

# **MANSTON AIRPORT DEVELOPMENT CONSENT ORDER 2022**

## **APPLICATION FOR A NON-MATERIAL CHANGE**

### **SUPPORTING STATEMENT**

#### **1 Introduction**

- 1.1 This statement is made in support of the application by RiverOak Strategic Partners Limited (the Applicant) for a non-material change to the Manston Airport Development Consent Order 2022 (DCO). The application is made pursuant to Schedule 6 of the Planning Act 2008 and Part 1 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011, as amended (2011 Regulations).

#### **2 Planning Background**

- 2.1 In August 2022, the Secretary of State for Transport made the DCO authorising the reopening and redevelopment of Manston Airport into a dedicated air freight facility able to handle at least 10,000 air cargo movements per year, whilst also offering passenger, executive travel, and aircraft engineering services. The DCO came into force on 8 September 2022.
- 2.2 Article 9 (Guarantees in respect of payment of compensation, etc.) of the DCO includes the value of the main airport site as part of a security figure. However, since that Article was drafted, the Applicant has acquired the main airport site through a voluntary agreement with its former owner. This occurred at the end of the examination of the DCO and prior the DCO being made. As a result, a correction is required to reflect the change of security figure that is needed. The Applicant has had an up-to-date valuation carried out by CBRE and this figure is reflected in the correction that is being applied for.
- 2.3 The Applicant has also separately identified a drafting error in Article 21 (Time limit for exercise of authority to acquire land compulsorily) of the DCO.

### **3 Corrections**

- 3.1 The Application comprises of two corrections to the DCO:
- 3.1.1 a non-material change to amend the security figure at Article 9(1)(a) from £13.1 million to £6.2 million to reflect the Applicant's acquisition of the main airport site prior to the making of the DCO; (Non-Material Change 1) and
  - 3.1.2 a non-material change to Article 21(3) to confirm that the Applicant's time limit for exercising its compulsory acquisition powers are limited to one year after either the DCO comes into force or the outcome of any challenge, rather than one year after the DCO comes into force and immediately after the outcome of any challenge (Non-Material Change 2).
- 3.2 Non-Material Change 1 replaces the £13.1 million figure in Article 9(1)(a). As the Applicant set out during examination of the DCO, this figure is made up of:
- 3.2.1 a compensation figure for compulsory acquisition;
  - 3.2.2 a figure for noise mitigation measures; and
  - 3.2.3 a contingency.
- 3.3 The new figure of £6.2 million includes a revised compensation figure for compulsory acquisition (£1.1 million) but does not interfere with the amount set aside for noise mitigation measures which remains at £4.35 million. A contingency remains built into the £6.2 million figure.
- 3.4 Non-Material Change 2 relates to a drafting error. The Applicant revised its time limit to exercise compulsory acquisition powers from the usual five-year period found on DCOs to one year. The Applicant did so to provide affected persons a greater degree of certainty that compulsory acquisition would take place in an expeditious way. However, due to a drafting error, Article 21(3) could be read as requiring the Applicant to exercise powers immediately on determination of any challenge to the DCO and not within one year of any determination, which is what was intended.

## **4 Non-Material Change**

- 4.1 There is no statutory definition of what constitutes a material or non-material amendment for the purposes of Schedule 6 of the Planning Act 2008 and Part 1 of the 2011 Regulations. However, the Government has issued guidance on this point and this is outlined in the Department for Communities and Local Government “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015).
- 4.2 Paragraphs 9 – 16 set out the four characteristics which indicate whether a proposed change to a DCO is material or non-material. The following characteristics are stated to indicate that an amendment is more likely to be considered ‘material’:
- 4.2.1 A change should be treated as material if it would require an updated Environmental Statement (from that at the time the original DCO was made) to take account of new, or materially different, likely significant effects on the environment.
- 4.2.2 A change is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change.
- 4.2.3 A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land that was not authorised through the existing DCO.
- 4.2.4 The potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material.
- 4.3 Each of these is considered in turn below, in light of the changes being applied for.
- 4.3.1 Environmental Statement
- (a) The change to the security figure value is a factual correction which has no bearing on any environmental effects that the project may have.
- (b) Similarly, amending the time limit for exercising compulsory acquisition does not give rise to any new environmental effects.
- (c) No updated environmental statement is needed.
- 4.3.2 Habitats Regulations Assessments
- (a) No updated Habitats Regulation Assessment is required as a result of either of the two corrections being applied for.
- (b) No European Protected Species licence is required as a result of either of the two corrections being applied for.

