

MANSTON AIRPORT DEVELOPMENT CONSENT ORDER EXAMINATION

SUBMISSION FOR DEADLINE 2 COMMENTS ON ANY SUBMISSIONS MADE TO DEADLINE 1 FROM LOCAL BUSINESS AND INTERESTED PARTY, FIVE10TWELVE LTD

Referencing of submissions made to Deadline 1

1. The following submissions to Deadline 1 will be referenced at various points throughout this submission:

TR020002-002882 - Summary of Applicant's Oral Submissions at January Hearings

TR020002-002870 - APP008 2.3 NSIP Justification

TR020002-002900 - Sam Bambridge - Written summary of oral submissions

TR020002-002940-AS - Cllr Rev. Stuart Piper

TR020002-002938-AS - Cllr Jonathan Curran

2. The following documents from the Relevant Representations will be referenced for additional context and as supporting evidence:

RR-0231 - Carol Messenger

RR-0333 - Cllr Paul Messenger

RR-0334 - Cllr Sarah Larkins

RR-0531 - Emma Dawson

RR-0598 - George Rusiecki

RR-1212 - Michelle Fenner

RR-1700 - Robin Edwards

RR-1747 - Samantha Bambridge

RR-1709 - Roger Gale

3. The following documents from the pre-examination library will also be referenced for additional context and as supporting evidence:

TR020002-000575 - Section 53 correspondence relating to Land at freehold title numbers K803975, K837264, K891199 and K806190 (Part 3)

4. Any other documents that may be presented in support of this submission will be appropriately referenced in footnotes and included in the Appendix

5. **Comments relevant to Principal Issues of ‘Compulsory Acquisition’ and ‘Funding’**

5.1. Comments on submissions to Deadline 1 herewith relate to the Principal Issue of **Compulsory Acquisition**, specifically as defined in Annex C of the Examining Authority (ExA) Rule 8 Letter and update of Principal Issues in the following paragraphs (bold has been added for emphasis):

*i. Whether all of the land which the Applicant wishes to acquire compulsorily has been shown to be necessary **for the purposes of the Proposed Development***

*ii. The compelling case **in the public interest** for Compulsory Acquisition*

5.2. Comments on submissions to Deadline 1 herewith also relate to the Principal Issue of **Funding**, specifically as defined in Annex C of the Examining Authority (ExA) Rule 8 Letter and update of Principal Issues in the following paragraph (bold has been added for emphasis):

*ix. Whether there is a realistic prospect **of the scheme** proceeding should it be consented*

5.3. The Applicant states in its Summary of Applicant’s Oral Submissions at January Hearings (**TR020002-002882**) at page 48, paragraph 8.1.2 (bold has been added for emphasis):

*“8.1.2 **the applicant has no ‘Plan B’ to build houses on the site. It has spent considerable time and effort resisting planning applications and local plan changes that would make non-airport development more likely, and is committed to securing and operating a successful airport from the site.**”*

5.3.1. The precise and careful phrasing above gives no certainty, assurances or comfort to concerns expressed by either the current Landowner, Stonehill Park Ltd, or concerns raised by residents and Interested Parties talking at the Oral Hearings and through numerous Relevant Representations that a plan to build houses on the site may actually be the Applicant’s Plan A.

5.3.2. Irrespective of whether or not the Applicant may or may not plan to build houses on the site, there are no assurances that this may become a necessary default option in the event that the Applicant is unsuccessful in its attempts to adequately fund the airport development and/or operations or in the event that the long history of commercial failure of airport operations at the site should continue.

5.4. The Applicant's statement that it "*has spent considerable time and effort resisting planning applications and local plan changes that would make non-airport development more likely*", requires detailed examination of the precise nature of those changes with regards to the Principal Issues of **Compulsory Acquisition and Funding** as they relate to the "*purposes of the Proposed Development*" and the "*realistic prospect of the scheme proceeding should it be consented*"

5.4.1. It is reasonable to assume that the "*local plan changes that would make non-airport development more likely*" refers to Policy EC4 of the Thanet District Council (TDC) current Local Plan (2006)¹, which states:

"LAND AT THE AIRPORT, AS IDENTIFIED ON THE PROPOSALS MAP, IS RESERVED FOR AIRSIDE DEVELOPMENT"

5.4.2. The importance of policy EC4 to the Applicant during the DCO Application and Examination Process is shown both in the Applicant's statement at 8.1.12 (**TR020002-002882**) and in its NSIP Justification, (**TR020002-002870**), specifically as it relates to the Northern Grass area, as noted on page 3, paragraph 10, (**TR020002-002870**):

"The Proposals Map which forms part of Thanet District Council's current Local Plan (2006) identifies the Northern Grass area as being within the airport boundary where Kent International Airport Policy EC2 applies and Airside Development Policy EC4 applies"

5.4.3. Policy EC4 of TDC's current Local Plan (2006) is therefore strongly beneficial to the Applicant whilst being detrimental to the current landowners or any other party wishing to pursue a non-airport development. Successful lobbying to retain this policy, a variant thereof, and/or to delay publication of a new Local Plan would therefore have the effect of "land banking" in favour of the Applicant **during its pursuit of the DCO and Compulsory Purchase Order**, without having to first take legal ownership of the land.

5.4.4. In August 2018, TDC published its Draft Local Plan - 2031, (Pre-Submission) which removes Policy EC4 and replaces it with Regulation 19² which states, (bold added for emphasis):

¹ Appendix: JJHCSDL001 - TDC Local Plan (2006) (p.34)

² Appendix: JJHCSDL002 - TDC Draft Local Plan (Pre-Submission) Regulation 19

*“To ensure that the NSIP-DCO process is not prejudiced, the Council is proposing **not to allocate the Airport site for any specific purpose in the draft Local Plan.***

This also provides the opportunity for any other interested parties to pursue the operational use of the airport through agreement with the landowners or through becoming an indemnity partner as part of a potential CPO process with the Council.

In the meantime, the site has an existing use for aviation, subject to other relevant legislation.

If a DCO for aviation use at the site is granted, this would require a partial review of the Local Plan in relation to housing land supply provisions, aviation and environmental policies and other related matters.

*In the event that a DCO or CPO process is not accepted or granted, or does not proceed, the Council will need to consider the best use for this site, in the **next Local Plan review after a minimum of two years.**”*

5.4.5. Regulation 19 of TDC’s Draft Local Plan - 2031 is further beneficial to the Applicant whilst being detrimental to the current landowners or any other party wishing to pursue a non-airport development in that it clears the way for the Applicant to pursue its DCO application and CPO unhindered. The Landowner is, meanwhile, blocked from continuing with its own development plans through a combination of the existing EC4 Policy, which remains in force due to the long delays in publishing the Local Plan -2031, and Regulation 19, which supports “an existing use for aviation” until the “next Local Plan review after a minimum of two years”.

5.4.6. Advice to Councillor’s published in the Agenda Document for Council of 19th July 2018³, notes on page 13, paragraph 2.11 (2) that:

“The statement regarding existing use is not a policy statement; it is simply a recognition of the current planning status of the site. This also means that current Policy EC4 (and other Airport-related Page 13 Agenda Item 4 Annex 1 policies) would not be continued or replaced with equivalent policies in the new Local Plan.”

5.4.7. This is further beneficial to the Applicant in that it ensures that in the event that the DCO and CPO is granted, there will be no policy

³ Appendix JJHCSL003: Agenda Document for Council, 19th July 2019 (p.12 - 15)

statements in the Local Plan -2031 that restrict development of the land to aviation-only use.

5.5. In summary, the combined effect of the current TDC Local Plan (2006) and the much-delayed TDC Draft Local Plan -2031 as it relates to **Compulsory Purchase** “for the purpose of the proposed development” and “whether there is a realistic prospect of the scheme proceeding” with regards to **Funding** is:

- Applicant has been afforded an unhindered window and 2 year timeframe to pursue its DCO application and CPO
- No other development can progress in the meantime unless it is also aviation-only and Applicant has reminded TDC that the Avia report notes it has “*the only active interest in reopening the airport*”⁴
- In the event that the Applicant’s DCO application is successful, Applicant will not have any policy restrictions through the Local Plan on any preferred development use of the site

5.6. With further regard to the Principal Issue of **Compulsory Acquisition**, there is a question as to whether the Applicant’s “*considerable time and effort resisting planning applications and local plan changes*”, and the necessity of the Applicant to take these actions in order to clear the way for the proposed Compulsory Purchase, is **in the public interest**.

5.6.1. This question has been brought into sharp focus following the Minister for Housing, Communities and Local Government’s (“MHCLG”) letter to the leader of Thanet District Council (“TDC”), Councillor Robert Bayford, dated 28th January 2019⁵. This confirms **Local Plan Intervention measures** as a result of TDC’s “*continuing failure to get a Local Plan in place*” and notes that TDC (in its capacity as a local planning authority):

- *does not have an up-to-date Local Plan in place - the Council’s last Local Plan was adopted in 2006 and covered a period up to 2011.*
- *has failed to meet the milestones in at least five Local Development Schemes since 2006.*
- *has failed to plan for and deliver the homes people need in Thanet”*

5.6.2. The MHCLG letter further notes:

“Thanet is within the top third of Districts in England for high housing pressure, based on average affordability ratios. Thanet lack of a

⁴ Appendix JJHCSDL1004: Letter from BDB to TDC, October 2016, (Page 3, second paragraph)

⁵ Appendix JJHCSDL1005 : MHCLG Letter to TDC, 28th January 2019

five-year housing land supply further highlights the authority's failure to plan for and deliver the homes people need."

and

"The wider planning context in each area in terms of the potential impact that not having a plan has on neighbourhood planning activity: at least six communities in Thanet are preparing neighbourhood plans: Birchington, Ramsgate, Margate, Broadstairs & St Peters, Westgate and Cliffsend. Communities can bring forward neighbourhood plans in the absence of an up-to-date Local Plan, but doing so can be more challenging for communities."

5.6.3. It is clear that the Applicant's "*considerable time and effort resisting planning applications and local plan changes that would make non-airport development more likely*" and its pursuit of the DCO and CPO is **not** in the public's interest.

