

Planning Act 2008 – section 92

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

Agenda for Compulsory Acquisition Hearing 2

The Examining Authority (ExA) notified Interested Parties (IPs) in its letter dated 3 May 2019 of the decision to hold a Compulsory Acquisition Hearing (CAH) on the following date:

Hearing	Date and time	Location
Compulsory Acquisition Hearing 2	Tuesday 4 June 2019 10.00am (seating available from 9.30am)	Laurence Suite, Building 500, Discovery Park, Sandwich, CT13 9FF

Participation, conduct and management of hearing

The CAH is being held to ensure adequate examination of the provisions within the draft Development Consent Order (dDCO) seeking to authorise the Compulsory Acquisition of land and/ or rights over land and to assess whether the conditions relating to the land and/ or rights being required for the Proposed Development or required to facilitate or be incidental to that development are met and whether there is a compelling case in the public interest for the land to be acquired compulsorily.

All Interested Parties are welcome to attend the hearing. However, Affected Persons (AP) whose land interests are affected under Compulsory Acquisition proposals are specifically invited to attend. APs have the entitlement to speak at this hearing and will be invited to do so.

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.

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 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.

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 this issue, including through a further round of Written Questions should the ExA consider this to be valuable and necessary.

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.

If there are additional matters to be dealt with or there are submissions that take a considerable amount of time, there may be a need to continue the session for longer on the day or continue the hearing at a subsequent sitting.

The ExA recognise that other hearings may contribute information and evidence which will be used in support of a recommendation in respect of Compulsory Acquisition. In particular, the need for the Proposed Development has been examined through three rounds of written questions and at an Issue Specific Hearing (ISH) on need and operations on Thursday 21 March 2019.

Throughout this hearing, the ExA will be referring to the following documents, amongst others:

- The ExA's Initial dDCO [PD-015] (published on 10 May 2019);
- Revised Explanatory Memorandum (tracked) [REP6-020];
- Statement of Reasons [APP-012];
- Revised Funding Statement (tracked) [REP6-015a];
- Book of Reference: Post-Application Revision 1 [REP3-194];
- Schedule of Changes to Book of Reference [REP3-180];
- Land Plans [APP-016];
- Crown Land Plans [APP-017];
- Special Category Land Plan [APP-019];
- Revised Works Plans [REP3-197];
- Third Revised Compulsory Acquisition Status Report [REP6-004];
- Applicant's Appendices to Answers to First Written Questions [REP3-187];
- Applicant's Appendices to Answers to Second Written Questions [REP6-014];
- Revised Noise Mitigation Plan (tracked) [REP6-022];
- Revised NSIP Justification (tracked) [REP1-006]; and
- s51 Advice on Funding, Response for Deadline 1, Enclosure 1 To Main Letter included in Enclosure 2 to the Deadline 1 Submission Cover Letter [REP1-001].

References in square brackets [] are to the unique document identification number in the Examination Library. This document is found on the National Infrastructure Planning website at:



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<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR020002/TR020002-002558-Manston%20Examination%20Library%20Template.pdf>

More generally, the ordering of the agenda and the conduct of the examination at the Hearing will have regard to relevant responses to the ExA's Third Written Questions [PD-014] published on 10 May 2019.

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

- The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- The Infrastructure Planning (Examination Procedure) Rules 2010
- The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015
(above all available on legislation.gov.uk)
- Planning Act 2008: Guidance Related to the compulsory acquisition of land:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf
- Planning Act 2008: Guidance on associated development applications for major infrastructure projects:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192681/Planning_Act_2008_-_Guidance_on_associated_development_applications_for_major_infrastructure_projects.pdf
- Guidance on Compulsory purchase process and The Crichel Down Rules:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684529/Compulsory_purchase_process_and_the_Crichel_Down_Rules_-_guidance_updated_180228.pdf



AGENDA

1. OPENING REMARKS BY THE EXAMINING AUTHORITY

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

2. INTRODUCTIONS

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

Section 94(7) of the Planning Act 2008 (PA2008) states that:

"...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."

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.

