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The Planning Inspectorate
National Infrastructure Planning
2 The Square
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28th June 2019

Dear Sirs

Your reference: TR02002

Application by River Oak Strategic Partners for an Order granting Development Consent

I am writing in response to the Examining Authority's Fourth Written questions and to provide comments on the dDCO. However, before responding to the specific points raised by these questions and providing comments on the dDCO, I consider it would be helpful to summarise the position in regard to the various matters relating to the MoD, as follows:-

A. Summary

1. Crown Lands

The various issues relating to Crown Lands will not be resolved or agreed prior the close of the examination period on 9th July. As stated previously, there are two freehold sites which the Applicant wishes to acquire – the Aerial Farm (Plot No. 26) and the Motor Transport Unit (Plot No. 38), in addition to various other interests of a more minor nature. The Aerial Farm has yet to be formally declared redundant and until this decision has been taken this site cannot be considered for disposal. It should also be noted that in addition to the Aerial Farm site itself there is covenant preventing any building or structure above ground level being erected within 150m of the boundary of the site. The site plus the restricted area around it impinge upon the land within the dDCO Application boundaries.

The Motor Transport Unit is still operational and although the applicant has made an offer to relocate the facility no specific site has been proposed or identified for this (in any event this proposal would be entirely dependent on the DCO Application being successful and the potential alternative site being acquired, so it cannot be viewed at this stage as being an offer of substance). Notwithstanding this offer the MoD wishes the facility to remain in its existing location. Again, this site is within the existing dDCO Application boundaries. No agreement will be concluded in regard to these matters before the close of the Examination Period on 9th July.

2. The High Resolution Direction Finder (HRDF)

- (i) The MoD has indicated to the Applicant that, in principle, it is possible that the HRDF could be re-provided assuming: that the replacement facility would comply with MOD siting requirements; that the new technical facility would have to be tested to verify that its performance capabilities to the standards required by the MOD; that the siting of a new technical facility would be compatible with MOD safeguarding requirements and relevant safeguarding zones to protect the operation of the new facility are put in place. The freehold of any new site would

have to be conveyed to the MoD and a relevant covenant put in place in any site acquisition documents whereby no building or structure could be erected above ground level within 120 metres of the HRDF (or equivalent zone required by safeguarding criteria relevant to any new type of equipment installed at a new site to undertake the function of the current HRDF).

- (ii) If the MoD were to agree to the re-provision of the HRDF facility, this would all need to be completed at nil cost to the MoD before the existing HRDF could be decommissioned.
- (iii) Until the Hearing on 4th June it had been clearly understood by the MoD that three possible alternative sites had been identified by the Applicant to the east of the former airport site for the relocation of the HRDF of which “Site 1” was the preferred option.
- (iv) The MoD’s understanding is clearly confirmed by reference to the copy of the contract between the Applicant and Aquila which was provided by the Applicant in their “Summary of Applicant’s Oral Submissions of the Compulsory Acquisition Hearing on 4th June 2019” at Appendix CAH2 -13. The contract defines the services to be provided by Aquila as being “to provide a feasibility study on the viability of moving the High Resolution Direction Finder (HRDF)...to “Site 1” as detailed in Figure 1 below.” It should be noted that whilst the Non-Disclosure Agreement that forms part of this Appendix is signed and redacted, the contract itself is neither signed nor redacted but is simply a blank copy of the document.
- (v) In spite of the fact that the Applicant robustly and categorically refuted the point at the Hearing on 4th June 2019 “Site 1” is clearly located within the boundaries of the Manston Green Development (as evidenced by the contract referred to above). It is both regrettable and inexcusable that the Applicant has not at any time made the MoD aware of this development proposal nor in turn has it made Cogent Land LLP aware of the proposals to relocate the HRDF particularly as each of these proposals has the potential to have a significant impact on the other.
- (vi) In Appendix CAH2 – 14 of the document referred to above, the Applicant in its “Note on HRDF Negotiations” (Hearing Action 14) advised that two sites were being considered that were different to “Site 1” that is defined in the Aquila contract. It should be noted in the interpretation section of the contract that any change requests and change request amendments are to be documented in the form set out in Schedule 3 of the contract. Although the Applicant stated that Aquila had requested that the contract price be redacted in the document, which indeed it was in Schedule 2 of the contract, the contract price had not been redacted in the “Interpretation” section of the contract. The figure shown is a not an insignificant sum of money and presumably given the impact on the contract and the possible variation in the contract price as a result of these proposed changes, these changes would or should have been formally documented.
- (vii) In the process of preparing the document “Hearing Action 14” there were a number of e-mail exchanges between the MoD and the Applicant’s solicitors in which a number of important points were made to them – these were largely ignored and in the end the Applicant simply submitted their version of the document. Although the Applicant appended the “DIO version of Note” this was simply a response to the original version of the document provided by the Applicant and this did not pick up a number of the key issues which had been raised with them. There are a number of points to make in regard to the Applicant’s version of the note:-
 - (a) “Site 1” on the plan attached to that note suggests that this point has simply been moved 250 metres to the northwest of the original location. It is now in a different location. Whilst it is technically correct for the Applicant to say that it is in the same field, at least for the time being, the respective points fall within two different legal ownership interests. The clear and distinct difference between the two points is that the location has been moved from within the Manston Green Development to a point outside it. Once this development commences these two sites will not be “in the same field”.
 - (b) Site 2 is in a location that the Applicant describes as being on Crown Land in a location that has not been previously discussed with the MoD and “requires exploration”. The MoD already owns the land on which the HRDF is located and there is no compelling reason for it to consider relocating the HRDF to Crown Land elsewhere. From the perspective of the MoD as landowner, the proposal to relocate the HRDF on to this land **would not be acceptable** (regardless of whether or not the site is technically suitable). This site will not,

