

Planning Act 2008 – section 91**Application by RiverOak Strategic Partners Ltd for an Order Granting Development Consent to reopen and develop Manston Airport****Agenda for Issue Specific Hearing 6 dealing with Habitats Regulations, biodiversity and other environmental matters**

The Examining Authority (ExA) notified Interested Parties (IPs) in its letter dated 3 May 2019 of the decision to hold an Issue Specific Hearing (ISH) into Habitats Regulations, biodiversity and other environmental matters on the following date:

Hearing	Date and time	Location
Issue Specific Hearing 6 Habitats Regulations Assessment, biodiversity and other environmental issues	5 June 2019 2.00pm (seating available from 1.30pm)	Laurence Suite, Building 500, Discovery Park, Sandwich, CT13 9FF

Participation, conduct and management of hearing

This is the sixth ISH to be held in this Examination. It is being held because the ExA wishes to question the Applicant about the approach that it has taken to identifying and assessing the environmental effects in the Environmental Impact Assessment and reported in its Environmental Statement (ES) [APP-033 to APP-035] and appendices and the Report to Inform the Appropriate Assessment (RIAA) [REP1-007].

Oral submissions on other subject matters or from persons who are not IPs may only be heard at the discretion of the ExA.

The following IPs and Other Persons are invited, in particular, to attend and participate in this hearing:

- The Applicant;
- Civil Aviation Authority;
- Independent Commission on Civil Aviation Noise;
- Stone Hill Park;
- Natural England;
- Kent Wildlife Trust;
- Environment Agency;
- Canterbury City Council;
- Kent County Council;
- Dover District Council; and

- Thanet District Council.

The named persons have been invited for the following reasons:

- As public bodies with policy and regulatory responsibilities for aviation and noise environment;
- as voluntary organisations with relevant interests; or
- as national and local authorities for the affected area.

Participation in the hearing is subject to the ExA's power to control the hearing. IPs may be invited to make oral representations at the hearing¹ (subject to the ExA's power to control the hearing). Oral representations should be based on the Relevant Representations or Written Representations made by the person by whom (or on whose behalf) the oral representations are made².

However, representations made at the hearing should not simply repeat matters previously covered in a written submission. Rather, they should draw attention to those submissions in summary form and provide further detail, explanation and evidential corroboration to help inform the ExA.

The ExA may ask questions about representations or ask the Applicant or other party to comment or respond. The ExA will probe, test and assess the evidence through direct questioning of persons making oral representations. Questioning at the hearing will therefore be led by a member of the Panel, supported by other Panel members.

This agenda is for guidance only. It is not designed to be exclusive or exhaustive. The ExA may add other issues for consideration, may alter the order in which issues are considered and will seek to allocate sufficient time to each issue to allow proper consideration of them.

Any lack of discussion of a particular issue at a hearing does not preclude further examination of that issue, including through the inclusion of questions in the ExA's Fourth Written Questions (if issued).

Should the consideration of the issues take less time than anticipated, the ExA may conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. Some of the issues identified in the agenda are by their nature overlapping. It may be the case therefore that certain questions later on in the agenda are answered by earlier questions. If this is the case the ExA will acknowledge this at the time.

If there are additional matters to be dealt with or there are submissions that take a considerable amount of time at any hearing there may be a need to

¹ s91 Planning Act 2008

² s91 Planning Act 2008

continue the session for longer on the day or continue the hearing at a subsequent sitting.

Those attending the hearing are asked to note that an early item on the agenda is to deal with any requests to question a person making oral representations directly under section 94(4)(a) of the Planning Act 2008 (PA2008).

The ExA may decide to allow oral cross-questioning of one party by another, where there is clear disagreement between the parties in question, to ensure adequate testing of the representations or to ensure that each party has a fair chance to put their case.

Breaks will be taken during the hearing as directed by the ExA.