5.6.4. This comment therefore raises a number of troubling questions and requires further investigation and clarification as to what efforts were made towards this end, with whom, what form these efforts took and to what impact with regards to the Principal Issue of **Planning Policy**.

6. **Comments relevant to Principal Issue of 'Planning Policy'**

6.1. Comments at page 48, paragraph 8.1.2 (**TR020002-002882**) are relevant to the Principal Issue of **Planning Policy**, as defined in Annex C of the Examining Authority (ExA) Rule 8 Letter and update of Principal Issues as follows (bold added for emphasis):

i. The status of, and policy framework provided by, the Saved Policies from the 2006 Thanet Local Plan and the Draft Thanet Local Plan – 2031

ii. History of relevant planning policies and proposals on the site

6.2. Given that the current TDC Local Plan (2006) and the much-delayed TDC Draft Local Plan -2031 appear designed to be so overwhelmingly beneficial to the Applicant whilst being prejudicial to other developers, including the current legal landowners, it is difficult to see this as anything other than Council-sponsored "land banking" in favour of the Applicant. As such, it is beyond question that the "*time and effort*" of the Applicant in pursuing Local Plan changes have been successful.

- 6.3. This success of the Applicant's endeavours includes numerous favourable Relevant Representations from Councillors, (**RR-0231, RR-0333, RR-0334, RR-0531, RR-0598, RR-1212, RR-1700, RR-1747**), as well as Oral Submissions from several Councillors, Written Summaries of Oral Submissions received from 3 Councillors (**TR020002-002900, TR020002-002940-AS** and **TR020002-002938-AS**) and a Relevant Representation (**RR-1709**) and Oral Submission, (not summarised in writing), from the Member of Parliament for North Thanet, Sir Roger Gale, ("**SRG**").
- 6.4. Our concerns and response with regards to the Relevant Representations listed above will be dealt with in our Comments on Relevant Representations and Written Representation at Deadline 3.
- 6.5. Oral Submissions from Councillors must be seen in the context of the Applicant's comment at 8.1.12 (**TR020002-002882**) and how its "*considerable time and effort*" may be considered as undue influence against the public interest when weighed against the following:
- 6.5.1. AviaSolutions report of 2016 ⁶, commissioned by TDC at a cost to the public of c. £50,000, which concluded 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".*
- 6.5.2. TDC Officer's strongly-worded and unequivocal advice in the Agenda Document for Council of 19th July 2018, particularly:
- i) pages 12-13 ⁷, paragraphs 2.3 - 2.10, which warn of the significant risk of intervention by MHCLG, subsequently realised in the MHCLG letter of 28th January 2019
- ii) Paragraph 2.4, which concludes that:
- "Taking on board the conclusions of the airport viability report and given the level of objectively assessed housing need **the Council considers that the best use for this 320ha brownfield site is for a mixed use development primarily focused on residential.**"*
- iii) pages 13-15, paragraphs 2.11 - 2.18, which notes the implications with regards to re-allocation of housing to accommodate the Applicant's DCO Application

⁶ https://www.thanet.gov.uk/media/3500741/Final-Report-forTDC-Manston-Airport-Viability-Oct2017_2.pdf

⁷ Appendix JJHCSLD003: Agenda Document for Council, 19th July 2019 (p.12 - 15)

iv) Pages 39-41 ⁸, paragraphs 2.107 - 2.130, with regards to viability of the Airport, MCHLG intervention, Government Guidance and National Planning Policy Framework (NPPF), which finds at paragraph 2.117 that:

“Following the evidence and Government guidance, there is insufficient justification to retain the Airport designation during the period of the Local Plan”

and concludes at paragraph 2.130 that:

“The recommendation to Members is therefore to continue the proposal for mixed uses on the site as part of the draft Local Plan.”

6.5.3. Advice and legal obligations of Councillors with regards to the Localism Act 2011, Code of Conduct, specifically having an open mind with regards to planning applications and inherent risks of pre-determination, including:

i) **House of Commons (HofC) Standard Note SN/SC/931⁹** of 5th January 2012, which *“describes the behaviour required of councillors in the determination of planning applications”* as set out in the Localism Act 2011. Specifically :

*“A relevant authority must secure that a code adopted by it under section 27(2) (a “code of conduct”) is, when viewed as a whole, consistent with the following principles— (a) selflessness; (b) integrity; (c) **objectivity**; (d) accountability; (e) **openness**; (f) honesty; (g) leadership”*; and

*“A planning application **has to be determined in the appropriate committee after considering all the appropriate evidence, and not before**”*; and

With regards to the abolition of the predetermination rule in the Localism Act of 2011, HofC Standard Note SN/SC/931 states:

*“...councillors will still have to be careful. Planning applications will still have to be determined in accordance **with the development plan** “unless material considerations indicate otherwise”. The abolition of*

⁸ Appendix JJHCSDL1006: Agenda Document for Council, Pages 39-41

⁹ Appendix JJHCSDL1007: House of Commons Advice on Predetermination

*predetermination **does not remove that legal obligation**. They still need to be open-minded in determining planning applications”*

- 6.5.4. Email from Timothy Howes, (“**TH**”) ¹⁰, Director of Corporate Governance and Monitoring Officer, Thanet District Council (TDC), to Cabinet Members re “August Meetings”, which notes with regards to Councillor’s relations with the Applicant:

“Whilst Cabinet Members might be predisposed to a particular view, predetermination occurs where someone closes their minds to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The Localism Act 2011 makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show the Councillor has a closed mind on the issue. However the Act suggests that other factors combined with the statements made etc. can still give rise to accusations of predetermination. This is the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading up to the decision, rather than looking at individual events in isolation.”;

and

“You should also be mindful that in determining whether there is predetermination, the question the courts ask is not what your motives or state of mind are but ‘whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the (decision maker) was biased’.

- 6.5.5. Contrary to numerous unsupported statements made by the Councillors during Oral Submissions, (**TR020002-002900**, **TR020002-002940-AS** and **TR020002-002938-AS**) and in Relevant Representations, (**RR-0231**, **RR-0333**, **RR-0334**, **RR-0531**, **RR-0598**, **RR-1212**, **RR-1700**, **RR-1747**), the majority of local residents - their constituents - have stated unequivocal opposition to the Applicant’s DCO Application. This is evidenced in the majority of Relevant Representations (at least 52%) and overwhelming majority of Relevant Representations from local Residents’ Associations, (in excess of 80%). This evidence also directly contradicts Written Summaries of Oral Submissions (**TR020002-002922**) presented by Save Manston Airport (“**SMA**”), comprised primarily of online polls and

¹⁰ Appendix JJHCS DL1008: Tim Howes advice to Councillors

closed members-only polls conducted via Facebook, with no independent verification of membership or identity of users. Further evidence to support these statistics and with regards to SMA polls will be presented at Deadline 3 in our Written Submission.

- 6.6. When weighed against this significant body of evidence, advice and legal and moral duties to their constituents, the favourable Oral Submissions received from Councillors, (**TR020002-002900**, **TR020002-002940-AS** and **TR020002-002938-AS**), and the Applicant's success in securing highly beneficial arrangements in the TDC Local Plan show the Applicant's comments regarding their "*considerable time and effort resisting planning applications and local plan changes that would make non-airport development more likely*" can only be seen as an understatement.
- 6.6.1. Further detail regarding the specific ***History of relevant planning policies and proposals on the site*** and how the Local Plan went through various iterations, with backing of numerous favourable Councillors, will be detailed in our Written Representation at Deadline 3.
- 6.7. At present, only limited documented evidence is publicly available with regards to the Applicant's undue pressure on TDC and Councillors, notably two items of correspondence publicly available in the pre-examination library between the Applicant's solicitor, Bircham Dyson Bell ("**BDB**") and Madeline Homer, ("**MH**"), Chief Executive of TDC, with TDC Councillors in cc., as follows:
- i) Letter from BDB to MH, (Councillors cc'd), of 28th October 2016 ¹¹
 - ii) Letter from BDB to MH ¹², ("*All Members invited to the 18th January 2018 TDC Extraordinary Council Meeting*" cc'd)
- 6.8. I respectfully suggest that further questions might be asked of the Applicant and the following interested parties, with an invitation to present evidence as required with regards to the precise nature, frequency and details of the Applicant's "*considerable time and effort resisting planning applications and local plan changes that would make non-airport development more likely*" and any financial implications and impacts that such efforts may have entailed, including but not limited to legal and consultancy fees and whether or not any as-yet-undisclosed pecuniary interests on behalf of Councillors might also be presented.

¹¹ Appendix JJHCSDL1004 : Letter from BDB to TDC October 2016

¹² Appendix JJHCSDL1009 : Letter from BDB to TDC January 2018

Appendix

JJHCSDL1001:	TDC Local Plan (2006) (p.34)
JJHCSDL1002:	TDC Draft Local Plan (Pre-Submission) Regulation 19
JJHCSDL1003:	Agenda Document for Council, 19th July 2019 (p.12 - 15)
JJHCSDL1004:	Letter from BDB to TDC, October 2016, (Page 3, 2nd para)
JJHCSDL1005:	MHCLG Letter to TDC, 28th January 2019
JJHCSDL1006:	Agenda Document for Council, Pages 39-41
JJHCSDL1007:	House of Commons Advice on Predetermination
JJHCSDL1008:	Tim Howes advice to Councillors
JJHCSDL1009 :	Letter from BDB to TDC January 2018

Appendix

JJHCSDL1001

TDC Local Plan (2006) (p.34)

Airside Development Area

2.74 In order to provide for the operational development of the airport, land north of the runway, and including the land north of the B2050, is reserved for airside development purposes. In this context, airside development is defined as uses with an operational requirement for direct access to aircraft and therefore dependent on a location immediately adjacent to the runway or capable of direct access to it via taxiways. This includes uses based on:

1. Operation of passenger handling services
2. Air cargo operations related to the site
3. Operation of aircraft maintenance and manufacturing
4. Services ancillary to the maintenance and operation of the airport

2.75 Consequently, the Local Planning Authority will oppose any development or use of land in the defined area which does not specifically require an airside location.