therefore, provide an alternative option to Site 1. Again, it is somewhat regrettable that the Applicant made no prior mention of this proposal to the MoD.

- (c) In the note it also states that “the Applicant understands that Aquila are considering a technical solution with a significantly different safeguarding requirement which is a departure from the standard safeguarding criteria set down in JSP 604”. It was pointed out to the Applicant in an e-mail exchange on 14th June that JSP 604 is the standard by which the relevant safeguarding criteria are assessed. There can be no exceptions to or deviations from this. It is the opinion of the MoD that this proviso should have formed a part of the contractual arrangements between the parties
- (d) The Applicant also appears to have fundamentally misunderstood the process involved with the feasibility report which again was pointed out to the Applicant in an e-mail exchange of 14th June. Once the report has been prepared by Aquila it is then for the Applicant to submit this report to the MoD for consideration. It is not a case of simply arranging a meeting discussing the findings across the table and coming up with a resolution. The MoD needs to consider the report in detail and assess its response taking all factors into consideration. It is for this reason that the MoD declined to attend the meeting proposed by the Applicant in their note.
- (viii) Even if a new site were to be identified with the correct technical capability, if it remains close to the proposed airport development (for example the Applicant’s proposed site 2) it would have to be assessed in the light of this.
- (ix) In addition to the question of land ownership, referred to above, the MoD would have to take into account other site related matters such as access, security, the connection of any utilities or telecommunications and the provision of any associated wayleaves. As indicated previously, at the Hearing on 18th January 2019 the Applicant made the incorrect statement that “the Landowner had already...consented to the HRDF being located on that land”. It raises a significant question as to whether when a landowner is approached by the Applicant to have the equipment placed on their land they are fully briefed as to the implications this would have.
- (x) The question of the potential relocation of the HRDF is extremely complex. The MoD received a copy of Aquila Air Traffic Management Services, Phase 1 A -Manston HRDF Relocation – Feasibility Study Report on the 28th June 2019. The MoD cannot reasonably review this and make any decisions on the possible re-provision of the HRDF before the close of the Examination Period. In addition, given the arbitrary changes made by the Applicant to the location of the proposed sites for the relocation of the HRDF neither will the Statement of Common Ground be signed.

3. The Manston Technical Site Direction Plan

- (i) It is accepted by the parties that if the HRDF is to be relocated then the Manston Technical Site Direction Plan would have to be replaced and a new safeguarding zone centred around the new location established. As mentioned in my letter of 13th June 2019, this would potentially impose restrictions on existing property owners that hitherto do not exist. The MoD would have to be completely satisfied from a legal standpoint that they would not then be exposed to potential claims for “planning blight” and this possible outcome has not, as yet, been explored.

