

**MANSTON AIRPORT DEVELOPMENT CONSENT ORDER EXAMINATION**  
**SUBMISSION FOR DEADLINE 6**  
**COMMENTS ON APPLICANT'S WRITTEN SUMMARY OF CASE PUT ORALLY**  
**NEED AND OPERATIONS HEARING AND ASSOCIATED APPENDICES ([REP5-024](#))**  
**FROM LOCAL BUSINESS AND INTERESTED PARTY, FIVE10TWELVE LTD**

**NOTES:**

- Our paragraphs in this document are numbered sequentially and do not relate directly to paragraph numbers used by the Applicant in its own submissions.
- Any other page and paragraph numbers referenced in this document, in bold, relate to the Applicant's Written Summary of Case put Orally (Need and Operations) submitted to Deadline 5, ([REP5-024](#)), unless otherwise stated.

**1. Policy**

**1.1. Paragraph 2.1** The Applicant notes *"recent emerging policy shows growing recognition by the Government of the important role played by air freight"*.

1.1.1. Of the five different aviation policy documents referenced by the Applicant in **pages 2-9, paragraphs 2.4 - 2.7** not one of the quotes provided from any of these reports specifies any policy, need or perceived demand for dedicated air cargo operations or dedicated cargo airports of the type proposed by the Applicant as opposed to belly freight using existing runways.

1.1.1.1. The reason why none of the quotes the Applicant has provided from any of these policy documents supports dedicated air cargo operations or airports is because there is no national policy that acknowledges the need for such an operation or actively supports its development.

**1.2. Paragraph 2.2.** The Applicant confirms the emerging and adopted airport and aviation policies - including the five aviation policy documents referenced by the Applicant - *"did not refer specifically to Manston Airport"*.

1.2.1. The Applicant's somewhat defensive explanation that this is due to the fact that *"Manston was not an operational airport at the time the adopted and emerging policies were published"* fails to mention that

numerous successive governments, policy documents and statements, dating back at least twenty-six years and as recently as the Airports Commission and Airports National Policy Statement, (ANPS), have in fact actively considered the case for development of Manston Airport, irrespective of whether it was operational at the time.

- 1.2.2. In every single case over these past twenty-six years and numerous reports, Manston Airport has been fairly considered and has consistently been rejected by the Government, largely on the grounds of poor geographical location with regards to distance from sources of demand and proximity to Ramsgate. Needless to say, the geography has not changed in the past twenty-six years, nor is it likely to in the period to 2050. These reports and statements include but are not limited to:

**Runway Capacity to Serve the South East (RUCATSE) report for the Department of Transport (“DfT”) (1993)**, which concluded that Manston *“did not merit detailed assessment”*

**The Future Development of Air Transport in the UK - South East (DfT, 2002)** which concluded with regards to Manston that *“key constraints are its geographic position in relation to the major sources of demand and noise impacts over the nearby town of Ramsgate”*<sup>1</sup>

**Sir Howard Davies’ Airports Commission Interim Report (2013)** which reviewed the case for Manston as one of 52 proposals received in its shortlisting process and dismissed it as an option for further consideration in the final report since it *“did not fit with the Commission’s remit or offer a solution to the key question of providing additional long-term capacity and connectivity for the UK”*.<sup>2</sup>

**Airports Commission Interim Report : The Air Freight Industry in the UK (PwC, 2013)**

Of particular note is that Manston was rejected for any further consideration after being considered by the Airports Commission (“AC”) in context as a dedicated cargo-only carrier in this report, which formed part of the AC’s suite of Economics Analysis Consultants Reports.

