

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED] manstonairport@pins.gsi.gov.uk
Subject: RE: RiverOak - Manston Airport [BDB-BDB1.FID9966962]
Date: 09 July 2019 11:04:07
Attachments: [image009.png](#)
[image012.png](#)
[image013.png](#)
Importance: High

Dear Nagla

Thank you for your e-mail timed at 16:55 of yesterday's date and it would be useful to speak with you about this directly as the fundamental merits and justification of compulsory acquisition are integral to the proposed development. The justification for the acquisition of the subsoil and the pipeline together with ancillary rights to repair and maintain the pipeline are that without the same this will impede the Applicant's intended operational use of the airport. Potentially this will also be of concern to other owners (including KCC) in view of their impending obligation to repair the pipeline owing to the statutory undertaker not being known and owing to the fact that the extent of the pipeline is relatively significant.

As you will appreciate from our e-mail of 21st June, the Applicant does not own the pipeline, and no statutory undertaker has been identified in this regard. Furthermore, the Applicant is not statutory undertaker and does not derive any powers to maintain the pipeline. As such the Applicant would not derive any ability to repair and maintain the pipeline without the justification of either compulsory acquisition or a voluntary transfer for the pipeline/subsoil/rights, so the provision of s50 the NRSWA 1991 are immaterial for consideration at this stage, as otherwise any attempt to rely upon those provisions would constitute a trespass.

The Applicant is willing to proceed with a voluntary transfer, which can incorporate suitable provisions for repair of the highway where it is necessary to break surfaces to repair the pipeline. As such a voluntary transfer would be advantageous for both parties.

I would therefore be grateful if you would further consider the position and let me know when you would be available for a further follow up conversation this morning.

I look forward to hearing from you.

Kind regards

Felicity


BDB PITMANS

Felicity Leedham-Turner Associate

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For and on behalf of BDB Pitmans LLP
50 Broadway London SW1H 0BL

From: Nagla.Stevens@invicta.law [mailto:Nagla.Stevens@invicta.law]
Sent: 08 July 2019 16:55
To: LEEDHAM-TURNER Felicity <FelicityLEEDHAM-TURNER@bdbpitmans.com>; HAQ Rahil <RahilHAQ@bdbpitmans.com>
Cc: WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; manstonairport@pins.gsi.gov.uk
Subject: RE: RiverOak - Manston Airport

Dear Felicity,

Thank you for your email.

Section 50 NRSWA 1991 is specifically designed to be used by members of the public or organisations who have no statutory right to install apparatus in (including under, over, across, along or upon) the public highway with a view to allow them to place or maintain such apparatus.

My clients do not understand your comparison to the position of a statutory undertaker. Section 50 NRSWA 1991 would entitle your client to execute any required works to the pipeline and maintain it. Once such a licence is granted, your client as the licensee, is an undertaker for the purposes of the relevant Part of the Act (see section 48(4) NRWSA 1991).

In light of the fact that the issue of a section 50 licence would permit your client (subject to the procedures imposed on undertakers in that Part of the Act) to place, retain, inspect, maintain, adjust, repair, alter, renew or change the position of pipeline in a street and to execute those works required for or incidental, it is entirely unclear why your clients are seeking to acquire land and/or rights to the subsoil owned by KCC. In addition, your client would also be permitted to break open the street or any sewer, drain or tunnel under it or to tunnel or bore under the street. The rights granted to a licensee under section 50 are sufficient to achieve your client's objective.

We note that you state that your client seeks KCC voluntary agreement on the basis of practicality and the desire of your client to have consistent legal rights. It is quite clear that such a motivation does not meet the required statutory tests and guidance for compulsory acquisition.

For all of the above reasons and those previously stated, KCC does not agree to a voluntary transfer.

Given the end of the examination is imminent, I am copying this exchange to the Examining Authority, so they are aware of the position of the parties.

Kind regards,

Nagla

Nagla Stevens
Senior Solicitor

Invicta Law Ltd - Priory Gate - 29 Union Street - Maidstone - ME14 1PT

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From: LEEDHAM-TURNER Felicity <FelicityLEEDHAM-TURNER@bdbpitmans.com>

Sent: 08 July 2019 14:22

To: Stevens, Nagla - IL <Nagla.Stevens@invicta.law>; HAQ Rahil <RahilHAQ@bdbpitmans.com>

Cc: WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; [REDACTED]

Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115] [BDB-BDB1.FID9966962]

Importance: High

Dear Nagla

Thank you for your e-mails of 26 June and 5 July.