4. Other matters

- (i) The fact that a viable alternative site for the HRDF has not been identified has meant that there are other aspects of the proposed development e.g. landscaping proposals that MoD safeguarding may not be in a position to comment on whereas if the location of the HRDF had been determined, they would.

B. Responses to questions raised in ExQ4

Below are the responses to the questions raised by the ExA to the MoD. In addition to questions directed to the MoD, some comments have been made on questions directed at the Applicant where it is considered relevant and appropriate.

1. **CA 4.19 Crown Lands – Secretary of State for Defence (Lands). Provide a further report on progress and state definitively whether Crown consent will be obtained by the close of the examination?**

As stated above, Crown consent will not be forthcoming by the close of the Examination period.

2. **CA 4.20 Crown Land – High Resolution Direction Finder (HRDF)**

- i. **Who would acquire and pay for the land?**

It has always been the understanding that the Applicant would acquire and pay for the land.

- iv. **Is only one site being considered as a possible location for the HRDF?**

The contract between the Applicant and Aquila refers to one site only.

- ix. **Given all the above, show why the ExA should not consider that the issues related to the HRDF to constitute a potential risk or impediment to implementation of the scheme that has not been properly managed.**

It is the view of the MoD that the issues related to the HRDF constitute a significant potential risk and impediment to the scheme.

3. **DCO 4.25 Possible New Requirement- High Resolution Direction Finder (HRDF)**

The ExA is considering whether there should be a new Requirement securing that no Works within the safeguarded area shown in the Ministry of Defence (RAF Manston) Technical Site Direction 2017 (Rep7a- 025) shall commence until the Ministry of Defence confirm in writing to the relevant planning authority that the High Resolution Direction Finder (HRDF) has been relocated from its position within the Order Limits and is fully operational to the satisfaction of the Ministry of Defence following, If required by the Ministry of Defence, a period of dual operation of the existing and the relocated HRDF.

The MOD position as at Deadline 9 remains extant i.e. that of objection. In the absence of a suitable address of these impacts on statutorily safeguarded national defence infrastructure, the MOD maintains its statutory objection to this application due to the impact upon the operation on the existing HRDF. In addition, the development scheme for which consent is sought would presume to displace the HRDF.

From the outset it has been made clear to the Applicant that the existing design proposals for the proposed new airport as submitted to the Planning Inspectorate as part of the DCO Application are not acceptable to the MoD from a safeguarding perspective. The Applicant has taken no steps to mitigate the design proposals for the scheme or provide an alternative solution to the concerns expressed with a coherent strategy for the relocation of the HRDF to a viable alternative site. Therefore, the Ministry of Defence maintains its statutory objection to the application.

It is considered, for the reasons stated above that this unresolved issue represents a significant impediment to the proposals.

Should the Examining Authority determine that a recommendation for approval should be made then, any such development consent order will need to contain a new requirement(s) taking the form of a Grampian type negative requirement(s) which will need to prohibit the authorised development from commencing unless and until a scheme to provide an alternative High Resolution Direction Finder site to satisfy MOD requirements has been submitted and approved by the Secretary of State in conjunction with the MOD; and until the Secretary of State receives affirmation from the MOD that they have reached agreement with the applicant to consent to the re-provision of the HRDF. Additionally, a requirement would also need to be incorporated, to be discharged separately, that the authorised development cannot commence unless and until an alternative HRDF facility has been established and accepted into operation by the MOD and the current HRDF decommissioned.

The MOD respectfully requests that the following Requirements are used in this eventuality:

1. No development shall commence unless and until a detailed mitigation scheme to provide an alternate High Resolution Direction Finder (HRDF) has been prepared by the undertaker and submitted to and agreed in writing by the Ministry of Defence to the relevant planning authority. The detailed mitigation scheme shall include siting location(s) for the alternate HRDF, full specification for the equipment and infrastructure proposed, and the technical performance data necessary to establish Safeguarding criteria to protect its subsequent operation.
2. No development shall commence unless and until the Ministry of Defence confirm in writing to the relevant planning authority that the equipment to provide the function of the High Resolution Direction Finder (HRDF) detailed in the approved detailed mitigation scheme has been provided by the undertaker and is fully operational to the satisfaction of the Ministry of Defence following, if required by the Ministry of Defence, a period of dual operation of the existing HRDF and the alternatively sited equipment to provide the function of the HRDF.
3. No development shall commence unless and until a programme for the decommissioning and removal of the existing High Resolution Direction Finder (HRDF) has been prepared by the undertaker and submitted to and agreed in writing by the Ministry of Defence to the relevant planning authority. The decommissioning and removal of the existing HRDF equipment shall be carried out strictly in accordance with the details approved.

