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Stone Hill Park Ltd

Your Ref:

Our Ref: TR020002

Date: 22 May 2019

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Dear Sir/ Madam

## **Planning Act 2008 – section 89**

### **Application by RiverOak Strategic Partners Ltd for an Order Granting Development Consent to upgrade and reopen Manston Airport**

#### **Procedural Decision in respect of cross questioning**

I refer to your letter dated 17 May 2019 addressed to the lead member of the Examining Authority (ExA) [AS-107].

The ExA has made a Procedural Decision under s89(3) of the Planning Act 2008 (PA2008) to respond to this letter and to publish that response and I am responding on behalf of the ExA.

Your letter states that:

*"We wish again please to request the right for oral questioning of the Applicant's representatives in relation to compulsory acquisition on 4 June."*

As you will be aware, the ExA has the power under s94(4)(a) of the PA2008 to decide whether a person making oral representations at the hearing may be questioned at the hearing by another person and, if so, the matters to which the questioning may relate.

The ExA draws your attention, however, to s94(7) of the PA2008 which states that:

*"In making decisions under subsection (4)(a), the Examining authority must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining authority except where the Examining authority thinks that oral questioning by another person is necessary in order to ensure—*

- (a) adequate testing of any representations, or*
- (b) that a person has a fair chance to put the person's case."*



Therefore, in deciding whether to grant your request to question orally the Applicant's representatives in relation to Compulsory Acquisition (CA) on 4 June 2019, the ExA has had careful regard to these provisions in legislation as well as the particular circumstances of this Examination.

Taking all this into account, the ExA has decided that your request to orally question at the Compulsory Acquisition Hearing (CAH) should be granted.

Your letter goes on to state that:

*"However, we believe it is reasonable to ask the Examining Authority in advance if it intends to limit our right to do so to 15 minutes, as was the case on 20 March? If that is the case, we would not consider it worthwhile to brief Leading Counsel or to have him attend on the day."*

Section 94(4)(b)(ii) of the PA2008 states that, in particular, it is for the ExA to decide the amount of time to be allowed at the hearing for any questioning by another person.

The ExA will exercise that power at the CAH to be held on 4 June 2019. The decision on the amount of time will be taken by the ExA at the hearing following any representations from, or on behalf of, Stone Hill Park Limited (SHP), as to the matters to which the questioning may relate and taking into account the need to deal with all matters on the agenda as fully as possible through oral questioning by the ExA.

With this in mind, the ExA may decide that SHP exercise the entitlement to orally question granted by the ExA at, or towards, the end of the CAH so that your oral questioning may be informed by the discussions held during the hearing.

Your letter also states that:

*"A curtailment of our right to fairly test the Applicants' case to compulsorily acquire our land would add to the serious concerns which we have already expressed about the legitimacy, legality and fairness of the application and its examination."*

The ExA considers that s94 does not provide a right for any person to question another during a hearing. It does however provide a power for the ExA to make a decision to allow such questioning if it considers it necessary in accordance with s94(7) as set out above.

There is an entitlement under s93 of the PA2008 for an Affected Person to make oral representations about the CA request. This entitlement is subject to the ExA's powers of control over the conduct of the hearing.

This is subject to s94(6) of the PA2008 which states that although the ExA's powers may be exercised for the purpose of controlling exercise of an entitlement, those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement.

The ExA does not conflate the varying powers and entitlements under s93 and under s94 of the PA2008.



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In deciding how the CAH is to be conducted, the ExA will be fully aware of the statutory framework for conducting this hearing and would not deprive any Affected Person the entitlement to make oral representations.

The ExA are also mindful of the fact that s90 of the PA2008 states that the ExA's examination of the application is to take the form of consideration of written representations about the application and, as designed, the examination of applications through the PA2008 procedure is primarily a written process.

The ExA have sought to give all parties at all hearings the opportunity to make oral representations by, for example, seeking responses by parties to points made by other parties and by requesting parties to present their own evidence and counter arguments.

The ExA will continue to conduct hearings in respect of this application through taking this approach.

Yours faithfully

*Kelvin MacDonald*

**Kelvin MacDonald**  
**Lead Member of the Examining Authority**

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