POLICY EC4 - AIRSIDE DEVELOPMENT AREA

LAND AT THE AIRPORT, AS IDENTIFIED ON THE PROPOSALS MAP, IS RESERVED FOR AIRSIDE DEVELOPMENT. DEVELOPMENT PROPOSALS WILL REQUIRE SPECIFIC JUSTIFICATION TO DEMONSTRATE THAT AN AIRSIDE LOCATION IS ESSENTIAL TO THE DEVELOPMENT PROPOSED. DEVELOPMENT WILL BE REQUIRED TO RETAIN SUFFICIENT LAND TO PERMIT ACCESS BY AIRCRAFT OF UP TO 65M (217FT) WINGSPAN TO ALL PARTS OF THE SITE.

Land at, and east of, Kent International Airport Terminal

2.76 Some airport terminal-related activities need to be located adjacent to the existing terminal building. This could include, for example, car parking or the physical expansion of the terminal. In order to cater for such uses, a site is identified on the Proposals Map including the existing airport terminal facilities and land immediately to the east of the terminal.

2.77 This land is identified for airport terminal-related uses and retains a reasonable gap between the expanding airport terminal area and the nearby Manston Village, which is protected by Policy CC6.

2.78 In the event that the airport develops at a quicker rate than that envisaged in this Plan, the future location of airport terminal facilities will need to be considered in the context of the airport Master Plan and the other relevant policies in this Plan.

Appendix

JJHCSDL1002

TDC Draft Local Plan (Pre-Submission) Regulation 19

You are here: [TDC Home Page](#) > [Environment & Planning](#) > [Planning](#) > [Draft Thanet Local Plan - 2031 - Pre-Submission Publication, Regulation 19](#) >

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Draft Thanet Local Plan - 2031 - Pre-Submission Publication, Regulation 19

Manston Airport

Following the closure of Manston Airport in May 2014, the Council has made significant efforts to support a functioning aviation use on the site and has explored its CPO powers in seeking an indemnity partner and carried out extensive soft market testing to seek an airport operator to run the airport.

In order to satisfy the requirements of the National Planning Policy Framework (NPPF), the Council commissioned an airport viability study by Avia Solutions. This was to look at whether an airport was a viable option for the site within the plan period to 2031. This report took into account national and international air travel and transport and the way in which it is likely to develop over the next 15-20 years and looked at previous reports and developments in national aviation.

The report concluded 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.

However, the Council recognises the proposals being put forward by RiverOak Strategic Partners for an air cargo operation at the site, and the fact that an application for a Development Consent Order (DCO) is to be submitted imminently/has been submitted to the Planning Inspectorate (PINS) for consideration. A DCO is a consent by a Secretary of State for a Nationally Significant Infrastructure Project (NSIP). A DCO not only provides planning consent for a project, but may also incorporate other consents and include authorisation for the compulsory acquisition of land. To ensure that the NSIP-DCO process is not prejudiced, the Council is proposing not to allocate the Airport site for any specific purpose in the draft Local Plan.

This also provides the opportunity for any other interested parties to pursue the operational use of the airport through agreement with the landowners or through becoming an indemnity partner as part of a potential CPO process with the Council.

In the meantime, the site has an existing use for aviation, subject to other relevant legislation.

If a DCO for aviation use at the site is granted, this would require a partial review of the Local Plan in relation to housing land supply provisions, aviation and environmental policies and other related matters.

In the event that a DCO or CPO process is not accepted or granted, or does not proceed, the Council will need to consider the best use for this site, in the next Local Plan review after a minimum of two years.

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Agenda Document for Council, 19th July 2019

(p.12 - 15)

1.0 Introduction and Background

- 1.1 The Council's Corporate Plan (as adopted in 2015) sets out the Council's aspiration to grow the local economy. One of the priorities is to promote inward investment and job creation (Corporate priority 3). Part of the Council's vision is to accelerate growth and achieve greater economic prosperity for our district; seeking opportunities for inward investment and high quality job creation, and working with partners to ensure we have the right skills, infrastructure and plans in place.
- 1.2 The Local Plan is one of the Council's key strategies in supporting economic growth and regeneration and is specifically identified in the Corporate Plan priorities. Not only does it help to deliver the economic strategy, it also identifies locations for new housing to meet local needs and to support the growth of the workforce, and other development requirements. It also supports the provision of new infrastructure (such as schools, medical facilities, transport and so on) through the infrastructure delivery plan, working with key partners to ensure the infrastructure is delivered in a timely way.
- 1.3 The Local Plan also has a role in supporting the other corporate priorities by seeking to improve design and quality of new development; protecting publicly-accessible open spaces and important wildlife sites; providing a framework for the preparation of Neighbourhood Plans; and working with other statutory providers to seek to ensure that local health, education and other services are provided alongside new development.
- 1.4 The Local Plan supports the current priorities set out in the Corporate Plan, but to some extent will also help to frame future priorities beyond the current Corporate Plan period.
- 1.5 The Local Plan process is also a statutory process. The draft Local Plan is assessed by an independent Planning Inspector through an Examination-in-Public, and this report describes the legal processes for the Local Plan and the guidance which affects decisions through the Local Plan process.

2.0 The Current Situation and next steps

- 2.1 On 18th January 2018, the Council voted not to proceed to Publication and Submission of the draft Local Plan. A copy of the report to Council is attached at Annex 1, for ease of reference, together with the previous Annexes.
- 2.2 Since that time, there have been a number of changes affecting the draft Local Plan of which Members should be aware.
- 2.3 Position regarding Local Plan intervention
- 2.4 Members will recall that in November 2017 the-then Secretary of State (SoS) wrote to the Council (along with 14 other local authorities), raising the possibility of intervention in the Local Plan process, and requiring a response from the Council by 31 January 2018, setting out how the Council intended to progress its Local Plan.
- 2.5 On 31 January, the Council wrote to the SoS, setting out a timetable for progressing the draft Local Plan, with submission expected in early 2019. On 23 March 2018, the SoS wrote to the Council (and two other Councils) to advise that he had decided to continue with the intervention process.

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- 2.6 The first stage is a diagnostic stage, assessing how the Council intends to move the draft Local Plan forward. The key consideration is whether the Ministry of Housing, Communities & Local Government (MHCLG) believes that further intervention would accelerate the Local Plan process. What MHCLG are considering is whether the Council has clear and credible plans to bring forward a “sound” Plan in a timely manner. Their conclusion on this point will be a significant factor in whether there will be further intervention in the Local Plan process
- 2.7 The Council needs to demonstrate two things:
- That it has a credible programme for bringing forward a draft Plan without delay; and
 - That the draft Plan has a strong probability of being found “sound”.
- 2.8 While the current process is not specifically looking in detail at the “soundness” of the draft Plan, it is clear that if the Council were to proceed with a Plan that was clearly not sound (eg: if it did not seek to meet the full housing requirement), this would inevitably lead to significant delays, which could prompt additional, more far-reaching, intervention by the Minister.
- 2.9 If the SoS is not convinced by the Council’s proposals, this could result in direct intervention:
- MHCLG could direct the Council to publish/submit a draft Plan; or
 - MHCLG could take over the writing of the draft Plan, or direct another body to do so (for example, KCC) at this Council’s expense.
- 2.10 At the time of writing, it is believed that the report of the MHCLG advisors has been submitted to MHCLG, but it is not known what recommendations will be made to the Minister, or when the Minister will make a decision on any further action on those recommendations.

Implications for draft Local Plan

- 2.11 The Council needs to continue to progress the draft Local Plan in the context of the risk of further intervention. The Council therefore has two options:
- (1) To proceed to Publication/Submission as recommended to Council on 18th January 2018, including the allocation of Manston Airport for mixed-use development, including 2,500 dwellings. This option also includes a number of additional Local Green Spaces at Westgate, and a proposed policy for fostering homes. This is the recommendation of officers; or
 - (2) If Members are not minded to follow that recommendation, to proceed to Publication/Submission with a draft Plan that does not allocate the Airport for mixed-use development, and meets the housing requirement for the period to 2031 on other sites.

Draft Policy SP05 would be deleted, and replaced with text that recognises the existing use of the Airport and acknowledges the current Development Consent Order (DCO) process for the site. This also provides the opportunity for any other interested parties to pursue the operational use of the airport through agreement with the landowners or through becoming an indemnity partner as part of a potential CPO process with the Council. The statement regarding existing use is not a policy statement; it is simply a recognition of the current planning status of the site. This also means that current Policy EC4 (and other Airport-related

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policies) would not be continued or replaced with equivalent policies in the new Local Plan.

In the event that a DCO or CPO is not accepted or granted, or does not proceed, the Council will need to consider the best use for this site (including housing), in the next Local Plan review.

2.12 If Option (2) is to be considered, the selection of housing sites should be:

- In line with the draft Local Plan Strategy;
- Consistent with the findings and recommendations of the Sustainability Appraisal;
- Compatible with the Transport Strategy for the district;
- Based on the sites submitted to the Council by land-owners/agents; and
- Otherwise consistent with Government guidance, and the Council's own evidence base.

2.13 Members will be aware that following the decision of Council in January 2018, a new "call for sites" was launched, to try to ensure that there was a sufficient pool of suitable sites available if there was a need to identify additional housing sites. A significant number of sites were submitted to the Council and these can be found at <https://www.thanet.gov.uk/wp-content/uploads/2018/06/Call-for-Sites-2018-for-publishing-Revised.pdf>.

2.14 In locational terms, considering Option 2 means that:

- Housing development should be focused at urban areas or the urban edge and larger villages;
- That any housing distribution should avoid any additional traffic loading of the Haine Road corridor (as advised by KCC Highways), and should be well-related to the road network improvements proposed in the draft Transport Strategy, including the Inner Circuit;
- Housing development should not be located in the vicinity of the Airport;
- Housing development should not be located adjacent to the national and international wildlife designations along the coast; and
- In addition, the designated Green Wedges should be avoided, as should Flood Risk Areas and sensitive landscape areas (identified through the Landscape Character Assessment).

