

From: Sarah.Platts@kent.gov.uk
To: Manston Airport
Subject: KCC comments on the ExA's Draft DCO (10 May)
Date: 04 June 2019 16:59:26

Good afternoon,

Please find below some comments in respect of the ExA's draft Development Consent Order (dDCO), published 10th May. These comments are submitted in recognition of, but without having reviewed, the applicant's revised dDCO recently published, or various other documents submitted under the recent deadline. KCC would therefore appreciate a further opportunity to review these documents and comment on further draft DCOs.

KCC will have a recently instructed solicitor, Nagla Stevens, attending the DCO hearing this week. She will be attending mainly in an observational capacity and whilst happy to respond to relevant technical matters raised in relation to the DCO, where she can assist the Examining Authority, she will not be preparing a formal oral presentation.

In respect of a Statement of Common Ground (SoCG), KCC would like to clarify a point made in the applicant's cover letter for deadline 7a submissions, where it states that "KCC have indicated that they would prefer to issue a joint statement and this is in preparation". On 10th May, KCC and the applicant discussed the preparation of a position statement as a possible alternative to the submission of a SOCG for submission to the ExA. This was considered due to the fact that the deadline for final submission was on 17th May, which did not provide sufficient time for parties to agree a SOCG, given that KCC has not received a draft for consideration by the applicant. That remains the position at the date of this email. There are various transport matters that KCC was hoping could be progressed and resolved prior to the Transport Hearing, however, having read the latest submissions in response to the ExA's Third Written Questions, this does not appear to be the case.

Following Hearing 4 yesterday, KCC will provide comment on the applicant's revised Written Scheme of Investigation (WSI) submitted at Deadline 7 in advance of Deadline 8.

