



# Manston Airport Air Freight Hub

*Reviving strategic transport infrastructure to  
maximise Global Britain's trading potential*

## Cover Letter to the Applicant's Redetermination Submission

**Project:** Manston Airport Development Consent Order  
**Document Ref:** TR020002/RED2/Cover  
**Redetermination Deadline Date:** 3 December 2021

**For the attention of Natasha Kopala**  
Secretary of State for Transport  
Department for Transport  
Great Minster House  
33 Horseferry Road  
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Our Ref  
AAT/ADW/OZP/166055.0003  
Date  
2 December 2021

**By Email [manstonairport@planninginspectorate.gov.uk](mailto:manstonairport@planninginspectorate.gov.uk)**

Dear Sir

**Redetermination of Manston Airport Development Consent Order**  
**Applicant reference: TR02000**  
**Applicant's redetermination submission - 3 December 2021 - document ref:**  
**TR020002/RED2/Cover**

The Applicant has set out in this cover letter the documents submitted for this deadline, with a brief description of their relevance for ease of reference.

However, the Applicant would first like to put on record the issues it has with the conduct of the redetermination. The Secretary of State conceded the judicial review on the sole ground that further reasons should be given for reaching a different conclusion to the Examining Authority on need in paragraphs 20 and 21 of the decision letter. The Applicant consented to the Secretary of State's decision to concede as it was understood that the re-determination process would be efficient and focused on the factors detailed at paragraphs 20 and 21 of the decision letter. The Applicant was not aware that the redetermination process would be the untimetabled and protracted exercise that has taken place. The Applicant considers that the redetermination process has taken far too long, has gone far beyond the redetermination process set out in statute and, worst of all, has not been at all directed to the conceded issue. Indeed if the Applicant had been made aware of the Secretary of State's true intentions in December 2020 the Applicant would not have consented to the Secretary of State's decision to concede.

The Department for Transport commissioned Arup, as an independent aviation assessor, to advise the Secretary of State on matters relating to the need for Manston Airport. The Applicant strongly disagrees not only with the conclusions of the Arup report but also the basis on which it was commissioned and its relevance to redetermining the application. The terms of reference under which Arup worked do not appear in their report and have only been disclosed by the Secretary of State following a Member of Parliament making a freedom of information request for this information; even then the identities of the authors of the report have been withheld on the basis that it was prepared by a team. The Applicant has

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appended the documents released under the freedom of information request to this cover letter. The anonymity of the authors runs counter to the principles of ascertaining the weight to be given to expert evidence, which must come from named and credentialed individuals. It is entirely inappropriate for weight to be given to a report where only the Secretary of State (at most) is aware of the authors' identities. This approach is contrary to established practice, as exemplified by the recent planning appeal considered by three inspectors from the Planning Inspectorate relating to London Stansted Airport.

The inspectors state at paragraph 27 of their decision letter dated 26 May 2021 that:

*“The panel was not persuaded that the conclusions in the ES and ESA were incorrect or unreliable. Indeed they **are to be preferred over the evidence of SSE on this matter, which was not prepared by a person qualified or experienced in air traffic forecasting.** Accordingly, the forecasts contained within the ES and ESA are sufficiently robust and the best available in this case”* (emphasis added)

This standard approach to applying weight to evidence that reflects the qualification and experience of the authors cannot be carried out in this case due to the failure to advise who the authors are (although a lack of relevant expertise seems patently apparent from reading the report). In contrast, the Applicant has provided evidence from suitably qualified experts, giving their names and credentials in its submissions, and it contradicts much of Arup's conclusions. Additionally, very recent evidence from industry publications further supports the findings of the Applicant's experts.

The Applicant's second main issue with the report is the basis on which it was commissioned. The terms of reference have revealed that Arup was not asked to consider paragraphs 20 and 21 of the decision letter, the very reason for conceding the judicial review. The economic, employment and education benefits that would occur should Manston Airport reopen have been ignored entirely, and instead, Arup has produced a narrowly focused demand study. Paragraph 4.3 of the Service Description provided to Arup, is misleading and imprecise. Arup are instructed to *“take account of any changes that may have occurred since the close of the examination as a result of the Covid-19 pandemic, Brexit or because of any other factors”*. First, Arup only considered changes to demand in relation to Covid-19, Brexit and the other factors they identified, rather than need. Secondly, the scope of the “other factors” should have been explicitly mentioned as those set out in paragraphs 20 and 21 of the decision letter. Instead, this vague description left it to Arup's judgement, and they included e-commerce, changes to aircraft design, impacts of GDP and resilience, meaning the reason for conceding the judicial review was absurdly overlooked.

