent: 18 October 2016 14:29
To: [REDACTED]
Cc: [REDACTED] 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED],

It has now been some time since we sent the e-mail below agreeing to the form of licence that your client had proposed two days earlier. Please can you confirm that your client is now content to proceed? There has already been an unacceptable delay given that our client has not made any substantive amendments to the draft licence.

Regards,

[REDACTED]

| |

[REDACTED] **Senior Associate, Government and Infrastructure**

[REDACTED]
[REDACTED]

[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

From: [REDACTED]
Sent: 07 October 2016 10:56
To: [REDACTED]
Cc: WALKER Angus <AngusWALKER@bdb-law.co.uk>
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

Please find attached our response to your letter of 5 October and related attachments.

Regards,

| |

██████████ Senior Associate, Government and Infrastructure

██████████

██████████

W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'
Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

From: ██████████
Sent: 05 October 2016 11:04
To: ██████████
Cc: 'Hunt, Richard' <Richard.Hunt@pins.gsi.gov.uk>
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

Dear ██████████

Please find attached our response to your mark-up and letter of 16th September.

Kind regards

██████████

██████████

Partner
Herbert Smith Freehills LLP

T - ██████████

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From: ██████████
Sent: 16 September 2016 11:21
To: ██████████
Cc: 'Hunt, Richard'; BDB Manston Airport Group
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

██████████

Please find attached a letter responding to your letter of 5 September together with a revised draft of the licence for access. Note that this response has been copied to Richard Hunt at PINS.

Regards,

██████████

██████████ Senior Associate, Government and Infrastructure
██████████
██████████

W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

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From: [Newman, Stephanie](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]
Date: 18 October 2016 16:14:04
Attachments: [image002.png](#)

From: Hunt, Richard
Sent: 18 October 2016 16:13
To: Newman, Stephanie
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

From: [REDACTED]
Sent: 18 October 2016 15:54
To: [REDACTED]
Cc: [REDACTED] Hunt, Richard
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

I believe I have made our position clear – as set out below and in our letter to the Inspectorate dated 5 October. We have conducted parallel negotiations while expressly maintaining our in principle objection to the s53 application. The s53 application has by its nature prejudiced my client's negotiating position. My client is taking stock of its position in light of recent developments. We will be responding to the Inspectorate's queries on 28 October, including clarifying whether we are willing to sign the licence. If we choose to sign the licence it will be in the form agreed, subject to any instructions from my client to the contrary.

Kind regards

[REDACTED]

From: [REDACTED]
Sent: 18 October 2016 15:22
To: [REDACTED]
Cc: [REDACTED] 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk)
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

I would be grateful if you could clarify whether your client is content to grant the consensual licence for access (which we have continued to negotiate separately to the s.53 process). Your letter of 5 October offered terms on which your client was prepared to grant a licence. Our client has agreed to those terms in their entirety. Is it now your client's position that it will not grant a licence on those terms?

Regards,

[REDACTED]



██████████ Senior Associate, Government and Infrastructure

██████████
██████████
[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

From: ██████████
Sent: 18 October 2016 15:08
To: ██████████
Cc: ██████████ 'Hunt, Richard'
(Richard.Hunt@pins.gsi.gov.uk) <Richard.Hunt@pins.gsi.gov.uk>
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

██████████

As we have made clear in our letter to the Planning Inspectorate of 5 October, copied to you, my client is considering its position. As explained, the agreed form of licence is preferable to the imposition of a s53 authorisation. However, we remain fundamentally of the view that the tests for imposition of a s53 authorisation are not met. This view has been strengthened by the publication of the Avia Solutions report. My client is seeking further professional advice in relation to its position in light of recent developments.

We will be responding to the Planning Inspectorate by 28 October, in which response we expect to clarify our position.

Kind regards

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From: ██████████
Sent: 18 October 2016 14:29
To: ██████████
Cc: ██████████ 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

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| |

██████████ Senior Associate, Government and Infrastructure

██████████

██████████

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For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

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From: ██████████

Sent: 07 October 2016 10:56

To: ██████████

Cc: ██████████

Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

██████████

Please find attached our response to your letter of 5 October and related attachments.

Regards,

██████████

| |

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██████████

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For and on behalf of Bircham Dyson Bell LLP
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From: ██████████

Sent: 05 October 2016 11:04

To: ██████████

Cc: 'Hunt, Richard' <Richard.Hunt@pins.gsi.gov.uk>

Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

Dear ██████████

Please find attached our response to your mark-up and letter of 16th September.

Kind regards

██████████

██████████

Partner

Herbert Smith Freehills LLP

T [REDACTED]

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From: [REDACTED]
Sent: 16 September 2016 11:21
To: [REDACTED]
Cc: 'Hunt, Richard'; BDB Manston Airport Group
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

[REDACTED]

Please find attached a letter responding to your letter of 5 September together with a revised draft of the licence for access. Note that this response has been copied to Richard Hunt at PINS.

Regards,

[REDACTED]

[REDACTED] **Senior Associate, Government and Infrastructure**

[REDACTED]

[REDACTED]

W www.bdb-law.co.uk

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From: [Newman, Stephanie](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [BDB-BDB1.FID9924398]
Date: 20 October 2016 11:03:02

From: [REDACTED]
Sent: 19 October 2016 16:21
To: [REDACTED]
Cc: Hunt, Richard; [REDACTED] Newman, Stephanie
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

[REDACTED]

Apologies that I must labour the point further but I just want to be sure that I understand what your instructions are. You informed us, in a letter dated 5 October, that your client was prepared to grant an access licence in the form of a draft licence which accompanied that letter. The draft introduced a number of substantive amendments to the travelling draft, all of which were in favour of your client. On 7 October we responded and informed you that our client was prepared to agree to those terms. We requested a signed licence by return. As I understand it your client is now refusing to grant the deed of licence and we have not been provided with an explanation as to why.

I am keen to understand your client's position with regard to the consensual negotiations which are separate from the s.53 process. You refer below to a deadline of 28 October, which is a deadline set by PINS for submissions by the applicant and the landowner in connection with the s.53 application. It is not related to our consensual negotiations. You also suggest that your client's negotiating position is prejudiced by the s.53 application. Are we to understand that your client is no longer willing to entertain the grant of a consensual licence for access and that our client must necessarily rely on the s.53 process to gain access for the necessary surveys?

I would appreciate a reply as a matter of urgency as the delay continues to jeopardise the programme for our client's proposals.

Regards,

[REDACTED]



[REDACTED] **Senior Associate, Government and Infrastructure**

[REDACTED]
[REDACTED]
[W www.bdb-law.co.uk](http://www.bdb-law.co.uk)

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'

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From: [Newman, Stephanie](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]
Date: 20 October 2016 16:00:33

From: [REDACTED]
Sent: 20 October 2016 15:41
To: [REDACTED]
Cc: Hunt, Richard; [REDACTED] Newman, Stephanie
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

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I expect to be able to update you and PINS by 28 October as to my client's decision. With respect, I have nothing more to add on this matter until then.

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Kind regards

[REDACTED]

From: [REDACTED]
Sent: 19 October 2016 16:21
To: [REDACTED]
Cc: 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk); [REDACTED]
'stephanie.newman@pins.gsi.gov.uk'
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

[REDACTED]

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introduced a number of substantive amendments to the travelling draft, all of which were in favour of your client. On 7 October we responded and informed you that our client was prepared to agree to those terms. We requested a signed licence by return. As I understand it your client is now refusing to grant the deed of licence and we have not been provided with an explanation as to why.

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I would appreciate a reply as a matter of urgency as the delay continues to jeopardise the programme for our client's proposals.

Regards,

██████



██████████ **Senior Associate, Government and Infrastructure**

██████████

██████████

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From: [Newman, Stephanie](#)
To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924265]
Date: 21 October 2016 15:20:34

From: [REDACTED]
Sent: 21 October 2016 15:19
To: [REDACTED]
Cc: [REDACTED] Hunt, Richard; Newman, Stephanie; [REDACTED]
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924265]

Hi [REDACTED]

[REDACTED] has copied me into this correspondence. Despite what you say, your position is not at all clear to me.

What you characterise as 'the best terms on which Riveroak is willing to contract with SHP' are in fact the terms that you yourself proposed, which we have accepted. Are you now reneging on the terms you offered? If so, which appears to be the case, this is highly relevant to the s53 application because it is clear that negotiations for voluntary access to the land will never succeed.

Our client is intent on making its application for a DCO and so the AviaSolutions report is irrelevant to whether the project is a distinct one of real substance. Or does your case rest on linking the substance argument to your view of the merits of the application? Surely the merits of the application are a matter for the Secretary of State once it has been made and not one for PINS to have to take view on now.

Regards



[REDACTED] **Partner (Head of Dept)**

[REDACTED]
[REDACTED]
W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

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From: [REDACTED]
Sent: Thursday, October 20, 2016 3:41 PM
To: [REDACTED]
Cc: 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk); [REDACTED]
'stephanie.newman@pins.gsi.gov.uk'
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924398]

[REDACTED]

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way from the terms on which Stone Hill Park as a private land owner would wish to authorise entry to its land in the circumstances. In ordinary circumstances a land owner has absolute discretion as to whether to allow another party onto its land and on what terms. While the s53 and licence negotiations are distinct, the two cannot be divorced from one another in the way you pretend.

