

From: [REDACTED]
To: [Manston Airport](#)
Subject: Manston Airport
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4.

Re-determination of the Application by RiverOak Strategic Partners Limited (“the Applicant”) for an Order granting Development Consent for the reopening and development of Manston Airport in Kent.

4. The Secretary of State notes that the “*Decarbonising transport: a better, greener Britain*” and the “*Jet Zero consultation: a consultation in our strategy for net zero aviation*” was published on 14 July 2021. The Secretary of State invites comments from the **Applicant** and **any Interested Party** on whether this results in any change in whether the Development would be consistent with the requirements of national policies.

In response to the SoS request I submit the following article ‘Hiding in Plane Sight’ by the Environmental Law Foundation dated 11th March 2020.

While Heathrow Airport Ltd ponders its next move in light of the historic [judgment of 27 February 2020](#), the first big test of the Government’s resolve as regards airport expansion in light of the Paris Agreement – and NetZero – is already deep into its final stages. A decision is due on the UK’s first ever airport Development Consent Order (DCO) on 18 May 2020.

This follows an announcement earlier this year – with very little fanfare – from the Department for Transport of [a delay in the Development Consent Order \(DCO\) decision](#) on Manston Airport, with plans to turn the current lorry park and former airfield into a new dedicated air cargo hub.

As this is the UK’s first ever airport DCO – the process which the Planning Act 2008 sets out for Nationally Significant Infrastructure Projects (NSIPs) – decisions made for the Manston DCO could have implications for other airport NSIPs to follow, including Gatwick, Luton and – yes – Heathrow.

Response from the media and even airport expansion and environmental campaigners has been muted. In a list of 21 airport expansion schemes around the UK highlighted by

Extinction Rebellion's call-to-action on Twitter, [posted 48 hours after the DfT announcement](#), the plans to develop Manston were completely ignored and not included in the list. Nor was it featured in [Carbon Brief's recent study of UK airports currently seeking to expand](#).

This is as surprising as it is concerning – and not just for the locals who have fought an extraordinary campaign against the developer's proposals. Buried at number 22 of the [30 issues where the Secretary of State is seeking further clarification](#) before deciding on the Manston DCO, there's the small matter of climate change. Specifically, whether the carbon emissions contribution from the airport development – proposed somewhat fancifully as “Nationally Significant” – might impact on the UK's commitment to meet Net Zero emissions by 2050.

Crucially, when the High Court initially found in favour of the Government against campaigners who launched a judicial review of the Airports National Policy Statement and Heathrow's third runway on climate change grounds, paragraph 648 of the [May 2019 judgment](#) ruled that “at the DCO stage this issue will be re-visited on the basis of the then up-to-date scientific position”. The February 2020 Court of Appeal judgment does not change this – in fact, it asserts at para 275 that “it is incumbent on the Government to approach the decision-making in accordance with the law at each stage”, (our emphasis), “not only in the current review of the ANPS or at a future development consent stage”.

Whilst there is much to celebrate in the Court of Appeal judgment of 27 February, the conclusion of the Lords Justice was very clear at para 285 that “we have not decided, and could not decide, that there could be no third runway at Heathrow”.

In essence, the recent judgment has removed – pending review – policy support for Heathrow, but DCO applications will still continue. In this respect, the DCO examination process remains our last line of defence, (judicial reviews on the Secretary of State's DCO decisions notwithstanding).

As the UK's first ever proposed airport development to go

through the DCO examination process, Manston is the first time the government's resolve will have been tested post-Heathrow judgment and on the "up-to-date scientific position" of the NetZero report, published a little over mid-way through the six month examination. Which makes the lack of attention from environmental groups and media alike all the more surprising, especially given the latest ruling and impact this may have on airport expansion schemes across the UK – including any prospective Heathrow DCO application.

Bizarrely, when the UK Planning Inspectorate set out the list of Principal Issues to be examined in the Manston DCO during the Preliminary Hearing in January last year, climate change did not even make the list, with the Examining Authority claiming it would instead "conduct all aspects of the Examination with these objectives in mind". Only the **intervention of local campaigners during that hearing** ensured climate change was added as a Principal Issue in its own right, with the necessary weight and focus that this entails.

The Manston DCO applicant, Riveroak Strategic Partners, (RSP), was represented in the latter stages of the DCO hearings by the same QC who represented Heathrow Airports Ltd during its two most recent judicial review hearings. And that set alarm bells ringing in our heads that, perhaps, there may be a bigger game at stake here, especially with the approach the Applicant took on the climate change issue during those DCO hearings.

Seeking, perhaps, to avoid any further discussion or investigation of the issue, the argument was put forward that "Government explained during those [Heathrow] judicial reviews its decision and those grounds of challenge to the Airports National Policy Statement failed," adding that "it's not the function of this examination ... to re-examine Government policy".

