



Pinsent Masons

BY E-MAIL AND POST

FOR THE ATTENTION OF RICHARD PRICE
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15 December 2017

Dear Sirs,

**THE FORMER MANSTON AIRPORT SITE
CORRESPONDENCE FROM BIRCHAM DYSON BELL AND PROPOSED APPLICATION
DELAY AND RE-CONSULTATION**

We write:

1. in respect of the delay to the proposed application and re-consultation that RiverOak Strategic Partners ("**RSP**"), the proposed applicant, now proposes as set out in your meeting note dated 22 November 2017;
2. further to Bircham Dyson Bell's email correspondence sent to you on 3 November 2017 (the "**BDB November Correspondence**") in response to your request for submissions in relation to the transitional provisions in the 2017 EIA Regulations; and
3. in respect of correspondence we have received from Bircham Dyson Bell dated 12 and 14 December 2017 regarding access to the Manston Airport site (the "**BDB December Correspondence**").

1. **RSP'S PROPOSED RE-CONSULTATION**

- 1.1 We note that following the matters we raised with the Planning Inspectorate in seeking section 51 advice relating to applying for an order granting development consent and making representations about an application, or a proposed application, for such an order, that RSP has advised that it intends to re-consult and move the proposed application submission date to Quarter 1 2018.
- 1.2 We confirm that our client, Stone Hill Park Limited ("**SHP**"), intends to engage with any new statutory consultation that is to take place under the Planning Act 2008 (as amended) (the "**2008 Act**"). We trust that the Planning Inspectorate has advised the proposed applicant of the need in any consultation to comply with the statutory provisions and notification requirements of the 2008 Act, in particular sections 42, 47,

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48 and 49, and of the 2017 EIA Regulations, as well as following guidance and advice and delivering best practice. Furthermore, we trust that given the interest to date in this proposed application and the issues involved, adequate time for consultation responses to be had regard to will be provided for by RSP otherwise there would be a legitimate concern over the adequacy of the consultation proposed.

1.3 However, from reading the Planning Inspectorate's November 2017 meeting notes with RSP, as well as receiving the BDB December Correspondence, we are concerned that the consultation to be carried out between January and February 2018 will fail to provide the necessary clarity over RSP's proposals that both our client and the public require in order to participate in a meaningful manner and for the consultation itself to be adequate.

1.4 The 22 November 2017 meeting note states that the "*Applicant summarised that the consultation materials would include an updated full Preliminary Environmental Information Report which would satisfy the 2017 Regulations and also articulate how the application has developed since the previous statutory consultation in June and July 2017.*" In order to fulfil this commitment, RSP must provide the necessary information to enable understanding of how the project meets, and is defined in accordance with, the provisions of section 23 of the 2008 Act and assessed in accordance with the 2017 EIA Regulations.

1.5 Yet the following extracts from the BDB December Correspondence would indicate that RSP is not intending to provide this fundamental information that goes to the heart of section 23 of the 2008 Act:

"the Planning Inspectorate did indeed advise in our meeting of 2 November 2017 that the 'concerns raised by SHP should be addressed, as far as possible, within its application'. ...Please confirm whether you will only discuss extending the licence upon seeing information that PINS agree should correctly be included within our application."; and

"That position [i.e. the provision of information required under section 23 on both current capability and future capability post the alteration] has been consistent and...has been discussed with PINS who have agreed that our proposed approach is acceptable to them."

1.6 Given these statements, and in order to assist SHP in participating in a helpful and meaningful manner in any forthcoming consultation, we request section 51 advice from the Planning Inspectorate as to whether the Inspectorate does "agree" that the concerns raised by SHP in its previous correspondence to the Inspectorate, and particularly the need to provide the information and assessment outlined in paragraph 1.4 above, should only be included in the proposed DCO application rather than in both the statutory consultation material and the proposed DCO application. We appreciate that the 2 November 2017 meeting was held before RSP confirmed that it was delaying its submission so as to re-consult, but it would appear that RSP is seeking to portray the discussions of that 2 November meeting as justification for not providing our client, and the public, with the necessary information required for them to consider and meaningfully participate in any future consultation.

1.7 We are, therefore, concerned that the serious concerns that we set out in our letters of 11 October 2017 and 12 November 2017 will not be adequately addressed, or addressed at all, in RSP's 2018 consultation. As we have previously noted, it is only by providing this detail that our client, and the public, can properly understand RSP's proposals and with it, whether the correct environmental assessment has been carried out and if they need to engage with and seek to influence the proposals and any minimisation or mitigation of likely significant effects.



2. COMPULSORY ACQUISITION

- 2.1 To enable our client to engage most effectively, it would also assist our client to understand the Planning Inspectorate's advice to RSP on what is now required to conform to legislative requirements and the spirit and intent of the 2008 Act, particularly in relation to proposed compulsory acquisition as a last resort.
- 2.2 As you are aware, an applicant should be able to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.
- 2.3 We note that in your comments on the Draft Statement of Reasons, you have requested that the "Status of landowner negotiations" be provided as a standalone document. As we have previously advised, RSP has not engaged at all with our client and therefore it is evident that the reasonable alternatives to compulsory acquisition, either through the terms and extent of the proposed scheme or through dialogue, negotiation and alternative dispute resolution/mediation, have not been considered.
- 2.4 We would like to understand and seek section 51 advice from the Planning Inspectorate as to what steps we should expect the applicant to take in pre-application, particularly with regard to the statutory tests and human rights associated with compulsory acquisition and in regard to fulfilling Government guidance. This would greatly assist in guiding SHP in how best to engage effectively with any further pre-application consultation undertaken by RSP.

3. 2017 EIA REGULATIONS

- 3.1 With specific regard to the matters raised in the BDB November Correspondence on the EIA Directive 2014/52/EU, we would ask the Planning Inspectorate and Secretary of State to consider carefully and take their own advice on the need for compliance with UK regulations, especially where those regulations provide greater prescription than required by the Directive they are bringing into effect in English law.
- 3.2 We would therefore ask that in its deliberations, the Inspectorate looks carefully at:
- 3.2.1 Regulation 37(2) of the 2017 EIA Regulations which states "*...the 2009 Regulations continue to apply to any application for an order granting development consent..... where before the commencement of these Regulations...(a) the applicant has...*" In this context, the definition of "applicant" can only mean "*an applicant for an order granting development consent*" and not "*or a person who proposes to apply*"; and
- 3.2.2 Regarding the Directive itself, it does not matter that article 3.2 does not refer to applicant or developer for the reasons expressed in this letter, but in any event paragraph (39) of the preamble does refer to "the developer".
- 3.3 In this regard, the UK has very clearly referred to "the applicant" and that is at the discretion of the UK Government as to how to transpose the Directive.

Nothing we have seen to date in correspondence from RSP or in meeting notes with the Planning Inspectorate provides confidence or assurance that the substantive matters raised by SHP are being addressed adequately in pre-application.

SHP would appreciate a further section 51 advice meeting with the Planning Inspectorate in the first instance to take advice on how best to make effective representations about the proposed



application in the forthcoming consultation to be undertaken by RSP and how best to get those representations taken in to account adequately in the pre-application process.

We confirm that we can make ourselves available for a meeting on any of 9 or 11 January 2018 and would request confirmation from the Planning Inspectorate when a section 51 advice meeting can be accommodated that will result in timely advice to inform the further consultation exercise proposed.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink that reads "Pinsent Masons LLP." The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Pinsent Masons LLP