

## **Manston Airport DCO: Comments on response to the Examining Authority's First List of Questions - Funding**

### **Ref F.1.8**

#### **Resource Implications – Acquiring the land**

The Applicant is reminded that that DCLG Guidance related to procedures for the compulsory acquisition of land (2013) states that:

“Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of ... acquiring the land ....”

The Funding Statement [APP- 013] states in paragraph 16 that:

**“...RiverOak has obtained advice from surveyors CBRE that the total cost of acquiring the necessary land for the project at its value in the ‘no-scheme world’, the basis upon which compensation for compulsory acquisition is calculated, as no more than £7.5 million.”**

The ExA notes that Article 9 - Guarantees in respect of payment of compensation, etc in the dDCO [APP-006] proposes guarantees in respect to this sum.

- i. Show where in the application documentation the detailed costings used to arrive at this figure are to be found; or**
- ii. Set out the assumptions and estimates of the costs of the different elements that underlie this estimate of £7.5 million.**

#### **Applicants' Response:**

ii. The Applicant has not included detailed costings in the application documentation. The Examining Authority will be aware that the overwhelming majority of the land is held by Stone Hill Park Limited, with a number of additional parties affected, and **for reasons of commercial confidentiality and sensitivity the Applicant considers it inappropriate to provide a breakdown of different elements** as they may be assigned to individual land holdings.

#### **Comments from The Ramsgate Society**

We have concerns that the applicants have not had due regard to the valuation principles established in the Land Compensation Act 1961 in their calculation of a figure of £7.5 million for the compulsory acquisition of the site. We set out below our understanding of these principles for the benefit of the Examining Authority when considering this matter and in further questioning of the applicants.

## **Land Compensation Act 1961**

The valuation principles to be used in the compulsory acquisition of land are set out in the Land Compensation Act 1961.

The underlying principle with regard to compensation following a compulsory acquisition of land is the principle of equivalence. This principle has been developed through case law over many years. Courts have determined the compensation by ensuring that the property owners are in no better or no worse position financially than they would have been if their land or property had not been compulsorily acquired.

Where land is compulsorily acquired, both the Lands Tribunal and the Courts will try and ensure that property owners are fairly and fully compensated for the loss arising.

It is important to highlight the fact that the basis of compensation is the value to the owner of the land being acquired not the value to the authority acquiring the land.

Land that is suitable for housing and has any prospect of being included in a development plan will already have 'hope value' – the possibility that in the future the land will be used for residential development. Moreover, as described above, the right of a landowner to hold out for residential value is enshrined in the 1961 Land Compensation Act, which made clear that compensation should take account of all the potentialities of the land acquired – including its potential for future development.

The Act states, specifically, that the value of the land is 'taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise'. That may take account of planning permission that is either already received or – crucially – "could reasonably have been expected to be granted at a later date."

If the Lands Tribunal considers that in the absence of a Compulsory Purchase Order (the No Scheme World) the land could be used for housing, then the compensation will be calculated by reference to its residential value, irrespective of whether planning permission is already in place

In the case of Manston the former airfield the site was recently allocated for residential and business development in the Draft Local Plan (Preferred Options January 2017) Section 2 Revised Policy SP05- Former Airport Site but a political intervention taken when the plan was put to Council in January 2018 for approval removed this allocation in what appears as a clumsy attempt to reduce the owner's legitimate claim for compensation in the event of a Compulsory Purchase Order

The 1961 Act, therefore, not only guarantees the landowner the right to the value of the land at the use to which it was already being put, it also guarantees the right to any hope value arising from a prospective future planning permission.

## **The Six Rules**

Statutory provisions relating to compulsory purchase compensation are contained in the Land Compensation Act 1961, which effectively was a consolidation statute. The six rules of compulsory

purchase compensation that are found in Section 5 of the Land Compensation Act 1961 are as follows:

- (1) No allowance shall be made on account of the acquisition being compulsory.
- (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers.
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account.
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.
- (6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

#### **Rule (2) S5 Land Compensation Act 1961**

“The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.”

Rule (2) is perhaps the most commonly used rule. It is known as the market value rule. It envisages a hypothetical sale of the property in the open market by a willing seller. No allowance should be made for the fact that the property is being compulsorily acquired. Market value does not, however, mean simply the existing use value. A willing seller would expect to receive recognition of any additional value due to the development potential of the land, which will not be negligible simply because, in practice, there is only one potential buyer.

The compensation must be determined, therefore, by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser. But this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion, may always be taken into consideration for what it is worth.

## Implications and Conclusions

1. As a rule of thumb in the development industry the residual land value for residential development land is usually around one third of the sale value of the completed houses for a site with access to the necessary infrastructure including the local highway network and the usual statutory services- gas, water electricity, mains drainage, telecoms and so on. Account must also be taken of the costs of complying with the terms of any additional Section 106 obligations.

The average house price in Thanet is currently circa £250,000 and by applying this average 2500 units on the site would produce a gross sales value of around £625million. At one third this would give a land value in the order of some £208 million.

From this gross figure must be deducted the costs of providing the necessary on and off site infrastructure and the cost of complying with any Section 106 Agreement which for the purposes of this illustration we have assumed would reduce the gross land value by 50% to say £104million nett or around 16% of the gross sales value.

In addition to this must be added the value of the proposed business park of some 80,000 square meters which might add a further £16million to £20million to the value of the whole site.

2. The current owners Stone Hill Park, pursuant to Policy SP05 in the Local Plan 2017 Preferred Options, submitted a Planning Application for residential and business development OL/TH/18/0660 received on 4th May 2018, validated on 9th May. This application is currently awaiting determination.

3. Based on the provisions of the Land Compensation Act 1961 we are of the opinion that the sum of £7.5million referred to by RSP as the land acquisition costs is totally inadequate. It fails to take into account the correct basis for compensation used by the Lands Tribunal and the Courts.

4. We would ask the Examining Authority to have particular regard to this issue and the effect it would have on the applicants' ability to fund their proposals in the event that the Lands Tribunal rejected the RSP basis of compensation and made an award in accordance with the provisions of the Land Compensation Act 1961 which we would certainly expect them to do.