The Planning Inspectorate

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Jason and Samara Jones-Hall
Five10Twelve Limited
By email

Your Ref:

Our Ref: TR020002

Date: 10 July 2020

Dear Mr and Mrs Jones-Hall

Planning Act 2008 - Section 95

Application by RiverOak Strategic Partners Ltd for an order granting development consent to reopen and develop Manston Airport

Application for an award of costs

1. Thank you for your correspondence and submissions dated 5 August 2019 in which you make an application to the Examining Authority (ExA) to exercise its power to award costs under s95 of the Planning Act 2008 (PA2008) in relation to the preparation for, and involvement in, the examination process.

2. The power to award costs under s250(5) of the Local Government Act 1972 is applied to an examination of an application seeking development consent by s95(4) of the PA2008.

3. The power to award costs falls to the ExA appointed in relation to the examination of the application under the PA2008. I respond as lead member of the ExA.

4. Your correspondence and submissions have been carefully considered by me along with the responses on behalf of the Scheme Applicant, RiverOak Strategic Partners Limited (RSP). The correspondence and submissions are attached to this letter and consist of:

    - Five10Twelve Limited's costs application, dated 5 August 2019;
    - a response for and on behalf of BDB Pitmans LLP (BDBP) acting for the Scheme Applicant (RSP), dated 24 March 2020;
    - Five10Twelve's comments on the Scheme Applicant's response to the costs application, dated 20 April 2020.

Decision

5. I conclude that the application fails and that no award of costs is made. The reasons for this decision are set out below.

Basis for determining the costs application and Examining Authority reasons

6. In considering this application, I have had close regard to the former Department for Communities and Local Government Guidance – *Award of costs: examinations of applications for development consent orders*[1] (July 2013) (the Costs Guidance).

7. This states, *inter alia*, that, in the examination of a Nationally Significant Infrastructure Project (NSIP), all parties will normally be expected to meet their own costs and that the decision-making process on the merits of an application for development consent and the making of an award of costs by the ExA are entirely separate matters.

8. The Costs Guidance sets out the conditions under which costs will normally be awarded in paragraph 11 of Part B.

9. The first condition is that the aggrieved party has made a timely application for an award. I note that the application was made by you (an Interested Party by virtue of your Relevant Representation received on 8 October 2018) on 5 August 2019 - within 28 days of the notification of the close of the examination.

10. The second condition is that the party against whom the award is sought has acted unreasonably. The third condition is that the unreasonable behaviour has caused the party applying for the award of costs to incur unnecessary or wasted expense during the examination.

11. I conclude on the second and third conditions below.

Your grounds for making an application for costs

12. I have considered all the points made in your application for costs carefully and where I use selected quotations from it, or seek to summarise points from it, this should not be construed as meaning that I have not taken into account the full detail of this letter. I have noted and considered the evidence provided in Appendices 001 and 002 to your letter of application.

13. I have taken equally full account both of the material that you provided in subsequent correspondence and of the response of BDBP acting for the Scheme Applicant, dated 24 March 2020.

14. I note from heading 1 in your application letter that your grounds for claiming costs are that the "*Applicant has acted unreasonably*" and that in headings 2 and 3 you cite "*unreasonable actions/inactions*".

15. Given this, in coming to a decision, I have had particular regard to the meaning of 'unreasonable' discussed in paragraphs 22 to 25 of the Costs Guidance and as instanced in paragraph 2 of Part C of that guidance.

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[1] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/211459/Awards_of_costs_-_examinations_of_applications_for_development_consent_orders_-_guidance.pdf

16. You elucidate and support your grounds in your paragraph 1.1.1 stating that:

"The DCO [Development Consent Order] *Applicant has acted unreasonably by failing to apply to the CAA* [The Civil Aviation Authority] *for its Airspace Change Process (ACP) in a timely manner prior to submitting its DCO Application and the start of the Examination."*

and in paragraph 1.1.3. that:

"*The Applicant also acted unreasonably in claiming falsely during the Preliminary Hearing of 9 January 2019 that the Applicant's ACP request was "not yet on [the CAA] website for formal consultation as [the CAA] haven't appointed a Case Officer yet. We are encouraging them to appoint a Case Officer as soon as they possibly can"."*

and in paragraph 1.1.5 that:

"*The CAA ACP Portal shows that the Applicant failed to initiate the ACP until 14 January 2019 and only confirmed its intention to proceed with the ACP on 13 May 2019, nine months later than advised and 7 weeks from the close of the DCO Examination. We respectfully submit that this is also unreasonable*."

17. Therefore, as your sub-heading 1.1 indicates, thus far your focus for unreasonable behaviour is the Scheme Applicant's interaction with the Airspace Change Process (ACP). In paragraph 1.1.7 you go on to list the impacts of the Scheme Applicant's actions in relation to the ACP. These include producing aspirational flight paths and noise contours which cannot be relied upon.

18. Your sub-heading 1.2 references the CAA's CAP 1616a Technical Note and you submit in paragraph 1.2.1 that:

"…the Applicant has acted unreasonably by failing to provide Noise Contours that are consistent with the CAA's CAP1616a Environmental Requirements Technical Annex, (ERTA)."

19. Your paragraphs 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8, 1.2.9 and 1.2.10 then specify those paragraphs of ERTA that you consider apply in this case.

20. Your sub-heading 2 then provides your "*Summary of impact of Applicant's unreasonable actions / inactions*" as follows:

- *"Flight paths are aspirational and cannot be confirmed or relied upon*
- *Noise contours are aspirational and do not conform to CAA's CAP1616a requirements*
- *Environmental Statement, based on aspirational flight paths and noise contours, cannot be relied upon*
- *Public, statutory bodies, Local Authorities and other third parties have not had the opportunity to be properly informed or consulted upon with accurate noise contours and/or flight paths*
- *SOCGs and LIRs are not based on accurate or verifiable noise contours and data*

- *Noise Mitigation Plan - including but not limited to Noise Envelopes and Noise Contour Caps - is not based on accurate or verifiable noise contours and data."*

21. Finally, under your heading 3, you set out the "*Impacts and unnecessary expense incurred by Five10Twelve Limited as a result of Applicant's unreasonable actions/inaction*."

22. The subsequent paragraphs set out points in the examination at which you raised concerns regarding the validity of the Scheme Applicant's noise contours.

23. You also state (at paragraph 3.3) that you had consulted with independent noise consultants and (at paragraph 3.5) that Five10Twelve commissioned its own noise contours through the CAA's Environmental Research and Consultancy Department (ERCD) and (at paragraph 3.6) that your commissioned "*noise contours plugged the gaps left by the Applicant's unreasonable behaviour*."

24. You list the information that your commissioned noise contours provided to the ExA in paragraph 3.6 and make further observations on this in paragraphs 3.7 and 3.8.

