DIRECTORATE OF PLACE

Please ask for: Iain Livingstone
Direct Line: [redacted]
Email: [redacted]
Date: 18th August 2023

By email - manstonairport@planninginspectorate.gov.uk

THANET DISTRICT COUNCIL RESPONSE TO CONSULTATION ON NON-MATERIAL CHANGE TO MANSTON AIRPORT DEVELOPMENT CONSENT ORDER

Dear Sir/Madam,

Thank you for providing the opportunity for Thanet District Council to comment on the proposed changes to the Development Consent Order (DCO) for Manston Airport. The proposed changes are summarised below:

1. To amend the security figure from £13.1 million to £6.2 million at Article 9(1)(a) of the DCO.
2. To amend 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.

It is disappointing that the Council was not aware of the potential change being requested prior to the submission being made, which will directly impact on the Council as local authority and landowner.

Proposed change 1

The Council raises significant concerns with a reduction to the guarantee amount in Article 9 through a non-material change to the DCO.

The figure of £13.1 million is included:

(i) to pay compensation to landowners in connection with the acquisition
of their land or of rights over their land by the Applicant exercising its powers under Part 5 of the Order; and,
(ii) to pay noise insulation costs and relocation costs as required by Requirement 9 of Schedule 2 to the Order;

Riveroak purchased the site on 9th July 2019. This occurred on the day that the examination ended, and the sale is referred to directly and considered in the Examining Authority's (ExA) report.

At 9.8.127 of the ExA report, they *"note that the Applicant's DL12 cover letter submitted on the final day of the Examination covered a range of issues but did not seek to amend the figure stated in Article 9(1)(a) as a consequence of the purchase of land from SHP."*

However notwithstanding the lack of request to change the figure, this was considered directly by the ExA at 9.8.128 and conclusions at 9.19.5(g), stating:

"given the need to seek to ensure that the sum specified in Article 9 is adequate to cover the potential costs related to CA, implementation of insulation policy, Part 1 claims; and implementation of relocation policy, and not withstanding that the sum required for noise insulation may have been reduced, the overall sum of £13.1m should not be changed in any final DCO to allow sufficient headroom for any contingencies;"

In both Secretary of State (SOS) decisions (9th July 2020 and 18th August 2022), this conclusion was not disputed nor was the amount altered, therefore this figure was considered appropriate by the SOS at £13.1million.

The proposed change could result in less security that the applicant will be able to provide the required finances to cover both the noise mitigation plan (NMP) and compulsory acquisition under Article 9. Whilst certain figures in the NMP are fixed, the relocation costs (stated as up to 40 caravans by both the ExA and the SOS) are not, as these are set in part by market value. Concerns have been raised by members of the public that the current amount set for mitigation, £4.35 million, will be inadequate once the changes in market conditions (and costs) since assessment in 2019 are included.

In addition, the submission by the applicant outlines the reduction to only affect the amount for compulsory acquisition, now valued by them at £1.1million on the basis of an "up-to-date valuation carried out by CBRE". This has not been provided to the Council for consideration, therefore we are unable to attach any weight to the figure stated. It has therefore not been demonstrated that the change would not materially affect the compulsory acquisition of the remaining land.

The applicant's submission applies the tests outlined in the Department of Communities and Local Government document ""Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015)." The submission responds to 4 examples in the guidance document of where changes are likely to be considered material; where the need to update the Environmental Statement, a need for a new Habitat Regulations Assessment, the change would authorise the compulsory acquisition not authorised through the DCO, and when there is a potential impact from the proposed changes on local people and businesses. From reviewing decisions on non-material changes to other Development Consent Orders, this appears to be applied by the Planning Inspectorate consistently when making decisions on non-material changes. However, the Council has been unable to find any example of a similar change to the financial aspect of a DCO being altered through a non-material change, potentially affecting the availability of finances for the compulsory purchase of land or mitigating the impact of the development.

The guidance states at paragraph 11 that "Some examples of these characteristics are set out below although these only form a starting point for assessing the materiality of a change". It is considered that tests do not adequately assess the materiality of the change to reduce the monetary amount stated within Article 9. If the examples/tests are applied by the

Inspectorate, it has not been adequately demonstrated that the change would not affect people or businesses by virtue of the reasons provided above.

Proposed change 2

The Council does not have any comments to make on the change, given that it provides a clarification change rather than anything material to the order itself.

The Council respectfully requests that the views expressed above and those of local residents are taken into account in reaching a decision on the proposed change.

Yours faithfully,

Iain Livingstone
Planning Applications Manager