2.15 Based on these criteria, there are very limited options available in which to accommodate the 2,500 dwellings previously allocated at the Airport. These are primarily focussed on land at the urban edges in the northern part of the district. It is therefore advised that the re-distribution of housing set out in the Addendum is the best option to adopt in terms of the soundness of the draft Plan.

2.16 This is, to re-allocate the 2,500 dwellings as follows:

- An additional 600 dwellings at Birchington, as an extension of the previous draft allocation;
- An additional 1,000 dwellings at Westgate, as an extension of the previous draft allocation;
- An additional 500 dwellings at Westwood, as an extension of the previous draft allocation at Manston Court Road/Haine Road;
- An additional 300 dwellings on a new site at Hartsdown, south of Margate; and

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- An additional 100 dwellings on the allocated housing site at Tothill Street, Minster.

2.17 Such a distribution would broadly follow the principles set out in paragraphs 2.13 and 2.15.

2.18 The site plans and detailed policy provisions for these sites are set out in the Addendum (Annex 2).

Assessment of re-distribution of housing

Sustainability Appraisal

2.19 In summary, the assessment of the SA consultants (see Annex 5) is as follows:

2.20 Option 1 – This was assessed previously. It is important to ensure that new settlement mitigation measures are addressed in the Policy. The main benefit of this option is that most of the housing is delivered on previously-developed (brownfield) land.

2.21 Option 2 – There would be a permanent redistribution of housing allocation and changes to how inward investment and employment opportunities are realised, thus effecting the development of sustainable locations (Objective 11). This has socio-economic implications for Thanet (Objective 6 and Objective 8) in that it is likely to affect diversity of employment types (opportunities for more Class B businesses) coming forward, potentially resulting in less sustainable options being implemented.

2.22 Whilst aspects of the Option 3 addendum items meet the SA Framework in promoting housing development (Objective 1), potential conflict exists between the need to prioritise the redevelopment of brownfield land for economic growth and continue to remain on track to meet local housing need and associated infrastructure such as healthcare provision (Objective 2) as the number of houses may not trigger new healthcare services. The sites identified either as strategic sites or an alternative to the former Airport site as a new settlement is likely to place permanent pressure on local resources.

2.23 Piecemeal additions at different locations throughout Thanet may only serve to add pressure on existing social infrastructure, rather than create a local critical mass that would warrant a (viable) increase in local social infrastructure provision. Sustainability would depend on how well these new sites will link to neighbouring established developments and rural settings (Objective 20).

2.24 The increased designations associated with Policy SP30 (Local Green Space) are likely to increase and improve access to local green space for residents of Westgate. This is likely to have benefits with respect to resident's health, which may go some way in ensuring that pressures on healthcare provision and facilities (Objective 2) are limited.

2.25 The addition of new wording to policy HO26 (Fostering Homes) supports sustainable development and meets the social objectives of the Plan by providing an appropriate mix of housing tenures (Objective 1) for Thanet as well as improving access to health care facilities and provision (Objective 2). New housing for foster homes will ensure that vulnerable people are supported by living in mixed communities and therefore able to foster a sense of community (Objective 6).

Appendix

JJHCSDL1004

Letter from BDB to TDC, October 2016

(Page 3, 2nd para)



BIRCHAM DYSON BELL

Ms Madeline Homer
Chief Executive
Thanet District Council
Cecil St
Margate
CT9 1XZ

Your Ref

Our Ref
ADW/165443.0001

Date
28 October 2016

By Post and Email: Madeline.Homer@thanet.gov.uk

Dear Ms Homer

AviaSolutions report and Local Plan process

As you will know from our previous correspondence, we act for RiverOak Investment Corporation who intend to seek development consent for a primarily cargo airport at Manston.

I am writing because I am concerned that the Council may be about to take significant decisions about the future of the airport site in a clandestine manner and on the basis of a report that is not robust, has not been tested or consulted upon, and indeed is wholly inaccurate, inadequate and misleading.

The report in question was written by AviaSolutions and published by the Council on 4 October. On that same morning, prior to the report itself being published, a press statement was made by the Leader of the Council, Chris Wells, in which he stated "it is with regret that I must accept the solid evidence-based report that tells me what I do not want to hear but must listen to. Manston has a glorious history but a different future".

Next, I understand that there was a private briefing of members about the report on 17 October at which AviaSolutions presented the report to the members. Neither minutes nor agenda were published by the Council of that meeting, and no mention is made of it on the Council website. Additionally we understand that on 31 October there is to be a meeting of the Local Plan Working Group where the proposed wording of the draft Local Plan may be altered in light of the report. Again there is no mention of this meeting on the Council website, no published agenda or report, and presumably the public are excluded if they should find out about it.

This evidence of pre-determination by the Council and its individual members and lack of regard for proper due process, scrutiny and public consultation, is of great concern.

Given that the members of the majority party in the district were elected on a manifesto of reopening the airport, it is a matter of considerable significance that the leader appears to be unilaterally attempting to reverse that policy without any opportunity for proper consideration of the report or for stakeholders to comment upon it.

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BIRCHAM DYSON BELL

If the AviaSolutions report is to form the basis, or indeed is to be the sole trigger, for a fundamental change in the policy of the Council, then at the very least the Council should invite comments to be made on it before deciding how much weight to give the report in light of the consultation undertaken. Equally, any preferred alternative use to which the site might be put should also be subject to an equivalent examination of its viability before it is referred to in the Local Plan.

In the short space of time that RiverOak has had to consider the report it already has serious concerns over it. RiverOak will, and reserves its right to, set out a detailed examination of the report in due course, once it has had the appropriate time to consider the report in detail. Clearly a proper, full, fair and transparent opportunity for all interested parties to make comments upon this report should be provided in the near future.

RiverOak will provide detailed rebuttal evidence when this exercise is undertaken. If the report is exposed as fundamentally flawed at this stage (as we are sure it will be) then this will avoid the Council wasting time and resources by relying on a report that is not sound in progressing its Local Plan.

Our initial assessment is that the report is flawed in certain key respects:

- It relies upon interviews with anonymous contributors which prevents an open and fair assessment of their contributions
- It is authored by an organisation which is heavily involved in advising on Heathrow Airport and gives rise to a serious concern over a conflict of interest
- It deliberately ignores all the information provided to it by RiverOak
- It does not divulge the data or modelling on which it heavily relies, instead it asserts its conclusions without setting out its evidence, rendering it impossible for a reader to assess its conclusions
- On cargo demand it is in direct conflict with the conclusions of (and does not even acknowledge) at least six respected studies showing considerable unmet demand/future forecasts for dedicated air freight, although it does seek to dismiss the findings of York Aviation (page 27)
- It assumes that all demand for air freight will be met by existing flights having greater loads until 2050 and that there is therefore no demand for air cargo to or from new destinations for 34 years, which is incorrect (page 31)
- It assumes that Manston would reopen in the same configuration as before given the underestimate of the considerable investment RiverOak will make, when in fact its capacity will be expanded considerably (pages 30 and 37)
- Insofar as its passenger analysis is comprehensible it assumes that very little of 5m rising to 44m unallocated demand for passenger services in the south east would use Manston if it reopened (page 24)



BIRCHAM DYSON BELL

- It assumes a turnover of 2.2m passengers would be unviable, but at least ten airports within the UK currently operate viably with fewer than 2m passengers and no significant freight component, and passenger flights are only a minor component of RiverOak's plans

Most significantly, to use this report to conclude that aviation is not viable when it specifically excludes consideration of RiverOak's proposals, RiverOak having the only active interest in reopening the airport (page 14 footnote), would be irrational.

No reliance can be placed on this report until there has been proper scrutiny of the issues in an open and democratic manner. In light of the above no amendments should be made to the draft Local Plan until the viability of aviation at Manston, including appropriate scrutiny of this report as well as alternative uses, is fully tested through an open and fair consultation exercise which should take place in the near future.

Yours sincerely

[Redacted]
[Redacted]
Partner
For and on behalf of Bircham Dyson Bell LLP

cc TDC councillors

Appendix

JJHCSDL1005

MHCLG Letter to TDC, 28th January 2019



Ministry of Housing,
Communities &
Local Government

Councillor Robert W. Bayford
Leader, Thanet District Council

The Rt Hon James Brokenshire MP
*Secretary of State for Housing, Communities and
Local Government*

***Ministry of Housing, Communities and Local
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28 January 2019

LOCAL PLAN INTERVENTION

Following Thanet District Council's failure over many years to get a Local Plan in place, the former Secretary of State wrote to your Council, on 16 November 2017, to express his concerns. He offered an opportunity to explain any exceptional circumstances justifying the failure of your Council to produce a Local Plan and any measures you had taken or intended to take to accelerate plan publication. Following your letter of January 2018 outlining your exceptional circumstances, the former Secretary of State wrote again on 23 March 2018. He set out that he had considered your representations and the Government's Local Plan intervention policy criteria and had decided to continue with the intervention process by commissioning a team of experts led by Government's Chief Planner to provide advice on next steps.

I have carefully considered that advice on next steps and all the above matters. I have also considered correspondence sent to my Department since January 2018, including correspondence from Thanet District Council, which reported some positive actions and progress, including the publication of a Local Plan under regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the publication of a revised Local Plan production timetable¹ and the submission of a Local Plan under regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

Section 27(1) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") provides:

¹ The Thanet Local Development Scheme (July 2018)

“This section applies if the Secretary of State thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a development plan document.”

In view of your continuing failure to get a Local Plan in place I am satisfied that the requirements in section 27(1) of the 2004 Act are met; Thanet District Council (in its capacity as local planning authority):

- does not have an up-to-date Local Plan in place - the Council’s last Local Plan was adopted in 2006 and covered a period up to 2011.
- has failed to meet the milestones in at least five Local Development Schemes since 2006.
- has failed to plan for and deliver the homes people need in Thanet.

Section 27(2) of the 2004 Act provides:

“The Secretary of State may—

- (a) prepare or revise (as the case may be) the document, or
- (b) give directions to the authority in relation to the preparation or revision of the document.”