All parties should note that the agenda given below is to provide a framework for this hearing and offer discussion points; it does not constrain the ExA to specific topics. The ExA may wish to raise other matters arising from submissions and pursue lines of inquiry in the course of the discussions which are not included in this agenda.

The hearing will have regard to submissions already set out in (amongst others):

- Applicants ES Chapters [APP-033 to APP-035];
- Report to Inform the Appropriate Assessment (RIAA) [REP1-007];
- Noise Mitigation Plan Deadline 7 [TBC], Updated Noise Contour Maps Deadline 7 [TBC], Ecology Noise Contour Maps at Deadline 7 [TBC];
- Relevant Representations;
- Written Representations;
- ExA's Draft DCO [PD-015];
- Responses to ExA's First Written Questions and subsequent comments on them;
- Responses to ExA's Second Written Questions and subsequent comments on them;
- Responses to ExA's Third Written Questions;
- Statements of Common Ground with the ten invited IPs;
- Local Impact Reports from Thanet District Council [REP3-010]; Kent County Council [REP3-143]; Dover District Council [REP3-227] and Canterbury City Council [REP3-246];
- Updated Register of Environmental Actions and Commitments [REP4-108]; and
- Addendum to the Environmental Statement [APP-033] Chapter 6 Air Quality [REP6-016].

References in square brackets [] are the unique reference number in the Examination Library. This document can be found on the National Infrastructure Planning website, here: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-002558-Manston%20Examination%20Library%20Template.pdf>

During the hearing, the ExA may additionally refer in particular to:

- Climate Change Committee, Net Zero – The UK’s contribution to stopping global warming, 2 May 2019
- [The National Planning Policy Framework](#), Ministry of Housing, Communities and Local Government, February 2019



AGENDA

1. INTRODUCTIONS

2. OPENING REMARKS BY THE EXAMINING AUTHORITY

Including consideration of other possible items for the agenda of the hearing.

3. REQUESTS TO QUESTION A PERSON MAKING ORAL REPRESENTATIONS DIRECTLY UNDER S94 OF PA2008

The ExA will consider any requests for questioning of those making oral representations at the hearing by another person under this item at the hearing.

4. EIA MATTERS

a) Air Quality

The ExA will wish to explore the Addendum to Chapter 6 Air Quality of the ES [APP-033] which addresses consequential changes from the revised traffic assessment which was submitted at Deadline 6 [REP6-016]³.

b) Biodiversity

- i. Ecological Surveys non completion – Natural England response to the ExA's Third Written Question Ec.3.1.
- ii. ES in Chapter 7 Biodiversity [APP-033] and consequential changes from the revised traffic assessment [REP6-016]⁴.
- iii. Biodiversity Net Gain. Biodiversity Impact Calculator. Requirement 8 [PD-015] commitment to a *"net gain of at least 10 Biodiversity Units across the Order limits and any land used for ecological mitigation purposes compared to the situation that existed prior to the commencement of the authorised development."*

c) Climate Change

Examination of the Applicant's response to the ExA's Third Written Question CC.3.1.

d) Noise

- i. Significant Observed Adverse Effect Level (SOAEL) daytime

³ Environmental Statement Addendum- Potential Effects arising from the use of the Kent County Council Thanet Strategic Transport Model. Chapter 4.

⁴ Environmental Statement Addendum- Potential Effects arising from the use of the Kent County Council Thanet Strategic Transport Model. Chapter 5.



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The ExA is considering whether it should be a Requirement in the draft DCO that the Authorised Development should have an SOAEL daytime of 60 dB $L_{Aeq,16hr}$ (free field). The Noise Mitigation Plan would be amended appropriately throughout to reflect this revised SOAEL daytime.

ii. Noise Mitigation Plan Deadline 7 [TBC]

Proposed new wording for Requirement 9 [PD-015]:

"The noise mitigation plan must be carried out in full. The authorised development must be operated in full accordance with the noise mitigation plan".

