

APPLICATION BY RIVEROAK STRATEGIC PARTNERS LTD ("THE APPLICANT") FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE UPGRADE AND REOPENING ON MANSTON AIRPORT

PINS Reference Number: TR020002

WRITTEN SUMMARY OF STONE HILL PARK LTD'S ORAL SUBMISSIONS PUT AT THE FIRST DEVELOPMENT CONSENT ORDER ISSUE SPECIFIC HEARING HELD ON 10 JANUARY 2019

1. BACKGROUND

- 1.1 The first Issue Specific Hearing ("ISH") regarding the Development Consent Order was held at 10:00am on 10 January 2019 at Margate Winter Gardens, Margate, CT9 1HX.
- 1.2 The ISH took the form of running through items listed in the agenda published by the Examining Authority (the "ExA") on 21 December 2018 (the "Agenda").
- 1.3 The format of this summary follows that of the Agenda and only refers to parts of the Agenda where Stone Hill Park Limited ("SHP") made substantive comments.
- 1.4 Present from SHP were Celina Colquhoun (Counsel for SHP), Richard Griffiths (partner at Pinsent Masons LLP) and Jamie Macnamara (for SHP).

2. AGENDA ITEM 4 – OVERALL ISSUES ON DRAFTING

- 2.1 In response to the ExA's request that the Applicant explain the drafting changes necessary as a result of the Housing and Planning Act 2016, the Applicant confirmed that it had produced a table to provide this explanation.
- 2.2 Counsel for SHP confirmed to the ExA that given the extent of compulsory acquisition in the Application and as SHP is the owner of the majority of the land the subject of that compulsory acquisition request, SHP is interested in how the draft Order has applied the Housing and Planning Act 2016. Accordingly, SHP will review the table once it is submitted into the Examination and, if necessary, provide comments to the ExA.

3. AGENDA ITEM 5 – ASSOCIATED DEVELOPMENT WHERE THE EXA NOTED THAT IT WISHED TO EXPLORE THE APPLICANT'S APPROACH TO ASSOCIATED DEVELOPMENT

- 3.1 All submissions made are without prejudice to SHP's position, as set out in its Relevant Representation (RR-1601), that the Application before the ExA contains no Nationally Significant Infrastructure Project ("NSIP").
- 3.2 Prior to setting out a summary of SHP's oral submission, a brief summary of the discussion between the ExA and Counsel for the Applicant is noted in sections 3.3 to 3.8 in order to provide context for SHP's oral submission. Sections 3.12 to 3.14 also provide additional background context regarding the degree to which material concerns regarding the Applicant's approach to Associated Development have been raised with the Applicant previously.

- 3.3 The ExA explained that Associated Development was an important issue, not only for the ExA understanding the nature of the proposed scheme and whether the way in which the draft Development Consent Order is formulated accords with statute and statutory guidance, but also whether the Applicant's request for compulsory acquisition powers over land can be justified and whether there are any doubts as to whether particular works should rightfully form part of the Application.
- 3.4 The ExA referred to the Guidance on Associated Development (Guidance on associated development applications for major infrastructure projects, April 2013) and explored the Applicant's approach to Associated Development. In doing so, the ExA highlighted a number of discrepancies and lack of information contained in the Application documents, including in respect of:
- 3.4.1 discrepancies between the works listed in the NSIP Justification document (APP-008) and the draft Development Consent Order (APP-006);
 - 3.4.2 a restriction by use class does not restrict the use to airport related development – there is therefore no linkage between the development proposed on the Northern Grass and the NSIP (as offered in paragraph 45 of the NSIP Justification document);
 - 3.4.3 the absence of any information in the draft Development Consent Order between those works that were considered by the Applicant to be the NSIP and those works that the Applicant considered to be Associated Development.
- 3.5 The ExA confirmed that it would need to examine whether the works identified by the Applicant as being Associated Development could justify its request for Compulsory Acquisition powers. The ExA explained that a direct link must exist between Associated Development and Principal Development.
- 3.6 The ExA noted that the Explanatory Memorandum states that there is no need to distinguish between those parts that are the NSIP and those parts that are Associated Development. The ExA referred the Applicant to the statutory guidance that states Applicants should explain which parts of the proposal are Associated Development and why.
- 3.7 In response to Counsel for the Applicant explaining that the main purpose of the Associated Development was to maximise the attraction of the airport to the market, the ExA noted that the Guidance is clear in stating that if part of the proposal is there to cross subsidise the principal development, it should not be treated as Associated Development. The ExA also noted there is a total absence of a business model or information on financing and funding that would be necessary to allow an assessment of whether the requested works do not contravene guidance principles, matters which would require to be assessed and tested in the examination.
- 3.8 The ExA asked the Applicant to explain when the works on the Northern Grass (work numbers 15-17) would be phased in the Masterplan. Counsel for the Applicant explained that 50,100 sq metres of these works (referred to as Landside Business Development in the Masterplan) would be carried out during Phase 2 (2020–2023) and also confirmed that the refurbishment of the runway would take place in Phase 1 (2019-2020). *SHP, having checked this detail post the Hearing, would bring to the*

ExA's attention that the information provided on phasing was not accurate. The Applicant's Masterplan shows 55,000 sq metres of Landside Business Development during Phase 1 (2019–2020), in addition to the 50,100 sq metres proposed for Phase 2.