Thirdly, the Applicant is concerned by the repeated use of the term “viability” in the Service Description and Prior Information Notice. The “viability” of the re-opening of Manston Airport is not an appropriate consideration in this redetermination, and in any event would have required interrogating the Applicant's business model, which was not done. The Applicant reiterates that the re-opening of Manston Airport makes no reliance on any public funding. It will constitute considerable private, inward investment in UK infrastructure, consistent with the vision of an independent Global Britain. The entire risk relating to the success of the project is borne by the Applicant and its investors alone. The Applicant remains justifiably confident that the project will succeed, with investors remaining convinced despite the uncertainty caused by the development consent being redetermined. The amount of time and money that has been invested in the project now stands at over £40m and stands testament to the confidence of the Applicant

in the viability and deliverability of the project. A considerable amount has been spent just with managing the unnecessary delays.

Even the focus on need in commissioning the Arup report wrongly elevates its status, which Arup compounded by incorrectly equating need with demand. Need would have been more relevant had the Applicant been relying on public funding or compulsory acquisition powers, but this project is entirely privately-funded and the Applicant has owned the Airport since just before the Examining Authority's examination ended on 9 July 2019.

As such, the Arup report does nothing to assist with the exercise of giving more detailed reasons for disagreeing with the Examining Authority but instead starts from the Examining Authority's conclusions, restricts its analysis to responses to the first consultation and ignores the abundant evidence that subsequent events have strengthened the Applicant's case.

The timetabled decision date for this application was 19 January 2020. The examination ran to schedule, and included a series of tight deadlines that the Applicant and interested parties adhered to. The Examining Authority provided their recommendation report to the Secretary of State on 18 October 2019, in line with the timetable. However, the decision was delayed by six months and consent was eventually granted on 9 July 2020. The Secretary of State conceded the judicial review on 1 December 2020 and this resulted in the DCO being quashed by the High Court on 15 February 2021, more than nine months ago, compared with three months for the statutory time limit for the Secretary of State to take a decision once it has received the recommendation of the Examining Authority.

Given this expected timescale, the narrow scope of the issues being considered and the familiarity that the Secretary of State has with the project, the Applicant is unable to see any justification for the continued delay for the redetermination and in particular urges that a timetable be published to give some certainty to all those involved. As a result of the freedom of information request, the Applicant has become aware of a timetable set out to Arup in the Department for Transport's Service Description. The total days allocated to the process of reviewing evidence and producing a report ranges from 26 to 56 days. In reality, this process has taken over 7 months, with no indication of any timelines given to the Applicant or interested parties. On the other hand, the Applicant and others have been expected to respond to documents, published without warning, and provide comments within short deadlines. It is entirely inappropriate to place such burdens on those involved and not place any time pressures on those commissioned by the Department for Transport. This impropriety is exacerbated when the quality of work produced after such a delay is of such poor quality and misdirected from the issue that it ought to have remedied.

The Applicant notes that in its review of the consultation responses submitted on 9 July 2021, regardless of whether responses supported or opposed the re-opening of Manston, the delay to the determination of the decision is regarded, almost unanimously, as inappropriate. It is very frustrating that redetermination has not been completed and no steps have been taken to provide certainty to all those who have actively participated in this process.

The Applicant, like many interested parties, has patiently participated in the redetermination process but is unable to understand why it has been so protracted. The lack of timetable is entirely inconsistent with the philosophy of the DCO regime and the Planning Act 2008. This procedural uncertainty is

unacceptable for any scheme being redetermined, not just for applicants but to all interested parties. We note that the three other decisions that have been quashed are in the same uncertain position as Manston Airport.