25. In paragraph 4 you sum up your position and reason for submitting a claim for costs in stating that:

    "*In light of the Applicant's unreasonable actions detailed at paragraph 1, impacts of these actions detailed at paragraph 2 and the resultant impact and costs which we strongly feel were necessary to incur in order to properly inform the Examination - yet unnecessary for Five10Twelve Ltd as an independent and Interested Party to have to expend - we are hereby respectfully submitting this formal request for costs to be awarded."*

26. I note that paragraph 4 goes on to list the elements of the costs associated with the preparation and production of the ERCD noise contours.

The Scheme Applicant's response

27. In a letter from the Planning Inspectorate dated 13 March 2020, the Scheme Applicant was invited to respond to the costs application.

28. BDBP acting for the Scheme Applicant responded on 24 March 2020. I now refer to this as 'the Scheme Applicant's response'.

29. First, I note that the response contained, in Section 3, a "*Counter claim against Five10Twelve*". I considered this 'counter-claim' carefully and, in a letter to BDBP dated 7 April 2020, I concluded that:

    "[…] *the application for costs contained in your letter of 24 March 2020 is a late application given that the Examination of the application to reopen and develop Manston Airport was completed on 9 July 2019 and Interested Parties were notified of the completion in a letter dated 10 July 2019."*

    and that:

    "The ExA has further concluded that the party making the application for an award of costs, RSP, has not shown good reason for not having complied with the time limit for submission."

and that, given the above:

"The ExA has concluded that it will not accept for consideration RSP's claim for costs against Five10Twelve Ltd as set out in your letter of 24 March 2020."

30. The Scheme Applicant's response states in paragraph 1.2 that it:

"…fully rejects the cost claim that has been made against it by Five10Twelve Ltd…"

and, in paragraph 2.6 that:

"As Five10Twelve's application failed to establish that the necessary conditions have been met, it is the Applicant's position that the claim against it cannot be sustained."

31. The Scheme Applicant's response refers to the Costs Guidance and states in paragraph 2.2 that the heads of claim in your application are unclear and then deals with your paragraphs 1.1, 1.2 and 3 in turn.

32. It states in paragraph 2.3 that:

"Paragraph 1.1 - it is entirely irrelevant to the reasonableness or otherwise of the Applicant's behaviour in relation to the DCO application as to the timing of a separate application."

and in paragraph 2.4 that:

"Paragraph 1.2 is also irrelevant, as it relates to compliance with the airspace change process, which is separate and, as set out above, subsequent to the DCO application process."

33. It also states in paragraph 2.4 that it:

"…firmly rejects any suggestion that it has not complied with that process, never mind behaved unreasonably in relation to it, but even if it had, it is irrelevant to this examination."

34. The Scheme Applicant addresses your paragraph 3, related to disagreements about noise contours, in its paragraph 2.5, stating that:

"The Applicant stands by its analysis. It is a perfectly normal part of an examination for different parties to provide different evidence on the issues being examined and the fact that Five10Twelve does not agree with the Applicant does not make the Applicant's behaviour unreasonable. It was Five10Twelve's choice to obtain its own noise evidence; no-one asked it to."

35. I note that the Scheme Applicant's response does not directly address the point that you made at paragraph 1.1.3, quoted at paragraph 16 in this letter that:

"*The Applicant also acted unreasonably in claiming falsely during the Preliminary Hearing of 9 January 2019 that the Applicant's ACP request was "not yet on* [the CAA] *website for formal consultation as [the CAA] haven't appointed a Case Officer yet. We are encouraging them to appoint a Case Officer as soon as they possibly can*"."

I have, however, taken into account the Scheme Applicant's response in its paragraph 2.3, quoted above, in considering this matter.

36. The Scheme Applicant summarises its position in paragraph 2.6:

"…the alleged grounds do not come remotely close to unreasonable behaviour, and are simply a repetition of these parties' objections to the application. They do not come close to any of the examples of unreasonable behaviour given in MHCLG guidance on costs relating to DCO applications."

Five10Twelve's response to the Scheme Applicant's letter

37. In a letter dated 7 April 2020, the Planning Inspectorate invited Five10Twelve to comment on the Scheme Applicant's response.

38. You responded in a letter sent by e-mail dated 20 April 2020.

39. In this letter, you addressed the Scheme Applicant's statement that the heads of claim in your application were unclear by re-setting out your grounds (in paragraph 2.2) stating that:

"The heads of claim in our Costs Application were quite clear and consistent with paragraph 11 of the Guidance in that:

- *the manner in which the Applicant behaved during the examination was unreasonable; and*
- *this unreasonable behaviour made it necessary for Five10Twelve Limited to commission noise contours, [AS-120], from the Civil Aviation Authority ("CAA Noise Contours"); and*
- *the expense of commissioning the CAA Noise Contours should not have otherwise been necessary*."

40. You then responded to each of the points in the Scheme Applicant's response. I deal with these points in my conclusion, below.

The Examining Authority's conclusion

41. I have focussed my reasoning on this application on your statement that:

"*…the manner in which the Applicant behaved during the examination was unreasonable*."

42. In considering the detail of this application, I deal initially with your reference to the position with regard to Heathrow Airport Ltd (section 2.3 in your response).

43. You state in paragraph 1.1.6 of your 5 August 2019 costs application that:

"*…we note that the PINs website states that the Heathrow Airports Ltd (HAL) DCO Application is "expected to be submitted mid 2020" whilst HAL initiated its own ACP request almost two years prior to this on 01 October 2018*."

44. The Scheme Applicant's response states in paragraph 2.2 that:

"*The analogy with Heathrow is wrong, because Heathrow has stated that it will not consult on flightpaths for the purposes of its airspace change application until after its DCO has been granted (see e.g. here*

https://afo.heathrowconsultation.com/consultation-topics/airspace-local-factors/). Therefore such data will not be available for that project just as it was not for this one. This ground therefore has no merit whatsoever."

45. In your 20 April 2020 response, you state that

"…*the URL address provided by the Applicant to support its assertion* […] *does not appear to evidence anything of the kind*.

46. I note that the document *How do we obtain approval to expand Heathrow?* dated June 2019[2] states that:

"In accordance with government policy, these airspace change proposals will not be included in our DCO but separately applied for and approved by the Civil Aviation Authority (CAA) and, potentially, the Secretary of State for Transport."

and that:

"It is the later airspace change process that will determine the precise position of final flight paths for the three runway airport, and which will be subject to its own process of consultation and environmental assessment."

and that:

"A statutory consultation on the proposed airspace design, and the position of all flight paths, will be undertaken in 2022."

47. I also note that the URL address you provide does relate to "*The Airspace and Future Operations Consultation*" but that this states that:

"In this consultation, we are presenting the geographic areas within which flight paths could be positioned. We are asking what local factors should be taken into account when developing new flight paths within these geographically defined areas known as 'design envelopes'".

