

For the attention of Naomi Williams

Secretary of State for Transport
Department for Transport
Transport Infrastructure Planning Unit
Great Minster House
33 Horseferry Road
London SW1P 4DR

Our Ref
AAT/ADW/166055.0003
Date
30 June 2022

Dear Secretary of State

Manston Airport DCO Redetermination Delay

As you know this firm acts for RiverOak Strategic Partners, the Applicant for the Manston Airport Development Consent Order. We have written to the DfT, on four separate occasions, to convey our concerns in relation to the lack of procedural propriety within the redetermination process. However, we have yet to receive a response or even an acknowledgement of receipt of our letters.

I am writing once again to put on record our exasperation at the lack of transparency of the redetermination process and to emphasise the effect that the delay in redetermining the application is having on the viability of a scheme which would lead to much needed job creation and inward investment in the UK of hundreds of millions of pounds, requiring absolutely no public funding.

The continued delay without any timetable makes a mockery of the supposedly predictable Planning Act 2008 process. In relation to Sizewell C, the Secretary of State for Business, Energy and Industrial Strategy cautioned that *'developer confidence in the certainty of timings under the Planning Act process for Nationally Significant Energy Infrastructure Projects is not eroded'*. This developer's confidence has been entirely eroded as a result of the actions of the Secretary of State for Transport.

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 was eventually taken on 9 July 2020. The Secretary of State conceded the judicial review in November 2020; it was not formally brought to a close until February 2021 and it appears that nothing was done in that intervening time. The quashing on 15 February 2021 was more than sixteen months ago, more than five times the statutory time limit for the Secretary of State to take a decision once it has received the recommendation of the Examining Authority.

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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. The Applicant notes that, regardless of whether submissions supported or opposed the re-opening of Manston, the delay to the determination of the decision is regarded, almost unanimously, as inappropriate by interested parties. It is very frustrating that redetermination has not been completed and no steps have been taken to outline a timetable for the redetermination process. There has been no attempt at providing certainty to all those who have actively participated in this process.

The Applicant has patiently participated in the redetermination process but is unable to understand why it has been so protracted. This is entirely inconsistent with the philosophy of the DCO regime and the Planning Act 2008. The lack of procedural certainty is unacceptable for any scheme being redetermined, not just for applicants but to all interested parties. It is irrefutable that throughout the redetermination process the Applicant and interested parties have been held to a more onerous standard than the Secretary of State. The Applicant and interested parties have repeatedly been given tight deadlines - with no prior warning – as set out below.

<u>Request made</u>	<u>Deadline</u>	<u>Days</u>	<u>Comments</u>
11 June 2021	9 July 2021	29 days	Statement of matters requested information on 8 broad topics.
21 October 2021	19 November 2021	30 days	Deadline extended to 3 December 2021 due to Arup / DfT error. The Applicant reviewed all the responses submitted by interested parties and thoroughly analysed and responded to the draft report produced by Arup. Arup were given 6 months' to produce this draft report and were paid £150,000 of public funds.
11 March 2022	28 March 2022	18 days	Department for Transport requested information on the actions taken by the Department for Transport when they temporarily used the site as an Inland Border Facility in order to assist the government in tackling cross-border delays in Dover and Folkestone and aid the UK's supply chain resilience post-Brexit.

The short deadlines summarised above are in direct contrast to the long periods of time that it has taken for the Secretary of State to announce information as to the next step of the redetermination process. On average, the Department for Transport has taken 3 times as long as the deadlines they've set for interested parties, to produce substantive information.

<u>Date of information provide to DfT</u>	<u>Date of DfT's next substantive action</u>	<u>Days</u>	<u>Comments</u>
15 February 2021	11 June 2021	117 days	A statement of matters was published which identified what further information should be provided. The identified topics were broad and included " <i>any other matters arising since 9 July 2019 which Interested Parties consider are material for the Secretary of State to take into account in his re-determination of the application.</i> "
9 July 2021	21 October 2021	105 days	A letter was published on 30 July 2021 which attempted to set out the next steps of the process but merely stated that submissions had been published and that an independent report would be shared " <i>in due course</i> ". That draft report was then published almost 3 months later on 21 October 2021. The Applicant and interested parties, as noted above, were given just over a month to respond to this.
3 December 2021	11 March 2022	99 days	A further request was published which asked for information on 2 discrete points. One of which related to the actions that the DfT had carried out on site.
28 March 2022	1 July 2022	95 days (ongoing)	The Applicant, and interested parties, are awaiting further information as to what the next steps of the redetermination process are and when they will take place.

The Applicant and interested parties have worked tirelessly, with no advance notice, to meet the arbitrary deadlines set. The Secretary of State has not held itself to any timeframe and has published letters at

random intervals, with at times trivial requests, including a request to the Applicant for information relating to the actions of the DfT itself.

This delay continues to frustrate and risk the loss of current investors and deter future ones; the existing investors 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. Further, delays are costing the Applicant money every day. This is particularly frustrating as policy changes and the situations at other airports continue to evolve to provide more support to the re-opening of Manston Airport. 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.

Given the current economic uncertainty, the government is surely keener than ever for inward investment into the UK, but through its own actions is jeopardising this. The delay also causes an unnecessary harmful local impact. Employment is more precarious than ever, and with inflation rising and the UK economy shrinking, it is absurd that there is such a lengthy delay to this development which would bring thousands of high quality construction and more permanent jobs.

Through no fault of the Applicant nearly two and a half years have passed since the decision was initially due. The Applicant is now in an indefinite decision stage with no idea of when the decision will be retaken. The Applicant urges that a decision be made by 21 July 2022, while Parliament is sitting, to avoid yet another lengthy delay

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. 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.

At the very least, 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 in a reasonable time rather than the Applicant resorting to refreshing the PINS website several times a day. This would help restore faith in the DCO regime, a regime which was founded on the principle of certainty of timescales and transparency.

Our clients reserve the right to publish this letter and any reply.

Yours sincerely

Angus Walker
Partner
For and on behalf of BDB Pitmans LLP