ExA's draft DCO – ref	Comments
Article 2 (1) – ‘associated development’	<p>In respect of the off-site highways works needed, much depends on the outcome of KCC's ongoing negotiations over what the mitigation package should look like. However, KCC would like to reiterate here that there is currently associated highway mitigation that is proposed by the applicant, which should constitute associated development. KCC has already set out where it does not currently agree with some of the proposed mitigation schemes in its responses to the Transport Related questions. Through ongoing discussion with the applicant, it has been suggested that instead of physical highway mitigation, it may be more appropriate to agree a monetary contribution, based on the cost of implementing agreed mitigation measures (should common ground be reached on this), with a level of flexibility over where it can be applied. This will enable KCC to have greater flexibility to react to any changes in circumstances (including the Local Plan Review and reviews within Thanet and Dover) however this flexible approach is predicated on reaching an agreed position in relation to a proportionate contribution towards the Inner Circuit Route Improvement Strategy. To date a satisfactory conclusion to this issue has not been reached between the applicant and KCC.</p> <p>In relation to the Northern Grass, the applicant's argument about uncontrolled development would be mitigated by the development control process, which is underpinned by planning policy and regulation. There is land available on or around Manston Business Park that could theoretically be used for further associated development, so at face value, it could be argued that there no compelling reason as to why it must be located on the Northern Grass.</p> <p>In respect of the definition of ‘associated development’ in section 115(2) Planning Act 2008, Section 115(2) essentially provides that associated development means “development which is associated with development for which development consent is required.” The Minister, at committee stage, in response to an amendment that alleged that the power was too wide, said [with added emphasis]:-</p> <p>“Removing the provisions, as the amendments propose, would have serious consequences. Essentially, it would mean that development that was not part of a nationally significant infrastructure project but needed to facilitate it – for example, highways works and works in mitigation – could not be granted development consent by order. Any associated works would therefore need planning permission through the TCP system as it stands.</p> <p>The above passage from the Minister supports KCC's case that off-site highways works should be settled as part of the DCO process and that that is at the very core of what the DCO regime is intended to deal with. To emphasize the point, the Minister went on to say the following (KCC's emphasis): -</p> <p>“We want to ensure that a promoter can combine the ‘core element’ of a nationally significant infrastructure project together with associated works in a single application. Such associated works might include ensuring that the new infrastructure is connected to other national networks, for example, or other development which is needed to allow the infrastructure to operate as intended. I stress that associated works do not include the construction or extension of housing.</p> <p>“I hope that I can answer categorically the two questions raised by the noble Baroness, of which she was kind enough to give me forewarning. She asked whether consent can be all or nothing. She is right up to a point. The IPC can grant consent on a different basis from that put forward by the developer – for example, in mitigation. If the IPC decides that the alignment of a runway needs to be corrected, to take an exaggerated example, it will have the flexibility to do that. That flexibility is extremely important. The IPC will be able to take a middle way, shall we say, between all or nothing. It will also deal with associated development at the same time as part of the attempt to streamline the process.</p> <p>“The purpose of a single consent regime is to present an application that is coherent and sustainable and takes into account all the implications, unlike some of the applications we have had where you find yourself further down the line looking at highway requirements that are significant but were not addressed in the original application.” (Hansard.)</p> <p>At the Report Stage of the Bill for this Act in the House of Lords the Minister said as follows:</p> <p>“Clause 113 then provides that the development consent under such an order can be either for development where consent is required, and/or for associated development which the promoter has chosen to include in the application for development consent.</p> <p>KCC therefore considers that the Examining Authority has an implied duty to ensure that the impact of the DCO is fully considered and that should include essential off-site mitigation works.</p>
Article 2(1) - “Operation Stack”	A new definition of “Operation Stack” “means the operations known as Operation Stack and Operation Brock administered by Kent Police and Highways England for the purpose of relieving congestion on the M20 motorway”. KCC is content.
Article 2(1) - “Operation Stack Land”	A new definition of “Operation Stack Land” “means the land comprising Manston Airport, Manston Road, Manston, Kent and defined as ‘the land’ in the Town and Country Planning (Manston Airport) Special Development Order 2019.” KCC is content.
