

Kent County Council's response to the Department for Transport's request for comments and further information (letter dated 17 January 2020)

1. The Secretary of State seeks comments from Kent County Council and Thanet District Council in relation to their respective Unilateral Undertakings, that were submitted on 9 July 2019 (the final day of the examination), in relation to the appropriateness of RiverOak Fuels being the named party in those Undertakings.

RiverOak Fuels Limited is the registered owner of the part of the site that is referred to in the section 106 agreement as the Jentex Site (see title K315361). KCC is therefore satisfied that it is appropriate for RiverOak Fuels to enter into the s106 agreement in the manner they have.

3. The Secretary of State invites views from Kent County Council on the acceptability and adequacy of the Applicant's contribution of £139,000 per year for affected schools for 20 years to mitigate and minimise the noise effects on schools.

KCC does not know how the education contributions were calculated or how the schools listed were identified. In response to the ExA's Second Written Questions, the County Council provided an estimate in respect of the potential costs associated with insulating and ventilating a primary school in Kent as £300,000. The exact amount will depend on the matters listed in KCC's response and KCC is not aware that the methodology has been set out in any of the applicant's documents submitted and in particular the revised Noise Mitigation Plan.

5. The Secretary of State invites the views of Kent County Council on the proposed mitigation for off-site junction improvements schemes included in the Unilateral Undertaking in favour of the County Council.

The views of the County Council (as the Local Highway Authority) in relation to proposed off-site junction improvements schemes are articulated in the responses that were provided to a number of Written Questions and within KCC's own Local Impact Report (LIR), which was submitted at Deadline 3 of the examination. KCC's response to the Fourth Written Questions (TR.4.48) sets out KCC's assessment of the provision made in the Unilateral Undertaking (UU) provided by the applicant (*links to the documents referred to in this part of KCC's response are provided at the end of this section*).

KCC would like to draw to the Secretary of State's attention that the final version of the UU was submitted to the Examining Authority after initial comments were provided by KCC, but without any opportunity for a further review of the UU before submission by the applicant. There are therefore a number of technical deficiencies, including, but not limited to, the fact that it is asserted that KCC is satisfied that the obligations are regulation 122 CIL compliant (see paragraph 4 of the Introduction to the UU). As regulation 122 is relevant to the substantive question raised by the Secretary of State, KCC considers it appropriate to draw it to the Secretary of State's attention.

In summary, KCC's position is described as follows:

- The evidence base to support the contributions offered is either unclear, or is not supported by any evidence;
- The mitigation offered has not been properly costed and projects identified are not deliverable on the basis of the contribution proposed;
- The mitigation offered is not acceptable, as it does not appropriately mitigate the impact of the development; and
- The triggers for payment are not supported by robust highway modelling about when unacceptable impacts will arise at the respective junctions and when payment should therefore be due.

KCC would like to highlight the following specific concerns:

Junction 1 (A256 / Sandwich Road): The position of KCC is set out in the County Council's Local Impact Report (LIR). KCC's assessment is that it is unlikely that the proposed mitigation scheme will deliver any practical benefits to junction capacity/operation of the junction and so it would not mitigate the impact of the proposed development. As such, KCC does not consider the proposed scheme to meet the regulation 122 CIL Regulations 2010 tests. Therefore, KCC does not consider the proposed mitigation to be an acceptable basis for a financial contribution within the UU.

Junction 2 (A299 / A256 / Cottington Link Road): KCC's position is outlined in the response to the Fourth Written Questions (TR.4.23) The proposed scheme is not considered to appropriately mitigate the impact from the development as it would lead to an increased likelihood of road traffic collisions and vehicular conflict in this location.

Junction 4 (A299 / B2190): KCC's position is outlined in its response to Fourth Written Questions (TR.4.24). The proposed scheme is not considered to appropriately mitigate the impact from the development as it would lead to an increased likelihood of road traffic collisions and vehicle conflict.

Junction 6 (A299 / Seamark Road / A253 / Willetts Hill): KCC's position is outlined in the response to the Fourth Written Questions (TR.4.25). The proposed scheme is not considered to appropriately mitigate the impact from the development, as it would lead to increased likelihood of road traffic collisions and vehicle conflict in this location.