PART I of the Hearing: Funding

4. REVISED FUNDING STATEMENT

The Planning Inspectorate's advice to the Applicant under s51 of PA2008, in a letter dated 14th August 2018 [PD-002] states that:

"...the Inspectorate considers that the Funding Statement poses substantial risk to the examination of the application."

The ExA will examine how and whether the submission of a revised Funding Statement [REP6-015a] has served to reduce or obviate this risk.

This item will draw on, *inter alia*, responses to the ExA's Second Written Question F.2.19 as well as on representations and submissions from other parties.

5. RESTRUCTURING

The ExA will examine the reasons behind, the timing of, and the intended and possible impacts of, the restructuring of the ownership of RiverOak Strategic Partners Ltd contained in the revised Funding Statement [REP6-015a] submitted on 3 May 2019 and, in particular, the formation of RiverOak Investments (UK) Limited as a 90 percent shareholder in RiverOak Strategic Partners Ltd.

This item will draw on, *inter alia*, responses to the ExA's Second Written Questions F.2.4, F.2.5., F.2.6., F.2.8, F.2.13, F.2.14, F.2.18, and on Appendices F.2.4, F.2.14, F.2.21 and F.2.25 in Applicant's Appendices to



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Answers to Second Written Questions [REP6-014] as well as on representations and submissions from other parties.

6. RESOURCE IMPLICATIONS

Paragraph 17 of Guidance related to the compulsory acquisition of land (DCLG, September 2013) states that:

"[The funding] statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required."

The ExA will examine, *inter alia*:

- a) The bases for the costings set out in the revised Funding Statement [REP6-015a].
- b) Any other cost implications not covered in the revised Funding Statement.
- c) The absence of a detailed business plan.
- d) Implications of any changes since the application was made on 17 July 2018, for example, changes in the programme of construction.
- e) The funding implications of the Revised Noise Mitigation Plan [REP6-022].
- f) The adequacy of the sum stated in Article 9 - Guarantees in respect of payment of compensation, etc of the ExA's Initial dDCO [PD-015].

This item will draw on, *inter alia*, responses to the ExA's Second Written Questions CA.2.28, F.2.7, F.2.9, F.2.10, F.2.11, F.2.12, F.2.15, F.2.16, F.2.17 and on Appendices F.2.4 in Applicant's Appendices to Answers to Second Written Questions [REP6-014] as well as on representations and submissions from other parties.

7. THE AVAILABILITY OF FUNDS and POTENTIAL SHORTFALLS

Paragraph 17 of the Guidance related to the compulsory acquisition of land (DCLG, September 2013) states that:

"...the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made."

The ExA notes that the revised Funding Statement [REP6-015a] states at paragraph 23 that:

"It is important to note that the funding of the project is not dependent on any public funding, government subsidy or guarantee, or any access to borrowing or grants from UK or European funds."



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This item will focus, therefore, *inter alia*, on the degree to which private sector bodies have agreed to make financial contributions or to underwrite the scheme, on what basis such contributions or underwriting is to be made and on seeking proof that statements contained in the revised Funding Statement are verifiable.

This item will draw on, *inter alia*, responses to the ExA's Second Written Questions F.2.21, F.2.22, F.2.23, F.2.24, F.2.25 and F.2.26, the redacted copy of the joint Venture Agreement at Appendix 4 to Applicant's Written Summary of Case put Orally Compulsory Acquisition Hearing and associated appendices [REP5-011] and Appendices F.2.4, F.2.5, F.2.6, F.2.7, F.2.8, F.2.15-17, F.2.21 and F.2.25A and B in Appendices to Answers to Second Written Questions [REP6-014], as well as on representations and submissions from other parties.

8. TIMING

Paragraph 18 of Guidance Related to the compulsory acquisition of land (DCLG) September 2013 states that:

"...applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made."

The ExA will examine, *inter alia*, any implications of the Applicant's proposed changes to Article 21.

Parties should note that this item may be covered jointly with agenda item 14(b).

This item will draw on, *inter alia*, responses to the ExA's First Written Question F.1.12, as well as on representations and submissions from other parties.

9. GUARANTEE OR ALTERNATIVE FORM OF SECURITY

The ExA will examine the robustness of this Article.