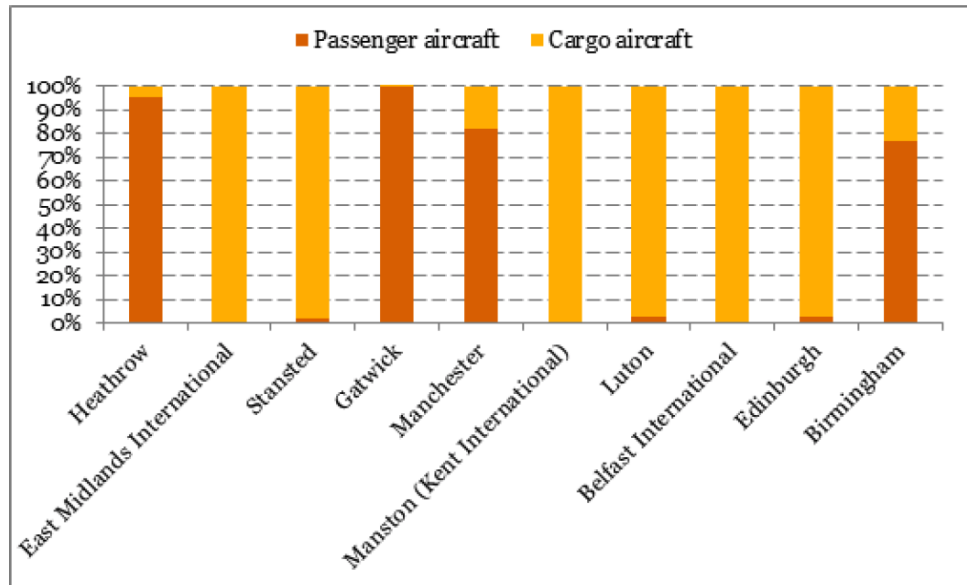
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<sup>1</sup> The Future Development of Air Transport, South East (DfT), July 2002, Page 93  
[http://www.pleiade.org/projectzone/LOX/pdf/The\\_Future\\_Development\\_of\\_Air\\_Transport\\_in\\_the\\_United\\_Kingdom\\_South\\_East.pdf](http://www.pleiade.org/projectzone/LOX/pdf/The_Future_Development_of_Air_Transport_in_the_United_Kingdom_South_East.pdf)

<sup>2</sup> Airports Commission, Interim Report 2013, Appendix 2: Assessment of Long-term Options, Page 16

The first of the two diagrams taken directly from this report, clearly shows Manston was taken into account and duly considered as part of this report. During this period, Manston was operating (unsuccessfully) as a pure freight airport - as per the current proposal by the Applicant.

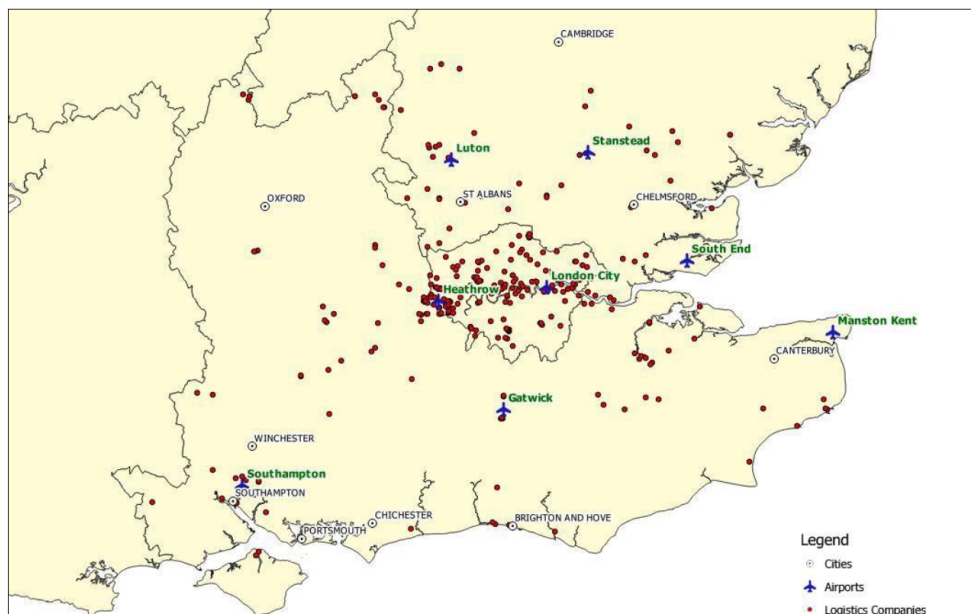
**Figure 31: Percentage of freight by aircraft configuration – 2012**



**Source: The Air Freight Industry in the UK, (AC/PwC 2013), Page 34**

The second diagram gives some indication as to one of the many reasons why Manston struggles to compete in the air freight market in the UK and consistently failed to achieve viability.

The map below highlights the presence of third party logistics companies in South East England, with a clustering around Heathrow:



**Source: The Air Freight Industry in the UK, (AC/PwC 2013), Page 43**

### **Airports Commission Final Report (2015)**

After being duly and fairly considered as both a passenger airport and in PwCs accompanying economic analysis in the context of a freight-only operator - as per the Applicant's current proposal - Manston was deemed unworthy of even a single mention in the Airports Commission Final Report of 2015.