Junction 7 (A299 / A28): The position of KCC is set out in the responses to the Third Written Questions (TR.3.27) and the Fourth Written Questions (TR.4.26). The proposed mitigation is not considered to appropriately mitigate the impact from the development. In particular, KCC considers that the proposed layout changes are likely to increase the likelihood of side swipe road traffic collisions, to the detriment of highway safety.

Junction 10 (Shottendane Rd / Manston Road / Margate Hill): The position of KCC is outlined its response to Fourth Written Questions (TR.4.28) This scheme is acceptable in principle.

Junction 13 (Manston Court Road / B2050): The position of KCC is set out in response to the Fourth Written Questions (TR.4.28) and the LIR. This mitigation scheme would not be deliverable within the extent of existing highway boundary. As neither KCC or the applicant has legal rights over the land required to implement the proposed mitigation (and the land is not included within areas of land identified for compulsory purchase in relation to the DCO), this scheme is not deliverable without further investment.

Junction 15 (Manston Road / Hartsdown Road / Tivoli Road / College Road / Nash Road): The views of KCC are outlined in the response to the Fifth Written Questions (TR 5.4), the Second Written Questions (TR.2.42) and the KCC LIR. The concerns previously set out in the aforementioned documents remain KCC's position. The applicant has failed to respond and address those concerns in a satisfactory manner.

Junction 16 (Ramsgate Road / College Road / A254 / Beatrice Road): The views of KCC are outlined in the response to the Fourth Written Questions (TR.4.32) and the Second Written Questions (TR.2.43). The proposed mitigation is not considered to effectively address the impact of the development. It will disadvantage pedestrians (of particular concern is that this junction is located close to a primary school and several local shops). It will also lead to an increased risk of road traffic collisions as the proposed reconfiguration will lead to blocking back of the junction by queuing traffic and restricted intervisibility between the signal stop lines in this location.

Junction 17 (Ramsgate Road / Poorhole Lane / Margate Road / Star Lane): The position of KCC is outlined in the response to the Fourth Written Questions (TR.4.33) and the KCC LIR. The proposed scheme of mitigation is not considered to deliver any practical benefits to the capacity of this junction.

Mitigation to junctions not offered in the UU (Schedule 6)

The Secretary of State's attention is drawn to the following mitigation that KCC considers to be necessary, but is not being offered by the applicant in the UU:

Junction of A256/Ash Road (A257): The Secretary of State is referred to KCC's response to the Fifth Written Questions (TR.5.15), in respect of the fact that no off-site mitigation has been identified by the applicant for the junction of A256/Ash Road (A257), despite the fact that KCC considers it necessary. KCC (as the Local Highway Authority) has identified that traffic impacts from the proposed development would be severe in this location and appropriate mitigation should have been offered as a planning obligation provided as part of the UU.

Junction of Alland Grange Lane/Spitfire Way: As outlined by KCC in its response to the Fifth Written Questions (TR.5.5), junction improvements at Alland Grange Lane/Spitfire Way are required. The applicant has not adequately justified the failure to provide this identified mitigation. It is accepted that the delivery of this mitigation would either require the acquisition of third-party land or a redesign of the Spitfire Way road widening scheme to avoid encroachment onto third party land and realignment of the existing road into the airport site.

Junction 26 (Newington Road / Manston Road) & Junction 27 (Newington Road / High Street). As set out by KCC in its response to the Fourth Written Questions (TR.4.37), the applicant has not addressed the residual impacts in these traffic sensitive locations and the UU does not offer any mitigation.

Methodology and assessment of cost estimates for proposed mitigation schemes offered in the Unilateral Undertaking

KCC is not content with the methodology used to arrive at the of costs offered to implement the proposed mitigation schemes. KCC officers have undertaken an initial review of the submitted costs estimates and highlighted specific discrepancies. The Secretary of State is referred to KCC's response to the Fourth Written Questions (TR.4.46), where this point is made.

As an independent review of the actual costs of implementing the proposed mitigation schemes was not undertaken and no evidence was provided by the applicant to set out how the respective level of contributions offered were arrived at, it is not possible for KCC to be satisfied that mitigation is in fact deliverable by the financial contributions offered.