This delay is not taking place in a vacuum, it has real world effects and is prejudicial to the Applicant and the UK economy. It is deterring and confusing investors, particularly from overseas, who had embarked upon their proposal to invest in the UK because of the certainty of timings of the DCO regime but can no longer rely upon it. In general, further, delays mean that responses have to be updated to take into account changes in policy in this field. With every passing day evidence and commentary are published, especially within the trade press for the aviation industry, which further strengthens the Applicant's position. In addition, even the Department for Transport can be seen to be promoting the UK aviation industry in the trade press. Most recently, the November issue of Flight International<sup>1</sup> reported on the appearance of the Secretary of State for Transport, Grant Shapps, as a keynote speaker at "Airlines 2021 - Rebuilding the UK's role in global aviation". These forward-facing industry journals provide the evidence that is severely lacking from Arup's draft report, undermines the draft report's analysis, and strongly supports the Applicant's position and the original decision of the Secretary of State that development consent should be granted. . As such, the revised reasons for granting the DCO, especially relating to policy and need, should be easier to set out than for the original determination, making the continued delay even more inappropriate.

Given the current economic uncertainty, the government is surely keener than ever for inward investment into the UK, but through its own actions is making this less likely to happen. The delay also causes an unnecessary harmful local impact. Employment is more precarious than ever, and has been exacerbated by the end of the furlough scheme, and yet there is undue delay to this development which would bring thousands of high quality construction jobs and more permanent jobs.

Through no fault of the Applicant almost two years have passed since the decision was initially due to be taken on 9 January 2020. The application is now in an indefinite decision stage with the prospect of many months more before the decision is retaken. The above points should be given serious consideration and responded to accordingly so as to maintain confidence in this regime, particularly among private inward investors into the UK such as RiverOak's. The supposed certainty of timing of the Planning Act 2008 regime is one of its main strengths for investors and this should not be undermined.

The Applicant urges the Secretary of State to publish a timetable for the redetermination process, as this will at least provide some certainty that a decision will be made shortly. This would help restore faith in the DCO regime, a regime which was founded on the principle of certainty of timescales and transparency. The Applicant considers that the redetermination process has, to date, been carried out improperly.

The Applicant has already written three times to the Secretary of State during the redetermination period about the delay and uncertainty and has not had any replies. It will not hesitate to seek judicial remedies

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<sup>1</sup> Flight International Magazine - November 2021, Page 79

or involve the National Audit Office, if the delay, wrongly-focused approach (deliberate or not), uncertainty and lack of engagement continue.

**Applicant's submissions for the second re-determination deadline**

The Applicant's submission, for this deadline, comprises the following in addition to this letter:

**1 Applicant's response to the Independent Aviation Assessor's Draft Report**

- 1.1 As requested by the Department for Transport, the Applicant has commented on the Independent Aviation Assessor's Draft Report. The response is submitted with reference **TR020002/RED2/Arup** and the below associated appendices.
- 1.2 Appendix 1 sets out the inaccuracies with submissions from York Aviation, on behalf of Jenny Dawes, and Alan Stratford Associates, on behalf of Ramsgate Town Council. The inaccurate information is quoted in the Independent Aviation Assessor's Draft Report. These inaccurate figures are derived from an incomplete dataset. This Appendix 1 is submitted with document reference **TR020002/RED2/Arup/APP1**.
- 1.3 Appendix 2 sets out the Applicant's concern with the independence of Arup, the appointed independent aviation assessor. This Appendix 2 is submitted with document **TR020002/RED2/Arup/APP2**.
- 1.4 Appendix 3 sets out an analysis of a selection of articles from the reputable aviation trade and industry press. These articles support the need for re-opening Manston Airport. This Appendix 3 is submitted, with document reference **TR020002/RED2/Arup/APP3**.
- 1.5 Appendix 4 contains a variety of articles, in full, that demonstrates a wealth of evidence that Arup have stated does not exist. The intention is to inform the Secretary of State about the abundance of evidence available on the matter of need that has not been considered by the Draft Report, despite going to the core of the issue that the Draft Report should be addressing. The Applicant hopes that this document will assist the Secretary of State to form an informed view as to the need for re-opening Manston Airport, and that he may benefit from this evidence as he considers the full scope of need. This Appendix 4 is submitted, with document reference **TR020002/RED2/Arup/APP4**.
- 1.6 As the Planning Inspectorate no longer permits the submission of hyperlinks, the Applicant has collated references within the main response to the Independent Aviation Assessor's Draft Report, and submitted references in one Appendix 5, with document reference **TR020002/RED2/Arup/APP5**.
- 1.7 Appendix 6 is a letter of support from Midnight Zulu airline, who have set out why the reopening of Manston Airport would aid their cargo operation and would result in benefits for the wider public and the environment and why Manston's location is particularly suitable. Appendix 6 is submitted with document reference **TR020002/RED2/Arup/APP6**.