The MOD reserves its position as to whether it will at any point agree to the relocation of the HRDF. Any requirement(s) that the Examining Authority may consider appropriate to include in a Development Consent Order for this purpose should take account of this and in no way commit or obligate the MOD to the relocation of the HRDF.

No timescales can be imposed on the Ministry of Defence in the dDCO regarding this process.

In the event that the re-provision of the HRDF equipment on an alternative site proves unsuccessful then the existing equipment will have to remain in its current location.

4. **OP.4.8 High Resolution Direction Finder (HRDF) and Construction Timetable**

- i. **Provide further details of the second possible relocation site for the HRDF, if proposed to be taken forward.**

As noted above – the Contract between the Applicant and Aquila details one site only “Site 1”, albeit that there is a second area coloured red on the plan attached to that document but it is only this site that is referred to in the text of the document. It is the Applicant’s Note on progress with the HRDF negotiations that identifies a second site (which is different to the area coloured red and marked “Northern Grass on the contract plan). The second site is on MoD land and for the reasons stated above this is not an option.

The MOD received a copy of the Aquila Air Traffic Management Services, Phase 1 A -Manston HRDF Relocation – Feasibility Study Report on the 28th June 2019 from the applicant’s representatives regarding the re-provision of the HRDF. The MOD will review the report however it is likely that the conclusion of the review and any subsequent decisions will be made after the end of proceedings i.e. after 9th July.

- ii. **Provide an update on the current latest situation re the HRDF, with reference to the timetable of this Examination**

On the morning of June 28th 2019 the MOD received a copy of the Aquila Air Traffic Management Services, Phase 1 A -Manston HRDF Relocation – Feasibility Study Report submitted by Bircham Dyson Bell (BDB). The MOD will proceed to review this report but will not be able to reach conclusions before the end of the examination proceedings. Prior to June 28th 2019, the MoD had received no substantive information regarding the re-provision of the HRDF.

iii. **How will the need for the existing HRDF to be in place for 2 years after the siting of the new HRDF affect the construction timetable and the opening date for the proposed development.**

The MOD does not consider that the possible re-provision of the HRDF has been sufficiently accounted for in the timescales for the progression of the proposed development. It is important to recognise that notwithstanding the outcome of any technical appraisal(s) completed by the applicant in conjunction with the MOD's appointed radio engineering authority, the MOD may not agree to the relocation of the HRDF or may not be able to support its re-provision within the timescale of the consent. It should also be recognised that subject to an alternative site being identified that would be compatible with MOD estate requirements (including tenure, access and security) an alternative HRDF facility may require separate planning permission.

The MOD will need to test the HRDF equipment prior to switching off the existing asset to ensure it meets our needs. The MOD will work with the applicant to assess the suitability of the site (or other sites if it is not suitable). If it or another site is suitable, and the project is consented, the parties will arrange the installation and commissioning of a replacement HRDF at the site and the approval that the new installation can be switched on and current HRDF switched off and dismantled.

It is important to note the MOD cannot confirm that it will be able to support works to relocate the HRDF within the timescales necessary to support the development.

Therefore, until testing has been carried out and deemed successful by the MOD and its stakeholders, construction will be delayed. The MOD cannot accept any degradation to the HRDF facility. The application in its current design regarding the ATC towers, Cargo buildings and aircraft parking bays infringe the statutory technical safeguarding zone surrounding the Manston HRDF. We would need to ensure that development will not impact on the HRDF.