Pursuant to the powers in section 27(2)(b) of the 2004 Act I have decided to make a direction in relation to the preparation of the Thanet Local Plan:

Within four weeks of the date of this letter, I direct Thanet District Council to designate a lead Councillor and lead official to be responsible for progressing preparation of the Local Plan and to publish details of those designations.

In making this decision I have considered the following Local Plan intervention policy criteria²:

- **The least progress in plan-making has been made:** Out of 338 local planning authorities in England, Thanet are one of only circa 50 authorities who have not yet adopted a 2004 Act Local Plan under Regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
- **Policies in plans have not been kept up to date:** Thanet’s last Local Plan was adopted in 2006 (not under the provisions of the 2004 Act), and covered a period up to 2011. Thanet have consistently failed to bring forward a Local Plan in accordance with its Local Development Scheme as legally required, having failed to meet Local Plan milestones in at least six Local Development Schemes since 2006.

² Local Plan intervention policy criteria were consulted on in 2016 and confirmed in the 2017 housing White Paper and the 16 November 2017 Written Statement in the House of Commons

- **There is higher housing pressure:** Thanet is within the top third of Districts in England for high housing pressure, based on average affordability ratios³. Thanet lack of a five-year housing land supply further highlights the authority's failure to plan for and deliver the homes people need.
- **Intervention would have the greatest impact in accelerating Local Plan production:** Based on Thanet's revised Local Development Scheme, it is unlikely that Local Plan production would be accelerated by my Department taking over its production. In my judgement, given the authority's track record of persistent failure in plan-making, the intervention I have decided upon will provide more certainty and is the best way of ensuring that a Local Plan will be produced in accordance with the Local Development Scheme timetable.
- **The wider planning context in each area in terms of the extent to which authorities are working co-operatively to put strategic plans in place:** Several authorities in Kent have indicated interest in joint planning but no formal arrangements are in place.
- **The wider planning context in each area in terms of the potential impact that not having a plan has on neighbourhood planning activity:** at least six communities in Thanet are preparing neighbourhood plans: Birchington, Ramsgate, Margate, Broadstairs & St Peters, Westgate and Cliffsend. Communities can bring forward neighbourhood plans in the absence of an up-to-date Local Plan, but doing so can be more challenging for communities.

Having considered Thanet's performance against the Local Plan intervention criteria, I am satisfied that intervention action is justified.

Section 15(4) of the 2004 Act provides:

“The Secretary of State may direct the local planning authority to make such amendments to the [local development] scheme as he thinks appropriate for the purpose of ensuring full and effective coverage (both geographically and with regard to subject matter) of the authority's area by the development plan documents (taken as a whole) for that area.”

Pursuant to my powers in Section 15(4) of the 2004 Act, I am also directing Thanet District Council to, within eight weeks of the date of this letter, amend its Local Development Scheme (dated July 2018) to provide for the completion of a review of their Local Plan within six months of its adoption.

³ Ranked 98 least affordable of 324 English Districts (Housing Affordability Statistics, Office of National Statistics, 2017)

This course of action would ensure full and effective coverage of housing provision to give clarity to communities and developers about where homes should be built.

Having considered all of the above, in my judgement, there is a compelling case for the Local Plan intervention actions I have decided upon in Thanet, pursuant to powers in sections 15(4) and 27(2)(b) of the 2004 Act. Given your recent actions and progress in meeting the requirements in the Town and Country Planning (Local Planning) (England) Regulations 2012, I have decided not to prepare the Thanet Local Plan. However I will continue to closely monitor your Local Plan progress. Should a significant delay occur against the milestones set out in your July 2018 Local Development Scheme, should you fail to comply with the directions in this letter or should your draft Local Plan fail at examination, I will consider whether to take further action to ensure that a Local Plan is put in place.

I am also, for the avoidance of doubt, now putting on public record my concerns about the low level of housing supply and delivery in Thanet. I expect planning decision-takers to have regard to these concerns as a material consideration when deciding local planning applications.

I appreciate the constructive way Thanet District Council have engaged in this process so far and I trust that you and your officers will continue to engage positively. My officials will be in touch over the next few days to discuss next steps.

RT HON JAMES BROKENSHERE

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Agenda Document for Council,
Pages 39-41

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previously considered and not allocated, and some are new sites. The new sites have all been subject to the same assessment as sites submitted earlier in the “call for sites” process.

- 2.106 Two of the proposed sites are considered suitable for allocation in the draft Local Plan, in that they are consistent with the selection criteria for the Local Plan process and the principles set out in the Sustainability Appraisal. These are:
1. Land at Shottendane Farm, Shottendane Road, Margate (8 dwellings); and
 2. Site known as Lanthorne Court, Broadstairs (up to 56 dwellings).
- 2.107 Future of the Airport site
- 2.108 Since the last consultation, RiverOak (now RiverOak Strategic Partners), have indicated their intention to proceed with an application for a Development Consent Order (DCO), in order to have the Airport identified as a Nationally Significant Infrastructure Project.
- 2.109 The AviaSolutions report (https://www.thanet.gov.uk/media/3500741/Final-Report-for-TDC-Manston-Airport-Viability-Oct2017_2.pdf), published in 2016, concluded 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”.
- 2.110 This conclusion is based on an assessment of future air traffic demand. Even applying assumptions favourable to an Airport use at Manston, the report concluded that it is most unlikely that Manston would attract private investors, nor represent a viable investment opportunity in both the longer-term – after 2040 – and certainly not during the Local Plan period.
- 2.111 There has been some criticism of AviaSolutions’ report. However, the report has been prepared by aviation consultants with a detailed knowledge of the industry, reflecting the knowledge of 15 years’ advisory experience in the sector. AviaSolutions is currently working on due diligence projects for Infrastructure Funds/Private Equity with regards to investment in UK regional airports and cargo airlines, where their commercial advice has to be evidence-based and has to consider financial and business risks. Over the last 15 years their clients’ have included a range of major airport operators and airlines, as well as government departments (UK, EU and non-EU), as well as many privately owned airports.
- 2.112 AviaSolutions have reviewed the submissions made by RSP (<https://www.thanet.gov.uk/media/4062746/AviaSolutions-Analysis-of-Manston-Airport-Report-by-Azimuth-Northpoint-2017a.pdf>) as part of the Local Plan process, and their conclusion is that, the RSP submission does not put forward “a sufficiently credible case, nor provides the evidence, for AviaSolutions to change its views on the financial viability of Manston Airport”.
- 2.113 AviaSolutions concur with the view put forward by Azimuth Associates that there may be sufficient local (catchment) demand to support a minor low-cost airline operation base, which could amount to c. 1.5 million annual passengers with some additional non-based services (but see comments below about passenger operations).
- 2.114 However, there are significant areas of divergence between the two assessments. In particular, Avia draw attention to the following key areas:
- Methodology – Avia has noted that the representations on behalf of RSP do not consider any of the risk associated with their forecast;

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- Demand – Avia do not believe that the freighter demand exists for the projections set out for Manston in the RSP submissions. In particular, Avia advise that the submissions ignore the dynamics of the UK air freight market and the key role of belly-hold capacity in meeting UK freight demand. The RSP submissions also appear to assume that all additional freight demand would come to Manston in preference to other Airports with mature, established and heavily invested freight operations;
- Passenger operations - AviaSolutions' view on passenger demand is that there may sufficient local catchment demand to attract some interest from low-cost carriers (possibly as much as 2 based aircraft). However, because of the arrangements sought by low-cost operators, there would be insufficient revenue arising from such an operation to make it financially viable. This does not address the capital or running costs associated with such an operation – Avia estimate a capital cost of £27m to bring the Airport back into commercial use (including a new terminal building), or the core daily cost of operations associated with maintenance, air traffic control, fire and rescue, and site security;
- Benchmark Airports – for various reasons of location, scale, population and economic activity in the localities, the benchmark airports proposed by RSP are not considered appropriate comparators to Manston; and
- Cross-channel freight operations – RSP submissions do not give a full picture of the cross-channel freight market, and are therefore misleading in terms of the implications for air freight.

- 2.115 Para 33 of the NPPF indicates that “When planning for ports, airports and airfields that are not subject to a separate national policy statement, plans should take account of their growth and role in serving business, leisure, training and emergency service needs. Plans should take account of this Framework as well as the principles set out in the relevant national policy statements and the Government Framework for UK Aviation”. However, the Airport is now closed and the evidence on this matter provided by AviaSolutions indicates 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.
- 2.116 The available evidence for an airport operation at Manston does not meet the threshold set out in the National Planning Policy Framework (para 22), which states that sites should not be protected “for employment use where there is no reasonable prospect of a site being used for that purpose”. Although the Airport site is not a typical employment site, the broad principle of deliverability of development proposals is applied through the NPPF; in particular paragraph 182, which addresses the requirement for Plan to be “sound”. Para 182 advises that one of the key elements of “soundness” is that Plan should be “effective”; that is, “the plan should be deliverable over its period”. The NPPF (para 22) goes on to say that proposals for alternative uses should be considered, where this is not the case.
- 2.117 Following the evidence and Government guidance, there is insufficient justification to retain the Airport designation during the period of the Local Plan.
- 2.118 The site contains a significant element of previously-developed land, and the NPPF (para 111) indicates that planning policies “should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value”.
- 2.119 As the Council prepares revisions to the draft Local Plan, an Inspector has dismissed Appeals relating to a number of buildings at the Airport site. The Inspector concluded

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“...until a new policy framework exists at the airport, I find that the evidence at the Inquiry did not demonstrate that the likelihood of the airport reopening was so slim that the conflict with Policy EC4 (*ie. in the adopted Local Plan 2006, relating to the airside development site*) should be disregarded” (para 33), and that “the appeal schemes would conflict with Policy EC4 of the Local Plan” (para 52).