#### 4.3.3 Compulsory Acquisition of Land

- (a) There is no change in the land, interest in or rights over land being acquired, to that presented in the DCO. The security figure is being updated to reflect the position that some land was acquired voluntarily rather than through compulsory acquisition before the DCO was granted but the extent of the compulsory acquisition remains the same. The extent of land remains the same as show in the land plans as certified in Schedule 10 of the DCO. The Land Plans remain on the Planning Inspectorate's website (Examination Library reference: REP11-015).

#### 4.3.4 Impact on local people

- (a) There will be no material change in impact on local people as a result of the proposed changes.

## 5 Consultation

5.1 In accordance with regulation 7A of the 2011 Regulations the Applicant must provide the Secretary of State with:

5.1.1 a copy of the notice referred to in regulation 6; and

5.1.2 a statement setting out details of the steps the applicant has taken to comply with the requirements of regulations 6 and 7.

5.2 The notice referred to in regulation 6 is appended to this document at **Appendix 1**. A copy has been provided to the Planning Inspectorate for publication on their Manston Airport project webpage.

5.3 This section sets out details of the steps taken by the Applicant to comply with the requirements of regulations 6 and 7. A consultation and publicity statement including copies of newspaper notices (as published) will be submitted once all newspaper notices have been published.

5.4 The 2011 Regulations set out, in regulations 6 and 7, how a non-material change application is to be published and consulted on. Regulation 6 requires a notice of non-material change application to be published for two consecutive weeks in one or more local newspapers and in any other publication necessary to ensure that notice of the application is given in the vicinity of the land. The Regulation 6 Notice will be published in the following newspapers on the following days:

5.4.1 East Kent Mercury Series: **Wednesday 12 July, Wednesday 19 July**

(a) East Kent Mercury (Deal & Sandwich)

(b) Dover Mercury

5.4.2 Kentish Gazette Series: **Thursday 13 July, Thursday 20 July**

(a) Kentish Gazette

(b) Faversham News

(c) Herne Bay Gazette

(d) Whitstable Gazette

5.4.3 Isle of Thanet Gazette: **Friday 14 July, Friday 21 July**

5.4.4 London Gazette: **Wednesday 12 July** (publication required only once)

5.5 As set out above, copies of these newspaper notices will be provided to the Secretary of State once published.

5.6 Regulation 6(2)(h) requires a minimum of 28 days for a response following the date when the notice is last published. The Applicant's consultation period is between 12 July 2023 and 25 August 2023 and responses need to be received by 11:59pm on 25 August 2023. The Applicant

has provided additional time, beyond the minimum prescribed by regulation 6, in order to assist interested parties.

5.7 Regulation 7 sets out who is to be consulted, being:

5.7.1 each person for whose benefit the development consent order, to which the application relates, has effect;

5.7.2 each person that was, in accordance with section 56 of the Planning Act 2008, notified of that application for the development consent order which is the subject of the application; and

5.7.3 any other person who may be directly affected by the changes proposed in the application.

5.8 Regulation 7(3) states that:

5.8.1 The applicant need not consult a person or authority specified above if they have obtained the written consent of the Secretary of State

5.9 On 24 May 2023, the Applicant submitted a request to the Secretary of State to only consult those still subject to compulsory acquisition powers. On 13 June 2023, the Secretary of State approved the Applicant's request (**Appendix 2**)

5.10 The Applicant confirms that it will be consulting with those subject to compulsory acquisition powers through the sending of individual letters (**Appendix 3**). The letters appended copies of the regulation 6 notice (**Appendix 1**). All letters made clear that the consultation would run between 12 July 2023 and 25 August 2023 and responses needed to be received by 11:59pm on 25 August 2023.