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Kind regards

[REDACTED]

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Sent: 19 October 2016 16:21
To: [REDACTED]
Cc: 'Hunt, Richard' (Richard.Hunt@pins.gsi.gov.uk); [REDACTED]
'stephanie.newman@pins.gsi.gov.uk'
Subject: Manston - Licence for Access [BDB-BDB1.FID9924398]

[REDACTED]

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I would appreciate a reply as a matter of urgency as the delay continues to jeopardise the programme for our client's proposals.

Regards,

[REDACTED]



██████████ Senior Associate, Government and Infrastructure

██████████
██████████
W www.bdb-law.co.uk

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To: [NIAOSupport](#)
Subject: FW: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924265]
Date: 24 October 2016 09:50:58

From: [REDACTED]
Sent: 21 October 2016 19:26
To: [REDACTED]
Cc: [REDACTED] Hunt, Richard; Newman, Stephanie; [REDACTED]
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924265]

[REDACTED]

I'm afraid I don't have anything to add to my previous comments.

Kind regards

[REDACTED]

From: [REDACTED]
Sent: 21 October 2016 15:19
To: [REDACTED]
Cc: [REDACTED] 'richard.hunt@pins.gsi.gov.uk'; Newman, Stephanie; [REDACTED]
Subject: RE: Manston - Licence for Access [HS-London_11.FID1151940] [BDB-BDB1.FID9924265]

Hi [REDACTED]

Alex has copied me into this correspondence. Despite what you say, your position is not at all clear to me.

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[REDACTED] **Partner (Head of Dept)**

[REDACTED]

[REDACTED]

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■



■ **Senior Associate, Government and Infrastructure**

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■

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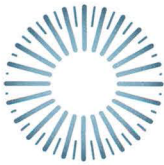
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HERBERT
SMITH
FREEHILLS

Richard Hunt
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

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Exchange House
Primrose Street
London EC2A 2EG
T +44 (0)20 7374 8000
F +44 (0)20 7374 0888
[REDACTED]
DX28 London Chancery Lane
[REDACTED]
www.herbertsmithfreehills.com

Our ref
5567/30983750
Your ref
20160720_TR02002_17059779
Date
27 October 2016

By email and by post

Without prejudice

Dear Richard

Former Manston airport: s53 application by Riveroak Investment Corporation

Thank you for your letter of 7 October 2016.

In relation to the two points on which you require further information, we respond as follows:

Use of the Site for Operation Stack

It is correct that the site has not yet been used for Operation Stack since the arrangement was first entered into with Stone Hill Park ("SHP") in August 2015. Operation Stack has, however, been called many times since it was first instigated in 1988, and SHP has a contractual obligation to ensure it is ready for use within a few hours if required.

It is incorrect that Operation Stack would only utilise the tarmacked runway and approaches. The whole of the site is liable to be used for Operation Stack if required.

Draft access licence (enclosure 4)

As you will be aware, negotiations with SHP have superseded the draft access licence provided as enclosure 4 with Riveroak's letter of 16 September 2016. You have been copied in to the progress those negotiations through various emails.

In summary, we provided Riveroak with a mark-up of the licence on 5 October 2016, sent without prejudice and subject to contract. Riveroak accepted the proposed changes on 7 October 2016. The form of licence agreed represents the best terms which SHP has been able to negotiate with Riveroak. It is, however, a long way from the terms on which SHP as a private land owner would wish to authorise entry to its land by a rival developer. In ordinary circumstances, without threat of compulsory authorisation under s53 Planning Act 2008, a land owner has absolute discretion as to whether to allow another party onto its land, and on what terms.

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Date
27 October 2016
Letter to
Richard Hunt

Having now obtained clarity on the best terms Riveroak is willing to accept in the context of the s53 application, SHP has had to consider carefully whether it prefers to accept those terms, or decline to complete the licence and instead leave the matter to the Planning Inspectorate to decide.

As you know, we have throughout maintained that it would be unlawful for the Planning Inspectorate to grant a s53 authorisation, because Riveroak's proposals:

- (a) do not meet the test of being a "distinct project of real substance"; and
- (b) are insufficiently developed to justify the conclusion that the proposed project meets the threshold relevant to airports for a "nationally significant infrastructure project."

The publication of the Avia Solutions report, commissioned by Thanet District Council for the purpose of their Local Plan preparation, is we suggest directly relevant to your consideration of whether the test for a "distinct project of real substance" is met. This report was published on 4 October 2016. We forwarded a copy to the Planning Inspectorate on 5 October 2016. In our letter (copied to Riveroak) we explained what we considered to be the significance of the report to Riveroak's s53 application, and that SHP would now "need to take a view as to whether it prefers to complete a private licence on less than ideal terms, or risk the imposition of a s53 authorisation."

SHP has now had the opportunity to consider the report and the wider circumstances of Riveroak's s53 application, and has secured an Opinion from [REDACTED] QC, a copy of which is enclosed. His clear conclusion is that, for the reasons he gives, the Secretary of State cannot lawfully authorise entry onto the airfield in the exercise of his powers under s53.

On the basis of [REDACTED] QC's advice, SHP has decided that it will not complete an access licence with Riveroak. Since the test for s53 authorisation is not met, SHP asserts its right as land owner to deny access to Riveroak by private treaty. The question of whether SHP has been 'unreasonable' in withholding its consent is legally irrelevant if, as we submit, the s53 power cannot lawfully be exercised by the Secretary of State.

SHP is the lawful owner of the site and has its own development plans, for which it has submitted a planning application. Despite this, it has been forced to expend its time and resources over many months dealing with an unmeritorious claim for compulsory access. We therefore request that without further delay the Secretary of State refuses Riveroak's s53 application.

Yours sincerely,

[REDACTED]

[REDACTED]

Partner

Enc.

STONE HILL PARK LIMITED:
APPLICATION BY RIVEROAK INVESTMENT CORPORATION
UNDER PLANNING ACT 2008 SECTION 53

O P I N I O N

Background

1. On 1st July 2016 RiverOak Investment Corporation ("RiverOak") made an application ("the Application") under section 53 of the Planning Act 2008 ("PA 2008") to the Secretary of State, by means of a letter from its solicitors Bircham Dyson Bell ("BDB") to Dr Richard Hunt at the Planning Inspectorate, for authorisation to enter onto land at the former Manston Airfield ("the Land") "for the purpose of surveying the Land and in order to facilitate compliance with the European Directives set out at s.53(1A) of the PA 2008".

2. The Application identifies the freeholder owner and the occupiers of the Land, and in section 2 explains why authorisation for rights of entry is sought. Paragraph 2.1 says:

2.1 RiverOak requests authorisation to enter the Land in order to carry out surveys, including for the purpose of compliance with the European Directives referred to in s.53(1A) of the PA 2008. In particular, the survey work is required for the production of:

 - 2.1.1 *the Environmental Statement to be submitted with an application for a Development Consent Order (DCO) pursuant to the PA 2008 for the Proposed Manston Airport (Proposed Development) (required pursuant to the EIA Regulations); and*
 - 2.1.2 *if required, a report to be submitted to the SoS with an application for a DCO pursuant to the PA 2008 for the Proposed Development that assists the SoS in complying with his obligations under the Conservation of Habitats Species Regulations 2010.*

3. Section 2 of the Application goes on to identify four areas, namely land quality, heritage, ground and surface water and ground and surface water, in respect of which access is said to be required in order to complete the proposed surveys.

4. Section 3 is headed "Justification that the applicant is proposing a distinct project of real significance genuinely requiring entry onto the Land". In summary, the reasons given (in paragraph 3.3) are:

- (i) RiverOak had been in regular contact with PINS since the beginning of 2016 about the Proposed Development, and a number of meetings had been held;
- (ii) it had for 5 months led a full consultant team to progress the proposed DCO application;
- (iii) its consultants had been in communication with various agencies and other stakeholders such as Kent County Council, Natural England and the Environment Agency;
- (iv) it was currently preparing for a pre-application non-statutory consultation, due to begin the same month (July);
- (v) a Scoping Report had recently been submitted to PINS, and RiverOak and its consultants were preparing EIA surveys, the Environmental Statement and material for the formal consultation stage;
- (vi) RiverOak intended to submit a DCO application in Q1 of 2017, subject to obtaining access to the Land;
- (vii) the Proposed Development was listed on the PINS website;
- (viii) all of these activities indicated that a distinct project of real substance was being developed and progressed towards application.

5. Section 4 of the Application describes the "project requiring development consent" as comprising two elements, namely:

4.2 The Principal Development

4.2.1 an area for cargo freight operations; and

4.2.2 a passenger terminal and associated facilities.

4.3 Associated Development

4.3.1 Amongst a number of things, it is proposed that this will include:

(a) an aircraft teardown and recycling facility;

(b) a flight training school;

(c) ancillary highway works.

6. The Application includes certain other information in the ensuing sections (5-13), including a list of the Schedules enclosed with it. I have seen all of these but there is nothing in them to which, for the purposes of this Opinion, I need to refer.