48. On this matter, I conclude, therefore, that the Scheme Applicant is correct in stating that Heathrow has stated that it will not consult on flightpaths for the purposes of its ACP application until after its DCO has been granted and that the consultation to which you refer related to design envelopes within which flight paths could be located rather than the flight paths themselves.

49. I now turn to the related issue of the relevance and importance of the ACP to the DCO (section 2.4 of your response).

50. I acknowledge the interrelationships between these two processes as evidenced in your two letters and elsewhere during the examination. However, whilst it is clearly advantageous for any applicant for airport-related development to try as far as possible to ensure that the processes and approaches adopted for the PA2008 regime do not conflict with processes required under other regimes, it remains that, statutorily, these two processes remain separate and are conducted under different legislative frameworks and overseen by different bodies.

[2] Available at: https://assets.heathrowconsultation.com/wp-content/uploads/sites/5/2019/06/How-Approval-To-Expand-Heathrow-web.pdf

51. I note, for example that the only reference to the ACP in the Airports National Policy Statement (ANPS)[3] in paragraph 5.255 is to consultations taking place "*outside of the planning process*".

52. Given this, I have some sympathy with the statement in the Scheme Applicant's response that:

    "*…it is entirely irrelevant to the reasonableness or otherwise of the Applicant's behaviour in relation to the DCO application as to the timing of a separate application."*

53. Therefore, in coming to my conclusions on your costs application, I have not taken account of the Scheme Applicant's adherence or otherwise to a process required under separate statute.

54. Equally, and based on the same reasoning, I have not come to any conclusion as to the Scheme Applicant's adherence, or otherwise, to technical notes, guidance or requirements *per se* issued under statute other than that related to the PA2008 regime.

55. However, I do recognise that a number of the inconsistencies or failings that you list in paragraphs 1.2.2 to 1.2.10 in your application letter of 5 August 2019 do relate to the overall robustness of the noise contours and related information that was provided by the Scheme Applicant.

56. This important issue, and a wide range of factors related to it were examined in some detail both through the ExA's written questions and at Issue Specific Hearings throughout the examination, and it was considered in the ExA's Recommendations Report.

57. Given this, I now turn to the overall issue which is summarised in paragraph 2.6:

    "*…the manner in which the Applicant behaved during the Examination was unreasonable* [and] *that this in turn gave cause for Five10Twelve Limited to commission evidence based on historical flight paths and operations and that, had the Applicant acted in a reasonable manner, it should not have been necessary for us to have incurred this expense*."

58. I note that your summary reflects the conditions set out in the Costs Guidance:

    "…the party against whom the award is sought has acted unreasonably"

    and:

    "…the unreasonable behaviour has caused the party applying for the award of costs to incur unnecessary or wasted expense during the examination."

59. I note that the Costs Guidance states that:

    "The word unreasonable is used in its ordinary meaning as established by the Courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774."

[3] In referencing the ANPS, I recognise both that this document was, in the case of the Manston Airport application, a relevant and important consideration and that, subsequent to the close of the examination, the status of this NPS has changed

60. Beyond this, the Costs Guidance sets out, in Part C, examples of possible events and behaviours that may give rise to an award of costs.

61. I have treated these as examples and not as a definitive list. However, I note that in your letter of 20 April 2020 you state at paragraph 2.6 that:

"…*we maintain that this may be accurately described as unreasonable in that it meets paragraph 23 of the Guidance; "non-compliance with procedural requirements or failure by a party to substantiate a relevant part of their case""*.

62. In general, in coming to my decision on this costs application, I am mindful that the process for examining an application for a DCO under the PA2008 is one in which evidence is examined by an ExA through written questions and through hearings. This may frequently result in the need for further evidence to be produced by the Interested Parties and by the Applicant to substantiate their cases.

63. This is a natural and potentially constructive aspect of the way in which this system has been established and, in general, the need to question an applicant's case and the evidence behind it in a robust and evidenced way would not be considered as constituting unreasonable behaviour in the terms set out in the Costs Guidance.

64. In the case of the examination of this proposal, the nature of the complexity of the case and, in some cases, the nature of the evidence provided did demand a very high degree of rigour and engagement by the ExA and by all parties involved. The ExA remains very grateful to all parties, yourselves included, for the level of engagement in the process that was displayed and for the time and resources that were devoted to that engagement.

65. However, applying the wording of the third condition in the Costs Guidance, I have considered whether the approach taken by the Scheme Applicant in this case caused you to incur unnecessary or wasted expense during the examination in commissioning evidence. I consider that this initiative on your part, however laudable that was, was a further example of the level of engagement that you displayed in the process and followed on from the inquisitorial nature of the examination process.

66. In adopting this line of reasoning, I make it clear that I do not agree with the Scheme Applicant's apparent suggestion in paragraph 2.5 of its response that whether or not a party is asked to provide additional evidence is germane to a conclusion on a costs application.

67. There is clearly a narrow dividing line between the extreme of normalised practices by applicants in the PA2008 regime, as long as these stay within the procedural requirements of that regime, and unreasonableness in the ordinary meaning of the term.

68. However, in reviewing your case for costs in detail and noting that in some cases your basis for classifying behaviour as being unreasonable is in relation to processes or guidance that lie outwith the PA2008 regime, I cannot discern points at which that line has been overstepped in this case.

Conclusion

69. For all the above reasons, my overall assessment is that it has not been shown that the Scheme Applicant acted unreasonably.

70. In this case, therefore, it is not necessary to consider further the third condition under which costs will normally be awarded as set out in paragraph 11 of the Costs Guidance and referred to in paragraphs 10 and 58 above.

71. I conclude that a persuasive case for an award of costs has not been made.

Yours Sincerely

[redacted]

Kelvin MacDonald FAcSS FRTPI CIHCM FRSA
Examining Inspector
Lead member of the Panel

Mr Richard Price
Case Manager
The Planning Inspectorate
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Temple Quay House
2 The Square
Bristol
BS1 6PN

Date: 5 August 2019

BY EMAIL: (ManstonAirport@planninginspectorate.gov.uk)
and BY MAIL

Dear Richard
Proposed Manston Airport Development Consent Order
Applicant Ref: TR020002

Application for award of costs pursuant to Department for Communities and Local Government Awards of costs: examinations of applications for development consent orders, Guidance.

1. Applicant has acted unreasonably

1.1. Airspace Change Process (ACP)

1.1.1. The DCO Applicant has acted unreasonably by failing to apply to the CAA for its Airspace Change Process (ACP) in a timely manner prior to submitting its DCO Application and the start of the Examination.

