



Manston Airport Air Freight Hub

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**Applicant's response to the
Consultation on the Non-Material
Change to the Manston Airport
Development Consent Order 2022**

Project: Manston Airport Development Consent Order
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MANSTON AIRPORT PROJECT

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DOCUMENT TR020002/NMC1

Introduction

1. In August 2022, the Secretary of State for Transport made the Manston Airport Development Consent Order 2022 (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, general aviation and aircraft engineering services (the 'Project').
2. Since the DCO came into force on 8 September 2022, the Applicant has been working to ensure the Project is delivered effectively and efficiently. As a result of this process, the Applicant applied for a non-material change to the DCO (the 'NMC').
3. The NMC comprises of two changes 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 the Applicant'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 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
4. The Planning Inspectorate invited representations on the NMC between 20 July 2023 and 25 August 2023. This document sets out Applicant's comments on the representations received in response to this consultation, structured in three parts:
 - a. General response to consultation responses, focusing on the Applicant's:
 - i. overall view of submissions;
 - ii. overall view of proposed amendment to Article 9 in relation to:
 1. the adequacy of the level of security;
 2. the provision of relevant information; and
 - iii. overall view of proposed amendment to Article 21.
 - b. Specific responses to consultation responses from landowners:
 - i. Thanet District Council; and
 - ii. Emma and Andrew Hargreaves.
 - c. Consultation responses unrelated to the NMC.

General response to consultation responses

Overall view of submissions

5. In total, 28 responses were published. 17 (60.7%) were opposed to the NMC, 6 (21.4%) were in favour of the NMC and 5 (17.9%) were not related to the NMC. The Applicant has taken a cautious approach to this classification and notes that if a response objected to any aspect of the NMC then this was considered a negative response, even if other aspects of the NMC were considered appropriate by the consultee.
6. The Applicant is grateful for the level of engagement that the Project has attracted generally and has carefully reviewed each NMC consultation response. The significantly lower number of responses compared to previous rounds of consultation seems appropriate given the narrow scope of the two corrections that make up this NMC.
7. The Applicant thanks its supporters for their dedication and it has carefully reviewed the submissions of those objecting to the NMC. The Applicant notes that the negative responses almost entirely centre upon the premise that it would be inappropriate to reduce the security amount at Article 9(1)(a) from £13.1 million to £6.2 million. The main reasons cited for this are that factors such as:
 - a. increased inflation;
 - b. increased development/ land value; and
 - c. the underestimation of those impacted by noise levelsresult in the reduced security amount not being representative of the money needed to cover the costs of land acquisition and noise mitigation.
8. The Applicant considers that the concerns raised are primarily the result of a misunderstanding of the purpose and impact of Article 9. The Applicant expects that this submission will alleviate the concerns raised in the consultation responses by clarifying the use of the security amount in Article 9.
9. There were 4 responses that objected to the clarification to Article 21 on the basis that the correction would increase the number of properties that would be blighted. The Applicant emphasises that this aspect of the NMC makes no change to who is affected by the land acquisition provisions of the DCO and is merely a correction to the drafting of the legislation.

Adequacy of the proposed security amount at Article 9(1)(a)

10. The Applicant strongly disagrees with the reasoning provided by consultees of why the security amount at Article 9(1)(a) should not be changed. The opposition to this aspect of the NMC seems to stem from a misunderstanding of the impact of this security amount. The figure does not affect the amount of compensation that the Applicant is required to pay in relation to compulsory acquisition and noise mitigation, nor does it represent a cap on the payments. The Applicant will make all required payments in relation to compulsory acquisition and noise mitigation, even if in total they exceed the new figure mentioned in Article 9(1)(a).
11. The original figure in Article 9(1)(a) of £13.1 million comprised of:

- a. a compensation figure for compulsory acquisition;
 - b. a figure for noise mitigation measures; and
 - c. a contingency.
12. 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.
 13. The new CBRE valuation was provided to the Applicant in June 2023 and the revised figure for compulsory acquisition is therefore reflective of the current prices and property market in England. The Applicant acknowledges that there were a handful of requests made for the publication of the CBRE valuation. The sharing of this information would not be appropriate as it contains commercially sensitive information related to the valuation of each plot of the relevant land. It is the industry norm for the total valuation to be shared but the publication of an individual breakdown would be inappropriate.
 14. The Applicant re-emphasises that the security amount proposed in the NMC is reasonable and leaves the Applicant with a £750,000 contingency figure once the estimated costs for land acquisition and noise mitigation are removed. Regardless, if the amount owed to those impacted by these factors, the Applicant is legally required to make these payments, whatever their level. The security amount in Article 9(1)(a) does not represent a cap to the costs that the Applicant will pay but merely represents a reasonable amount to be held as an additional safeguard. The Applicant notes that this article is not common in made DCOs, which generally contain no obligation to provide any such security, and has only been included two or three times before. It represents a belt and braces approach to safeguarding the interests of local residents. The Applicant considers that this approach, whilst cautious should remain proportionate. The security amount was set when the Applicant needed to compulsorily acquire 99% of the land of the site. The Applicant is now the freehold owner of over 95% of the land needed. This reduction in compulsory acquisition should be reflected in the security amount required under Article 9(1)(a).
 15. The Applicant understands concerns raised by consultees on the accuracy of the CBRE valuation given that the site land acquired by the Applicant was acquired for a price higher than CBRE's initial valuation of the land. However, the Applicant acknowledges that it paid above the market rate for this land. The Applicant prioritised becoming the freehold owner of over 95% of the land needed for the Project during the examination of the application for the DCO and the figure was not what the land would have fetched on the open market, which is how compulsory purchase compensation is generally calculated. CBRE are a nationally-recognised company of high standing and its assessment can be relied upon.
 16. Finally, some responses pointed to the Examining Authority proposing to keep the figure as it was despite the purchase of the airport. It should be noted that at that point the examination had closed, and the Examining Authority was unable to obtain any further evidence on which to base a change in the figure and decided to keep it as it is.