Article 2(1) - “Outline construction environmental plan”	A new definition of “outline construction environmental plan” - this has been added and “means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) for the purposes of this Order”. KCC is concerned that the Construction Environmental Plan would be submitted for approval in outline only and requests that the full document is submitted, unless further justification can be provided for a need to deal with it by way of a staggered approach.
Article 3 - “Development consent etc. granted by the Order”	(“development consent etc. granted by the Order”) - This has been amended in sub-section (2) . It now provides that “Any enactment applying to land within, [adjoining or sharing a common boundary with or adjacent to the Order limits] has effect subject to the provisions of this Order. There is adopted Highway Land that immediately abuts the site and as such KCC would need to ensure that this order does not prevent the County Council from undertaking any maintenance/upgrades or changes to the highway in the future, and, if necessary, any new routes that KCC wishes to promote. In order to carry out full due diligence, KCC officers will check the enactments that apply in respect of any other adjacent land in which KCC has an interest that will be affected and will update the Examining Authority accordingly.
Article 5 - maintenance of drainage works	This has been added as sub-section (3) . It provides that “in the light of further heritage assessment, Heritage Constraint Areas in which deviations are restricted will be identified by the applicant in consultation with Kent County Council, and if appropriate Historic England, before they are submitted to the Secretary of State for consideration”. KCC is content to be consulted in this manner in due course.
Article 6 - new sub-paragraph (3)	KCC is satisfied with the proposed wording, although the wording set out in the ‘Table of Proposed Changes’ proposes “submitted to the Secretary of State for approval”, while the wording in Article 6 (3) states “...for consideration”. It is suggested that the word ‘approval’ is the correct terminology.
Article 6 - new sub-paragraph (4)	KCC is satisfied with the proposed wording that has evolved from comments put forward by Historic England seeking to protect Heritage Assets and their settings. KCC questions whether the Heritage Constraint Areas include a description of where or what type of works will be triggering this consultation. It is noted that the wording has not been included in Article 6 on Page 9.
Article 12 - (“temporary stopping up and restriction of use of streets”),	<p>This is an amendment to sub-section (6). It now reads as: “(6) If a street authority which receives an [valid] application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.”</p> <p>KCC is concerned that the deemed consent provisions are not appropriate for a development of this scale and magnitude – the text in this article would mean that if the street authority fails to determine the application for consent to stop up, alter diverting a street etc., deemed discharge provisions would be applied. On carrying out a review of the draft DCO, similar deemed discharge provisions are found in:</p> <ul style="list-style-type: none">Article 15 (“traffic regulation”) – see Article 15(11);Article 16 (“discharge of water”) – see Article 16(9) andArticle 18 (“authority to survey and investigate land”) – see Article 18(6). <p>KCC considers that the approach is entirely unsatisfactory. There might be an unavoidable delay – for instance, due internal consultation required within KCC and a requirement to take decisions in compliance with delegated authority and sign off procedures within the authority. 28 days is therefore not considered to be a reasonable time period. KCC requires the power to refuse to undertake the works for which approval is sought, if there is a conflict with other planned works in the vicinity for example. Article 12(6) and the provisions quoted immediately preceding this paragraph are not acceptable to KCC.</p>
Article 14 - (“access to works”)	<p>This has been amended to provide “The undertaker may, for the purposes of the authorised development, and with the consent of the street authority, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development [provided that this does not result in any materially new or materially worse environmental effects than those identified in the environmental statement].”</p> <p>It is understood that the use of the definition ‘Street Authority’ would encompass KCC's role as Local Highway Authority, not just the Streetworks Team. Any new access onto existing highway within the order limits would need KCC teams (not just the Streetworks team) to review and agree. It may, for example, need to be secured through a Section 278 agreement if it is semi-permanent or consists of complex engineering works. KCC will look to check this amendment further with its streetworks team.</p>
Article 18 - “authority to survey and investigate land	<p>New sub-sections (7) and (8) have been added. They provide:-</p> <p>“(7) The right of access under paragraph (1) will be suspended temporarily and with immediate effect in respect of the Operation Stack land and the undertaker must remove all apparatus and equipment from that land [within 2 hours] in the event that the Secretary of State notifies the undertaker in writing that—</p> <p>(a) Operation Stack has been declared by Highways England or Kent Police; and</p> <p>(b) the imminent use of the Operation Stack land for lorry parking purposes would be incompatible with the exercise of rights notified to the Secretary of State under paragraph (2).</p> <p>(8) The Secretary of State will notify the undertaker as soon as is practicable of the date on which the use of Operation Stack land mentioned in paragraph (7)(b) has ceased at which point the temporary suspension under paragraph (7) will end.”</p>