5.11 The Applicant further confirms that while it does not consider there to be any other person who would fall within the scope of regulation 7 (outside of those on the list approved by the Secretary of State), any other party would have the opportunity to comment as a result of the publication of the newspaper notices specified above.

## **6 Conclusion**

- 6.1 The Applicant is seeking to amend the Manston Airport DCO to reflect its acquisition of the main airport site prior to the making of the DCO, and to correct an error in relation to the timing for the compulsory acquisition of land for the remainder of the site.
- 6.2 Consideration has been given to the tests outlined in the Department for Communities and Local Government “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015). It has been explained and demonstrated that the proposed amendments would be non-material in nature due to there being:
- 6.2.1 no new, or materially different, likely significant effects on the environment that would require an updated Environmental Statement being produced since the original DCO was made;
  - 6.2.2 no need for a Habitats Regulations Assessment or an additional licence in respect of European Protected Species;
  - 6.2.3 no change in the compulsory acquisition of any land, or an interest in or rights over land that was not authorised through the existing DCO; and
  - 6.2.4 no impact on local people as a result of the amendments.

**APPENDIX 1**  
**COPY OF REGULATION 6 NOTICE**



## **SECTION 153 PLANNING ACT 2008**

### **REGULATION 6 OF THE INFRASTRUCTURE PLANNING (CHANGE TO, AND REVOCATION OF, DEVELOPMENT CONSENT ORDERS) REGULATIONS 2011 (AS AMENDED)**

#### **NOTICE OF APPLICATION TO MAKE A NON-MATERIAL CHANGE TO THE FOLLOWING DEVELOPMENT CONSENT ORDER**

#### **THE MANSTON AIRPORT DEVELOPMENT CONSENT ORDER 2022 (S.I. 2022/922)**

#### **PLANNING INSPECTORATE REFERENCE: TR020002**

**NOTICE IS HEREBY GIVEN** that RiverOak Strategic Partners Ltd (“RiverOak”) c/o BDB Pitmans, One Bartholomew Close, London EC1A 7BW, is submitting an application (“the Application”) to the Secretary of State for Transport under Regulation 4 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended), for a non-material change to be made to the Manston Airport Development Consent Order 2022 (“the DCO”). The Planning Inspectorate reference number is TR020002.

The DCO granted consent on 18 August 2022 to RiverOak Strategic Partners Limited to undertake works to redevelop Manston Airport in Thanet, Kent and to carry out all associated works including to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The DCO also includes provisions in connection with the maintenance and operation of the authorised development.

#### **Summary of the Main Proposals**

The Application seeks a non-material change to the DCO to amend articles 9 (Guarantees in respect of payment of compensation, etc.) and 21 (Time limit for exercise of authority to acquire land compulsorily) as follows:

1. a non-material change to amend the security figure at Article 9(1)(a) from £13.1 million to £6.2 million to reflect RiverOak’s acquisition of the main airport site prior to the making of the DCO; and
2. a non-material change to Article 21(3) to confirm that RiverOak’s time limit for exercising its compulsory acquisition powers are limited to one year after either the DCO comes into force or the outcome of any challenge, rather than one year after the DCO comes into force and immediately after the outcome of any challenge.

#### **Copies of Application Documents**

The Application and its accompanying documents and plans showing the nature and location of the land concerned are available to view electronically and download, free of charge, on the project page of the Planning Inspectorate’s National Infrastructure Planning website, being a website maintained by or on behalf of the Secretary of State, and can be found under the tab “Documents” at:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/manston-airport/>

The documents will remain available until at least Friday 25 August 2023.

Further information regarding the Application and its accompanying documents may be obtained from the Applicant by using the following contact details:

Email: ConsultationManston@bdbpitmans.com

Telephone: +44 (0)754 882 5642

Post: FAO RiverOak  
BDB Pitmans LLP  
One Bartholomew Close,  
London  
EC1A 7BL

A free digital copy of the Application documents can be obtained by writing or sending an email to the Applicant using the contact details above. Alternatively, a paper copy can be obtained, but a charge of £100 will be made.