## **2 Applicant's Redetermination Submission**

- 2.1 As requested by the Department for Transport, the Applicant has commented on the statement of matters and the comments requested by the Secretary of State, in paragraphs 7 to 9 of the letter dated 21 October 2021. The response is submitted with reference **TR020002/RED2/SoSReq** and the below associated appendices.
- 2.2 Appendix 1 is a technical note which the Applicant has produced in response to comments submitted by Natural England and paragraph 8, bullet point 3 of the Secretary of State's letter dated 21 October 2021. Appendix 1 details the effects on air quality impacts of updated Air Pollution Information Service data. This Appendix 1 has been submitted with document reference **TR020002/RED2/SoSReq/APP1**.
- 2.3 Appendix 2 is a technical note which the Applicant has produced in response to paragraph 8, bullet point 5 of the Secretary of State's letter dated 21 October 2021. Appendix 2 details the consideration that has been given to reach the conclusion that the assessment of the impact on the historic environment remains adequate. This Appendix 2 has been submitted with document reference **TR020002/RED2/SoSReq/APP2**.
- 2.4 As the Planning Inspectorate no longer permits the submission of hyperlinks, the Applicant has collated references within the Applicant's Redetermination Submission, and submitted references in one Appendix 3, with document reference **TR020002/RED2/SoSReq/APP3**.
- 2.5 As requested by the Secretary of State, in paragraph 8, bullet point 6 of the letter dated 21 October 2021, the Applicant submits an updated clean version of the Book of Reference as a document with reference **TR020002/RED2/SoSReq/BoR.**, and a tracked version with reference **TR020002/RED2/SoSReq/BoR(T)** accompanied by a document scheduling the changes that have been made with reference **TR020002/RED2/SoSReq/BoRSoC**.

## **3 Other documents**

- 3.1 The Applicant submits further documents, as set out below, to evidence the need for reopening Manston Airport. These documents set out that capacity is constrained in the South East of England and details the impact of reopening of Manston Airport on employment and economic growth. The Applicant considers these documents to add further weight to the case for the reopening of Manston Airport and the need for this application to be granted consent.

## **4 International Bureau of Aviation Report**

- 4.1 The Applicant has appointed the International Bureau of Aviation (IBA), a leading aviation consultancy, to undertake an independent and updated assessment on whether additional air cargo capacity is required in the south-east of England. The IBA report supports the Applicant's original case and demonstrates an analysis of the need for Manston, rather than a demand study. This IBA report is submitted with document reference **TR020002/RED2/IBA**.

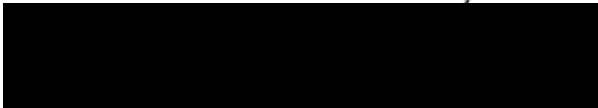
**5 Manston Airport Skills Need Report**

5.1 The Applicant commissioned Steve Matthews, an independent researcher and consultant with particular expertise in learning & skills, social economy and sustainability, to report on the need for the skills aligned to the creation of jobs at Manston Airport and in the immediate supply chain. This report is submitted, with document reference **TR020002/RED2/SNR.**

**6 Manston Skills Need Forecasting Report**

6.1 This report sets out further detail on the overall anticipated scale and nature of demand for skills among the businesses that are expected to be based at Manston Airport as part of the proposed re-development by the Applicant. This report is submitted, with document reference **TR020002/RED2/SNFR.**

Yours faithfully



For and on behalf of BDB Pitmans LLP