With regard to your e-mail of 26 June, my client will require to take so much of the subsoil as comprises the pipeline together with the rights for manholes and access rights.

Clearly a section 50 licence will not be practicable for on-going maintenance of the pipeline, particularly in view of the extent of the pipeline and in relation to the consistency of covenants and rights which my client is seeking for the extent of the pipeline. For ease, the extent of the access rights can be seen from the access way plans (sheet 5 of 5) and the acquisition of the subsoil and the rights can be seen from the Land Plans on the National Planning & Infrastructure website. This can be cross-referenced with Articles 22 and Articles 23 (as the case may be) of the draft development consent order being for the benefit of the pipeline.

As you will appreciate, my client is not a statutory undertaker and will not benefit directly from the provisions of the New Roads and Street Works Act 1991. Under the circumstances, we would be pleased to hear from you with your agreement in principle to the voluntary transfer with ancillary rights for my client.

Kind regards

Felicity



Felicity Leedham-Turner Associate

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For and on behalf of BDB Pitmans LLP
50 Broadway London SW1H 0BL

From: Nagla.Stevens@invicta.law [<mailto:Nagla.Stevens@invicta.law>]

Sent: 05 July 2019 09:21

To: HAQ Rahil <RahilHAQ@bdbpitmans.com>

Cc: LEEDHAM-TURNER Felicity <FelicityLEEDHAM-TURNER@bdbpitmans.com>; WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; [REDACTED]

Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115] [BDB-BDB1.FID9966962]

Dear Rahil,

I would be grateful, if you could kindly respond to the email below and in particular whether your clients now accept KCC's position.

Kind regards,

Nagla

Nagla Stevens
Senior Solicitor

Invicta Law Ltd - Priory Gate - 29 Union Street - Maidstone - ME14 1PT

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From: Stevens, Nagla - IL

Sent: 26 June 2019 17:00

To: HAQ Rahil <RahilHAQ@bdbpitmans.com>

Cc: LEEDHAM-TURNER Felicity <FelicityLEEDHAM-TURNER@bdbpitmans.com>; WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; [REDACTED]

Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115] [BDB-BDB1.FID9966962]

Dear Rahil,

Thank you for your email.

I note from your response that RSP is agreeing to take on the burden of maintenance of the pipeline from the owners of land along the pipeline route to ensure the safe operation of the pipeline serving the airport. You also helpfully explain that the owner of the pipeline is unknown.

Could you please clarify whether RSP is proposing to compulsorily acquire the pipeline? I am not familiar with the CPO elements of the scheme, so would be grateful for your assistance in this respect. If RSP indeed intend to acquire the pipeline, RSP would become the owner of the apparatus. RSP would therefore in principle be able to meet the KCC requirements for the grant of a section 50 licence that you identify.

I look forward to hearing from you further.

Kind regards,

Nagla

Nagla Stevens
Senior Solicitor

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From: HAQ Rahil <RahilHAQ@bdbpitmans.com>

Sent: 21 June 2019 17:06

To: Stevens, Nagla - IL <Nagla.Stevens@invicta.law>

Cc: LEEDHAM-TURNER Felicity <FelicityLEEDHAM-TURNER@bdbpitmans.com>; WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; [REDACTED]

Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115] [BDB-BDB1.FID9966962]

Dear Nagla

Thank you for your email.

I continue to take instructions on the undertaking and hope to provide this next week. Bruce Fowler had requested an undertaking of £20,000 which was a sum considerably higher than expected for the review of the draft deeds and this was the reason for the delay. Given that Mr Fowler is not yet instructed, please do confirm your fees in respect of this matter.

For context, RSP is seeking to acquire the subsoil around the pipeline and rights of access to/from existing manholes in order to harmonize the legal position throughout the pipeline route. This will also ensure consistent legal rights for the pipeline, e.g. rights of support throughout the route. The situation is complicated by the fact that the owner of the pipeline is unknown and although there are no known faults with the pipeline, its maintenance record is unknown. The pipeline serves the airport but runs under land owned by a number of third parties, which includes individuals as well as KCC. Currently, if there was an issue with the pipeline which impacted the land above, the liability would fall on the land owner (as the owner of the pipeline is unknown). RSP is agreeing to take on the burden of maintenance of the pipeline from the owners of land along the pipeline route. This will ensure the safe operation of the pipeline serving the airport.