New Requirement 9A [PD-015]:

"No part of the authorised development must be commenced until measures set out in sections 2, 3, 4 and 5 of the Noise Mitigation Plan have been implemented."

Noise Contour Area Cap – The ExA will wish to explore the purpose of this cap.

Noise Insulation and Ventilation in schools – The Applicant's response to the ExA's Second Written Question Ns.2.16 and Third Written Question Ns.3.2.

iii. Noise-related DCO Requirements

New Requirement 21 [PD-015]:

"The operation of the airport is subject to i) a total annual air transport movement limit of 26,468 atms; and ii) a total annual General Aviation movement limit of 38,000 atms."

New Requirement 22 [PD-015]:

"No aircraft can take-off or be timetabled to land between the hours of 2300 and 0600".

This follows the Applicant's response to Ns.2.7:

"There are no circumstances when an aircraft could take off between 2300-0600 other than humanitarian flights. An aircraft could land between 2300-0600 if it was scheduled, programmed or otherwise notified to the airport that it was originally to arrive before 2300 but is delayed or if it is a humanitarian or emergency flight."

iv. Cumulative Effects Assessment of road traffic and air traffic – The Applicant's response to the ExA's Third Written Question Ns.3.3.



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- v. Smugglers Leap Residential Caravan Park – The Applicant's response to the ExA's Third Written Question Ns.3.6.
- vi. Manston Green Development – Thanet District Council's response to the ExA's Third Written Question Ns.3.4.
- vii. Examination of the Applicant's response to the ExA's Second Written Question Ns.2.24. The ExA will wish to explore the case of Powell and Rayner v UK (1990) 12 EHRR 355 and Hatton v UK (2003) 37 EHRR 28, where noise from an airport has the potential to engage Article 8 of Schedule 1 to the Human Rights Act 1998, being interference of a type falling within the scope of Article 8.
- viii. Health Impacts – The Applicant's response to the ExA's Third Written Question Ns.3.5.
- ix. The ExA will wish to explore the ES Addendum- Potential Effects arising from the use of the Kent County Council Thanet Strategic Transport Model. Chapter 3 [REP6-016].
- e) Jentex Contaminated Land Liabilities – The Applicant's response to the ExA's Second Written Question CA.2.26.
- f) The ExA will wish to explore the Method Statement for Environmental Monitoring secured by Requirement 7(2)(b)(ix) [PD-015].

5. HRA MATTERS

- a) Outfall Works – Natural England response to the ExA's Third Written Question Ec.3.2.
- b) Air Quality Effects – The Applicant's response to the ExA's Third Written Question Ec.3.3.
- c) Noise Contours – The Applicant's response to ExA's Third Written Question Ec.3.4.
- d) Requirement 13 [PD-015]. Add new sub-paragraphs clause (3) and (4):

"(3) No part of the authorised development is to commence until the construction of the entire surface and foul water drainage system is completed."

"(4) Construction of the attenuation basins must be completed within the first phase of construction if construction is undertaken in phases."

The ExA would like to explore how this will secure mitigation that is required to support the Applicant's conclusion of no adverse effect on integrity in their Report to Inform the Appropriate Assessment. The mitigation seeks to ensure that the ecological protection embedded



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in the surface and foul water drainage system is available prior to operation and essential elements are in place as early as possible in the construction period.

- e) Report on the Implications for European Sites (RIES) to be published on 17 June 2019 with comments due by 2 July 2019.

6. **ANY OTHER MATTERS ARISING FROM DEADLINE 7 AND DEALINE 7A SUBMISSIONS NOT COVERED ABOVE**
7. **ORAL REPRESENTATIONS FROM INTERESTED PARTIES WHO HAD PREVIOUSLY REQUESTED TO SPEAK**
8. **ANY OTHER RELEVANT BUSINESS**
9. **EXA'S CLOSING REMARKS AND CLOSE OF HEARING**