The ExA notes that in the revised dDCO submitted at Deadline 6 [REP6-018] the Applicant has proposed adding:

"(f) a guarantee by a parent company of the undertaker;"

to Article 9 - Guarantees in respect of payment of compensation, etc.

This item will draw on, *inter alia*, responses to the ExA's Second Written Questions DCO.2.17, DCO.2.18 and DCO.2.19 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014] as well as on representations and submissions from other parties.

PART II of the Hearing: Compulsory Acquisition

10. COMPELLING CASE IN THE PUBLIC INTEREST

The ExA will seek to establish whether there is a compelling case in the public interest for the land to be acquired compulsorily.

The Applicant will be asked to outline the main points in its case relating to the statutory provision contained in s122(3) of the PA2008 including whether the public benefits that would be derived from the Compulsory Acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

11. LAND REQUIRED

The ExA will seek to establish whether the land is required for the development to which the development consent relates or that it is required to facilitate, or is incidental to, that development (s122 PA2008).

This item will focus on, *inter alia*:

- a) The definition of 'Associated Development' including definitions, Schedule 1, Requirement 19 and other provisions in the dDCO.
- b) Proposed development on the 'Northern Grass'.
- c) The request for Compulsory Acquisition on land shown to be used for the proposed Manston-Haine Link Road.

This item will draw on, *inter alia*, responses to ExA's Second Written Questions CA.2.18, CA.2.19, CA.2.20, DCO.2.10, DCO.2.33, DCO.2.34 and DCO.2.44 as well as on representations and submissions from other parties.

12. REASONABLE ALTERNATIVES

The ExA will seek to establish whether all reasonable alternatives to Compulsory Acquisition have been explored, including:

- a) Progress with negotiations with Affected Persons, including those listed in the Third Revised Compulsory Acquisition Status Report [REP6-004] as having made representations.
- b) The approach taken to acquire land and/ or rights voluntarily with Stone Hill Park Ltd, including the nature of offers made and reasons for the rejection of these.
- c) Discussions with Cogent Land LLP in respect of the development proposed at Manston Green.

This item will draw on, *inter alia*, responses to the ExA's Second Written Questions CA.2.12, CA.2.13, CA.2.16, CA.2.17, CA.2.23 and CA.2.25 and Appendices F.2.25B in Appendices to Answers to Second Written Questions [REP6-014] as well as on representations and submissions from other parties.



13. POTENTIAL RISKS OR IMPEDIMENTS

The ExA will seek to establish whether any potential risks or impediments to the implementation of the Proposed Development have been properly managed, including:

- a) The potential viability of the Proposed Development.
- b) The need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.

This item will draw on, *inter alia*, Statements of Common Ground (SoCG) between the Applicant and the Civil Aviation Authority [REP4- 006] and the Applicant and NATS [REP6-009] and the Civil Aviation Authority Interface Document [APP-086] as well as on representations and submissions from other parties.

14. PROPOSED INTERFERENCE WITH RIGHTS

The ExA will seek to establish whether the purposes for which an order authorises the Compulsory Acquisition of land and/ or rights over land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected, including:

- a) The effect of Compulsory Acquisition on the operation of businesses and activities affected by applications for Compulsory Acquisition, including Polar Helicopters, Avman Engineering, the RAF Manston Museum and the Spitfire and Hurricane Museum.
- b) The proposed use of restrictive covenants.

Parties should note that there will be additional examination of aspects of human rights in the ISH dealing with environmental issues to be held on 5 June 2019.

This item will draw on, *inter alia*, responses to the ExA's Second Written Questions CA.2.14, CA.2.22, CA.2.24 and the SoCGs with RAF Manston Museum [REP3-191] and Spitfire and Hurricane Museum [REP3-173]; Avman Engineering [REP3-181]; and Polar Helicopters [REP3-183] as well as on representations and submissions from other parties.

15. THE DRAFT DEVELOPMENT CONSENT ORDER

To consider aspects of Part 5 of the ExA's Initial dDCO [PD-015].

All parties should note that the agenda for the ISH on the dDCO to be held on 7 June 2019 contains items for discussion on the provisions of the dDCO set out under items a) to e), below.