- 2.120 However, he also states that “it is difficult to predict conclusively whether the airport will reopen or not”, and that “it must be stressed that it is not the purpose of this inquiry to judge the merits or otherwise of RSP’s project” (para 31). He also recognises the role of the Local Plan process (para 22) and the DCO process (para 31) in considering the future of the Airport.
- 2.121 This Appeal cannot be seen as determining the future of the Airport site in the long term. That is a matter for the Local Plan and DCO processes.
- 2.122 The key point is that what the Local Plan says about the Airport must be driven by evidence. The primary evidence that the Council has is the independent assessment by Avia Solutions.
- 2.123 At the Proposed Revisions consultation, the site was proposed for mixed-use development, including 2,500 dwellings and 85,000sqm of business space. There are also other implications to be considered if the Airport site were not allocated for mixed-use development.
- 2.124 Firstly, it creates uncertainty over the soundness of the draft Plan, as the Council would not be following the evidence regarding the viability of the Airport.
- 2.125 Second, the 2,500 dwellings allocated in the Proposed Revisions would have to be re-allocated elsewhere. The Council cannot simply remove the allocation without meeting the overall housing requirement for the district. This would require reviewing a large proportion of the evidence base to assess which option, if any, would be suitable.
- 2.126 Third, RSP have indicated that their project could create 30,000 jobs. This would be likely to result in additional housing being required in East Kent to support the growth in the workforce. This has not yet been factored into the draft Plan, and RSP have been advised that they need to consider those potential impacts as part of the DCO process.
- 2.127 This would also result in an additional requirement for transport assessment, Sustainability Appraisal work, and viability advice, which would inevitably delay the draft Plan, with all the attendant risks that creates.
- 2.128 The Department for Communities & Local Government (DCLG) has advised that the draft Local Plan should not be delayed to await the result of the DCO process. The Council should therefore progress with the draft Local Plan.
- 2.129 However, it should be noted that if a DCO is granted with compulsory acquisition powers, this would effectively over-ride the Local Plan. In that event, the Council would need to review the affected parts of the Plan. In other words, to progress the draft Local Plan on the basis set out in this report would not prejudice the DCO process or its outcomes.
- 2.130 The recommendation to Members is therefore to continue the proposal for mixed uses on the site as part of the draft Local Plan.

Appendix

JJHCSDL1007

House of Commons Advice on Predetermination



Councillors and Planning Applications

Standard Note: SN/SC/931

Last updated: 5 January 2012

Author: Christopher Barclay

Science and Environment Section

-
- This note describes the behaviour required of councillors in the determination of planning applications. There is another relevant note, [Do councillors have to follow the advice of officers in taking planning decisions?](#) (SN/SC/1030).
 - The *Localism Act 2011* will completely change the previous system, but the relevant provisions have not yet been brought into force. Standards for England expects to lose its regulatory role at the end of January 2012 and to be abolished on 31 March 2012.
 - Councillors have to follow a Code of Conduct, with particularly strict rules relating to personal interests, such as a councillor living near to a property where there is a planning application.
 - The Code of Conduct and Standards Board interpretations do not automatically prevent a councillor from taking part in a planning decision if he has earlier expressed a view about a development. However, he does risk being accused of “predetermination”. A planning application has to be determined in the appropriate committee after considering all the appropriate evidence, and not before.
 - The *Localism Act 2011* will abolish the concept of predetermination from 15 January 2012. Councillors will still have to have an open mind, but previous actions will not be evidence that they do not do so.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

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1 The regime that will be replaced in 2012

Part III of the *Local Government Act 2000* introduced a new ethical framework for members and employees of local authorities. This included a statutory code of conduct for councillors, and the creation of a standards committee for each local authority. It also established a new body, the Standards Board for England, to provide an independent mechanism for investigating instances of unethical conduct by local authority members, including any allegations that a code has been breached. However, local standards committees now do most of the investigation with the Standards Board co-ordinating and monitoring.

The Labour Government issued model codes of conduct for different types of councillor in 2001, but they were widely criticised for being too strict. After consultation, a new model code of conduct for all councillors was introduced and came into force in May 2007 - *The Local Authorities (Model Code of Conduct) Order 2007* (SI 1159).¹

1.1 Personal interests

Councillors need to declare personal interests and are not allowed to vote if they have prejudicial interests. The definition of personal interests includes:

Personal interests

8. — (1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

¹ <http://www.opsi.gov.uk/si/si2007/20071159.htm>

- (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

Personal interests have to be disclosed (paragraph 9). There follows a definition of prejudicial interest:

Prejudicial interest generally

10. — (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

This is followed by a list of exceptions not particularly relevant to planning decisions. Paragraph 12 is particularly important since it defines what a local councillor can do in the planning committee (or board) that determines an application in the area where he lives: and in which he has a prejudicial interest.

Effect of prejudicial interests on participation

12. — (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

- (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

- (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

1.2 Lobbying

The position on lobbying was rather less clear, and only in part relates to the Code. The general principle was that a councillor could not express an opinion on a proposed development and then take part in a planning committee meeting. If he had expressed a view in advance, he was said to have fettered his discretion. This was the predetermination rule. Councillors found it very difficult if they were elected on the basis of their view on a major development, only to find that their campaigning excluded them from taking part in making the decision.

2 The Localism Act 2011 will abolish the regime

2.1 Changes to register of interests and code of conduct

The [*Localism Act 2011*](#) will allow more local variation in the regime. It allows the local authority to decide what to include in the local register of interests. Some councils might choose not to change the existing register but others might want to limit those interests having to be registered.

At some date not yet announced, the Government will allow local authorities to adopt a new code of conduct. Under s.28:

A relevant authority must secure that a code adopted by it under section 27(2) (a “code of conduct”) is, when viewed as a whole, consistent with the following principles—

- (a) selflessness; (b) integrity; (c) objectivity; (d) accountability; (e) openness; (f) honesty; (g) leadership.

Again, some authorities might choose to retain the existing code of conduct, but others might want changes.

2.2 Abolition of predetermination

The *Localism Act 2011* s.25 will abolish the predetermination rule, from 15 January 2012.

25 Prior indications of view of a matter not to amount to predetermination etc

(1) Subsection (2) applies if—

- (a) as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and
- (b) it is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.

(2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—

- (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- (b) the matter was relevant to the decision.

(3) Subsection (2) applies in relation to a decision-maker only if that decision-maker—

- (a) is a member (whether elected or not) of the relevant authority, or
- (b) is a co-opted member of that authority.

(4) In this section—

“co-opted member”, in relation to a relevant authority, means a person who is not a member of the authority but who—

- (a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question which falls to be decided at any meeting of the committee or sub-committee;

“decision”, in relation to a relevant authority, means a decision made in discharging functions of the authority, functions of the authority’s executive, functions of a committee of the authority or functions of an officer of the authority (including decisions made in the discharge of any of those functions otherwise than by the person to whom the function was originally given);

“elected mayor” has the meaning given by section 9H or 39 of the Local Government Act 2000;

“member”—

(a) in relation to the Greater London Authority, means the Mayor of London or a London Assembly member, and

(b) in relation to a county council, district council, county borough council or London borough council, includes an elected mayor of the council;

“relevant authority” means—

(a) a county council, (b) a district council, (c) a county borough council, (d) a London borough council, (e) the Common Council of the City of London, (f) the Greater London Authority, (g) a National Park authority, (h) the Broads Authority, (i) the Council of the Isles of Scilly, (j) a parish council, or (k) a community council.

(5) This section applies only to decisions made after this section comes into force, but the reference in subsection (2)(a) to anything previously done includes things done before this section comes into force.

However, councillors will still have to be careful. Planning applications will still have to be determined in accordance with the development plan “unless material considerations indicate otherwise”.² The abolition of predetermination does not remove that legal obligation. They still need to be open-minded in determining planning applications. The difference is that the fact that they may have campaigned against a proposal will not be taken as proof that they are not open-minded.

3 Timetable for abolition of the standards board regime

On 6 December 2011, Standards for England described the arrangements for its abolition:

As you will already no doubt be aware, it is the government’s intention to effect the abolition of the “Standards Board Regime” through the Localism Act 2011. This means that, under the standards provisions of the Act, Standards for England is to be abolished.

The government has now clarified the timetable for our abolition in response to a parliamentary question from Lord Greaves, although this is still subject to formal confirmation through regulations. It is the government’s intention that our abolition will take effect on 31 March 2012.

² *Planning and Compulsory Purchase Act 2004* s.38(6)

Prior to this, our regulatory role in handling cases on your behalf and issuing guidance will stop from a date that will be set out in regulations but, as noted in the government's response to Lord Greaves, is anticipated to be 31 January 2012.

From this date, Standards for England will no longer have powers to accept new referrals from local standards committees or conduct investigations into complaints against members. Any existing referrals or investigations we have at that time will be transferred back to the relevant authority for completion. However, any complaints which are being handled locally on that date will need to continue through to a conclusion; and similarly any matters relating to completed investigations or appeals which have been referred to the First Tier Tribunal will continue to conclusion.

As stated, this means we will be returning, to local authorities, any existing referrals or open investigations which we have been unable to complete by 31 January. We currently have a number of cases which we expect will not be completed by this date, and we have already contacted the monitoring officers in question to agree handover arrangements.

You may also wish to note that - while we can continue to receive referrals of new cases up to 31 January, and we will continue to assess whether it is in the public interest to take them on or not for the short time remaining - it will become increasingly unlikely that we will feel in a position to take a case where the investigation is likely to go beyond the end of January.

Standards for England staff will, of course, continue to be on-hand between now and the end of January to facilitate the transfer of existing referrals and open cases back to local standards committees, as well as to provide advice and guidance on the current framework.

Please note that these arrangements relate only to the role of Standards for England in the current standards framework. It is for DCLG to confirm when the other standards elements of the Localism Act 2011, such as the removal of powers from existing local standards committees, the requirement to adopt a local Code and to appoint an independent member, will come into force.³

³ Standards for England Press Release, *Arrangements relating to the abolition of Standards for England*, 6 December 2011

Appendix

JJHCSDL1008

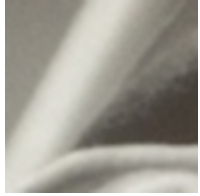
Tim Howes advice to Councillors

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WhatDoTheyKnow

Request re Officers Advice to Councillors



██████████ made this Freedom of Information request to [Thanet District Council](#)

This request has been **closed to new correspondence from the public body**. [Contact us](#) if you think it ought be re-opened.