7. I have also seen the following other documents which are related, or contain material of potential relevance, to the Application:

- (i) a letter dated 7 July 2016 from Herbert Smith Freehills, by whom I am instructed, to PINS making representations about the Application on behalf of Stone Hill Park Ltd ("Stone Hill"), who are the freehold owners of the Land, together with 5 enclosures comprising:
 - (a) RiverOak's document "Manston Airport – Kent international freight and passenger airport. A blueprint for success" ("the Consultation Document"), which was the basis for the informal consultation process that took place between and July and September this year (see para 4(iv) above);
 - (b) a report to Thanet District Council ("TDC") Cabinet dated 11th December 2014, in which it was recommended that no further action be taken in relation to the compulsory acquisition of land at Manston Airport on the basis that it had not identified a suitable indemnity partner. At the time RiverOak's interest in Manston Airfield was confidential, so it was referred to as "Party A" in the report;
 - (c) an written Opinion by myself dated 22 July 2015, in which I concluded (*inter alia*) that the prospects for the confirmation of a CPO promoted by TDC for the re-use of Manston Airfield for the purposes then envisaged by TDC and RiverOak were "very remote" (para 41);
 - (d) and (e) letters dated 23 May 2016 from BDB to those instructing me, and a reply from those instructing me dated 7 July 2016, concerning certain matters relating to RiverOak's wish to secure access to the Land;
- (ii) a report to TDC Cabinet dated 29 October 2015, in which it was concluded (para 6.3) that the Council's legal advisors and officers were
not satisfied at this moment in time that the information or assurances provided to date by RiverOak justify the Council deciding to make a CPO or as part of that process to support the appointment of RiverOak as the Council's indemnity partner in advance of deciding whether to make a CPO;
- (iii) a letter dated 17 August 2016 from BDB to PINS, commenting (at para 1.4.1) on the question of whether RiverOak are "considering a project of real

substance”, and referring again to several of the matters previously set out in paragraph 3.3 of the Application;

- (iv) a letter dated 16 September 2016 from those instructing me to PINS responding (at para 3(vi)) to paragraph 1.4.1 of BDB’s letter of 17 August;
- (v) a letter dated 5 October 2016 from those instructing me to PINS enclosing a copy of AviaSolutions’ final report for TDC (“the Avia report”) entitled “Commercial Viability of Manston Airport”. The Avia report concludes (Executive Summary, para 2.5; see also para 8.2) that

airport operations at Manston are very unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031;

- (vi) notes of various meetings (held on 5 January, 23 February, 22 April and 19 July 2016) between representatives of RiverOak and PINS;
- (vii) Manston Airport DCO Scoping Report dated June 2016, in which the proposed project is described (para 1.1.3) as involving

the development of an air freight and cargo facility with the capacity to handle more than 10,000 air transport movements (ATMs) of cargo per year

(see also paras 1.3.2 and 2.3.1 where the same figure is stated);

- (viii) PINS Scoping Opinion dated August 2016, which at paragraph 2.52 *notes that limited information has been provided in the Scoping Report on the description of the proposed development and its components;*

- (ix) a letter from TDC to PINS dated 29 July 2016 responding to consultation on the Scoping Report, in which TDC express concern

about the lack of information currently available regarding how the projected increase in air transport movements of cargo aircraft by 10,000 would occur. No proposed delivery strategy for the project, long term business plan showing involvement of operators or investors, or general financial information proving that this is a viable long term prospect has been provided. Without this information, it is difficult to assess the capability of the project to be delivered;

- (x) a letter dated 7 October 2016 from BDB to PINS asserting that the Avia report was “not relevant” to RiverOak’s proposals since footnote 2 on p.14 of the report makes it clear that AviaSolutions

does not offer any opinion about the reasonableness or otherwise of RiverOak’s commercial plans for the airport,

that

RiverOak is confident of demolishing the weak evidence on airport viability contained in the AviaSolutions report,

and that

we are confident that our own research will carry much more weight.

The letter also reiterates that non-statutory consultation has been carried out and that a Scoping Opinion has been received, and states:

This is a multimillion pound project to develop a large site and there is no doubt that RiverOak are intent on applying for it,

- (xi) email correspondence passing between BDB and those instructing me on various dates in September and October 2016 concerning the terms on which a consensual license for RiverOak to enter on the Land might be agreed, in which those instructing me reiterate that Stone Hill continue to maintain an in principle objection to the Application.

8. The Consultation Document gives the following information about RiverOak's proposals, at section 3 (on p.7):

The objective of our masterplan for Manston Airport is to provide an integrated aviation services hub. The main feature will be a major international centre for air freight that is capable of handling a minimum of 10,000 air freight Air Traffic Movements (ATMs) per annum.

10,000 ATMs a day [sic – should be a year] equates roughly to 14 return services a day.

Additional facilities proposed include:

- *a base for at least one passenger carrier;*
- *an aircraft recycling and engineering facility;*
- *a flight training school;*
- *a fixed base operation for executive travel;*
- *business facilities for aviation related organisations.*

The Consultation Document also includes a Masterplan (on pp.8-9) and sections dealing with planning policy and the DCO process, and identifies the topics that will be assessed in an EIA.

Legislation and guidance

9. PA 2008 section 14 provides, so far as material, as follows:

14(1) In this Act “nationally significant infrastructure project” means a project which consists of any of the following — ...

(i) airport-related development ...

10. Section 23, so far as material, provides:

23(1) Airport-related development is within section 14(1)(i) only if the development is —

...

(b) the alteration of an airport in a case within subsection (4) ...

(4) Alteration of an airport is within this subsection only if —

(a) the airport is in England or in English waters, and

(b) the alteration is expected to have the effect specified in subsection (5).

(5) The effect is —

...

(b) to increase by at least 10,000 per year the number of air transport movements of cargo aircraft for which the airport is capable of providing air cargo transport services.

(6) “Alteration”, in relation to an airport, includes the construction, extension or alteration of—

(a) a runway at the airport,

(b) a building at the airport, or

(c) a radar or radio mast, antenna or other apparatus at the airport.

11. PA 2008 section 31 provides:

Consent under this Act (“development consent”) is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.

12. Section 53, so far as material, provides:

53(1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land for the purpose of surveying and taking levels of it, or in order to facilitate compliance with the provisions mentioned in subsection (1A), in connection with — ...

(b) a proposed application for an order granting development consent ...

(2) Authorisation may be given by the Commission under subsection (1)(b) in relation to any land only if it appears to the Commission that—

(a) the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land,

(b) the proposed application is likely to seek authority to compulsorily acquire the land or an interest in it or right over it, and

(c) the proposed applicant has complied with section 42 in relation to the proposed application.

(1A) Those provisions are any provision of or made under an Act for the purpose of implementing—

(a) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time,

(b) Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time, or

(c) any EU instrument from time to time replacing all or any part of either of those Directives.

13. PINS Advice Note 5 is entitled "Section 53: Rights of Entry (Planning Act 2008)". In relation to a case such as the present one where no DCO application has yet been made, paragraph A3.4 advises as follows:

To demonstrate that the applicant is 'considering a project of real substance' the applicant could, by way of example, provide the following information:

(i) details about what stage in the pre-application consultation the application has reached on the project;

(ii) whether the applicant has given notification under s.46 of the Act; and

(iii) whether the applicant has requested a screening or scoping opinion from the Secretary of State.

Discussion

14. In my view the following questions must all be answered affirmatively before the Secretary of State is able to exercise his power authorise entry onto land for the purposes specified in PA 2008 s.53(1):

(i) Is entry sought in connection with a proposed application for a DCO?

(ii) Is the proposed applicant (a) considering (b) a distinct project that is (c) of real substance and that (d) genuinely requires entry onto the land.

15. In relation to (i), whilst RiverOak have made it clear that they intend to make a DCO application, in my view there is very little indeed at this stage, other than bald assertion to the effect that it is intended to develop an air freight and cargo facility with the capacity to handle more than 10,000 cargo ATMs a year, to demonstrate that their proposed project will be one that requires development consent, as opposed to planning permission. This is the very point identified in TDC's letter of 29 July 2016 (see para 7(ix) above).

16. This means in my view that it is seriously open to question whether (PA 2008 s.23(5)(b)) the proposal will increase by at least 10,000 per year the number of cargo ATMs for which the airport is capable of providing air cargo transport services, and therefore whether RiverOak is able, as matter of law, to make a DCO application. If it is not, then in my view the requirement of s.53(1)(b), that entry onto land is sought in connection with such an application, would not be met.

17. I do not however need to reach a definitive view on this matter because, as I will now explain, I am very clearly of the view that the requirements of s.53(2)(a) are not met, and therefore that the Secretary of State cannot lawfully grant the authorisation sought by the Application.

18. PA 2008 s.53(2), as I have said, requires the four elements that I have identified at paragraph 14(ii) above to be satisfied. So far as the first two are concerned, in my view RiverOak are in the process of considering a distinct project; and, as to the fourth, I shall assume for the purposes of this Opinion that they genuinely require entry onto the land, although this is a matter that remains in issue between RiverOak and Stone Hill. I shall therefore focus on the third question, namely whether the proposed project is one "of real substance".