Links to documents referred to KCC's response to question 5

Link to KCC Local Impact Report (submitted at examination deadline 3)

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-003273-Kent%20County%20Council%20-%20Local%20Impact%20Report.pdf>

Link to KCC response to First Written Questions (submitted at examination deadline 3)

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-003275-Kent%20County%20Council%20-%20response%20to%20Examining%20Authority's%20questions.pdf>

Link to KCC response to Second Written Questions (submitted at examination deadline 6)

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-003998-KCC's%20response%20to%20the%20ExA's%20Second%20Written%20Questions%20dealing%20with%20Traffic%20and%20Transport.pdf>

Link to KCC response to Third Written Questions (submitted at examination deadline 7a)

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-004122-Kent%20County%20Council%20Response%20to%20Third%20Written%20Questions.pdf>

Link to KCC response to Fourth Written Questions (submitted at examination deadline 9)

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-004585-KCC%20Response%20to%20Fourth%20Written%20Questions.pdf>

Link to KCC response to Fifth Written Questions (submitted at examination deadline 11)

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-004710-KCC%20Response%20to%20Examiner%20Fifth%20Written%20Questions.pdf>

Transport/Public Rights of Way

8. The Secretary of State invites the Applicant and Kent County Council to provide clarification on the reason for the contradiction in the approach initially adopted by the Applicant in consideration of the costs and methodology regarding the improvements to the Public Right of Way to Manston village to allow pedestrian access.

The contradiction between the original draft Section 106 agreement and the final UU is due to the fact that the initial proposal was drawn up by the Applicant before full consultation with KCC Public Right of Way (PRoW) Officers. The draft Section 106 agreement did not address the connectivity of the site and improvements required to the wider PROW network. The final UU reflects KCC's PROW response to the Fourth Written Questions, referenced TR 4.54 and is therefore in accordance with KCC's PROW requirements.

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-004585-KCC%20Response%20to%20Fourth%20Written%20Questions.pdf>

Draft Development Consent Order

18. The Secretary of State seeks the comments of the Applicant and other Interested Parties on the new requirement 21(4) for inclusion in any DCO that might be granted in due course. This would read: “(4) *No passenger air transport departures will take place between the hours of 20.00 and 21.00. There shall only be one passenger air transport arrival between the hours of 16.00 and 17.00; only two passenger air transport departures between the hours of 18.00 and 19.00; and only one passenger air transport departure between the hours of 19.00 and 20.00.*”

The proposed requirement within the DCO would assist in managing future PM peak hour traffic movements, in line with forecasts identified within the applicant's Transport Assessment. Therefore, KCC supports the proposed requirements.

20. The Secretary of State seeks views from Network Rail and other Interested Parties on the new Protective Provisions at Annex C to this letter to be included in the draft DCO, if made.

The County Council defers to Network Rail on this matter. It is understood that the Secretary of State has written to Network Rail, requesting commentary on the proposed set of Protective Provisions to be included in the Order, if made.

Late Representations

24. The Secretary of State seeks views from Historic England, Kent County Council, Thanet District Council and other Interested Parties on the late representation from Five10Twelve Limited dated 1 November 2019, which is also published alongside this letter.

The submission relates to the addition of two designated heritage assets in the town of Ramsgate to the Historic England 'Heritage at Risk Register 2019'. Their condition has been entered as deteriorating. The impact of overflying the town of Ramsgate on its designated heritage assets has been led by Historic England and Thanet District Council rather than the County Council, given their role in this aspect of heritage management.

26. The Secretary of State also invites comments from the Applicant and other Interested Parties on the late representation from Five10Twelve Limited dated 23 December 2019 relating to public cost and reputational risk, which is published alongside this letter.

Five10Twelve refers to the benefits of the use of the site for Operation Brock and Operation Stack. Current traffic management plans, should there be issues with channel crossing, have reverted to Operation Stack. Should there be the risk of Operation Stack (phases 1 and 2) filling, the use of Manston is designated as part of the next phase, with capacity for 4,000 HGVs. With uncertainty still surrounding a permanent solution to these issues with channel crossing resilience, Operation Stack is still an option. The Manston site could be used regardless of the transport management scheme we have in the future.

27. The Secretary of State invites comments from the Applicant and other Interested Parties on the late representation from Mr Chris Lowe dated 6 January 2020 relating to air and noise emissions. The representation is published alongside this letter.

The letter from Mr Chris Lowe reports evidence that has come available after the closure of evidence submission. KCC considers that this is a matter for Public Health England to review.