- 3.9 Counsel for SHP welcomed the ExA picking up on how Associated Development is reflected in the draft Development Consent Order, and noted that Counsel for the Applicant had agreed that the Applicant would confirm which works listed in Schedule 1 of the draft Development Consent Order are Associated Development. However, Counsel for SHP submitted that it is vital that the Applicant also sets out which works in Schedule 1 of the draft Development Consent Order comprise the NSIP itself, having regard to the fact that only those works that satisfy section 23 of the Planning Act 2008 can be the NSIP. Alongside this list there needs to be a full and clear explanation that provides rationale for the categorisation of each element of the works, which can then be tested in the examination against both section 23 (in respect of the NSIP) and against the Guidance on Associated Development (for all works that are not the NSIP, or part of the NSIP).
- 3.10 Counsel for the Applicant stated to the ExA that the information could be provided for Deadline 3. Counsel for SHP noted that this information should be provided as soon as possible, on the basis that SHP was required to submit its written representations by Deadline 3. It is the rationale for why a work is, or part of, the NSIP or is Associated Development that is most important to both SHP and the examination, and any delay in providing this information would be prejudicial to SHP. Furthermore, this explanation should have been provided in the Application. It is unfortunate that it has not been provided when SHP has been making these exact points pre-submission (see further below). Waiting until one month into the examination for the explanation is unreasonable when the Applicant should have this information now.
- 3.11 In response to a query from the ExA, Counsel for the Applicant again stated it would provide the list of what is the NSIP and what is Associated Development for Deadline 1 and the rationale would be provided for Deadline 3. The ExA then urged that the full information is provided for Deadline 1. The ExA explained that a list is useful but not as useful as an explanation of why certain works are NSIP and why other works are Associated Development. Counsel for the Applicant confirmed that it would aim to provide as much information as possible by Deadline 1.
- 3.12 For additional context, there can be absolutely no justification for the Applicant's failure or inability to clearly set out and provide justification for the elements of its proposal that it purports to be the NSIP and that which it considers to be Associated Development.
- 3.13 In numerous pieces of correspondence dating back over 15 months, SHP has explained in detail the material issues with the Applicant's inclusion of elements of development that are neither the NSIP nor satisfy the statutory requirements for Associated Development.
- 3.14 This includes letters to the Planning Inspectorate dated 10 October 2017 and 17 November 2017 (both of which were copied to the Applicant's solicitors) and SHP's s42 consultation response in February 2018. Each of these documents were also appended to SHP's relevant representations submitted in October 2018. Despite this, to date the Applicant has been unwilling, or unable, to provide rationale to

justify how the works in its proposed project complies with guidance related to Associated Development.

4. AGENDA ITEM 7 – DISCUSSION ON SPECIFIC PARTS OF THE dDCO

4.1 Counsel for SHP asked that the ExA consider a specific concern in relation to Article 18, which deals with entering on to land to undertake surveys. SHP has an existing Parking Services Agreement with the Secretary of State for Transport under which SHP is obligated to provide parking services on its land in relation to Operation Stack (or equivalent) at short notice, should SHP be notified of the requirement by Highways England. As a result, the provisions contained within Article 18 are not appropriate as there is no provision which recognises that entry to the land must be refused in certain circumstances.

4.2 Mr Macnamara, for SHP, explained that the Applicant is aware of the existing arrangements and that the s53 Authorisation issued to the Applicant in 2018 includes provisions that could be used as a starting point for the drafting of this article. SHP would then be able to comment on the revised drafting. In response to a query from the ExA as to whether the agreement can be triggered unilaterally by Highways England, it was confirmed that SHP are under an obligation to provide such services when requested.

4.3 Following confirmation from Counsel for the Applicant that the Applicant is content to include provisions to allow this to continue, Mr Macnamara noted that it is important the draft Development Consent Order does not place obligations on SHP that are in conflict with its obligations to Secretary of State.

4.4 Counsel for SHP raised two points in respect of the environmental impact assessment:

4.4.1 First, Counsel for the Applicant has made it clear in her oral submissions that the Applicant's approach is to ensure that the proposed development would not give rise to anything that is "materially worse" than the effects outlined in the environmental statement. However, the Applicant has made it clear in its Application that whilst the proposed development has the capability of accommodating 83,220 air transport movements per year, the environmental impact assessment has only assessed 17,170 air transport movements on the basis that the Applicant considers that it is "no more than a very remote possibility" that the airport would operate at its maximum capability. However, there is nothing in the draft Development Consent Order that clear restricts the operation of the airport to the number of movements that have been environmentally assessed and on which the mitigation has been based. This needs to be examined and tested.

4.4.2 Secondly, the Applicant's approach to ecological mitigation breaches relevant law as the ExA, and ultimately the Secretary of State, does not have in front of them sufficient information to determine the likely significant environmental effects of the proposed development. It is established case law that such surveys cannot be secured by a condition/requirement.