### **Making representations about the Application**

Any person may make representations on the proposed non-material change to the Secretary of State by email to:

[manstonairport@planninginspectorate.gov.uk](mailto:manstonairport@planninginspectorate.gov.uk) or by post to National Infrastructure Planning, The Planning Inspectorate, Temple Quay House, Temple Quay, Bristol, BS1 6PN, quoting reference TR020002. Should you have any difficulty in submitting a representation, please contact the Planning Inspectorate at either [manstonairport@planninginspectorate.gov.uk](mailto:manstonairport@planninginspectorate.gov.uk) or by telephone on 0303 444 5000.

**The deadline for receipt of representations is 11.59pm on 25 August 2023.**

Please note that any submitted representations to the Planning Inspectorate may be published on the National Infrastructure Planning website for the Application and will be subject to their privacy policy which can be viewed at:

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notice/customer-privacy-notice>

BDB Pitmans LLP  
One Bartholomew Close, London, EC1A 7BL  
Solicitors acting on behalf of RiverOak Strategic Partners Ltd

12 July 2023

**APPENDIX 2**

**SECRETARY OF STATE LETTER DATED 13 JUNE 2023**



Department  
for Transport

Gareth Leigh  
Head of the Transport Infrastructure Planning Unit  
Department for Transport  
c/o Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Enquiries:

E-mail: [TRANSPORTINFRASTRUCTURE@dft.gov.uk](mailto:TRANSPORTINFRASTRUCTURE@dft.gov.uk)

Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)  
13<sup>th</sup> June 2023

Angus Walker  
Partner  
BDB Pitmans  
One Bartholomew Close  
London  
EC1A 7BL

Dear Mr Walker,

## **PLANNING ACT 2008: PROPOSED NON-MATERIAL CHANGE TO THE MANSTON AIRPORT DEVELOPMENT CONSENT ORDER 2022**

### **REGULATION 7(3) OF THE INFRASTRUCTURE PLANNING (CHANGES TO, AND REVOCATION OF, DEVELOPMENT CONSENT ORDERS) REGULATIONS 2011 - WRITTEN CONSENT FROM THE SECRETARY OF STATE FOR NOT CONSULTING A PERSON OR AUTHORITY**

1. Thank you for your email of 24<sup>th</sup> May 2023, and attached documents which provided details of the proposed application to amend The Manston Airport Development Consent Order 2022 (“the 2022 Order”) and your intended approach to consultation.
2. The Secretary of State notes that the amendments that will be sought through the proposed application correct article 21(3) setting out the deadline for the exercise of compulsory acquisition powers and the monetary value given in article 9(1)(a), which does not currently reflect the acquisition of the main airport site by agreement at the end of the examination.
3. Your email requested the Secretary of State’s consent for a limited consultation exercise and set out in Table 1 a list of parties you propose to consult on the non-material change application. The email explains the reasons why these parties should be consulted, and so implies why others should be excluded.
4. The Secretary of State has considered your request under regulation 7(3) of the Infrastructure Planning (Changes to, and Revocation of, Development Consent;

Orders) Regulations 2011 (as amended) (“the 2011 Regulations”). The Secretary of State considers that those parties listed in Table 1 accurately represent those which should be consulted, in that they are still subject to compulsory acquisition powers and include Thanet District Council and Kent County Council. Had those Councils not been subject to compulsory purchase powers, he would in any case have requested that they be consulted.

5. The Secretary of State agrees that other consultees previously involved in the process need not be consulted as they are not directly affected either because the proposed amendments will not affect their interests.

6. Accordingly, the Secretary of State gives written consent for the consultation to proceed in accordance with the details set out above, under regulation 7(3) of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.

7. In taking this decision the Secretary of State notes that while those persons not proposed to be consulted on the non-material change application will not be consulted directly in relation to the change proposals, the Application will be publicised in line with the requirements in regulation 20 of the 2011 Regulations.