Clarification of wording at Article 21

17. Article 21 sets a 1 year time limit on the power of the Applicant to take temporary possession of land although it does not prevent the Applicant from remaining in possession of land after that time if it took possession within the 1 year limit.
18. 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.
19. This aspect of the NMC has no practical impact on landowners but merely ensures clarity in the drafting of the legislation.

Specific responses to consultation responses from landowners

Thanet District Council

20. The Applicant notes Thanet District Council's concern that they were not consulted ahead of other consultees. The Applicant adhered to the legal requirements of publication and notification for an NMC as set out in Regulations 6 and 7 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 as amended (the 2011 Regulations). Letters enclosing a copy of the application notice were sent to consultees by first class post on 11 July 2023, in accordance with Regulation 7(1) of the 2011 Regulations. A letter was sent to those parties who are still subject to compulsory acquisition powers in accordance with the list of consultees approved by the Secretary of State. The Applicant did not treat Thanet District Council differently to the other parties who are subject to compulsory acquisition powers.
21. Thanet District Council raise the same concern in their response as many other consultees who opposed the NMC. Their concern relates to the adequacy of the proposed security figure in Article 9(1)(a). They are concerned that the reduction proposed in the NMC *"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."*
22. As set out earlier in this submission, the actual compensation that the Applicant may need to pay is not affected by the amount of the guarantee. The guarantee in Article 9 is only an additional safeguard and is not a cap to payments from the Applicant. The Applicant notes that the inclusion of this article where a sum is mentioned is not a common occurrence and only has precedent in article 7(1) of the Swansea Bay Tidal Generating Station Order 2015. The inclusion of a figure in Article 9 goes above and beyond the usual standard that applicants are held to.
23. The Applicant welcomes the confirmation from Thanet District Council that in relation to the proposed change to Article 21, 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."*

Emma and Andrew Hargreaves

24. The Applicant notes that Emma and Andrew Hargreaves also raise the concern that the current economic landscape of England has not been factored into the proposed security amount of Article 9. As set out in response to the general consultation responses and that of Thanet District Council, the amount proposed in Article 9(1)(a) does not represent a cap to the payments that the Applicant may make. The Applicant will make all payments in relation to compulsory acquisition and noise mitigation that are either agreed with the landowner or determined by the Upper Tribunal in the case of dispute. Article 9 represents a further safeguard to those impacted but the level of security provided should be reflective of the scale of the size of payments that are likely needed. The circa 94% decrease in the scope of compulsory acquisition that is needed since the original security amount was decided should be reflected in the DCO.
25. The Applicant re-emphasises that the amendment to Article 21 will have no practical impact on landowners. It was understood by all parties during examination that the Applicant had shortened the time limit to exercise compulsory acquisition powers from the usual five-year period found on DCOs to one year. The correction proposed is merely to reflect that intention.

Consultation responses unrelated to the NMC

26. The Applicant notes that National Grid and NATS have not commented on the NMC and have reiterated in their position in relation to the DCO generally. The Applicant confirms that dialogue between the Applicant and these parties are ongoing. The Applicant will follow-up with both National Grid and NATS separately to discuss their consultation responses.

Conclusion

27. In summary, the Applicant considers that both aspects of the NMC are entirely appropriate. After careful consideration of the consultee responses, the Applicant is confident that the concerns raised in them stem from a misunderstanding of the mechanisms involved in Article 9, and to a lesser extent Article 21.
28. The Applicant reiterates that the security amount proposed in Article 9(1)(a) does not represent a cap to the payments that the Applicant may make. The Applicant will make all appropriate payments in relation to compulsory acquisition and noise mitigation.
29. 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. The Applicant has no doubt in relation to its ability to meet the required payments in relation to compulsory acquisition and noise mitigation. However, the security amount should be reflective of the level of payment expected. It does not act as a cap, so there is no additional risk to those impacted by compulsory acquisition or eligible for noise mitigation.