	<p>Whether KCC is content with this matter depends on the point in time when the Secretary of State notifies the undertaker following a declaration of Operation Stack. If the notification is given when Operation Stack is declared, then two hours is adequate, as Manston will not be first stage. However, the timeframe would be inadequate should there be a delay between declaration of Operation Stack and notification of the relevant undertaker. The removal of apparatus should also include the surrounding road network – i.e. A299 Hengist Way and B2190 Spitfire Way. Clarity is requested on this matter.</p>
<p>Article 21 - "time-limit for exercise of authority to acquire land compulsorily"</p>	<p>Amended sub-section (1) provides that "after the end of the period of 1 year beginning on which the day this Order is made" no notice to treat etc may be served. Article 2(1) – a new definition of "associated development" has been added. "Associated development" has the same meaning as in section 115 (development for which development consent may be granted) of the 2008 Act.</p> <p>KCC will require some land within the red line to facilitate the Manston to Haine Road link, in either the existing alignment or the RSP suggested alternative alignment, which KCC is in dialogue with the applicant over. The delivery of the road will fall in line with the delivery of Local Plan Growth and as such, will theoretically be required prior to 2031. As outlined in previous responses to the Examiner's Written Questions, KCC considers, that in the absence of compelling justification from the applicant, the road link should be delivered in line with their onsite masterplan (i.e. their access road should form part of the link). This would also be preferential from an archaeological perspective, as there may need to instigate a review of the alignment if sensitive areas of interest are identified later on.</p> <p>KCC will need to secure land parcels or an agreed corridor methodology within the red line as part of the DCO (whilst highlighting the risk with archaeology at this early stage).</p> <p>KCC will require longer than one or even five years to take an option on this as theoretically KCC may need to acquire land at any time over the period of the Local Plan (to 2031), or beyond if an unexpected delay in realising funding/growth is experienced. KCC therefore considers the one-year time-limit to be inappropriate. KCC considers that a period of 20 years are required as a minimum to enable necessary flexibility to deliver essential infrastructure in line with future growth. It is noted that the most recent submissions from the applicant at Deadline 7a suggest a mechanism to secure a land corridor as part of an initial draft section 106 agreement. It is important that sufficient time is given to KCC to consider this in more detail, however it is important that it is considered in tandem with this article.</p>
<p>Article 37 - Removal of human remains</p>	<p>This article covers a process dealing with human remains that may be of more recent date - in the context of the airfield, those as a result of war time casualties. There is a known potential for human remains of Roman date on the site and potential for remains of prehistoric and Saxon date on the site. Such remains are of archaeological interest and would be identified, investigated, removed and studied under the provisions of the archaeological written scheme of investigation. Article 37 should make provision for archaeological matters relating to human remains where this is appropriate.</p>
<p>Article 43 - "arbitration"</p>	<p>The Secretary of State has been inserted as the arbiter in any dispute between the parties, instead of previously the President of the Institution of Civil Engineers. KCC would question the role of the Secretary of State as an arbiter, given that the Secretary of State grants the Development Consent Order and must have considered it was clear at the point of grant. If there is any ambiguity about wording, any dispute about the Development Consent Order must be approached from objective perspective i.e. by reference to the meaning that could reasonably be ascribed to a term or words in the Development Consent Order. Any other form of statutory instrument of the type akin to this Development Consent Order would be objectively interpreted in a court of law or an independent expert.</p>
<p>Requirement 3 - Development masterplans (1)</p>	<p>This should be submitted to and approved by the Secretary of State in consultation with Historic England and KCC, as well as the relevant planning authority. This is so that the preservation of heritage assets, including archaeological assets, can be taken into account in development master planning.</p>
<p>Requirement 3 - Development masterplans (3)</p>	<p>This new paragraph should include that the applicant should also commission "Further archaeological evaluation of the airfield" to cover the need to evaluate those areas that have yet to be surveyed and that may identify archaeological remains that may influence the masterplan and quantum of development in those areas. KCC has highlighted those areas in earlier responses to Examiner's Questions. Please note this is mentioned as new sub paragraph 4 in the table, but it is 3 in the requirement.</p>
<p>Requirement 3 - Development masterplans (6)</p>	<p>KCC suggests that there needs to be a caveat in this new clause, as it may be that there needs to be substantial adjustment of the masterplan and quantum of development in specific areas following consideration of heritage constraints, especially informed by further archaeological evaluation.</p>