The dDCO ISH will consider these items only insofar as they have not been fully considered in the CAH. However, the ExA may decide to defer or to continue discussion of these items to and at the dDCO ISH to be held on 7 June 2019.



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This item will consider, in particular:

a) **Article 19: Compulsory acquisition of land**

In particular issues related to the Criche Down Rules.

This item will draw, in particular, on responses to Second Written Question DCO.2.49 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014] and on the wording proposed by Stone Hill Park Ltd in its response to DCO.2.49 [REP6-053] as well as on representations and submissions from other parties.

b) **Article 21: Time limit for exercise of authority to acquire land compulsorily**

In particular the proposed change in the time limit in 21(1) from "5 years" to "1 year".

and any consequent effects on:

c) **Article 25 – Application of the Compulsory Purchase Act 1965**

This item will draw, in particular, on responses to Second Written Question DCO.2.49 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014] and on Stone Hill Park Ltd's Written Summary of Oral Representation - Compulsory Acquisition Hearing 20 March 2019 [REP-031] as well as on representations and submissions from other parties.

d) **Article 26 - Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

This item will draw, *inter alia*, on responses to Second Written Question CA.2.29 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014] as well as on representations and submissions from other parties.

e) **Article 29 - Temporary use of land for carrying out the authorised development**

This item will draw, *inter alia*, on Stone Hill Park Ltd's Written Summary of Oral Representation - Compulsory Acquisition Hearing 20 March 2019 [REP-031] as well as on representations and submissions from other parties.



16. CROWN LAND

The Applicant is reminded that it may be possible that the project as a whole will not get development consent if a voluntary agreement with the Crown authority is not reached (paragraph 39 of Guidance Related to the compulsory acquisition of land, DCLG, September 2013).

The ExA will require a report from the Applicant on the position in respect of negotiations with:

- the Secretary of State for Defence in respect of its interests in land;
- the Secretary of State for Defence and/or Defence Infrastructure Organisation in respect of the High Resolution Direction Finder;
- the Government Legal Department; and
- The Met Office and The Secretary of State for Housing, Communities and Local Government;

all in respect of land at plots identified in Part 4 of the Book of Reference: Post-Application Revision 1 [REP3-194] as being Crown Land.

The ExA will examine the position of the Secretary of State for Transport as an Affected Person to be listed in Part 1 of the Book of Reference.

This item will draw on, *inter alia*, responses to the ExA's Second Written Questions CA.2.1, CA.2.2, CA.2.3, CA.2.4, CA.2.5, CA.2.6, CA.2.7, CA.2.8, CA.2.32 and the SoCGs with the Met Office [REP6-007], the Ministry of Defence (Land) [REP5-019] and the Ministry of Defence (HRDF) [REP6-008] as well as on representations and submissions from other parties.

17. STATUTORY UNDERTAKERS

The ExA will require a statement from the Applicant on the position in respect of:

- BT Group plc;
- Nemo Link Limited;
- Network Rail Infrastructure;
- South Eastern Power Networks plc;
- Southern Gas Networks plc; and
- Southern Water Services Limited

This item will draw on, *inter alia*, responses to ExA's Second Written Questions CA.2.10 and CA.2.11 and SoCGs between the Applicant and:

- Nemo Link Limited [REP5-016];
- Network Rail Infrastructure [REP7-005];
- South Eastern Power Networks plc [REP4-004];



- Southern Gas Networks plc [REP3-175]; and
- Southern Water Services Limited [REP4-009]

18. ORAL REPRESENTATIONS FROM AFFECTED PERSONS PRESENT AND/ OR FORMALLY REPRESENTED

Section 92(4) of the PA2008 allows that at a CAH, the Applicant and each Affected Person is entitled (subject to the ExA's powers of control over the conduct of the hearing) to make oral representations about the Compulsory Acquisition request.

The ExA will invite oral representations from the Applicant and Affected Persons present and/ or formally represented insofar as those representations have not already been made under other items on this agenda.

19. ANY OTHER RELEVANT BUSINESS

20. EXA'S CLOSING REMARKS AND CLOSE OF HEARING