I note your comments in respect of the RSP's prima facie ability to apply for a section 50 licence. Condition 7 of KCC's section 50 application ([located on the KCC website](#)) states that: "A licence to place or maintain apparatus in the highway will only be granted to the owners(s) of apparatus or his Successor in Title. Owners should note their statutory duty to ensure that the apparatus is properly maintained at all times." RSP are not owners of the pipeline and there is no duty on them to ensure the maintenance of the pipeline. As explained above, this is a liability RSP is taking on as part of its running of the airport. Although Condition 7 does not appear to be vested in statute and could therefore (at least in theory) be removed, the larger issue of RSP needing to harmonise the legal position throughout the pipeline route in order to eliminate uncertainty for the use of the pipeline by the airport, would not be dealt with by section 50. The pipeline is in situ and will require on-going maintenance which cannot easily be achieved through entering into a licence or multiple licences in perpetuity. Such an obligation would be quite onerous for RSP and may affect their ability to maintain the pipeline especially if they needed to carry out emergency works. A licence is therefore not an appropriate method of maintaining the pipeline.

I will enquire about the existence of a survey, however I would not expect RSP to take any issue with KCC's ability to maintain the highway and carry out improvements – provided that KCC's works do not damage/impact the pipeline. Perhaps we could make that a basis for any future agreement?

Kind regards
Rahil



Rahil Haq **Solicitor**
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For and on behalf of BDB Pitmans LLP
50 Broadway London SW1H 0BL

From: Nagla.Stevens@invicta.law [mailto:Nagla.Stevens@invicta.law]
Sent: 18 June 2019 16:18
To: HAQ Rahil <RahilHAQ@bdbpitmans.com>
Cc: WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; [REDACTED]
Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115] [BDB-BDB1.FID9947610]

Dear Rahil,

Thank you for your email on 10 June 2019 together with enclosures.

My clients note with some discontent that no costs undertakings have been forthcoming, although several requests to provide the same have been made. Please note that I have removed Bruce Fowler from this email chain, as he has not yet been instructed.

However, in the interests of expediency and in order to assist the Examining Authority, my clients have now given initial consideration to your proposals. On that basis, they do not agree for your clients to permanently acquire the subsoil containing the existing pipeline or seek rights at surface level, in respect of KCC freehold or Highways land, for the following reasons.

Kent County Council ('KCC') does not consider that your client requires any subsoil land and/or access rights for any KCC freehold or Highways land, in order deliver the pipeline.

The KCC freehold land identified by your clients as being required to deliver and maintain the pipeline appears to be land that was transferred to KCC in order to deliver public highway and is likely to be required for ongoing maintenance of said highway. However, without a survey of the land identified, KCC is not in a position to ascertain the position with certainty. In the absence of a full survey, KCC will continue to maintain an objection to this element of your clients' proposal in order to ensure the public highway is not adversely affected.

Prima facie, your clients' aims could be achieved by making an application for a section 50 licence under the New Roads and Street Works Act 1991. The grant of such a licence will entitle them to execute works and to do so without obtaining consent from any owner of apparatus affected by the works or relevant authority.

As you will probably be aware, the issue of a street works licence permits the licensee (subject to the procedures imposed on undertakers) to place, retain, inspect, maintain, adjust, repair, alter, renew or change the position of apparatus in a street and to execute those works required for or incidental to those acts. In particular the licensee is permitted to break open the street or any sewer, drain or tunnel under it or to tunnel or bore under the street.

My clients will therefore be making representations to the Examining Authority that a failure to reach agreement in this regard, in respect of KCC freehold or Highways land, should not result in a grant of powers of acquisition under the DCO, as there appears to be a clear alternative means of bringing about the delivery and maintenance of the pipeline.

If you wish KCC to investigate the position in any more detail, your clients will need to provide a firm undertaking with regard to KCC's legal and professional costs in this regard by return.