### **Airports National Policy Statement (June 2018)<sup>3</sup>**

The ANPS confirms the significant role of the Airports Commission and its reports in establishing the evidence base for the ANPS and evaluating *"how any need for additional capacity should be met in the medium and long term"*.<sup>4</sup>

The ANPS confirms that the shortlisting process of the Airports Commission reviewed 52 proposals, which - as evidenced above - included Manston in its capacity as both a passenger airport and as a freight-only operator, and concludes that:

*"The Government believes that the Airports Commission has analysed all the options put forward to the appropriate degree of detail, and discounted shortlisted schemes fairly and objectively"*<sup>5</sup>

- 1.2.3. It is disingenuous of the Applicant to suggest that the reason why Manston does not appear in any policy statements is in any way connected with the operational status of Manston or its closure in May 2014. This occurred due to commercial failure throughout its operation as a freight and passenger airport, culminating in its inevitable closure midway through the Airports Commission enquiry, *after* publication of the interim report and review of Manston's submission as one of 52 proposals received for shortlisting, as evidenced above.
- 1.2.4. The ExA is now being asked by the Applicant to ignore decades of commercial failure and overturn more than twenty-five years of government policy with regards to airport operations at Manston, including the three year Airport Commission review and resulting

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<sup>3</sup> Airports National Policy Statement, June 2018

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714106/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714106/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf)

<sup>4</sup> *Ibid*, page 5, paragraph 1.3

<sup>5</sup> Airports National Policy Statement, page 17, paragraph 2.23

Airports National Policy Statement, on the basis of the Applicant's own evidence and Azimuth Report.

### 1.3. Existing Runways and Capacity

The Applicant refers at **paragraph 2.2** to the Airport Commission's recommendations and the government being "*minded to be supportive of all airports who wish to make best use of their existing runways, including those in the South East, **subject to environmental issues being addressed***", (bold added for emphasis).

1.3.1. **Paragraph 2.3** The Applicant cites the Appeal Decisions<sup>6</sup> brought by the current land owners, Stone Hill Park, (SHP), as confirmation that "*national policy applies to airports that are existing but closed*" without providing any evidence to support this statement. Indeed, the decision of the Inspector in this case appears to be primarily based on weighting given to the Local Plan policy EC4 in the Thanet District Council Local Plan (2006), which the Inspector deemed to be "*consistent with the Government's Aviation Policy Framework*". No mention is made anywhere in the decision with regards to runway use or any specific consideration whatsoever as to whether national policy as it relates to runway use does or does not apply to airports that are existing but closed. This assumption has been made solely by the Applicant.

1.3.2. **Paragraph 2.7** The Applicant states that "*Uniquely, Manston's long runway allows all aircraft types to land unlike at other airports*".

1.3.2.1. In point of fact, Manston has just the 28th longest runway in the UK and only the 10th longest in the South East<sup>7</sup>. There are no fewer than ten other disused runways of greater length in the UK, at Bedford (Thurleigh), Elvington, Bruntingthorpe, Chelveston, Greenham Common, Upper Heyford, Wethersfield, Alconbury, Cottesmore and Gaydon. Four of these are also in the South East.

1.3.2.2. If existing runways at disused airports were to be developed as a matter of policy, this would mean considerable airport expansion of no fewer than twenty-four new airports across the

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<sup>6</sup> Ref: APP/Z2260/W/15/3140995, 3140990, 3140992, 3140994

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?Caseid=3140990&CoID=0>

<sup>7</sup> UK Airfields, Runway Lengths in the UK & Ireland

<http://www.ukairfields.org.uk/runway-lengths.html>

UK. If such expansion were prioritised according to runway length, Manston would be 11th highest priority for development, or fifth in the South East.

**1.3.3. Paragraph 2.5** The Applicant confirms that the Aviation Policy Framework (“APF”) of 2013 states at paragraph 1.24 that “*The Government wants to see the best use of existing airport capacity*”.

1.3.3.1. The Applicant states on page 8 of its Cover Letter submitted to Deadline 5, ([REP5-001](#)), at paragraph A2, that “*The Applicant’s case is not that existing runway capacity is zero, but that the current the (sic) capability of the airport to provide air cargo transport services is zero*”.