8. Finally, the Secretary of State’s written consent in this matter should not be taken as indicating approval for any aspects of the proposed changes to the 2022 Order which fall to him for consideration and determination, or whether the proposed changes will be regarded as material or not.

Yours sincerely,

Gareth Leigh

**APPENDIX 3**  
**LETTER TO CONSULTEES**



**For enquiries -**

**Email: [ConsultationManston@bdbpitmans.com](mailto:ConsultationManston@bdbpitmans.com)**

**Tel: +44 (0)754 882 5642**

**Date: 12.07.2023**

Dear Sir or Madam

**The Manston Airport Development Consent Order 2022 (the DCO)**

**Section 153 of the Planning Act 2008 (the 2008 Act)**

**Regulation 6 of the Infrastructure, Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as Amended) (the 2011 Regulations)**

**Consultation on an application for a Non-Material Change to the DCO**

On behalf of our client, RiverOak Strategic Partners Ltd (**RiverOak**), we enclose a notice of an application for a proposed non-material change to the Manston Airport Development Consent Order 2022. We are serving the enclosed notice upon you as you were previously consulted in relation to the application for the DCO in accordance with section 56 of the Planning Act 2008.

In August 2022, the Secretary of State for Transport made the DCO authorising the reopening and redevelopment of Manston Airport into a dedicated air freight facility able to handle at least 10,000 air cargo movements per year, whilst also offering passenger, executive travel, and aircraft engineering services.

Since the DCO came into force on 8 September 2022, RiverOak has been reviewing the drafting of the DCO. RiverOak acquired the main airport site through a voluntary agreement with its former owner in 2019. However, this acquisition was not reflected in the drafting of the DCO which still included the value of the main airport site as part of a security figure in Article 9 (Guarantees in respect of payment of compensation, etc.) of the DCO. RiverOak has separately identified a drafting error in Article 21 (Time limit for exercise of authority to acquire land compulsorily) of the DCO. As a result of this review, RiverOak is now seeking consent from the Secretary of State to make a non-material change to the DCO (the **Application**).

The Application comprises of two corrections to the DCO:

- a) a non-material change to amend the security figure at Article 9(1)(a) from £13.1 million to £6.2 million to reflect RiverOak's acquisition of the main airport site prior to the making of the DCO; and
- b) a non-material change to Article 21(3) to confirm that RiverOak's time limit for exercising its compulsory acquisition powers are limited to one year after either the DCO comes into force or the outcome of any challenge, rather than one year after the DCO comes into force and immediately after the outcome of any challenge.

RiverOak is carrying out consultation on this application **between 12 July 2023 and 25 August 2023**. During this time, copies of the application documents can be viewed under the "Documents" tab on the Planning Inspectorate's website at - <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/manston-airport/>. This is a website maintained on behalf of the Secretary of State by the Planning Inspectorate.

The following documents will be made available on the website:

- Supporting Statement
- The draft Amendment Order
- Application Notice
- Consultation and Publicity Statement (following publication of all newspaper notices)

Please send any representations about the application to the Planning Inspectorate (on behalf of the Secretary of State) by email to [manstonairport@planninginspectorate.gov.uk](mailto:manstonairport@planninginspectorate.gov.uk) or by post to National Infrastructure, The Planning Inspectorate, Temple Quay House, Bristol, BS1 6PN, quoting reference TR020002. Should you have any difficulty in submitting a representation, please contact the Planning Inspectorate at either [manstonairport@planninginspectorate.gov.uk](mailto:manstonairport@planninginspectorate.gov.uk) or 0303 444 5000. Please also quote reference TR020002 on any correspondence.

Any enquiries on the documents accompanying the Application can be sent to RiverOak by email [ConsultationManston@bdbpitmans.com](mailto:ConsultationManston@bdbpitmans.com) or by leaving a voicemail at +44 (0)754 882 5642.

**The deadline for receipt of representations is 11:59pm on 25 August 2023**

Yours faithfully

A handwritten signature in black ink that reads "BDB Pitmans LLP". The signature is written in a cursive, flowing style.

**BDB Pitmans LLP**