19. The right of entry which the Secretary of State is empowered to authorise, provided certain conditions are met, under PA 2008 s.53 is in my view akin to a power of compulsory acquisition, in the sense that rights over land may be granted against the landowner's will. It is not surprising therefore to find that an applicant who wishes the Secretary of State to exercise his s.53 power must not merely show that he has a

project which he wishes to pursue and for which a DCO will be required, but also that it is one of “real substance”. Clearly Parliament cannot have intended that compulsory rights of entry over land should be granted where a proposed project is (for example) at a very preliminary stage, ephemeral or unrealistic.

20. What does the expression “of real substance” mean? It is not defined in PA 2008, but in my opinion it cannot be merely directed at the “substance”, that is the ingredients, of the project, since in this sense it must already be a substantial project – otherwise it would not require development consent, and would therefore not meet the requirements of s.53(1)(b).
21. It seems to me therefore that the notion of “real substance” requires consideration of whether the project has a real prospect of delivery, or of going ahead. Absent some genuine and convincing evidence of that, I do not consider that it would be open to the Secretary of State to exercise his power to authorise entry onto land under s.53.
22. This does not of course mean that there must be unassailable evidence that the project is viable and will, if development consent is granted, go ahead. However, at the other end of the spectrum, there must be something more than mere assertion on the part of the applicant that they intend to undertake the project.
23. That in my view must especially be the case where there is evidence to the contrary: that is, that the project in question is, or is likely to be, unviable, and therefore that it is not likely to be deliverable.
24. Turning to the facts of the present case, TDC has already, on two occasions, rejected RiverOak as a potential indemnity partner on the basis that evidence was lacking that it had the necessary financial resources to fund land acquisition. There is nothing that I have seen in the Application itself or its accompanying documents, or in the documentation to which I have referred in paragraph 7 above, which demonstrates, or even seeks to demonstrate, that RiverOak has the resources to enable it to fund and deliver the project.
25. Whilst RiverOak (through BDB) seeks to dismiss the Avia report on the basis that the report expressly does not offer any opinion about RiverOak’s commercial plans for the airfield, it is in my view telling that it has offered no substantive response to the

report's conclusion that "airport operations at Manston are very unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031". As noted above, all that is said – and this as recently as 7 October – is that RiverOak "is confident of demolishing the weak evidence on airport viability contained in" the Avia report, and that they "are confident that our own research will carry much more weight".

26. Not only does it seem to me contradictory to claim that the Avia report is irrelevant to RiverOak's proposals on the one hand whilst promising to "demolish" it on the other, but also, and more importantly, RiverOak has to date offered no evidence to demonstrate that the scheme is viable. Indeed it appears that RiverOak itself, at the present time, does not know what its own "research" will show in terms of the viability, and therefore the deliverability, of the project.
27. In short, what is notable by its absence is any evidence that is directed to showing that, even *prima facie*, the project has a real prospect of being delivered. On the contrary, there is *prima facie* evidence that it does not.
28. It follows that, in my opinion, RiverOak's proposed DCO application is not for a project "of real substance" within the meaning of PA 2008 s.53(2)(a).
29. In those circumstances the other matters to which RiverOak has (on several occasions) drawn attention, as set out at paragraph 4 above, are in my opinion insufficient, individually or cumulatively, to satisfy the "real substance" test set out in s.53(2)(a). That is because they do not remedy the fundamental deficiency that I have identified above.
30. So far as the three matters identified in paragraph A3.4 of PINS Advice Note 5 are concerned (see paragraph 13 above):
 - (i) there has been some informal pre-application consultation, but none of the statutory pre-application consultation processes as required under PA 2008 Part 5 Chapter 2 "Pre-Application Procedure", and in particular under ss.42 or 47, has (as I understand it) yet been initiated. In my view it is plainly towards these statutory consultation requirements that the PINS advice is directed.

In this respect, I note that, in their letter of 17 August 2016 to PINS, BDB say that, for there to be a “distinct project of real substance” within the meaning of s.53,

“the promoter does not have to be in a position where its plans are finalised; indeed, in order for any consultation (non-statutory as well as statutory) to be meaningful, plans cannot be finalised. RiverOak is aware that further detail does need to be provided over the course of the promotion of this project, however it cannot carry out this work fully or appropriately without being granted access to the site, access which is currently being unreasonably denied by SHPL.

The implication of this seems to be that statutory consultation cannot be undertaken because the surveys for which access to the Land is said to be required need to be done first.

If that is what is being claimed, then in my view this must be open to significant doubt. There is already a large amount of baseline environmental information about the Land contained in the Environmental Statement submitted as part of the outline planning application made by Stone Hill on 31 May 2016 for the mixed-use redevelopment of Manston Airfield. This is a public document, but I have seen nothing from RiverOak or BDB to indicate that, in developing their own plans, they have attempted to access this resource, or why (if they have) it does not provide them with sufficient information to enable them to undertake meaningful pre-application statutory consultation.

- (ii) no notification of the proposed application has yet been given to the Secretary of State under s.46;
- (iii) the applicant has requested, and has received, a Scoping Opinion.

31. The fact that only the last of these three criteria is satisfied in my view tends towards the conclusion that there is no project of “real substance” in connection with which the Secretary of State’s power under s.53 could be exercised. However, whilst these considerations must carry some weight, they cannot be determinative, one way or the other, of the question whether the project is one of “real substance”, in

circumstances where the project lacks any reality in terms of likelihood of delivery.
That seems to me to be the determinative issue.


Conclusion

32. In my opinion neither the evidence and information provided in RiverOak's Application, nor any other relevant and available evidence or information, demonstrates that the proposed project is one of "real substance".

33. It follows that, in my opinion, the Secretary of State cannot lawfully authorise entry onto the Land in the exercise of his powers under PA 2008 s.53.

Landmark Chambers
180 Fleet Street
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25th October 2016

Dr Richard Hunt
Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Your Ref
TR020002_18082572
Our Ref
ADW/APH/165443.0001
Date
28 October 2016

By Recorded Delivery, and By Email

Dear Dr Hunt

RIVEROAK: APPLICATION PURSUANT TO S.53 OF THE PLANNING ACT 2008 IN CONNECTION WITH THE PROPOSED MANSTON AIRPORT

We write in response to your letter dated 7 October 2016 and the queries raised therein. For ease of reference, we respond to your queries under a number of different headings as set out below. We also respond to the points in Herbert Smith Freehills' letter of 26 October 2016.

1 Ministry of Defence infrastructure

- 1.1 As noted in paragraphs 1.2 and 1.22 of RiverOak's application under section 53 of the Planning Act 2008 ("**s.53 application**"), RiverOak is not seeking access to the land that is comprised in the registered leasehold interests under any of the freehold titles. This includes the land in which the Secretary of State for Defence has an interest under leasehold title number K976945 which falls under freehold title number K803975.
- 1.2 As noted in paragraph 6.1 of the s.53 application, the extent of the land in which the Secretary of State for Defence has an interest is shown on Plan A at Schedule 2 in green. Plan A identifies in green all three registered leasehold interests in land to which RiverOak is not seeking access. The one in which the Secretary of State for Defence has an interest is the westernmost green area.
- 1.3 For the avoidance of any further doubt, RiverOak confirms that:
- 1.3.1 no survey access is currently required to the MoD infrastructure;
 - 1.3.2 the MoD has not been consulted regarding the proposed survey access as no access to their site is required at this time;
 - 1.3.3 the proposed surveys have no potential to interfere with any safeguarding zone set by the MoD; and

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- 1.3.4 there are no other persons of which RiverOak is aware with interests present within the site that have a bearing on the s.53 authorisation process.

2 Plans

- 2.1 RiverOak has provided Plans A and B with its s.53 application and the different areas and colourings have been explained fully in the s.53 application.

- 2.2 However, for further ease we include a further Plan A showing:

- 2.2.1 in red outline, the extent of the development and works;

- 2.2.2 in blue outline, the land in which a subsidiary of RiverOak, RiverOak AL Limited, now has an interest (this has been acquired since the original s.53 application was made); and

- 2.2.3 in green outline, the land for which rights of entry are sought.

The area in green outline comprises the four freehold titles which are owned by Stone Hill Park Limited (formerly known as Lothian Shelf (718) Limited and still registered as such on the register of title) and listed in the table at paragraph 5.3 of the s.53 application. Each freehold title official copy and title plan is also shown separately at Schedule 3 of the s.53 application, and is shaded as a different colour on the enclosed Plan A for ease of reference. A key on Plan A identifies which shaded area relates to which freehold title.

- 2.3 The Plan is A1 size to a scale of 1:7500 and includes the direction of north. It is not shown at a scale of 1:2500 as if it were to that scale, it would span 9 A1 sheets.
- 2.4 RiverOak confirms that the updated Plan A does not show the extent of the unregistered leasehold titles listed at paragraph 1.2.3 of the s.53 application as the extent of their interest is unknown. However, RiverOak reminds the Planning Inspectorate (“PINS”) that those with a known unregistered interest, as listed at paragraph 1.2.3 have been written to by both RiverOak and PINS to notify them of the s.53 application and that no response from them has been forthcoming.
- 2.5 PINS is also reminded that RiverOak, in its letter of 16 September 2016 to PINS, confirmed that it would consider it acceptable for PINS to grant authorisation for access to the site on the condition that such authorisation would not include access to the area comprised in those unregistered interests.