1.1.2. At the CAA/Planning Inspectorate (PINs)/Applicant process workshop held at Kingsway House on 12 June 2017, it was agreed with the CAA that "acceptance of the DCO submission by PINs would be an appropriate threshold at which point to initiate the ACP", i.e on or around 14 August 2018.[1]

1.1.3. The Applicant also acted unreasonably in claiming falsely during the Preliminary Hearing of 9 January 2019 that the Applicant's ACP request

[1] Osprey CAA Interface Document [APP-086], Page 13, paragraph 5.3

was "*not yet on [the CAA] website for formal consultation as* [the CAA] *haven't appointed a Case Officer yet. We are encouraging them to appoint a Case Officer as soon as they possibly can"*.[2]

1.1.4. We challenged this assertion, with promise of evidence, (subsequently submitted[3]), during the Preliminary Hearing of 9 January 2019[4].

1.1.5. The CAA ACP Portal shows that the Applicant failed to initiate the ACP until 14 January 2019 and only confirmed its intention to proceed with the ACP on 13 May 2019[5], nine months later than advised and 7 weeks from the close of the DCO Examination. We respectfully submit that this is also unreasonable.

1.1.6. By way of comparison, we note that the PINs website states that the Heathrow Airports Ltd (HAL) DCO Application is *"expected to be submitted mid 2020"* whilst HAL initiated its own ACP request almost two years prior to this on 01 October 2018[6]. Given that the ACP process is expected to last 108 weeks, this means the HAL actual operational flight paths are likely to be either fully decided or at least sufficiently well advanced to allow CAA to provide informed comment on the likely routes for HAL's third runway during its own DCO Examination.

1.1.7. The impacts of the Manston DCO Applicant's failure to initiate its ACP request in a timely manner are:

- CAA has been unable to provide any meaningful comment on the Manston DCO Examination with regards to ACP, possible or indicative flight paths, environmental issues and/or noise impacts[7]
- Flight paths proposed by the Applicant in its DCO request are purely aspirational and cannot be relied upon
- Noise Contours produced by the Applicant, based on these aspirational and unconfirmed flight paths, equally cannot be relied upon
- Environmental Statement (ES), based on aspirational flight paths and Noise Contours, cannot be relied upon

[2] Isabella Tafur for RSP, Recording of Preliminary Hearing (Afternoon Session) [EV-002a], at or around timecode 01:02:09
[3] Submission to Deadline 1 from Samara Jones-Hall, [REP1-019], page 37, paragraph 11 / II / c
[4] Samara Jones-Hall for Five10Twelve Ltd, Recording of Preliminary Hearing, (Afternoon Session) [EV-002a], at or around timecode 01:27:47
[5] Appendix 001: Letter of Intent to Proceed from Osprey to CAA, 13/5/19
[6] Appendix 002: CAA ACP Portal - Heathrow Airports Ltd
[7] Letter from CAA to ExA 30 May 2019 in response to invitation to attend ISH6 [AS-117]

- Resulting Statements of Common Ground, (SOCG) and Local Impact Reports, (LIR), submitted by third parties, statutory bodies and Local Authorities based on the ES, Noise Contours and aspirational flight paths cannot be relied upon

1.2. CAP 1616a Technical Note

1.2.1. Compliance with CAP1616 ACP - the ACP regulatory requirements since December 2017 - is required and confirmed as per the SOCG between the Applicant and the CAA[8]. We respectfully submit that the Applicant has acted unreasonably by failing to provide Noise Contours that are consistent with the CAA's CAP1616a Environmental Requirements Technical Annex[9], (ERTA). Specifically:

1.2.2. Paragraph 1.11 of the ERTA with regards to types of aircraft, ("Fleet Mix"), and possible variations in fleet mix according to consumer demand and Applicant forecasting. As the ExA is aware, and as detailed in our submission to Deadline 5[10], the Applicant's inaccurate forecasting of its Fleet Mix has significant implications with regards to the Noise Contours, ES and resulting SOCGs and LIRs.

1.2.3. Paragraph 1.13 of the ERTA states that conventional noise contours are calculated for an average summer day, partly due to the fact that *"Aircraft tend to climb less well in higher temperatures so, because they are closer to the ground, Laeq values will tend to be higher than in colder weather"*. Applicant's noise contours, which it confirms were based on an average winter's day[11], do not appear to have taken this into account.

1.2.4. Paragraph 1.15 of the ERTA states that *"Where sufficient data is available this should be based on the last 20 years' runway usage"*. Applicant has unreasonably refused to provide historical data of prior runway usage or operations at Manston for the production of its noise contours.

1.2.5. Paragraph 1.21 of the ERTA states that *"Contours should be portrayed from 51dB Laeq, 16hrs (for daytime) and 45dB Laeq, 8hrs (for nighttime) at 3dB intervals"*. Applicant failed to provide this information, with its ES

[8] [REP4-006] Statement of Common Ground between RSP and CAA, paragraph 1.2.2
[9] [REP9-066] Appendix 04, Pages 37-72, CAA CAP1616a Technical Annex
[10] [REP5-074], pages 5-8, paragraphs 5.33 - 6.7
[11] Applicant's ES Section 12.1 and Table 12.1. See also CAA's response to ExA question Ns.1.19 [REP3-231], page 4

showing only daytime noise contours at 50dB, 63dB and 69dB[12], with no intervals in-between.

1.2.6. Paragraph 1.21 of the ERTA further states that *"a table should be produced showing the following data for each 3dB contour interval:*

- *Area (km²)*
- *Population (thousands) - rounded to the nearest hundred"*

Applicant failed to provide the above tables.

1.2.7. Paragraphs 1.22 - 1.23 of the ERTA sets out further requirements for data to be included in such tables, including - for example - number of schools, hospitals and other special buildings within each of the noise contours at 3dB intervals, which the Applicant failed to provide.

1.2.8. Paragraph 1.26 of the ERTA sets out recommendations to overlay noise contour maps onto ordinary road maps which *"must be sufficiently clear for an affected resident to be able to identify the extent of the contours in relation to their home"*. Applicant's noise contours provided in their ES and during consultation and DCO Examination failed to provide this.

1.2.9. Paragraph 1.27 of the ERTA sets out a requirement for the Applicant to provide two 100% mode noise contours showing operation in both directions of each runway. Applicant failed to provide this or to make clear in its Figures 12.4 and 12.6 which direction or at which percentage of operation the noise contours had been produced.

1.2.10. Paragraph 1.74 of the ERTA states that operators using AEDT noise modelling, as the Applicant has done, *"should use guidance provided in ECAC Document 29 4th Edition".* Applicant used the outdated 3rd Edition of this document, which has implications as to the validity and validation of the Applicant's noise contours, as evidenced in our submission to Deadline 9[13].