A 2 year period has been mentioned as an indicative basis to account for the provision of any new equipment. In reality, a test and assurance period will have to be undertaken to determine whether any new piece of equipment can be accepted into service by the MOD. It is not possible to determine the duration of this period based on the information known at this time. It cannot be verified that in the event of a viable site being identified, the testing and assurance process for any new equipment could be completed in the time period of the DCO.

As at deadline 9, the MOD maintains its objection to the RSP development, however, should the application be granted that the Requirements relating to the re-provision of the HRDF would need to be completed prior to the commencement of any development to take account of the possibility that re-provision is not successful.

iv. **Provide any further comments on the safeguarding impact or otherwise of the Ministry of Defence (RAF Manston) Technical site Direction 2017 (REP7a-025) for the HRDF in its current and proposed position in terms of the construction of the Proposed Development.**

DIO provided comment in our submission dated the 24th May specifying the points of contention these are:

Cargo Buildings – approximately 25m above ground level; 410m distance from HRDF

Aircraft parking – commercial jet aircraft within 100m to HRDF

Air Traffic Control Tower- 24m above ground level 460m distance from the HRDF

The design plan for the proposed application is not compatible with the current HRDF location. The problem is the scale, mass and proximity to the HRDF.

Therefore, development immediately north and west of the HRDF is of concern to the MOD and the reason behind our objection response. The MOD originally submitted our objection to the applicant in 2017 stating their

development was “incompatible with the need to safeguard this installation.” The MOD position as at Deadline 9 remains extant i.e. that of objection.

The Aquila Air Traffic Management Services, Phase 1 A -Manston HRDF Relocation – Feasibility Study Report suggests that a new type(s) of technical equipment may be required to re-provide the HRDF. This alternative equipment may require new safeguarding criteria to protect its operation. Therefore, it is not possible to verify that these new safeguarding requirements will be compatible with the proposed development depending on the alternative sites proposed.

C. Comments on the Draft Development Consent Order

Comments relating to the Draft Development Consent Order are attached to this letter in table form as Appendix I.

Yours faithfully



Graham Boulden B.Sc. (Hons) Est. Man. FRICS FAAV

Estate Surveyor

APPENDIX I

The Manston Airport Development Consent Order 201[*] - Suggested amendments to Draft DCO.

Schedule	Part	Paragraph	Comment
	2	6	<p>Limits of Deviation</p> <p>(1)(c): The provision to deviate vertically upwards is not acceptable given the potential impact on the HRDF, a Safeguarded national defence infrastructure.</p> <p>Table at (1)(c): In order to ensure the capability of the HRDF is not compromised the maximum heights of two elements should be amended: Cargo buildings – Maximum height of 11m above ground level. Air traffic control tower – Maximum build height of 13m above ground level.</p> <p>In addition a requirement should be added to ensure that no aircraft parking is permitted within 100m of the HRDF.</p>
	2	6	<p>(2)</p> <p>Request MOD is added as consultee, this element of the development has the potential to impact on the HRDF, a Safeguarded national defence infrastructure.</p>
	4	17	<p>Protective works to buildings.</p> <p>It is assumed that as the HRDF is on Crown Land it is excluded from this provision and the DCO boundaries will have to be amended.</p>
	4	18	<p>Authority to survey and investigate the land.</p> <p>Any Crown Land currently shown within the DCO boundaries will have to be excluded so that these provisions do not apply</p>
	5		<p>Powers of Acquisition and Possession.</p> <p>All Crown Land to be excluded from within the boundaries of the DCO Application.</p>
	7	40	<p>Crown Land.</p> <p>No comment</p>
2	1	3	<p>Development Masterplans.</p> <p>Request MOD is added as consultee, this element of the development has the potential to impact on the HRDF, a Safeguarded national defence infrastructure.</p>
2	1	4	<p>Detailed Design.</p> <p>Request MOD is added as consultee, this element of the development has the potential to impact on the HRDF, a Safeguarded national defence infrastructure.</p>
2	1	6	<p>Construction Environment Management Plan.</p> <p>Request MOD is added as consultee, this element of the development has the potential to impact on the HRDF, a Safeguarded national defence infrastructure.</p>
2	1	15	<p>Piling and other Intrusive Works.</p> <p>Request MOD is added as consultee, this element of the development has the potential to impact on the HRDF, a Safeguarded national defence infrastructure.</p>