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The request was **successful**.

██████████ 21 October 2015

Delivered

Dear Thanet District In an attempt to get their point of view across to Members (Councillors) RiverOak have held two question and answer meetings.

20th August 2015

Custom House, Ramsgate, for Ramsgate Town Council

20th October 2015

Cliftonville.

On both occasions instructions or advice was relayed by officers of Thanet District Council to councillors attending or proposing to attend those meetings.

Please provide an agreed definition of the meaning of the phrase "official meeting"; one that has either been agreed by elected Members or defined by Statute.

Please provide details of the advice or instructions relayed to Councillors, District and Town, prior to the meeting on 20th August 2015. Where such communication was in writing (including email, internet messaging service or SMS text message) please provide copies of the communications.

Please provide details of the advice or instructions relayed to Councillors prior to the meeting on 20th October 2015. Where such communication was in writing (including email, internet messaging service or SMS text message) please provide copies of the communications.

Yours faithfully,

Liam COYLE

Claire Grant, Thanet District Council 22 October 2015

Ref No:83164

Subject:Riveroak Meetings

Dear Mr Coyle

Thank you for your correspondence of 21/10/2015 requesting information about instructions issued to Members regarding attendance at meetings.

Your request is being dealt with under the terms of the Freedom of Information Act 2000 and will be answered within 20 working days.

If you have any queries about this request, please contact me quoting the reference number above.

Yours sincerely,

Claire Grant
Customer Contact and Engagement Officer

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Tim Howes, Thanet District Council 30 October 2015

Ref No: 83164 / 3121418

Subject:Riveroak Meetings

Dear Mr Coyle

Thank you for your communication received on 21/10/2015 where you requested information about Member attendance at RiverOak meetings.

I am writing to advise you that, following a search of our paper and electronic records, I have established that the information you requested in respect of "an agreed definition of the meaning of the phrase "official meeting"; one that has either been agreed by elected Members or defined by Statute" is not held by Thanet District Council.

I am, however, able to provide copies of the emails sent to Members in respect of the meetings to which you refer:

August meeting:

Dear Cabinet Member,

I have been informed that you have been invited to attend a private meeting on Thursday with representatives from RiverOak organised by Ramsgate Town Council. Giving that this has come to my notice I would be failing in my duty if I did not advise Cabinet Members to be cautious about attending this meeting.

In deciding whether or not to attend the meeting, Cabinet Members should bear in mind that they will in the near future, be making a decision at Cabinet on the suitability of RiverOak to be the Council's Indemnity Partner in a prospective CPO process. That decision is likely to be the subject of intense external scrutiny from all parties and may be the subject of legal challenge, so caution should be exercised by all those involved in the decision-making process.

In making decisions, Cabinet Members must act fairly and avoid suggestion of bias or predetermination. Whilst Cabinet Members might be predisposed to a particular view, predetermination occurs where someone closes their minds to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The Localism Act 2011 makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show the Councillor has a closed mind on the issue. However the Act suggests that other factors combined with the statements made etc. can still give rise to accusations of predetermination. This is the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading up to the decision, rather than looking at individual events in isolation.

My advice is that in deciding whether to attend, Cabinet Members need to consider the purpose of the meeting with RiverOak, the fact that Ramsgate Town Council has no role in the decision on whether or not to appoint RiverOak and the fact that this is a meeting to be held in private. You will need to balance the benefit of attending this meeting against the risk of a legal challenge to the Council's future decision making process.

You should also be mindful that in determining whether there is predetermination, the question the courts ask is not what your motives or state of mind are but 'whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the (decision maker) was biased'.

October meeting:

Dear Councillor,

It has come to my attention that some of you may have been invited to a presentation tomorrow evening by RiverOak. I understand that it is in relation to them becoming appointed as the Council's indemnity partner in the acquisition of land at Manston Airport.

The Council is presently in negotiation with RiverOak through their lawyers and it would be inappropriate for Members to put themselves in a position to be lobbied.

As the Council's Monitoring Officer, I am duty bound to advise you of the provisions of the Council's Anti-Fraud and Corruption Policy which says:

Unless an officer is also present, no Member will meet with a third party to discuss:

- * the acquisition of goods and services by or on behalf of the Council including the terms on which such goods and services are to be acquired;
- * the acquisition or disposal by the Council of land or an interest in land including the terms on which such land or interest in land is to be acquired or disposed of;
- * the actual or proposed development or redevelopment of Council owned land including the terms on which such land may be developed or redeveloped;
- * the securing of planning obligations or other community benefits arising out of or in connection with a planning application under consideration by the Council;
- * the award by the Council of financial assistance of any kind whether by way of grant, pledge, indemnity or loan (whether secured or unsecured).

This advice is especially relevant to Cabinet Members who will soon be asked to make a decision on whether or not to appoint RiverOak on the basis of a report prepared by officers. That decision is likely to be the subject of intense external scrutiny from all parties and may be the subject of legal challenge, so caution should be exercised by all those involved in the decision-making process.

Should you require further detailed advice on this matter, please do not hesitate to contact me.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to: Information Request Assessor, Thanet District Council, P O Box 9 Cecil Street, Margate Kent CT9 1XZ, or send an email to [REDACTED]

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely,

Timothy Howes
Director of Corporate Governance and Monitoring Officer

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Appendix

JJHCSDL1009

Letter from BDB to TDC January 2018

Ms Madeline Homer
Chief Executive
Thanet District Council
P.O. Box 9
Cecil Street
Margate
CT9 1XZ

Your Ref

Our Ref
ADW/166055.0003

Date
16 January 2018

By Email
Urgent

Dear Madam

Extraordinary Council Meeting, 18 January 2018

This letter has been jointly prepared by BDB and RPS who are the legal and planning representatives acting on behalf of RiverOak Strategic Partners (RiverOak) in connection with their proposals to submit a Development Consent Order (DCO) application to reopen Manston Airport as an air-freight hub with some passenger services. It is written further to publication of the officer's report to the 18 January 2018 Extraordinary Council which will consider the Pre-Submission Publication Stage of the new Thanet Local Plan and should be read alongside the letter from RPS to the Head of Strategic Planning at Thanet District Council (TDC) dated 17th March 2017 in connection with the Proposed Revisions to the draft Thanet Local Plan (Preferred Options) (January 2017).

Following our review of the officer's report to the 18th January 2018 Extraordinary Council, it has become necessary to bring several items to your attention. We address these matters below and present them under sub-headings that match those used in the officer's report.

Introduction and Background

The officer's report clearly sets out how important the Local Plan is as a key strategy document that supports the Council's Corporate Plan priorities by seeking to support economic growth and regeneration and seeking opportunities for inward investment and job creation. In its current state, RiverOak do not believe that the Local Plan goes far enough and it is not proactive enough in securing policies that encourage deliver of the corporate priorities – not least in respect of the significant opportunity presented by the possible reopening of Manston Airport site. The 2015 Consultation of the draft Thanet Local Plan rightly acknowledged that "a successful airport has the potential to be a significant catalyst for economic growth" and Policy SP05 supported "retention, development and

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DX 2317 Victoria W www.bdb-law.co.uk

expansion of the airport and aviation operations" in full recognition of the opportunity that the airport presented to deliver strategic growth objectives. This policy approach to the airport was widely supported by the general public. To allocate the airport site for anything other than aviation use would be a missed opportunity for the District which should not be lost.

Government Guidance – Key Requirements

Paragraph 2.13 of the officer's report correctly recognises that the new Local Plan should be based on adequate, up-to-date and relevant evidence. RiverOak do not believe that Members of the Extraordinary Council have adequate evidence upon which to make such an important decision on the next stages of the Local Plan.

The officer's report itself identifies examples of where crucial pieces of evidence have not been completed and therefore made available to Members, or the general public. The evidence base to the Local Plan is lacking and incomplete and has not benefited from full scrutiny by way of a full consultation. Members have not seen the following evidence:

- **Avia response to the March 2017 representations** – Avia have already issued a preliminary response to RiverOak's comments from March 2017. However officers indicate that a fuller response, which relates directly to their September 2016 report, will be reported to Members in due course. No date is provided for this response. Additionally, the Avia Report itself has never been subject to scrutiny and comments have never been invited on it. As the principal evidence base for the Council's justification for no longer protecting the airport for aviation use, the Avia Report and any further commentary needs to be fully considered by Members and the subject of proper scrutiny before any definite decision is taken on the future of the airport.
- **Justification for the amount of employment land allocated** – The Council has promised to publish an Economic Development Needs Assessment-style document which will explain the amount of floorspace needed over the Plan period and the employment land supply situation. This is welcomed as the current document is very out of date (2010). The Council's employment strategy and policies are a central part of the Local Plan and in realising corporate priorities. They must be based on the latest information available especially as there are likely to be implications for other elements of the Local Plan if the currently reported land supply situation changes. It is understood that the promised document will be submitted to the Secretary of State alongside the Local Plan, but this will be after Members have made their decision at this week's meeting. RiverOak continue to raise significant concerns about the Council's continued approach and admittance to maintaining a significant oversupply of employment land especially when delivering employment land in Thanet has historically been difficult and failing to properly consider Employment Omission Sites, as doing this may present better options for addressing housing land supply needs thereby reducing the reliance on Manston Airport to meet this supply.
- **Strategic Housing Land Availability Assessment (SHLAA) and Strategic Housing Market Assessment (SHMA)** – the Council acknowledges that these documents are out of date. The SHMA has been revised to provide up to date evidence for the objectively assessed housing need for Thanet and the types and affordability of homes required but it has not been published. This should inform the level, size, type and affordability of housing to be provided for in the Pre-Submission draft Local Plan. The SHLAA will be updated for the Pre-Submission draft Local

Plan. The content of the Pre-Submission draft will be informed by the updated SHMA. Again, this is all crucial evidence which Members will not see before making a decision this week.