2. Summary of impact of Applicant's unreasonable actions / inactions

- Flight paths are aspirational and cannot be confirmed or relied upon
- Noise contours are aspirational and do not conform to CAA's CAP1616a requirements

[12] ES, Figures, [APP-042], Figures 12.4 and 12.6
[13] [REP9-062], paragraphs 3 - 3.1.15

- Environmental Statement, based on aspirational flight paths and noise contours, cannot be relied upon
- Public, statutory bodies, Local Authorities and other third parties have not had the opportunity to be properly informed or consulted upon with accurate noise contours and/or flight paths
- SOCGs and LIRs are not based on accurate or verifiable noise contours and data
- Noise Mitigation Plan - including but not limited to Noise Envelopes and Noise Contour Caps - is not based on accurate or verifiable noise contours and data

3. Impacts and unnecessary expense incurred by Five10Twelve Limited as a result of Applicant's unreasonable actions/inaction

3.1. Five10Twelve Ltd raised concerns regarding the validity of the Applicant's noise contours in our submission to Deadline 5[14]. This included details of numerous other Interested Parties who have challenged the Applicant's approach to noise modelling and noise contours[15].

3.2. Our submission to Deadline 5, [REP5-074], also detailed at paragraphs 6 - 6.2 the impacts of this, as further detailed and summarised at paragraph 2, above.

3.3. Five10Twelve Ltd confirmed in our submission to Deadline 5 that we had consulted with independent noise consultants, Bickerdike Allen, with regards to appropriate components and steps towards production of noise contours[16].

3.4. We further put on record a request in our submission to Deadline 5 that there should be an independent review and reissue of the noise contours produced by the CAA's Environmental Research and Consultancy Department, (ERCD)[17].

3.5. In the absence of any such report or attempt to address the significant issues raised, Five10Twelve Ltd commissioned its own noise contours through the ERCD, based on historical flight paths in order to assist the ExA in its Examination and to highlight the inconsistencies, inaccuracies and lack of necessary data due to the Applicant's unreasonable failures identified in paragraph 1, above.

3.6. The Five10Twelve/ERCD noise contours plugged the gaps left by the Applicant's unreasonable behaviour by providing the following information to the ExA:

[14] [REP5-074]
[15] *Ibid*, paragraph 6.3
[16] *Ibid*, paragraph 6.1
[17] *Ibid*, paragraphs 6.5 - 6.5.3

- Independently-produced noise contours
- Flight paths produced by CAA's ERTA that are fully compliant with CAP 1616a
- Noise contours based on historical flight paths, providing an illustration of the impact of different flight paths, given Applicant's failures and aspirational flight path use as outlined in paragraph 1.1, above
- Noise contours based on historical flight path and runway operations, in line with paragraph 1.15 of CAP1616a ERTA
- Noise contours starting at 51db and at 3dB intervals, in line with paragraph 1.21 of CAP1616a ERTA
- Tables showing impacted Area (㎢) and population at 3dB intervals, in line with paragraph 1.21 of CAP1616a ERTA
- Noise Contours made publicly available overlaid against Google Maps, allowing general public to search for and identify impacts of noise contours in relation to their homes and public buildings - e.g. schools, hospitals, conservation areas, listed buildings, outdoor spaces - in line with paragraphs 1.22, 1.23 and 1.26 of CAP1616a ERTA
- 4x variations of noise contours showing runway splits at 100% in each direction, in line with paragraph 1.27 of CAP1616a ERTA, as well as 70/30 in each direction

3.7. Five10Twelve Ltd noted the Applicant's comments on our ERCD-produced noise contours and provided a detailed response and rebuttal to Deadline 9 [REP9-062].

3.8. Five10Twelve Ltd further noted in our submission to Deadline 11[18] that since submitting the above comments and our rebuttal, the Applicant reached an agreement with Natural England based on confirmation that the *"proposed flightpath is similar to that used by the previous Manston Airport"*. This is consistent with the Five10Twelve/ERCD noise contours, but it is inconsistent with arguments previously put forward by the Applicant and the aspirational flight paths, noise contours and the Environmental Statement produced and put forwards by the Applicant.

4. In light of the Applicant's unreasonable actions detailed at paragraph 1, impacts of these actions detailed at paragraph 2 and the resultant impact and costs which we strongly feel were necessary to incur in order to properly inform the Examination - yet unnecessary for Five10Twelve Ltd as an independent and Interested Party to have to expend - we are hereby respectfully submitting this formal request for costs to be awarded. This should

[18] [REP11-034], paragraph 5

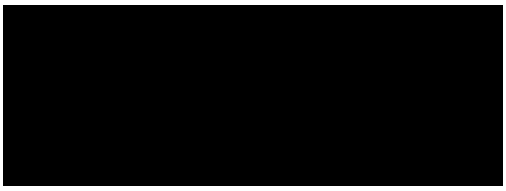
include all costs association with the preparation and production of the ERCD noise contours, to include:

- Five10Twelve Ltd personnel and administration costs
- Costs associated with initial discussions with Bickerdike Allen
- Costs associated with negotiations and discussions with CAA/ERCD
- Costs associated with preparation and production of data for CAA/ERCD
- Direct consultation fees from CAA/ERCD for production of noise contours
- Costs associated with presentation and oral representation of noise contours at Issue Specific Hearings
- Costs associated with presentation and written submission of noise contours and associated submissions to the DCO examination written process

This costs award request is submitted without prejudice to our contention that the Applicant's DCO request should be refused.

We look forward to a response at your earliest convenience.

Kind regards



Jason Jones-Hall

Samara Jones-Hall

Directors, Five10Twelve Ltd

Appendix 001

Letter of Intent to Proceed with ACP

OSPREY
CONSULTING SERVICES

Mr Steve Walters
Airspace Change Account Manager
Airspace, ATM & Aerodromes
Civil Aviation Authority (CAA),
Aviation House, City Place
Gatwick, RH6 0YR

Date: 13th May 2019
Ref: 70992 026 Issue 1

By email,

Dear Steve,

Manston Airport: Intention to Proceed with the Airspace Change in line with the Manson Statement of Need

Thank you for hosting the Assessment Meeting last Thursday (9th May). I have pleasure in confirming RiverOak Strategic Partners Ltd.'s (RSP) intention to proceed with the Airspace Change outlined at the meeting last Thursday.