3 RiverOak Investment Corporation

- 3.1 The following are the relevant details of RiverOak Investment Corporation:

- 3.1.1 Name: RiverOak Investment Corporation

- 3.1.2 Registered company number: Delaware Company No. 3028870

3.1.3 Registered company address: 1209 Orange Street, Wilmington, Delaware, DE 19802, USA

4 Details of the proposed surveys and works

- 4.1 The scope of the proposed surveys remains the same as those identified within the Scoping Report that was submitted to PINS as part of a request for a scoping opinion in June 2016.
- 4.2 These proposed surveys are in line with the requests made by consultees consulted by PINS as part of the formation of its Scoping Opinion, in particular:
- 4.2.1 Kent County Council's view that a walkover of the airfield will be an important part of the historic environment assessment;
 - 4.2.2 Thanet District Council's view that a site walkover survey of the airfield will be required to inform the Phase 1 Land Quality Assessment;
 - 4.2.3 Historic England's view that archaeological field assessments should be used to inform the Masterplan; and
 - 4.2.4 Natural England's reference to their Standing Advice note on protected species which set out the requirements for surveys as part of the biodiversity assessment. In addition to this a meeting to agree the scope of the Phase 1 Habitat Survey and the protected species survey has been arranged with Natural England, and an Evidence Plan is also being prepared setting out the scope and details of surveys and this will be used to agree the scope of surveys with Natural England and other stakeholders.

5 Request for comment

- 5.1 RiverOak confirms that Stone Hill Park Limited's ("**SHPL**") legal advisers, Herbert Smith Freehills ("**HSF**") have responded to correspondence dated 16 September 2016 in relation to the s.53 application and have now provided RiverOak with a further draft of the access licence. This was provided on 5 October 2016; a copy of this and the covering correspondence is enclosed with this letter.
- 5.2 The licence provided on 5 October 2016 reneged on some of SHPL's previously established positions and still contained certain provisions that RiverOak considers to be unreasonable. However, in order to agree a licence and to progress its application for a development consent order under the Planning Act 2008, RiverOak has agreed to the licence as drafted by SHPL on 5 October 2016 and in return has provided SHPL with a clean copy of the agreed licence. This was provided on 7 October 2016; a copy of this and the covering correspondence is also enclosed with this letter.
- 5.3 In terms of clause 10 of the licence at Enclosure 4 of this firm's letter to PINS dated 16 September 2016, which remains clause 10 in the version of 7 October 2016, RiverOak is of the

view that this clause should remain part of an agreed licence if agreement is reached, but that it need not be included in a s53 authorisation.

6 SHPL letter of 27 October 2016

- 6.1 We have been copied into a letter to you from SHPL's solicitors, HSF, of yesterday's date, which we take the opportunity to respond to.
- 6.2 On the issue of Operation Stack, it may be the case that the agreement between SHPL and the Department for Transport or Highways England covers the whole site, but only the runway has deemed planning permission for lorry parking, and so that is the only part that can in fact be used by Operation Stack. A copy of this plan, together with Statutory Instrument 2015/1635 to which it relates, is enclosed.
- 6.3 On the draft licence, what HSF's letter is trying to avoid saying directly is that RiverOak have accepted all the conditions, many of which it considered unreasonable, that SHPL have proposed in their draft of the licence and yet SHPL and HSF are still holding out, for what it is not clear. I think PINS can take it that reasonable negotiations have therefore come to an end.
- 6.4 HSF have obtained the advice of a QC that the project is not a DCO and not of 'real substance'. On the first point, the advice, in referring to Thanet District Council's response to the scoping report, makes the typical confusion between capacity and actual operating level; RiverOak's masterplan used at its non-statutory consultation shows 19 stands, each of which would merely need to be capable of handling one aircraft arriving and leaving per day to trigger the capacity threshold.
- 6.5 On the issue of 'real substance', the key point is at paragraph 21 of the advice – where Mr King says this equates to whether the project will be delivered (far beyond any of the examples in PINS Advice Note 5 that he quotes earlier). Note that this is not whether it will be applied for, at least he and his solicitors are not questioning that, nor is he questioning whether it will get consent (which is also not a matter for you to have to take a view on at this stage), but whether it will be built. It simply cannot be correct that for the purposes of granting permission under section 53 of the Planning Act 2008, one must go beyond establishing whether the project would be applied for and even whether it would get consent. The 'substance' goes to the seriousness of the prospect of an application being made, and no further than that, and that is not in doubt.

7 Conclusion

- 7.1 In light of the above information, RiverOak asks PINS to grant the s.53 application. In particular, PINS is asked to note the following:
- 7.1.1 the land to which RiverOak is seeking access remains mainly unused, save for a few buildings which are occupied by corporate entities which do not have a registered interest in the land; and



BIRCHAM DYSON BELL

7.1.2 as explained in this firm's letter to PINS dated 16 September 2016, RiverOak is unlikely to require access to these occupied buildings. There is therefore likely to be no disruption to occupiers of the land and buildings. In addition, the large size of the site and minimal occupation of it needed by those carrying out RiverOak's surveys demonstrate that the overall effect on the site of carrying out the environmental surveys will be negligible.

7.2 RiverOak has made many compromises in order to reach agreement with SHPL to the extent where it has agreed the terms of a licence which it believes to still contain unreasonable provisions. Despite this, SHPL has yet to take any further action. The lack of response supports our view that SHPL is attempting to thwart this project by sustaining negotiations indefinitely, and we believe that the point has been reached where fruitful negotiations have been exhausted and that compulsory powers should now be granted.

7.3 We trust that the Secretary of State considers this further information sufficient and that RiverOak is therefore given the authority to access the land for the purposes and to the extent set out in its s.53 application.

We look forward to hearing from you.

Yours sincerely

pp. Bircham Dyson Bell

Senior Associate
For and on behalf of Bircham Dyson Bell LLP

cc [REDACTED] Herbert Smith Freehills

enc

Enclosure 1: Plan A

Notes

1. This drawing has been prepared in accordance with the scope of RPS's services as defined in the RPS Services Agreement. RPS accepts no liability for any use of this document other than for its intended purpose and only for the purposes for which it was prepared and provided.
2. RPS is not responsible for the accuracy of any information provided to it by the recipient, responsibility for print to correct scale. Only written amendments should be used.
3. This drawing should be read in conjunction with all other relevant drawings and specifications.



KEY

- Proposed Development
- Land to which access is sought
- Land owned by RiverOak
- Leasehold Land (Excluded)
- K803975 (Plot 1)
- K837264 (Plot 2)
- K851195 (Plot 3)
- K866190 (Plot 4)

P02 Plot areas added, as well as plot boundaries			
Rev	Description	By	Date
P01	First Issue	BF	GDD: 25 10 16
P02	Plot areas added, as well as plot boundaries	KH	GDD: 27 10 16



Sherwood House
 Sherwood Avenue
 Newark, Nottinghamshire, NG24 1DQ
 T 01509 605 700 E rpsnewark@rpsgroup.com

Client **RIVERAK**
 INVESTMENT CORP., LLC

Project **Mansston Airport Masterplan**

Title **Section 53 Access Plan**

Status	Scale	Date Created
Preliminary	1:7500 @A1	25 10 16
Project Leader	1:15000 @A3	Checked by
GDD	BF	GDD

Drawn By	Checked By	Scale
KH	BF	1:7500
Plot	Sheet	Scale
P02	S0	1:7500

Enclosure 2: Correspondence

Herbert Smith Freehills to Bircham Dyson Bell

5 October 2016



HERBERT
SMITH
FREEHILLS

██████████
Bircham Dyson Bell LLP
50 Broadway
London
SW1H 0BL

Herbert Smith Freehills LLP
Exchange House
Primrose Street
London EC2A 2EG
T +44 (0)20 7374 8000
F +44 (0)20 7098 4858
██████████
DX28 London Chancery Lane
██████████ ██████████
www.herbertsmithfreehills.com

Our ref
5567/30983750
Your ref

Date
05 October 2016

Dear ██████████

Without prejudice and subject to contract

Access to former Manston Airport site for the purpose of surveys on behalf of Riveroak

Thank you for your letter of 16 September, enclosing a mark-up of the proposed licence.

Without prejudice to the points made in our previous correspondence with the Planning Inspectorate in relation to the s53 process, I enclose a return mark-up.

The revisions made should be largely self-explanatory. Key points to note:

1. We accept your proposal to limit the total number of survey days to 60, and on this basis we accept that the nature of the surveys may be described widely. The wording I have included in Schedules 1 and 2 to describe the surveys is taken from the Amec technical note provided to us on 10 August 2016.
2. In light of this very significant concession, we feel it is reasonable to reinsert the condition we proposed previously (clause 4.17) requiring copies of survey data collected to be provided to Stone Hill Park.
3. The previous drafting was ambiguous as to when the daily rate applied: only for days on which Amec personnel are on site (up to 60 days now), or on any day on which survey equipment is on site monitoring the environment (up to 12 months)? Payment of a daily rate would also require active monitoring and invoicing on a piecemeal basis, which seems less than ideal from my client's point of view. We therefore propose instead a flat payment of ██████████ payable upon entry to cover the entirety of the survey period. This equates to 60 days of access at ██████████ per day, or ██████████ per day for every day of the 12 month monitoring period.