Regards,

Nagla

Nagla Stevens
Senior Solicitor

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From: HAQ Rahil <RahilHAQ@bdbpitmans.com>

Sent: 13 June 2019 17:44

To: 'Bruce Fowler' <Bruce.Fowler@brutonknowles.co.uk>; Stevens, Nagla - IL <Nagla.Stevens@invicta.law>

Cc: WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; [REDACTED]

Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115] [BDB-BDB1.FID9947610]

Dear Bruce and Nagla

I am still taking instructions on your request for an undertaking. I will get back in touch once I have received instructions.

In the meantime, I welcome your comments on the draft documents. I attach the electronic copies in case you have not yet had sight of them.

Kind regards
Rahil



Rahil Haq Solicitor
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For and on behalf of BDB Pitmans LLP
50 Broadway London SW1H 0BL

From: Bruce Fowler [<mailto:Bruce.Fowler@brutonknowles.co.uk>]

Sent: 10 June 2019 09:32

To: HAQ Rahil <RahilHAQ@bdbpitmans.com>; Nagla.Stevens@invicta.law

Cc: WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; [REDACTED]

Subject: RE: RiverOak - Manston Airport - Kent County Council [BDB-BDB1.FID9947610] [BK-BK.FID178115]

Importance: High

Dear Rahil

Further to your email below, we have yet to hear from anyone in respect of this matter. I have copied in Nagla Stevens from Invicta Law (for KCC) and would be grateful if you could make contact as soon as possible.

Yours sincerely

Bruce Fowler MRICS
Partner



Property Consultants

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From: HAQ Rahil <RahilHAQ@bdbpitmans.com>
Sent: 23 May 2019 18:30
To: Bruce Fowler <Bruce.Fowler@brutonknowles.co.uk>
Cc: WALKER Angus <AngusWALKER@bdbpitmans.com>; RYAN Lydia <LydiaRYAN@bdbpitmans.com>; Laura Lilly <laura.lilly@brutonknowles.co.uk>; [REDACTED]
Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115] [BDB-BDB1.FID9947610]

Dear Bruce

Mr Yerrall has passed this email on to me to deal with. I am currently taking instructions in respect of the undertaking and will revert in due course.

Kind regards
Rahil

BDB
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For and on behalf of BDB Pitmans LLP
50 Broadway London SW1H 0BL

From: Bruce Fowler [REDACTED]
Received: Monday, 13 May 2019, 6:16AM
To: George Yerrall [george.yerrall@rsp.co.uk]
[REDACTED]
Subject: RE: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115]

Dear Sirs

I would be grateful to receive a reply to our email as set out below.

We look forward to hearing from you.

Yours sincerely

Bruce Fowler MRICS
Partner

Property Consultants

Olympus House, Olympus Park, Quedgeley
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From: Bruce Fowler

Sent: 30 April 2019 18:04

To: george.yerrall@rsp.co.uk

[REDACTED]

Subject: RiverOak - Manston Airport - Kent County Council [BK-BK.FID178115]

Importance: High

Dear Sirs

Your letter, TP1 and plans for the DCO have been forwarded to me as agent acting on behalf of Kent County Council. KCC have asked to receive advice on the documents you sent over and we consequently ask for a fee undertaking for professional fees initially capped at £20,000. Bruton Knowles also dealt with the land acquisition for the East Kent Access Roads (a small element from your 'predecessors' Infratil) and there are issues that KCC would wish to consider with the pipe in respect of the protection of the highway.

If you are able to respond to us, I will ensure that the relevant parties in KCC are able to pursue the agreement in all haste, having regard to your noted timescales.

I look forward to hearing you.

Yours sincerely

Bruce Fowler MRICS

Partner

Property Consultants

Olympus House, Olympus Park, Quedgeley
Gloucester, GL2 4NF

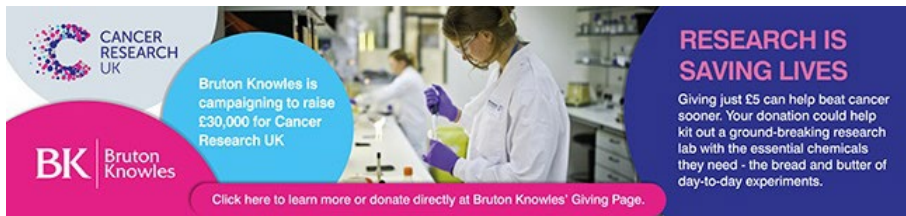
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