1.3.3.2. This is not merely a matter of semantics, rather the Applicant appears to be drawing a distinction between the capacity of a *runway*, (which it claims is ‘existing’), and the capacity of an *airport*, (which it claims is currently zero - hence the need for development). As such, the language at paragraph 1.24 of the APF, which refers specifically to “*existing **airport capacity***”, (bold added for emphasis), appears to exclude the Applicant’s proposal from consideration or qualification.

#### 1.4. **Environmental Issues**

Regardless of any policies that may or may not emerge regarding air freight and/or existing runway use, these will inevitably need to be balanced against emerging - and/or competing - policies in other areas, notably with regards to climate change and airport expansion. Indeed, the APNS calls for making best use of existing runways “*subject to environmental issues being addressed*”.

1.4.1. Since the Applicant submitted its Written Summary at Deadline 5, Parliament has declared a Climate Emergency on 1/5/19, just twenty-four hours before the Committee on Climate Change (“CCC”) published its NetZero<sup>8</sup> report on 2/5/19.

1.4.2. Net-Zero recommends an ambitious new emissions target for the UK of net-zero greenhouse gases (“GHG”) by 2050. Parliament’s declaration of a Climate Emergency places this at the top of the political agenda nationally, if not globally.

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<sup>8</sup> Net-Zero: The UK’s Contribution to Stopping Global Warming, Committee on Climate Change 2019 <https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf>

- 1.4.3. The Net-Zero report recognises that aviation presents one of the most significant challenges in achieving net-zero GHG emissions, with a total of 169 references to aviation across the 275 page report. Air freight is not specifically mentioned or addressed. Like the ANPS, the focus is squarely on growth in demand only for passenger services, which suggests that there is little or no acknowledgement, much less prioritisation, of any perceived growth in demand of air freight services in key national policy documents.
- 1.4.4. Net-Zero confirms that *“Updated evidence for aviation points to greater potential to reduce emissions, although we still expect the sector to emit more than any other in 2050”*<sup>9</sup>
- 1.4.5. The report further notes that *“Aviation contributes to both CO2 and non-CO2 warming effects. If its greenhouse gas emissions were left to increase, by 2050 they would constitute approximately 10% of the global cumulative carbon budget”*.<sup>10</sup>
- 1.4.6. The CCC has committed through Net-Zero to *“write to the Government later this year on its approach to aviation, building on the advice in this report”*.<sup>11</sup>
- 1.4.7. Net-Zero: Managing Demand versus Compelling Need**
- 1.4.8. Net-Zero notes that *“demand-side measures”* are one of the few feasible ways to limit aviation GHG emissions and that *“new UK policies will therefore be needed to manage growth in demand. These could include carbon pricing, reforms to Air Passenger Duty, or policies to manage the use of airport capacity”*.<sup>12</sup>
- 1.4.9. Whilst the Applicant has presented numerous quotes which it claims support its theories regarding growth in demand for general UK air freight - contrary to current market trends - there is no evidence of demand or policy support specifically for dedicated air cargo operations.
- 1.4.10. Having failed to comply with the ExA’s request for the Applicant to provide a business model, or for the Applicant to present a compelling case to illustrate the type of goods, services or clients that might realistically require dedicated air freight from Manston during the Issue Specific Hearings, the Applicant’s ongoing and ever-evolving attempts

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<sup>9</sup> Net-Zero: UK’s Contribution to Stopping Global Warming, Committee on Climate Change 2019, page 23

<sup>10</sup> *Ibid*, page 116

<sup>11</sup> *Ibid*, page 35

<sup>12</sup> *Ibid*, page 206

to evidence demand now appear to rest on the growth of the e-commerce market.

- 1.4.11. Due consideration must be given as to whether the Applicant has identified a need case so compelling in the public interest that it takes precedence over meeting the UK's GHG Emissions Targets and addressing global warming.
- 1.4.12. With very few exceptions, next day delivery services typical of e-commerce businesses such as Amazon are not driven by public need. Rather this is a customer service benefit and competitive advantage which sits at the heart of Amazon's business model in order to drive up Prime Membership subscribers. Like all business models - with the apparent exception of the Applicant's - this is not commercially confidential, rather it is explicit in its *modus operandi*.
- 1.4.13. This classic sales technique - the "need you don't know you have" - drives customer expectations and escalates global consumption. Bloomberg, reporting on Amazon's US announcement for one-day shipping as standard, reports that "*e-commerce companies and old-line retailers will now have to start investing just as furiously to keep up*".<sup>13</sup>
- 1.4.14. Irrespective of any perceived public need, there is no evidence to support the idea that Amazon might relocate to the South East corner of Kent, following its investment in a 2 million square foot fulfilment centre at Tilbury, (served by Tilbury Docks and nearby London City and Stansted Airports).