Yours sincerely

[redacted]

On behalf of RSP

Richie Hinchcliffe MBA BSc (Eng) MRAeS
Principal Consultant
Instrument Flight Procedure Team Lead

Tel +44 1609 751 641
[redacted]
Email richie.hinchcliffe@ospreycsl.co.uk
Web www.ospreycsl.co.uk

Appendix 002

CAA ACP Portal - Heathrow Airports Ltd

; ;

Airspace change proposals that match your search

Enter Airport Name Or Post Code to Search Changes

HEATHROW

Search

Heathrow Airport (LHR), Longford TW6, UK

4 results (Page 1 of 1)

Heathrow Airport

London Heathrow - Airspace, Departures and Arrivals Procedure - Third runway — IN PROGRESS

Change type: Permanent

Level: 1

Step: Step 2a

Created: Monday, October 1, 2018

Last updated: Wednesday, July 3, 2019

Find out more about this airspace change (/PublicProposalArea?pID=24)

Heathrow Airport

London Heathrow - Independent Parallel Approach Arrivals Procedure — IN PROGRESS

Change type: Permanent

Level: 1

Step: Step 2a

Created: Monday, October 1, 2018

Last updated: Wednesday, June 26, 2019

Find out more about this airspace change (/PublicProposalArea?pID=25)

Ministry of Defence

Enabling Remotely Piloted Air System Operations Out of RAF Waddington — IN PROGRESS

Change type: Permanent

Level: TBC

BDB PITMANS

Mr Richard Price
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your Ref

Our Ref
JNG/ADW/166055.0003

Date
24 March 2020

By Email RICHARD.PRICE@planninginspectorate.gov.uk

Dear Richard

Proposed Manston Airport Development Consent Order
Applicant ref: TR020002
Application for an award of costs

1.1 Please accept this letter as the Applicant's response to your letter of 13 March 2020 and the application for an award of costs made by Five10Twelve Ltd attached to that letter.

1.2 The Applicant fully rejects the cost claim that has been made against it by Five10Twelve Ltd ('**Five10Twelve**'), and issues its own counter-claim in response.

2 Response to costs claim from Five10Twelve

2.1 The MHCLG Costs Guidance[1] sets out the conditions to be met before an award of costs could be made. These include *unreasonable behaviour*, by the party against whom the award is sought, which has '*caused the party applying for the award of costs to incur unnecessary or wasted expense during the examination'*.

2.2 The heads of claim in Five10Twelve's application are unclear but appear to be set out in paragraphs 1.1, 1.2 and 3. The Applicant's response is as follows.

2.3 Paragraph 1.1 - it is entirely irrelevant to the reasonableness or otherwise of the Applicant's behaviour in relation to the DCO application as to the timing of a separate application. The analogy with Heathrow is wrong, because Heathrow has stated that it will not consult on flightpaths for the purposes of its airspace change application until after its DCO has been granted (see e.g. here https://afo.heathrowconsultation.com/consultation-topics/airspace-local-

[1] Awards of costs: examinations of applications for development consent orders, July 2013

factors/). Therefore such data will not be available for that project just as it was not for this one. This ground therefore has no merit whatsoever.

2.4 Paragraph 1.2 is also irrelevant, as it relates to compliance with the airspace change process, which is separate and, as set out above, subsequent to the DCO application process. It also alleges that lack of compliance with a CAA technical note in relation to the separate process amounts to unreasonable behaviour. The Applicant firmly rejects any suggestion that it has not complied with that process, never mind behaved unreasonably in relation to it, but even if it had, it is irrelevant to this examination.

2.5 Paragraph 3 relates to disagreements about noise contours. The Applicant stands by its analysis. It is a perfectly normal part of an examination for different parties to provide different evidence on the issues being examined and the fact that Five10Twelve does not agree with the Applicant does not make the Applicant's behaviour unreasonable. It was Five10Twelve's choice to obtain its own noise evidence; no-one asked it to. Indeed, Five10Twelve behaved unreasonably in submitting this evidence to the examination nine months after the Applicant's Environmental Statement to which it is a response was published and less than six weeks before the end of the examination.

2.6 In summary, the alleged grounds do not come remotely close to unreasonable behaviour, and are simply a repetition of these parties' objections to the application. They do not come close to any of the examples of unreasonable behaviour given in MHCLG guidance on costs relating to DCO applications. As Five10Twelve's application failed to establish that the necessary conditions have been met, it is the Applicant's position that the claim against it cannot be sustained.

3 Counter claim against Five10Twelve

3.1 The Applicant was not going to make a costs claim against Five10Twelve despite the considerable effort it had to expend in addressing its vexatious submissions. However, in the light of its claim against the Applicant, the Applicant now wishes to pursue a costs claim against Five10Twelve Ltd and, given its limited assets, its directors Jason and Samara Jones-Hall.

3.2 The Applicant accepts that this application is made some time after the end of the examination, albeit before the decision has been made. Although Five10Twelve's application letter is dated 5 August 2019, the Applicant was not made aware of it by the Planning Inspectorate until 13 March 2020, which is the sole reason for the lateness of this application, and the Applicant has responded within two weeks of becoming aware of the costs claim made against it.

3.3 The three parties above (Five10Twelve Ltd and its two directors) made 134 submissions during the examination amounting to 11,224 pages of information, much of it submitted late in the examination. While the Applicant understands that they were not professionally represented (although Mrs Jones-Hall claims in her relevant representation to be a solicitor) and were not familiar with the Planning Act 2008, this amount of material goes far beyond what is reasonable even in those circumstances. The submissions made during the examination were as follows:

Examination deadline	Documents	Pages
Deadline 1	3	817
Deadline 2	5	543
Deadline 3	8	612
Deadline 4	25	1980
Deadline 5	19	641
Deadline 6	12	192
Deadline 7	6	216
Deadline 7a	4	35
Deadline 8	7	54
Deadline 9	19	797
Deadline 10	0	0
Deadline 11	14	504
After deadline 11	12	5650

3.4 Deadline 9 was 11 days before the end of the examination, so these three parties made 45 submissions totalling 6,951 pages – over 60% of their entire submissions in terms of pages – in the final two weeks of the examination, putting the Applicant to significant work at a very late stage in the examination and indeed unable to respond to the final avalanche of submissions, putting it at a disadvantage. Additional team members had to be brought up to speed to consider the submissions due to the other work that needed to be carried out at the time. This clearly runs counter to the following criterion in the MHCLG Costs Guidance for an award for procedural unreasonableness, :

"Introducing fresh or substantial evidence at a late stage, necessitating the preparation and submission by any other party or parties of additional submissions or evidence that would not have been required if the fresh or substantial additional evidence had been submitted on time."

3.5 Furthermore, these parties commissioned and submitted noise evidence to counteract the Applicant's noise evidence, which is of course a legitimate step. However, although the latter had been available in its Environmental Statement since August 2018, these parties' evidence was not submitted to the examination until 31 May 2019, less than six weeks before the end of the examination on 9 July 2019. This also fell foul of the criterion in the guidance given above.

3.6 Finally, these parties behaved vexatiously during and following the examination, not only through the quantity of material of questionable relevance submitted but also for seeking to subvert the process such as their attempt to curtail the examination in their request of 29 March 2019 (application document REP5-074).

