



Department for Transport

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Dear Sir or Madam

PLANNING ACT 2008

APPLICATION FOR A NON-MATERIAL CHANGE TO THE MANSTON AIRPORT DEVELOPMENT CONSENT ORDER 2022

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the non-material change application ("the Application") by BDB Pitmans on behalf RiverOak Strategic Partners Ltd ("the Applicant") made on 11 July 2023 seeking amendments to the Manston Airport Development Consent Order 2022 (S.I. 2022/922) ("the 2022 Order"). The Application was made under paragraph 2 of Schedule 6 of the Planning Act 2008 ("PA08"). This letter is the notification of the Secretary of State's decision in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) ("the 2011 Regulations").

2. The 2022 Order was granted on 18 August 2022 following a redetermination process subsequent to the quashing by the High Court of the previous Order granted on 9 July 2020. The 2022 Order allows for the reopening and redevelopment of Manston Airport into a dedicated air freight facility ("the Development"). The Development site is on the existing site of Manston Airport, west of the village of Manston and north east of the village of Minster, in Kent. The 18 August 2022 decision letter sets out the reasons and considerations on which the decision to grant the 2022 Order is based.

3. The Applicant is seeking a change to the 2022 Order to reduce the proposed security figure set out in article 9(1)(a) from £13.1 million to £6.2 million to reflect its

acquisition of the main airport site. The Applicant is also seeking to correct a drafting error in article 21(3) of the 2022 Order to ensure that the time limit of one year for exercising powers of compulsory acquisition starts from the expiry of the legal challenge period or the final determination of any legal challenge to the 2022 Order.

Summary of Secretary of State's Decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the PA08 to make a non-material change to the 2022 Order so as to authorise the changes detailed in the Application. The Secretary of State has also made minor drafting changes to the Order, amending the 2022 Order.

Consideration of the Materiality of the Proposed Change

5. The Secretary of State has considered whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the PA08 which requires the Secretary of State to consider the effect of the changes on the 2022 Order as originally made.

6. There is no statutory definition in the PA08 or the 2011 Regulations of what constitutes a 'material' or 'non-material' change for the purposes of Schedule 6 to the PA08 and Part 1 of the 2011 Regulations.

7. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the former Department for Communities and Local Government, the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Change Guidance"), which makes the following points. First, given the range of infrastructure projects that are consented through the PA08, and the variety of changes that could possibly be proposed for a single project, the Change Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material and such decisions will inevitably depend on the circumstances of the specific case. Secondly, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:

- (a) A change should be treated as material if it would require an updated Environmental Statement to take account of materially new, or materially different, likely significant effects on the environment. There may be cases where the change proposed will result in likely significant effects on the environment that are entirely positive, but in such cases an updated Environmental Statement will still be required, and the application will need to be treated as a material change to ensure that the regulatory requirements on EIA are met.
- (b) 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.

- (c) 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 Development Consent Order.
- (d) The potential impact of the proposed change on local people will also be a consideration in determining whether a change is material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.

8. Third, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

9. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (a), (b), (c) and (d) above.

(a) Environmental Statement

The Secretary of State has considered whether the Application would give rise to any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement submitted in support of the application for the 2022 Order. The Secretary of State has considered the nature of the changes sought by this Application, and notes that the changes would not result in any development that would have a new environmental impact or impact on amenity. The Secretary of State is therefore of the view that there will not be any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement submitted in support of the authorised Development, and as such considers that there is no requirement to update the Environmental Statement. As there are no new significant environmental impacts as a result of the Application, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

(b) Habitats Regulations Assessment

The Secretary of State has considered his obligations as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if he has ascertained that

it will not adversely affect the integrity of the protected sites within the National Site Network. As set out above, the Secretary of State has considered the nature of the changes sought through the Application and is satisfied that as the Application will not result in development with a new environmental impact or impact on amenity, there is not likely to be a significant effect on any European site as a result of these changes. Therefore, the Secretary of State is satisfied that a Habitats Regulations Assessment is not required. Furthermore, in respect of European Protected Species, the Secretary of State is satisfied that the proposed changes do not bring about the need for a new or additional licence as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective.