<p>Requirement 6 - "construction environmental management plan", sub-section (2).</p>	<p>Officers would like to consider whether a Construction Management Plan, including these items, in outline, gives KCC sufficient certainty. It appears that the process will be that the Outline Construction Management Plan is submitted for approval under Article 41 and then a condition is imposed by Requirement 6(1) that no part of the authorised development is to commence until a Construction Management Plan, in essence, a final version is submitted for approval by the Secretary of State that is substantially in accordance with the outline Construction Environmental Management Plan. The fact that it must be substantially in accordance with the outline plan, may provide sufficient certainty, but KCC would like the opportunity to ensure that, in practice, there would not be any discrepancies that may cause KCC any difficulty.</p>
<p>Requirement 7 - "operation environmental management plan", new sub-section (1).</p>	<p>The County Council is content with the requirement to consult the relevant highway authority in Requirement 7(1) before approval of the operation environmental management plan. KCC would also question whether this would sit with Thanet District Council as the Local Planning Authority to manage the approval of. If so, it is presumed that KCC would be consulted by them as a matter of course.</p>
<p>Requirement 7 - "operation environmental management plan" New sub-sections (2)(b)(ii) ("site waste management plan"), sub-section (2)(b)(x) ("framework travel plan") and sub-section (2)(b)(xi) ("public rights of way management strategy").</p>	<p>It would be helpful to know what this will encompass (for example will it include any requirement for the applicant to work with KCC in terms of managing unforeseen flight delays that could have a knock-on impact to the highway network which in turn has environmental ramifications?). Poor management of the Airport could have a significant impact on the highway.</p>
<p>Requirement 13 - "surface and foul water drainage" Amendments to sub-sections (1) and (2).</p>	<p>The amendments to sub-sections (1) and (2) have the effect of requiring consultation with KCC in respect of surface and foul water drainage plan, mitigation measures in the register of environmental actions and commitments. Any amendments must be consulted on with KCC before otherwise being agreed by the Secretary of State in writing. KCC should be consulted with respect to surface water, not foul.</p>
<p>Requirement 13 - "surface and foul water drainage"</p>	<p>New sub-sections (3) and (4) provide:-</p> <p>"(3) No part of the authorised development is to commence until the construction of the entire surface and foul water drainage system is completed.</p> <p>(4) Construction of the attenuation basins must be completed within the first phase of construction if construction is undertaken in phases."</p> <p>Surface water management must be in place prior to any contributions occurring.</p>
<p>Requirement 14 - "Archaeological remains" Amended sub-sections (4), second sub-section (4) and sub-section (6).</p>	<p>These sub-sections all insert new requirements for reporting archaeological remains to KCC and for KCC to be consulted before the Secretary of State makes a decision on an application for approval in relation to archaeological remains. KCC has no comments to make on this.</p>
<p>Requirement 16 - Archaeological remains (4)</p>	<p>KCC welcomes the text that states that any archaeological remains not previously identified that are subsequently revealed will be reported to KCC. It may be that Historic England would defer this aspect to KCC's function, other than where remains of national importance are identified.</p>
<p>New Requirement 19a - "Airport operation"</p>	<p>This new requirement sets a ceiling for annual air transport movements subject a General Aviation movement limit. The term General Aviation movement has not yet been defined. As per KCC's previous comments highlighted through Inspectors questions, KCC is looking for a restriction on freight handling limit to coincide with the forecasts made in the Transport Assessments. Moreover, KCC considers that the passenger numbers used in the Transport Assessment should be similarly restricted to ensure that impacts forecast in the Transport Assessment are worst case and as such robust. This is of particular importance given the first principles approach to Traffic Impact appraisal that has been undertaken.</p>
<p>Requirement 21 - "applications made under requirements", amended sub-section (2)</p>	<p>This Requirement proposes that in the event that the Secretary of State does not determine an application for consent, agreement or approval by a requirement, if no decision is made within eight weeks, the requirement will be deemed to have been discharged. It is considered that this is inappropriate as currently drafted as an attempt to copy the deemed discharge provisions in articles 28, 29, 30 and Schedule 6 of the Town and Country Planning (Development Management Procedure) Order 2015, without the necessary limitations and procedural requirements in place, which KCC objects to.</p>

Kind regards

Sarah

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From: Manston Airport <ManstonAirport@planninginspectorate.gov.uk>

Sent: 17 May 2019 16:42

To: Platts, Sarah - GT EPE <Sarah.Platts@kent.gov.uk>

Subject: RE: ExA's Draft DCO deadline

Dear Ms Platts

Thank you for your email providing an update on submissions for DL7.

Please provide your comments on the draft Development Consent Order when you can. The Examining Authority can use its discretion to accept documents after the timetabled deadline.

Kind regards

Manston Airport Case team

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