3.7 It is for these reasons that the Applicant is seeking a costs claim against Five10Twelve Ltd, Jason and Samara Jones-Hall.

Yours sincerely

[redacted]

Angus Walker
Partner
For and on behalf of BDB Pitmans LLP
T +44 (0)20 7783 3441
[redacted]
E anguswalker@bdbpitmans.com

Five10Twelve Limited
[redacted]

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Date: 20 April 2020

BY EMAIL: ManstonAirport@planninginspectorate.gov.uk
CC: richard.price@planninginspectorate.gov.uk

BY MAIL: (as per the Coronavirus (COVID-19) Planning Inspectorate Guidance updated 1 April 2020 we are not sending a hard copy by post)

Dear Sir

Planning Act 2008 - Section 95

Application by RiverOak Strategic Partners for an Order granting Development Consent for the upgrade and reopening of Manston Airport (Applicant Ref: TR020002)

1. Application for an award of costs

1.1. Please accept this letter in response to your letter of 7 April 2020 and the Applicant's response of 24 March 2020 to our application for an award of costs of 5 August 2019, ("**Costs Application**").

1.2. We note that the Applicant has rejected our costs claim and we set out, below at paragraphs 2.1-2.6, the reasons as to why costs should be awarded to us.

1.3. As directed by the Examining Authority, ("**ExA**") in your letter of 7 April 2020 we comment on part 2 (paragraphs 2.1-2.6) of the Applicant's letter only below.

1.4. For ease of reference, numbering of paragraphs in our response corresponds with the Applicant's numbering in its letter of 24 March 2020.

2. Response to the Applicant's letter of 24 March 2020

2.1. We are aware of the MCHLG Costs Guidance[1] (the "**Guidance**") and our Costs Application was made in accordance with this Guidance, in particular with regard to paragraph 11.

[1] Awards of costs: examinations of applications for Development Consent Orders, July 2013

2.2. The heads of claim in our Costs Application were quite clear and consistent with paragraph 11 of the Guidance in that:

- the manner in which the Applicant behaved during the examination was unreasonable; and
- this unreasonable behaviour made it necessary for Five10Twelve Limited to commission noise contours, [AS-120], from the Civil Aviation Authority ("**CAA Noise Contours**"); and
- the expense of commissioning the CAA Noise Contours should not have otherwise been necessary.

This will be further detailed in our response to each point of the Applicant's letter of 24 March 2020, as set out below.

2.3. **Relevance of Costs Application paragraph 1.1**

The relevance and impact upon the DCO Examination and ourselves - as well as other Interested Parties - of the Applicant's unreasonable failure to progress its Airspace Change Process ("**ACP**") in a timely manner was clearly set out in our Costs Application, at paragraph 1.1.7. We note that the Applicant has failed to respond to any of these specific points or to explain - much less evidence - why they may be considered *"irrelevant"* or why the analogy with Heathrow - one of only three other UK airports expected at the time of our Costs Application to apply for a DCO - is *"wrong"*.

The Applicant's response and reasoning on this point refers only to Heathrow's *consultation* on flightpaths, which forms only one part of the ACP. Further, the URL address[2] provided by the Applicant to support its assertion that *"Heathrow has stated that it will not consult on flightpaths for the purpose of its airspace change application until after the DCO has been granted"*, does not appear to evidence anything of the kind. In fact, this entire site - under the main domain name **heathrowconsultation.com** - appears to be a dedicated part of that public consultation process, which - the site confirms - has already taken place and is *"now closed"*.

The page further confirms under the heading "***What is the process for airspace change - including flight paths"*** that:

*"**In 2018, Heathrow consulted and engaged with stakeholders, including local communities**, on the design principles for both an expanded Heathrow and potential changes to some arrivals **flight paths** for our two existing runways. **Both sets of proposed design principles were submitted to and approved by the CAA in 2018**",* (our emphasis).

This was also confirmed in Appendix 002 of our Costs Application, which provided evidence of this from the CAA's own ACP portal[3]. This portal confirms that Heathrow completed ACP Step 1b (Design Principles) on 26 June 2019 - well in advance of its DCO

[2] https://afo.heathrowconsultation.com/consultation-topics/airspace-local-factors/
[3] https://airspacechange.caa.co.uk/PublicProposalArea?pID=25

application. This same step in the Manston ACP was not reached by the Applicant until 28 February 2020 - almost **8 months after the end of the DCO examination period**.

2.4. **Relevance and importance of Costs Application paragraph 1.2 (i)**

As regards the relevance and importance of the airspace change process to the DCO, including but not limited to compliance with related technical notes of CAP1616a, this was made explicit by the Applicant itself in its response to the CAA Noise Contours during the Examination [REP8-015]. Its conclusion, at section 3, confirms that the Applicant's indicative flight path options appraisal, as set out in Appendix 12.3 of **its Environmental Statement** [APP-057] **followed both the CAA's ACP and CAP1616a**, as follows:

"The ACP process is introduced on the CAA's website and defined in Airspace Design; guidance on the regulatory process for changing airspace design including community engagement requirements (CAP1616). The environmental requirements for the process are given in Airspace Design; environmental requirements technical annex (CAP 1616a). ***[The Applicant's] options appraisal approach within Appendix 12.3 followed the (then) draft Airspace Change proposal guidance linked above."*** (our emphasis).

Relevance and importance Costs Application paragraph 1.2 (ii)

As noted in our submission to the ExA immediately prior to submitting the CAA Noise Contours [AS-121 at paragraph 13.2], the Applicant previously cited the importance of CAP1616 as a reason for **non-compliance with a proposed requirement**, namely the ExA's Second Written Question ("2WQ") Ns.2.19, [PD-010b], which asked the Applicant:

"There can be no certainty that the proposed flightpaths which the noise assessment is based on will be deliverable. Would the Applicant agree that a worst case assessment would ***need to be based on flightpaths as previously operated when the airport was open?****"*.

The Applicant's response to Ns. 2.19 [REP6-012], states:

"It is highly unlikely that the identical flight paths, vertical and lateral , that were used when the airport was previously open would be accepted by the CAA as they would ***not represent best practice*** *(having been based on obsolescent equipment and procedures)* ***in the context of the requirements of CAP1616****"* (our emphasis).

Unreasonable behaviour relating to lack of compliance with Technical Note CAP1616a

As the ExA will be aware, and as was made clear in the CAA's Technical Note accompanying the CAA Noise Contours [AS-120], the noise contours commissioned by Five10Twelve were based on flightpaths previously operated when the airport was open, as proposed by the ExA and which the Applicant subsequently **refused to provide on the basis of CAP1616 requirements,** as detailed above and in its response to Ns. 2.19 [REP6-012].

It remains our assertion that this constitutes unreasonable behaviour as defined in paragraph 23 of the Guidance as ***"non-compliance with procedural requirements or failure by a party to substantiate a relevant part of their case"***.