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Herbert Smith Freehills LLP is a limited liability partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications.

11/37919477_1



4. We have specified in the drafting [REDACTED]s payable for legal fees, as this was the sum previously agreed with you, but we will need to review our file at the time of signing to confirm the actual fees incurred, which Stone Hill Park will expect to be reimbursed.

To be clear, the significant concessions made in the enclosed mark-up and in previous negotiations go beyond the terms on which Stone Hill Park would wish to allow entry onto its property were it free to exercise its right as land owner to negotiate terms at its commercial discretion.

The enclosed licence represents the terms on which Stone Hill Park is willing to contract with Riveroak in preference to imposition of a s53 authorisation.

However, Stone Hill Park maintains its view that Riveroak's DCO proposals do not constitute a "distinct project of real substance" for the purpose of s53 Planning Act 2008. This view has been confirmed by the recent publication of the Avia Solutions report, commissioned by Thanet Council, which concluded that: "airport operations at Manston are unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031." We will be drawing this report to the attention of the Planning Inspectorate.

Yours sincerely, [REDACTED]

[REDACTED]
Partner
Herbert Smith Freehills LLP

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



BIRCHAM DYSON BELL

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys
- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Company No. [] whose registered office is at [] Query: I cannot find this entity listed at Companies House
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee, who for the avoidance of doubt shall not include [REDACTED] or any employee of the Licensor or any of its affiliated companies
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- ~~Daily Payment~~ ~~Means the amount of [REDACTED] plus VAT~~
- 1.8 Operation Stack The provision of parking facilities on the Property as agreed between the Licensor and the Department for Transport to alleviate pressure on the arrangements known as facilitate 'Operation Stack' when declared by Kent Police;
- 1.9 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and

shown edged red on the Plan annexed to this Licence

- 1.10 Phase 1 Survey Works Means the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys;
- 1.11 Phase 2 Survey Works Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys;
- 1.12 Site Manager Means [REDACTED] or such alternative employee of the Licensor who has knowledge of the Property
- 1.13 Survey Works Means the Phase 1 Survey Works and the Phase 2 Survey Works

2 Interpretation

- 2.1 In interpreting this Licence, and for the avoidance of doubt:
- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works during the Licence Period PROVIDED THAT the total number of days on which personnel of the Licensee's Agent access the Property shall not exceed 60 days and~~the~~ Licensee's Agent's right to access the Property pursuant to this Licence shall:
- 3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or
- (b) ~~cannot be~~ has not been rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will:

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a

programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.
- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or

neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out.
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application.
- 4.17 The Licensee shall ensure that within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, and at least 10 days before it is made publicly available in any form, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.[...]
- 4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
- 4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

- 5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.
- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts

¹ This is standard in s53 authorisations.

of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [redacted] ~~[insert email address] at the Licensor~~ or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence ~~and on the date of the completion of the Licence,~~ the Licensee agrees to pay to the Licensor (within 28 days of first accessing the Property pursuant to this Licence ~~demand) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.~~ [redacted]

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored ~~to~~ by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of ~~[£xxx]~~ [redacted]

10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

- 11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

<u>Survey</u>	<u>Descriptions</u>
<u>Extended Phase 1 Survey</u>	<u>Walkover survey – taking notes and mapping habitats</u>
<u>Reptile Surveys</u>	<u>Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.</u>
<u>Bird Surveys</u>	<u>Walkover surveys using binoculars</u>
<u>Bat Surveys</u>	<u>Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.</u>
<u>Great crested newt surveys (unlikely to be required)</u>	<u>All water bodies to be checked using torches, nets and bottle traps during the evening and morning.</u>
<u>Badger surveys</u>	<u>Walkover survey looking for field signs / evidence of presence.</u>
<u>Land quality Phase 1 desktop study, including a site walkover</u>	<u>A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.</u>
<u>Heritage site walkover</u>	<u>Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.</u>
<u>Surface and Ground Water</u>	<u>Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure</u>
<u>Topographical surveys</u>	<u>Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments</u>

SCHEDULE 2

Phase 2 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

<u>Survey</u>	<u>Descriptions</u>
<u>Dormouse surveys</u>	<u>Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.</u>
<u>Unexploded Ordnance (UXO) Surveys</u>	<u>Access to the Property for UXO specialists to provide clearance before any Phase 2 intrusive surveys</u>
<u>Water Quality monitoring</u>	<u>To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.</u>
<u>Non-intrusive geophysical survey of site</u>	<u>To support identification of archaeological remains</u>
<u>Targeted trial trenching based on outputs of geophysical survey</u>	<u>Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies</u>
<u>Historic building recording</u>	<u>To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys</u>
<u>Land quality Phase 2 intrusive investigations</u>	<u>Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study</u>

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory

Enclosure 3: Correspondence

Bircham Dyson Bell to Herbert Smith Freehills

7 October 2016

[REDACTED]
Partner
Herbert Smith Freehills
Exchange House
Primrose Street
London EC2A 2EG

Your Ref

Our Ref
APH/ADW/165443.0001

Date
7 October 2016

Dear [REDACTED]

Manston Airport: s53 application and licence negotiation

Thank you for your letter of 5 October 2016. I have taken instructions and the latest draft licence is acceptable to our clients. Please find attached a mark-up that simply accepts all your changes and adds the company information for RiverOak Investment Corporation.

Given the difficulties that we have had in getting this far, you will understand that we are maintaining our section 53 application until we actually set foot on your clients' land, whereupon we will immediately withdraw it. We will respond to PINS in this vein and also respond to your letter to PINS of 5 October.

Please return the engrossed licence and we will do the same.

Yours sincerely

[REDACTED]

Senior Associate
For and on behalf of Bircham Dyson Bell LLP

[REDACTED]

14794181.1

50 Broadway London T +44 (0)20 7227 7000
SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria W www.bdb-law.co.uk

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

**LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS**

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ

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- 1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Delaware Company No. 3028870) whose registered office is at 1209 Orange Street, Wilmington, Delaware DE 19802, USA
- 1.6 Licensee's Agent Amec Foster Wheeler, its consultants and contractors, acting on behalf of the Licensee, who for the avoidance of doubt shall not include [REDACTED] or any employee of the Licensor or any of its affiliated companies
- 1.7 Licence Period Means the period of 12 months from and including the date of this Licence
- 1.8 Operation Stack The provision of parking facilities on the Property as agreed between the Licensor and the Department for Transport to facilitate 'Operation Stack' when declared by Kent Police;
- 1.9 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence

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3 Licence

- 3.2 Subject to this clause 3 and clause 5, the Licensor gives to the Licensee's Agent the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works during the Licence Period PROVIDED THAT the total number of days on which personnel of the Licensee's Agent access the Property shall not exceed 60 days and the Licensee's Agent's right to access the Property pursuant to this Licence shall:
- 3.2.1 cease immediately if there is a breach of the terms of this Licence by the Licensee or the Licensee's Agent and that breach either
- (a) is incapable of remedy; or
- (b) has not been rectified within 7 days; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack and that, in the Licensor's reasonable opinion, Operation Stack would be obstructed by the carrying out of the relevant Survey Works or the carrying out of Survey Works concurrently with use of the Property for Operation Stack would give rise to health, safety or security risks PROVIDED THAT the Licensee's Agent may remain on the Property after this period at the request and direction of the Licensor to the extent required to carry out remediation works to make good the Property for Operation Stack in accordance with clause 4.9.

3.3 The Licensor shall notify the Licensee as soon as practicable of the date on which use of the Property for Operation Stack has ceased, and the temporary suspension of the Licence shall cease forthwith upon vacation of the Property by Operation Stack as notified by the Licensor.

4 Licensee's obligations

4.1 The Licensee agrees to ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 The Licensee will:

4.2.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 1 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property) during such surveys;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to those named individuals, in accordance with the terms of the programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee considers, in its reasonable opinion, that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 after consulting with the Licensor and seeking to accommodate any reasonable requests from the Licensor to avoid any interference that the Phase 2 Survey Works might cause to surveys being carried out by the Licensor for the purpose of its own proposed redevelopment of the Property provide to the Licensor a

programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out, and will also provide notice of any requirement for the Site Manager to escort and assist the Licensee's Agent (particularly in respect of specialist knowledge of the Property)during such surveys;

- 4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

- 4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence.
- 4.5 The Licensee will not permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence.
- 4.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.
- 4.7 The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey.
- 4.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.
- 4.9 In the event that the Licence is suspended temporarily due to Operation Stack, the Licensee shall at the Licensor's request and direction make good any damage to the Property which in the Licensor's reasonable opinion might impede its use for Operation Stack.
- 4.10 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.
- 4.11 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.
- 4.12 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or

neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

- 4.13 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹.
- 4.14 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works.
- 4.15 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out.
- 4.16 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental statement and other documentation forming part of the Licensee's DCO Application.
- 4.17 The Licensee shall ensure that within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, and at least 10 days before it is made publicly available in any form, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.
- 4.18 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.
- 4.19 The Licensee undertakes to ensure that no act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

- 5.1 The Licensor agrees and undertakes to allow the Licensee's Agent access to all such parts of the Property as are identified by the Licensee in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works.
- 5.2 The Licensor agrees and undertakes to procure the attendance of the Site Manager to escort and assist the Licensee's Agent where the Licensee's Agent has given notice of the requirement for such assistance pursuant to clauses 4.2.1 and/or 4.3.1.