Essentially, the Applicant appeared to be arguing that the climate change issue as it relates to aviation emissions had already been set down by Government, decided in the original Heathrow judgment of May 2019 and needed no further examination during the DCO hearings. Needless to say, the

exact opposite approach was taken during the recent Heathrow Court of Appeal case, with the February 2020 judgment reporting at para 275 the Heathrow argument that:

“... it is unnecessary and inappropriate to grant a remedy in these proceedings because policy in the ANPS requires the applicant for development consent to provide evidence of the carbon impact of the project “such that it can be assessed against the Government’s carbon obligations” .

So how was the carbon impact and assessed against the Government’s carbon obligations during the first airport DCO? In the entire examination, only four written questions were asked by the Examining Authority specifically on the Principal Issue of climate change. Every single one of them was related to the proposed development’s approach to climate change adaptation. In other words, how the developers proposed mitigating against the impact of climate change on the airport rather than the other way around. A further written question was asked under the General and Cross Topic heading, specifically relating to energy consumption and dependency on road surface access. At no point were any questions asked relating to aviation emissions during the Examination – until the Secretary of State’s most recent question in January this year.

The lack of attention on Manston is perhaps hardly surprising from Government. On the one hand, there’s the fact that the DfT has spent millions converting the Manston site into a lorry park for Operation Brock/Stack and may not want to draw attention to the idea of now turning it back into an airport. On the other, the DfT’s often preferred airport consultants, York Aviation, **submitted reams of evidence** during the DCO process questioning the credibility of the applicant, the strength of their need case and the viability of their proposals. In response to the Secretary of State for Transport’s recent call for Comments and Further Information in its follow-up Consultation, **York Aviation again confirmed** its reports from 2013 and 2015 “do not, as was made clear in our subsequent reports, support the case for a new dedicated freight airport in Kent”.

Coming so soon after FlyBe, this has all the hallmarks of, at

best, another regional airport bail-out waiting to happen and, at worst, Grant Shapps' very own Seabourne Freight fiasco in the sky, (Skyborne Freight?).

But as the DfT comes under criticism in [yet another legal challenge](#) for a culture that has been “highly resistant to openness and transparency”, it must be said that this is not the issue here. The DCO process, for all its flaws, is predicated on these principles, with every single one of the record-breaking 1,997 documents submitted and 648 pages of questions asked made publicly available on the [UK Planning Inspectorate website](#), along with high quality recordings of every single hearing.

Yet openness and transparency are meaningless where there is an almost total lack of external scrutiny. So far, this has been the case here from anyone other than the 2,000+ local individuals and organisations who fed into the DCO process. That's ten times higher than the national average for any DCO – and the second highest ever – but the weighty voices of the larger national campaign groups and NGOs are not amongst them, save for the local branch of the [CPRE](#).

Tempting though it may be to write this off as yet more evidence that the Applicant's vision for Manston isn't nearly as “nationally significant” as they claim it to be, there is a real danger lurking.

If the Manston DCO is refused – as it most surely must be – it will be because the Applicant has failed to present a credible case. Amongst the many issues – besides the climate change/NetZero question – the Applicant provided no credible evidence of financial backing or previous airport development or operational experience, the airport site has poor surface access and previous attempts to operate commercial services – including freight – from previous incarnations of Manston Airport ended in repeated failure and closure of the site in 2014. Since then, numerous industry experts have repeatedly made clear that there is no need for a new dedicated freight airport in this corner of Kent.

This being the case, if a DCO application this wanting is granted,

it will be because we just weren't paying enough attention and let this one slip through.

This could set a dangerous precedent for all the other airport DCOs to follow – including Heathrow, Gatwick and Luton – and the environmental groups who seek to set limits on exponential airport expansion.

Having made contact with the Environmental Law Foundation (ELF), the significant issues around the proposed development and reopening of Manston Airport – and their potential impact on other airport DCOs to follow – are now being brought further into light through the very much-welcome and vital support of the organisation. With the DCO decision deadline extended until 18 May, following the Secretary of State for Transport's recent call for Comments and Further Information on a range of matters – including climate change – the ELF sought and submitted a legal opinion on this issue on behalf of local campaigners, which has now been included within their own submissions. (See ELF submission [here, from page 4-20](#)).

The importance of this is made clear at paragraph 42 of the ELF submission, which notes:

“...this is the first DCO process for an airport expansion, and will be likely to be followed by others. As such, this approach to the assessment of climate change will provide an invokable precedent” (emphasis added).

While the cost of the Manston DCO will be all too visible, breathable, smellable and audible in the historic town of Ramsgate – with 40,000 residents sitting directly under the flight path just over a mile from the runway and with overflying planes at a maximum altitude of 700 feet – the wider threat of rampant airport expansion, new airports and the environmental impact on us all is hiding in plain sight.

Submitted prior to the 17th November deadline

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