Applicant's claims of compliance with Technical Note CAP1616a (i)

We clearly set out in paragraph 1.2 of our Costs Application that the Applicant has not complied with CAP1616 and the **Environmental Requirements Technical Annex** (CAP 16161a), which the Applicant refers to as *"a CAA technical note"*. The Applicant has failed to provide any explanation or evidence to support its assertion of compliance or to refute any of our evidenced assertions in paragraph 1.2 of our Costs Application.

Applicant's claims of compliance with Environmental Requirements (ii)

The Applicant refers only to *"lack of compliance with a CAA technical note"* and fails to acknowledge the crucial element of CAP1616a, which is that it is comprised of **Environmental Requirements.** These work hand-in-hand with the Applicant's Environmental Statement. This is further illustrated in paragraphs 1.2.2 - 1.2.8 of our Costs Application in that these sub-paragraphs set out precisely why compliance with each of these Environmental Requirements **was of material importance to the DCO Examination.**

Failure to meet the Environmental Requirements described in these paragraphs during the DCO Examination are contributing factors to the Applicant's unreasonable behaviour, which also contributed to the necessity of commissioning the CAA Noise Contours. In summary of these points from our original Costs Application:

- Paragraph 1.2.2 of our Costs Application outlines the importance and relevance of Fleet Mix to the DCO, Noise Contours, Environmental Statement ("**ES**"), and resulting Statements of Common Ground ("**SOCG**") and Local Impact Reports ("LIRs").

- Paragraph 1.2.3 of our Costs Application outlines the implications to the ES and CAA's response to ExA's First Written Question Ns.1.19, [REP3-231] of the Applicant's failure to base noise contours on an appropriate season.

- Paragraph 1.2.4 of our Costs Application refers to the Applicant's refusal to provide historical data of prior runway usage or operations at Manston during the DCO Examination, as requested by multiple Interested Parties.

- Paragraph 1.2.5 of our Costs Application refers to the Applicant's failure to provide contours at 3dB intervals. This was requested during the Examination Issue Specific Hearings. The host Local Authority (Thanet District Council), also requested noise contours at 60dB in its Local Impact Report [REP3-010]. which were not forthcoming.

- Paragraphs 1.2.6 and 1.2.7 of our Costs Application refers to the Applicant's failure to provide a table showing impacts on numbers of households/residents, schools etc. This was also requested during the Examination Issue Specific Hearings.

- Paragraph 1.2.8 of our Costs Application refers to the Applicant's failure to provide noise contours based on different runway usage, or modal splits. It is our understanding that this was also requested by the ExA during the Examination Issue Specific Hearings.

None of the above issues and/or unreasonable behaviour on behalf of the Applicant - or their implications and impact on the DCO Examination - were addressed by the Applicant in its response to our Costs Application. Rather the Applicant has merely asserted, without any justification or explanation, that these Environmental Requirements are *"irrelevant to this examination"*.

2.5. **Applicant's unreasonable behaviour**

We do not accept that this is a simple matter of a disagreement between Five10Twelve Ltd and the Applicant or its noise contours and analysis.

Our Costs Application included evidence at paragraph 3.1 that numerous other Interested Parties and Statutory Bodies had challenged the Applicant's approach to noise modelling and its noise contours throughout the Examination, which merited reasonable responses from the Applicant. These were not forthcoming.

The issue is not whether or not Five10Twelve Limited was *"asked"* to produce alternative noise contours or environmental impacts based on historical flight paths. The issue is that numerous Interested Parties, Statutory Bodies and the ExA itself asked **the Applicant** at various stages to provide evidence based on historical flight paths and former airport operations and - as detailed at paragraph 2.4 above - the Applicant did not comply with any such requests.

Had the Applicant responded in a more reasonable manner - for example to the ExA's 2WQ question Ns.2.19 - or indeed had the Applicant responded in a more reasonable manner to any of the other requests and requirements outlined at paragraph 2.4 above, it would not have been necessary for Five10Twelve Limited to commission the CAA Noise Contours or to have incurred the expense of doing so.

Timing of submission of the CAA Noise Contours

Regardless of the relevance - or otherwise - of the Applicant's assertions regarding the timing of the submission of the CAA Noise Contours in relation to the Costs Application, we set out in paragraph 3 of our Costs Application the circumstances leading up to the commissioning of the CAA Noise Contours. We do not believe we could have been reasonably expected to have commissioned or produced them any earlier.

We maintain that the CAA Noise Contours were introduced at an appropriate point during the Examination process on 31/5/19 and in advance of the relevant Issue Specific Hearing 6 dealing with matters relating to Habitats Regulations Assessment, Biodiversity and other Environmental Issues, in which the accuracy of noise contours was a key consideration.

Finally on the issue of the timing of our submission of the CAA Noise Contours, we note paragraph 24 of the Guidance as it relates to our own position and familiarity, as lay people, with the Examination Process and the Planning Act 2008. As such, we refute any suggestion that we have acted unreasonably in that we have *"read and take(n) note of them to the degree that it is reasonable to expect a party in (our) position and with (our) experience and resources to do so".*

2.6. In summary, we maintain that we have provided ample evidence to support our assertion that **the manner in which the Applicant behaved during the Examination was unreasonable**. Further, in accordance with the Guidance, we maintain that this may be accurately described as unreasonable in that it meets paragraph 23 of the Guidance; "***non-compliance with procedural requirements or failure by a party to substantiate a relevant part of their case",*** that this in turn gave cause for Five10Twelve Limited to commission evidence based on historical flight paths and operations and that, had the Applicant acted in a reasonable manner, it should not have been necessary for us to have incurred this expense.

3. **PART 3**

We note that, as confirmed by the ExA, in your letter of 7 April 2020, it is not necessary for us to respond to the Applicant's "*counter-claim*" in part 3 of its letter. As such we make no response save to state:

A. That we unequivocally refute the Applicant's assertions therein and our lack of reply is no admission that we agree to the contents of the same.
B. Samara Jones-Hall did not claim in her relevant representation to be a solicitor. At [RR-1754] Samara states that in September 2018, she held "*a solicitor's practicing certificate and [was] on the Rolls but [did] not currently practice law. [She], also, [did] some work for the Bar Standards Board. Before moving to Ramsgate [she] worked as a lawyer in the offshore trusts and funds industry in all three of the Crown dependencies including at a senior level for the Jersey Financial Services Commission".*
C. Ninety-two percent (92%) of the total page count of our submissions consisted of accompanying evidence including specific scientific, aviation and economic reports relevant to the examination and to the Applicant's application. The remaining 8% of the total page count had evidence embedded within the submitted documents.

Yours faithfully

[redacted] [redacted]

Directors, Five10Twelve Limited
Jason and Samara Jones-Hall