6 General

- 6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts

¹ This is standard in s53 authorisations.

of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 Any notice to be given to the Licensor pursuant to this Licence may be given by email by sending it to [REDACTED] or to any other person as the Licensor may inform the Licensee of from time to time.

7 Contracts (Rights of Third Parties) Act

7.1 It is intended that the Licensee's Agent shall be entitled to enforce the provisions of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 Payment and Indemnity

8.1 In consideration of the grant of this Licence, the Licensee agrees to pay to the Licensor (within 28 days of first accessing the Property pursuant to this Licence) [REDACTED]

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works or following the suspension of the Licence due to Operation Stack; and.

8.2.2 all losses suffered by the Licensor due to breach or termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such breach or termination arises due to the Licensee's Agent failing to vacate the Property in accordance with clause 3.1.2 or due to the condition of the Property following suspension of the Licence in accordance with clause 3.2.2 making it totally or partly unusable for Operation Stack.

9 Costs

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [REDACTED]

10 Confidentiality

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 Governing Law and Jurisdiction

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance

with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

SCHEDULE 1

Phase 1 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Extended Phase 1 Survey	Walkover survey – taking notes and mapping habitats
Reptile Surveys	Placement of refugia across all grassland and scrubby habitats. Checking refugia over 7 visits during summer time. Also general walkover and observations.
Bird Surveys	Walkover surveys using binoculars
Bat Surveys	Various – walkover transect surveys using detectors and recorders; placement of static recorders that are checked fortnightly; infra-red cameras; internal inspections of buildings and mature trees.
Great crested newt surveys (unlikely to be required)	All water bodies to be checked using torches, nets and bottle traps during the evening and morning.
Badger surveys	Walkover survey looking for field signs / evidence of presence.
Land quality Phase 1 desktop study, including a site walkover	A site walkover including inspection of areas previously or currently used for potentially contaminative uses, including fuel storage and use, hangars and workshops, aircraft breaking areas, formal and informal waste disposal areas will be conducted and photographs taken.
Heritage site walkover	Site visit will identify visible historic features and assess possible factors which may affect the survival or condition of known or potential historic environment assets on the site. Photographs of historic features will be taken to document current state/level of survival.
Surface and Ground Water	Walkover survey to establish appreciation of the local site topography, drainage paths and location of site infrastructure
Topographical surveys	Mapping the topography of the site to inform the flood risk assessment, archaeology, landscape and land quality assessments

SCHEDULE 2

Phase 2 Survey Works

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

Survey	Descriptions
Dormouse surveys	Placement of dormouse tubes in any continuous hedgerow/scrub habitats that are then checked monthly for season.
Unexploded Ordnance (UXO) Surveys	Access to the Property for UXO specialists to provide clearance before any Phase 2 intrusive surveys
Water Quality monitoring	To support a Phase 2 Land Quality Risk Assessment and groundwater assessment there may be a requirement to install groundwater boreholes.
Non-intrusive geophysical survey of site	To support identification of archaeological remains
Targeted trial trenching based on outputs of geophysical survey	Potential for targeted archaeological investigations to further characterise any archaeological remains identified as part of the geophysical surveys and Phase 1 and desk-top studies
Historic building recording	To record any upstanding historic buildings and remains identified as part of the Phase 1 surveys and desk-top studies, to include photographic and drawn records, written report and earthworks surveys
Land quality Phase 2 intrusive investigations	Collection of samples using techniques including boreholes, trial pits and hand augers for the Phase 2 assessment in areas identified from the Phase 1 desktop study

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory

Enclosure 4: Statutory Instrument 2015/1635 and Plan

2015 No. 1635

TOWN AND COUNTRY PLANNING, ENGLAND

**The Town and Country Planning (Operation Stack) Special
Development Order 2015**

<i>Made</i> - - - -	<i>28th August 2015</i>
<i>Laid before Parliament</i>	<i>1st September 2015</i>
<i>Coming into force</i> - -	<i>2nd September 2015</i>

The Secretary of State, in exercise of the powers conferred by sections 59 and 60 of the Town and Country Planning Act 1990(a), makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (Operation Stack) Special Development Order 2015 and comes into force on 2nd September 2015.

(2) This Order applies to land comprising the freight holding area at Manston Airport, Manston Road, Manston in Kent.

Interpretation

2. For the purposes of this Order—

“freight holding area” means the area which is part of Manston Airport shown on the Map bounded externally by the outer edge of the bold black line and references in this Order to “the land” are to be construed as references to that land;

“goods vehicle” has the meaning in section 192 of the Road Traffic Act 1988 (general interpretation)(b);

“Highways England” means Highways England Company Limited, a company limited by shares and incorporated in England and Wales under company number 9346363;

“the Map” means the map marked “Map referred to in the Town and Country Planning (Operation Stack) Special Development Order 2015” a copy of which, signed by a member of the Senior Civil Service in the Department for Communities and Local Government, is available for inspection at—

(a) Planning Directorate, Department for Communities and Local Government, 2 Marsham Street, London, SW1P 4DF; and

(b) Thanet District Council, Cecil Street, Margate, Kent, CT9 1XZ; and

“Operation Stack” means the operation, administered by Kent Police and Highways England, for the purpose of relieving congestion on the M20 motorway.

(a) 1990 c.8. Section 59 was amended by section 1 of, and Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27) and section 60 was amended by section 4(1) of the Growth and Infrastructure Act 2013.

(b) 1988 c.52.

Temporary planning permission

3.—(1) Subject to the following provisions of this Order, planning permission is granted for development consisting of—

- (a) use of the land for the stationing of goods vehicles;
- (b) the provision on the land of any temporary structures, works, plant or machinery in connection with that use including the provision of facilities for drivers of goods vehicles stationed on the land; and
- (c) use of the air traffic control tower building on the land as a centre for control and co-ordination of activities on the land.

(2) The planning permission granted by paragraph (1) ceases on 1st June 2016 and accordingly immediately thereafter the land reverts to its previous lawful use.

Conditions and limitations

4.—(1) Development is not permitted by article 3 for—

- (a) the use of the land for the stationing of goods vehicles otherwise than in relation to those vehicles directed to use the freight holding area under Operation Stack;
- (b) the use of the land for the stationing of goods vehicles otherwise than on areas of hard standing;
- (c) the use of the land for the refuelling or unloading of goods vehicles;
- (d) the provision on the land of any structure, works, plant or machinery otherwise than on areas of hard standing;
- (e) the provision on the land of any structure, works, plant or machinery which exceeds 3 metres in height;
- (f) the use of the air traffic control tower building otherwise than as a centre for control and co-ordination of activities on the land relating to Operation Stack; and
- (g) the use of any building on the land (other than the air traffic control tower or any structure brought on to the land on or after 5th August 2015 for the purposes of Operation Stack).

(2) Development permitted by article 3 is subject to the following conditions—

- (a) any hard standing must be kept in good repair and any defects in the hard standing which may allow surface water or other liquids to penetrate beneath the hard standing must be repaired, so the hard standing is impermeable, as soon as practicable;
- (b) the surface water drainage system must be kept in good repair and any defects or blockages to that system must be repaired or removed as soon as practicable;
- (c) the foul water drainage system must be kept in good repair and any defects or blockages to the foul water drainage systems must be repaired or removed as soon as practicable;
- (d) a plan identifying the foul water sewers and surface water drainage system, including the location of access points to deploy emergency stop valves, must be kept on the land at all times; and
- (e) any artificial lighting must be installed no closer than 10 metres from the boundary of the land and must be arranged so the main beam angle of each installation is directed downward so as to minimise light spill.

(3) As soon as reasonably practicable after 1st June 2016—

- (a) all structures, works, plant or machinery brought on to the land on or after 5th August 2015 for the purposes of Operation Stack must be removed; and
- (b) the land must be restored to its condition immediately before 5th August 2015.

Signed by authority of the Secretary of State for Communities and Local Government

28th August 2015

James Wharton
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants planning permission for 9 months, subject to limitations and conditions, for development consisting of use of certain land on the Manston Airport site for the stationing of goods vehicles and use of the control tower building as a co-ordination centre and the provision of other temporary structures including those needed to provide lighting and other facilities.