- **Housing Omission Sites (which have not be allocated)** – there were numerous objections from landowners and agents whose sites had not been allocated for housing. The Council is considering the sites individually and on their own merits in line with established assessment procedures set out in the evidence base. The Council has previously promised to publish an Environmental Report to update on this process and to explain why sites had not been allocated. This report has not been published. This evidence needs to be considered in full against the Council's proposed list of housing allocations and especially in light of the proposal to deliver a new settlement on Manston Airport (which was once the Council's least preferred housing solution) and which RiverOak state is not required with reference to the January 2018 RPS Report "*Thanet District Local Plan: Review of Future Housing and Employment Growth and Capacity for Development.*"
- **Final versions of the Infrastructure Delivery Plan, Sustainability Appraisal, Viability Assessment and Transport Modelling Work** – objections were received stating that these documents should have been published as part of the 2017 consultation. The Council has responded by saying it has published evidence base documents and information in the past, and is committed to continuing to do so, as and when evidence is available and at the appropriate stage. The Council recognises that these are important elements of evidence for the Examination. The officer's report states that it is the Council's intention to publish the evidence mentioned at the next stage, if available. This is simply not good enough when we are talking about such important evidence documents which underpin the District's future for the next 20 years.
- **Whole Plan Viability Study** – this document is required to ensure that the development identified in the draft Plan is deliverable in the Plan period to 2031. As this document has not yet been completed and therefore published, there is no certainty that the development being proposed (including the new settlement at Manston Airport) is viable and therefore deliverable. This evidence should be made available to Members now.

The above list is sizeable and contains a number of essential evidence documents that could all have significant implications for the Local Plan which the Council itself recognises as a key strategic document. Members have not been properly informed in advance of being asked to make decision on the next steps. This is not only unfair but irresponsible and could have severe repercussions at the Examination stage if an independent Inspector is not satisfied that adequate evidence has been supplied or that it is out-of-date.

Duty to Cooperate

We suggest that, despite the assurances given in the officer's report (paragraph 2.25), all the evidence suggests that there has not been sufficient co-operation with Dover District Council (DDC) on cross-boundary strategic priorities especially in relation to Manston Airport and that DDC is likely to make this point to the Local Plan Inspector at the appropriate time. A failure to demonstrate evidence of having effectively cooperated to plan for cross-boundary issues in accordance with paragraphs 178-181 of the

NPPF before submitting Local Plans for examination is a serious issue for the Inspector that could lead to the Local Plan not being accepted.

Housing Omission Sites

Paragraph 2.106 of the officer's report recognises that at the last consultation, the Council received a number of proposals for new housing sites that had not been allocated in the draft Local Plan. The Council alleges that the new sites have all been subject to assessment and in the same way as those sites that were submitted earlier on in the Local Plan process at the 'call for sites' stage. There has been no information published to date to evidence or justify the Council's decisions. Consequently, the Council's approach to meeting its housing land supply needs is not fully understood and even less so when considering that there needs to be a clear synergy and integration between the Local Plan housing and employment strategies (with reference to paragraph 158 of the NPPF) – where there is evidently none (see earlier section on Government Guidance – Key Requirements and comments made in relation to the Council's employment land supply assessment).

The overprovision of employment land allocations within the Local Plan (see paragraph's 2.131 to 2.135 of the officer's report) needs to be fully considered alongside the new SHLAA to establish if there is further opportunity for employment sites to be given over to housing (and therefore not having to allocate Manston Airport for a new settlement before the airport's future is properly considered). Additionally, there needs to be a proper consideration of the employment land omission sites (paragraph 2.136 and 2.137 of the officer's report) to see if they represent better examples for employment allocations therefore meaning that existing employment sites could be released for housing. Presumably if Manston Airport is retained in employment use, then other employment sites could be released for housing while maintaining the same amount of employment land.

Future of the Airport Site

There are a couple of points that we need to respond to in relation to paragraphs 2.107 to 2.130 of the officer's report. These are separated out under headings below:

Selective and Inaccurate Reporting of the Planning Inspector's decision on Manston Airport (dated July 2017)

The characterisation of the unsuccessful planning appeals relating to the Manston Airport site at paragraphs 2.119 to 2.122 of the officers' report is wholly misleading. The true picture is as follows:

The Council refused, or did not determine, four applications for changes of use of buildings on the site away from airport use. This was appealed by Stone Hill Park Limited. In December 2016, the Council decided that it would not defend the appeals, relying on the Avia Solutions report for its change of heart.

The Council attended, but did not participate at all in the appeals, which were heard in the Council Chamber in March 2017. The Avia Solutions' report was not introduced to evidence and was not therefore subject to any scrutiny and has as yet not been subject to scrutiny in any other way. In contrast, RiverOak's reports by Dr Sally Dixon and Mr Chris Cain were submitted in evidence and were able to be scrutinised, but were not challenged either by Stone Hill Park Limited nor the Council.

The Inspector decided on 13th July 2017 to dismiss the appeals because there was sufficient prospect of the airport site being brought back into airport use, and he concluded that existing national aviation policy framework and adopted Thanet Local Plan Policy EC4 carry 'significant weight', and that the emerging Policy SP05 carries 'little weight'.

Justification to retain the airport designation

It is wholly inappropriate and wrong for the Council to state in paragraph 2.117 that there is insufficient justification to retain the airport designation during the Plan period. The future of the airport has not yet been properly considered or tested through either the Local Plan or development consent processes and to base the new Local Plan on this conclusion would be wholly wrong. In paragraph 2.121 the Council fully recognises that the airport's future is a matter for the Local Plan and DCO process. It is simply too premature to conclude as the Council has on this matter – especially in light of the Planning Inspector's conclusions in July 2017 in connection with the planning appeals by Stone Hill Park Limited (see above).

Paragraph 2.38 says that the Environmental Report (yet to be published by the Council) will make the Council's assessment of the airport site much clearer. This document must be seen by Members and scrutinised before making such an important decision on the airport's future.

Paragraph 2.123 states that there are implications for the Local Plan if the airport site was not allocated for mixed-use development. RiverOak simply does not agree. The implications can be satisfactorily addressed through better consideration of the evidence base. We believe that there are equally implications for the Local Plan (and the Council's Economic Growth Strategy) by not safeguarding the airport for aviation use – this is not something that has been properly considered by the Council.

Prematurity of deciding the airport's future now

Paragraph 2.128 says that DCLG have said that there is no need for the draft Local Plan to be delayed by the DCO. Whilst this is true, it would also be significantly premature for the Council to assume that the DCO will not be successful and that an alternative use for the airport site must be promoted now. The airport should remain protected for aviation uses until such time that the Local Plan review and DCO processes have been completed – a fact that officers themselves acknowledge in the report (paragraph 2.120).

Weight to be given to the draft Local Plan

In paragraphs 2.150 to 2.152, the officer's report suggests that as the draft Local Plan progresses towards Examination, it gradually accrues more weight in development decisions and that when the Local Plan is submitted for Examination, that significant weight can be afforded to the draft policies. Until the Local Plan has been considered by an independent Planning Inspector, little weight can be given to the emerging plan policies and in particular Policy SP05 (Manston Airport) which continues to attract significant outstanding objection.

Consideration by the Overview and Scrutiny Panel

The officer's report also gives a misleading account of the proceedings of the Overview and Scrutiny Panel that took place on 21st November 2017 (paragraphs 1.10 and 2.168). In fact, a motion to

recommend that the Cabinet agree the Local Plan and that it recommend that the Council submit the Local Plan to the Planning Inspectorate for Examination was defeated by nine votes to one. This represents a strong message from elected Members about the concerns surrounding the new Local Plan and the outcome of the vote should be properly reported and accepted.

We have previously expressed concerns about the way that the comments from the Overview and Scrutiny Panel have been recorded. The concerns that they raised at the 21st November 2016 meeting a year earlier, namely the proposed loss of Manston Airport; the shortage of time that the Panel were given to study evidence documents; the lack of considering alternative uses for the airport site other than for housing; and whether the Council was going to look at rejected housing sites before finalising its housing strategy to deal with the need for additional homes, are all matters that are still of concern. The Panel's specific recommendation from that meeting to conduct further reviews in relation to the rejected housing sites to find extra land for housing development in order to minimise the use of greenfield sites still has not been actioned by the Council – over a year on.

Conclusions

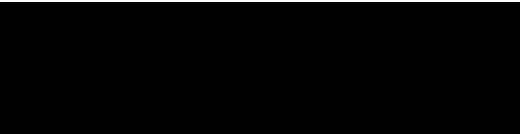
For the reasons set out in this letter, and in the RPS letter to the Head of Strategic Planning at the Council dated 17th March 2017 in connection with the Proposed Revisions to the draft Thanet Local Plan (Preferred Options) and contrary to the requirements of paragraph 182 of the NPPF:

- the draft Local Plan has not been positively prepared;
- it is not justified through adequate and up-to-date evidence;
- there is no evidence available to confirm that it will be effective and deliverable over the Plan period;
- there has not been effective joint working on cross-boundary strategic priorities;
- is not consistent with national planning and aviation policy objectives; and
- it has not been prepared in accordance with the Duty to Cooperate or legal and procedural requirements and therefore fails the 'soundness' test.

Consequently, the Plan should not be submitted for Examination.

RiverOak maintain that there should be no new mixed-use settlement promoted at Manston and that there is a clear need, which needs to be captured in the new Local Plan, to safeguard land at Manston Airport exclusively for aviation related uses – consistent with the national policy context. The airport would deliver much-needed infrastructure which in turn would deliver economic growth on a local, regional and national level in addition to wider growth opportunities fully consistent with national planning policy objectives and the Council's own strategic priorities to grow economically.

Yours faithfully



Bircham Dyson Bell LLP

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cc All Members invited to the 18th January 2018 TDC Extraordinary Council Meeting
Adrian Verrall, Strategic Planning Manager, TDC
Iain Livingstone, Planning Applications Manager, TDC
RiverOak Strategic Partners
RPS