## **1.5. London Heathrow Judgement and the DCO**

Whilst the judgment on the Heathrow Third Runway Litigation<sup>14</sup> dismissed all five environmental claims against Heathrow, there are a number of key differences and findings that are highly relevant to this DCO hearing that must be carefully considered, as follows:

### **1.5.1. The ANPS, preferred location and the Planning Process**

#### **1.5.1.1. The judgement summary states that:**

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<sup>13</sup> Amazon's One-Day Shipping is a Perk Few Retailers Can Match, Bloomberg, 29 April 2019 <https://www.bloomberg.com/news/articles/2019-04-29/amazon-one-day-delivery-is-a-perk-few-retailers-can-match-jv28ks24>

<sup>14</sup> The Heathrow Third Runway Litigation (2019) EWHC (Admin) 1069 and 1070 <https://www.judiciary.uk/wp-content/uploads/2019/05/Heathrow-main-judgment-1.5.19.pdf>



*“There were five claims for judicial review challenging the Secretary of State for Transport’s decision to designate the Airports National Policy Statement (“ANPS”). The ANPS sets out the Government’s policy on the need for new airport capacity in the South East of England and its preferred location, namely a new runway at Heathrow to the North West of the current two runways (“the NWR Scheme”)”*

1.5.1.2. As such, the claims specifically challenged the ANPS on the basis of the preferred location - i.e. Heathrow NWR Scheme.

1.5.1.3. The Judgment summary makes very clear the role of the DCO in the planning process and makes explicit the function of the ExA in augmenting and interpreting the ANPS, stating, (bold added for emphasis):

*“The ANPS forms a part of an iterative planning process. It sets a framework under which applications can be made for a development consent order (“DCO”) – in effect, planning permission – **for a third runway at Heathrow**. Development cannot proceed without a DCO. Any application for a DCO will be subject to examination by independent inspectors, who will make a recommendation to the Secretary of State on whether or not that application should be granted and if so subject to what conditions and obligations. **It is open to parties to contend at the DCO stage that (e.g.) the particular proposed development should not be allowed because of its adverse effects on the environment”***

1.5.1.4. In effect, this confirms that the DCO examination is the most appropriate forum in which to test and challenge whether or not any development should proceed. As such, the claims against Heathrow brought to Judicial Review may be seen as a pre-emptive and premature challenge, which was evidently a contributing factor in the dismissal of those claims.

1.5.1.5. The Judgment Summary further sets out a further reason for the dismissal of the claims against Heathrow as they relate to airport capacity and need, which is fundamentally different to the Manston DCO as follows:

*“the ANPS does constrain the issues for consideration at the DCO stage to an extent, effectively to exclude arguments that*

*the airport capacity is not needed and to restrict consideration of the ENR and Gatwick 2R Schemes as fulfilling it.”*

- 1.5.1.6. Since the issue of airport capacity and the unique ability of the preferred location at Heathrow NWR to fulfill this need was specifically considered and addressed in the ANPS, the Summary Judgment suggests that any re-examination of capacity and need **as it relates to the Heathrow NWR Scheme** would be outwith the scope of the DCO **and** consideration of alternative schemes as fulfilling this need - such as Heathrow’s Existing North Runway (“ENR”), or Gatwick’s Second Runway, (“Gatwick 2R”), should be restricted.
- 1.5.1.7. As evidenced in our paragraphs 1.2 - 1.24, above, the Airports Commission Report of 2015, which forms the basis of the ANPS, has already carefully considered the issues of capacity and Manston’s ability to meet any need, both as a passenger airport **and** as a dedicated freight operator, and found it did not *“offer a solution to the key question of providing additional long-term capacity and connectivity for the UK”*
- 1.5.1.8. As such, insofar as the ExA might consider to what extent the *“ANPS does constrain the issues for consideration at the DCO stage”*, this should be tilted more towards an assumption that the need is not met by Manston, with a high bar set for the Applicant to provide a significant body of evidence to challenge the previous findings of the Airports Commission.