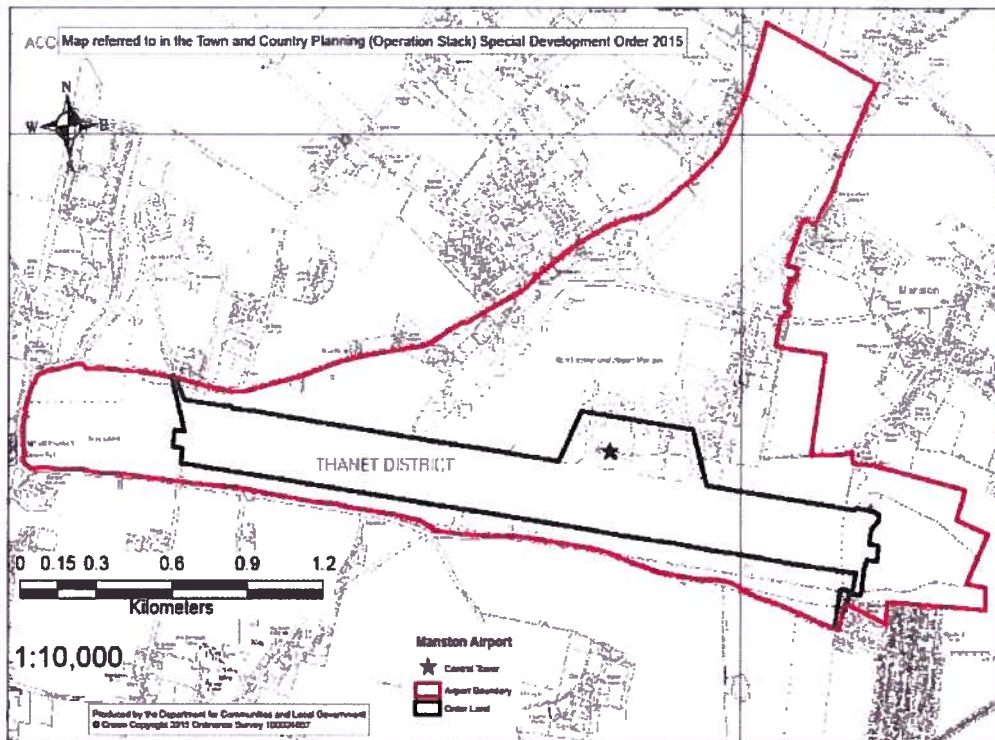
The limitations are that: the use is for the purposes of Operation Stack only; good vehicles are only to be parked on hard standing areas of the land; any temporary structures are to be sited on hard standing areas only; the land may not be used for the refuelling or unloading of such goods vehicles; and no temporary structure may exceed 3 metres in height.

The conditions are that: the hard standing and drainage systems on the land are to be kept in good repair; a plan identifying the sewers and drainage systems is kept on the land; and any artificial lighting installed is placed no closer than 10 metres from the boundary of the land and is arranged so the light is directed downward to minimise light spill

The land to which this Order applies is shown on a map, a copy of which is available for inspection at the Planning Directorate, Department for Communities and Local Government, 2 Marsham Street, London, SW1P 4DF and Thanet District Council, Cecil Street, Margate, Kent, CT9 1XZ.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

For illustrative purposes only a plan of the Airport site and the land to which this Order applies is appended below.



© Crown copyright 2015

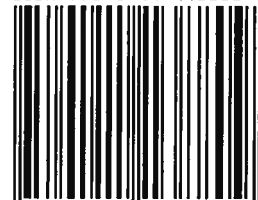
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Your Ref: ADW/APH/165443.0001

Our Ref: TR020002_000502

(by email)

Date: 8 November 2016

Dear [REDACTED]

Planning Act 2008 (as amended) – Section 53

Application by RiverOak Investment Corporation for an Order Granting Development Consent for the Manston Airport

Request for corrected plan in line with Advice Note 5

In our letter dated 7 October 2016, we requested that you provide a revised copy of Plan A, prepared in accordance with the guidance set out in Advice Note 5 (AN5) 'Section 53: Rights of Entry (Planning Act 2008)'. We note the inclusion of a revised Plan A in your submission to the Inspectorate dated 28 October 2016.

The Inspectorate welcomes that the revised plan denotes the proposed development in red, the land owned by RiverOak in blue, and the land to which access is sought in green, as requested. We also welcome that as requested your plan was revised to include the parcels of the four separate land titles to which you seek access, and that these plots match the boundaries of the official copies of the title plans (provided in Schedule 3 of the original application). However, the Inspectorate notes that the plan has been mislabelled, the title numbers listed under Plots 3 and 4 have been mixed up (i.e. the plot denoted in purple (Plot 3) is labelled as title number K891199, however this should be K806190 (Plot 4) according to the Land Registry title plans). The Inspectorate therefore requests an amended Plan to correct this error.

The Inspectorate also notes that the revised hardcopy of the plan was provided on A3 sized paper, at a scale of 1:15000, and you have not provided the plan to the specifications requested in AN5 because "it would span 9 A1 sheets". We request that you provide us with both electronic and hardcopies of the plans, to a scale of 1:2500 as specified in the Advice Note.

The revised plan must identify the premises and boundary of the other occupiers identified under Freehold Title Number K803975 in your original submission (paragraph 1.2.3a).

Request for further information

The Inspectorate requests that the applicant provides a plan to show the extent of the safeguarding zone and the details of the conditions relating to the technical safeguarding zone set by the Ministry of Defence around their infrastructure located within the Leasehold Title Number K976945 (excluded from the authorisation request). We also request that the applicant provides confirmation of whether the safeguarding zone extends beyond the plot of Title Number K976945.

The applicant is also requested to provide further justification for the assertion in paragraph 1.3.3 in the letter dated 28 October 2016 that "the proposed surveys have no potential to interfere with any safeguarding zone set by the MoD".

Format of the information to be provided

Please provide electronic copies as well as hard copies of the information requested in this letter. Please note that any personal information relating to third parties provided by the applicant to the Inspectorate will be handled by the Inspectorate in accordance with its obligations under the Data Protection Act 1998 and therefore will not be made available on our website.

Please provide the requested information by **22 November 2016** copying in all persons with interest. Following expiry of this date the Planning Inspectorate will move to make a recommendation to the Secretary of State regarding the authorisation requests, on the basis of the information which has been provided.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Richard Hunt

Richard Hunt
Senior EIA Advisor
on behalf of the Secretary of State

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.



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Our ref
5567/30983750
Your ref
20160720_TR02002_17059779
Date
21 November 2016

By email and by post

Without prejudice

Dear Richard

Former Manston airport: s53 application by Riveroak Investment Corporation

We write in relation to Bircham Dyson Bell's letter to you dated 28 October 2016.

In their letter, Bircham Dyson Bell took the opportunity (at section 6) to comment on our letter to you dated 27 October. While you have not yet invited us to comment on Bircham Dyson Bell's letter, we feel it is essential to respond to what they say (at paragraphs 6.4 and 6.5) about [REDACTED] QC's Opinion which we sent to you with our letter of 27 October.

Paragraph 6.4

In relation to paragraph 6.4, it is wrong to suggest that either Herbert Smith Freehills or [REDACTED] has made "the typical confusion between capacity and actual operating level." It is accepted that if Riveroak eventually submits an application which would render the site physically capable of use by 10,000 cargo movements per annum, such an application must be decided under the Planning Act 2008 regime. The point which [REDACTED] makes at paragraph 15 of his Opinion is rather that "there is very little indeed at this stage, other than a bald assertion to the effect that it is intended to develop an air freight and cargo facility with the capacity to handle more than 10,000 cargo ATMs a year, to demonstrate that [the] proposed project will be one that requires development consent, as opposed to planning permission."

In any event, as [REDACTED] states at paragraph 17, he does not need to reach a definitive view on this matter because he is "very clearly of the view that the requirements of s53(2)(a) are not met."

Paragraph 6.5

Bircham Dyson Bell assert at the end of paragraph 6.5 that "The 'substance' goes to the seriousness of the prospect of an application being made, and no further than that, and that is not in doubt." This is quite obviously wrong.

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Herbert Smith Freehills LLP is a limited liability partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications.



Under s53(1) Planning Act 2008, it is a pre-requisite that s53 authorisation may only be granted in connection with an application or proposed application for development consent, or a DCO which has already been granted. However, meeting this condition alone is not sufficient for the Secretary of State to grant s53 authorisation for a "proposed application". It is necessary as a matter of law that the test in subsection (2) is also met: that is, that the "proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land."

At paragraph 15 of his Opinion, Mr King records that "RiverOak have made it clear that they intend to make a DCO application" and this is not in issue. However, BDB misrepresents [REDACTED] Opinion when they say that [REDACTED] (at para 21 of his Opinion) "says this ['real substance'] equates to whether the project will be delivered". In fact, [REDACTED] says that the notion of 'real substance' "requires consideration of whether the project has a real prospect of delivery, or of going ahead". Importantly, that is in the context of what he says about the compulsory nature of the s53 power, and the implications of this, in paragraphs 19 and 20, on which we note that BDB offer no comment.

We have never contended that the question whether the project will be given consent is relevant to RiverOak's s53 application. BDB's reference to this is therefore an irrelevant diversion.

[REDACTED] goes on to say at paragraph 22 of his Opinion that there is no need for there to be "unassailable evidence that the project is viable and will, if development consent is granted, go ahead." It is his view, however, that "there must be something more than mere assertion on the part of the applicant that they intend to undertake the project."

We continue to maintain therefore that it is incumbent on the Secretary of State to consider whether there is *prima facie* evidence that the project has a real prospect of delivery. [REDACTED] QC's view, as stated in his Opinion (paragraph 27), is that there is not.

Furthermore, should RiverOak's s53 application be determined on the basis advanced by BDB, namely that the 'real substance' test is met merely because there is a serious prospect of a DCO application being made, then the Secretary of State will have fallen into serious legal error.

Yours sincerely, [REDACTED]

[REDACTED]
Partner