## **1.5.2. The ANPS and the Climate Change Act 2008 (CCA)**

The Heathrow Judgment dismissed claims on grounds of Climate Change in part due to the fact that, contrary to assertions made in the claims, the ANPS confirms at paragraph 597 that the Airports Commission, (“AC”), and ANPS considered the impact of airport expansion on the UK’s GHG emissions targets under the CCA, **but only insofar as they relate to the three shortlisted schemes**, as follows:

*“The AC had considered all three short-listed schemes (including the NWR Scheme) in the context of two possible ways in which international aviation carbon emissions might be dealt with as a matter of policy in the future: (i) a “carbon cap” in which emissions from the UK aviation sector were limited to the Aviation Target of 37.5 MtCO<sub>2</sub> in 2050, and (ii) “carbon trading” which would involve*

*capping-and-trading or (as in the current European Emissions Trading System) a process involving the buying and selling of permits and credits to emit CO2. The AC considered that the NWR Scheme (and the other two schemes) could be delivered within the UK's obligations on either basis; a conclusion with which, after further analysis and updating of passenger demand forecasts, the ANPS agreed".*

1.5.3. Implicit within this statement is the fact that - by virtue of the fact that no other airports were considered in the Airports Commission Final Report of 2015 or in the ANPS - the question of whether or not any other airport expansion might have a material impact on the UK's ability to meet its GHG emissions targets would be dealt with separately through the DCO process.

**1.5.4. The Role of the ExA and DCO process in determining accordance with The Climate Change Act ("CCA")**

The Heathrow Judgement states at paragraph 601 that:

*"ANPS made clear that an increase in carbon emissions that would have a material impact on the ability of Government to meet its carbon reduction targets would be a reason to refuse development consent"*

1.5.5. The definition of "*material impact*" in this context was found in **Paragraph 631** (vi) of the Heathrow Judgement to fall under the purview of the DCO ExA, as follows:

*"Mr Wolfe submitted that, as a matter of law, "material" may mean "more than trivial" or "substantial" or may have some other shade of meaning; and paragraph 5.82 [of the ANPS] was unclear because it did not set out its precise meaning. However, we are unpersuaded. As we have explained, such close textual examination is inappropriate for policy documents such as the ANPS. In our view, the phrase "material impact" is a good example of "fact and degree" language in a policy document which cannot be divorced from, or sensibly interpreted by the court in advance of, the factfinding exercise which (in this case) will have to be carried out by the Examining Panel and the Secretary of State on a DCO application".*

1.5.6. Further, the Heathrow Judgment states at **paragraph 648** that:

*"if scientific circumstances change, it is open to [the Secretary of State] to review the ANPS; and, in any event, at the DCO stage this issue will be re-visited **on the basis of the then up to date scientific position**".*

- 1.5.7. We respectfully remind the ExA that, pursuant to our request at the Preliminary Hearing of [date], the ExA confirmed a procedural decision to include Climate Change as a Principal Issue in the Manston DCO Examination.
- 1.5.8. Given the likely emerging changing policy landscape with regards to Parliament's Climate Emergency declaration and the Net-Zero report, specifically as it relates to "*Demand-side measures*", as outlined in our paragraphs 1.4.7 - 1.4.8, a high bar must be set with regards to the demonstrating whether any compelling need in the public interest is best served by the Applicant's desire to fulfil the commercial requirements of any as-yet-unevidenced e-commerce operators or whether the public interest might be better served by ensuring that the Government is able to meet its GHG emissions targets.
- 1.5.9. We note that, to date, the ExA has asked a total of 3 Written Questions relating to Climate Change - mostly related to impact of Climate Change on the development, as per UCKP18. To the best of our knowledge, the issue has not been raised specifically at either a dedicated Issue Specific Hearing or in any substantial way at any of the other Hearings.
- 1.5.10. In light of the emerging policy landscape with regards to the CCC's recommendations to revise the UK's GHG emissions target to net-zero, together with updated scientific evidence since the DCO Application, we respectfully submit that the Applicant's Environmental Statement, Chapter 16, Climate Change, ([APP-034](#)), and Climate Change Adaptation Framework, ([REP4-033](#)), might be subject to a thorough review and re-examination.