(c) Compulsory Acquisition

In respect of compulsory acquisition, the Secretary of State notes that while the Application seeks to amend a drafting error in article 21(3) that would result in the change in the time limit that the Applicant is able to exercise compulsory purchase powers following the conclusion of a legal challenge, the Application would not authorise the compulsory acquisition of land, interest in or rights over land that was not authorised by the 2022 Order and not shown in the land plans listed in Schedule 10 of that Order. The Secretary of State also notes that the reduction in the Security Figure in article 9 of the 2022 Order will be reduced to only take account of the purchase of the airport site, and that the funds for noise mitigation (including relocation) and blight notices will remain unchanged. The Secretary of State is therefore satisfied that these matters do not raise any issues of materiality in relation to the proposed changes.

(d) Impacts on local people

Given the nature of the changes being sought, the Secretary of State has concluded that local people will not experience a change in the environment or in amenity as a consequence of the proposed changes; and therefore the changes would not result in a Development inconsistent with the 2022 Order. He is also content that, given no change is anticipated to the impacts already assessed in the Environmental Statement submitted in support of the application for the 2022 Order, the potential impacts on local people and businesses are no greater than those that arise from the Development permitted by the 2022 Order.

10. For the reasons explained in paragraph 9, the Secretary of State is satisfied that the changes sought by the Applicant are not material and should therefore be dealt with under the procedure for non-material changes.

Consultation

11. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations and on 20 July 2023 consulted the persons required by regulation 7 of the 2011 Regulations in the manner prescribed. The deadline for the receipt of representations on the Application was 25 August 2023.

12. The Application was made available on the Planning Inspectorate's website on 20 July 2023, so that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

13. A further consultation was conducted on 1 September 2023 to invite representations from any Interested Party on the responses received to the consultation on the Application, and to also invite comments from the Applicant on the points raised in the responses submitted by other Interested Parties. The deadline for responses to this consultation was 8 September 2023.

14. The Secretary of State has considered the representations received in response to the consultations and late representations, and does not consider that any further information needs to be provided by the Applicant or that further consultation of those already consulted is necessary.

Consultation responses

15. Representations raising concerns and objections to the changes sought through the Application were received from a number of Interested Parties including from local residents, Thanet District Council, Thanet Green Party, a number of local councillors, Nethercourt Action Group, the Ramsgate Society and others.

16. These representations raised concerns regarding the timing and notification of the consultation on the Application, queried whether the revised security figure was sufficient and stated that the new timescale for the compulsory acquisition powers were unacceptable. There were also representations from local residents and Save Manston Airport Association, representing 4000 members, submitted in support of the Application. The Secretary of State's consideration of the representations submitted by Interested Parties are summarised below.

Notices Publicising the Application

17. A number of Interested Parties raised concerns regarding the publication of the notices publicising the Application, the start date of the consultation period and its duration. The duration of the consultation is governed by regulation 6 of the 2011 Regulations. Regulation 6 requires notices to be published for two consecutive weeks in one or more local newspapers in the vicinity of the Development, and for a consultation period of no less than 28 days to start following the date of the last notice published. The Applicant's '[Consultation and Publicity Statement](#)'¹ submitted as part of the Application states that the last notice publicising the Application was published in the Isle of Thanet Gazette on 21 July 2023 and that the Applicant set a deadline of 25 August 2023 for the receipt of responses on the Application. The Secretary of State is therefore satisfied that the Applicant has met the requirements set out in regulation 6 of the 2011 Regulations for publicising the Application and consulting on it.

18. The Secretary of State notes that concern was raised regarding the use of newspapers to publicise the Application, the key concern being that print editions of

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR020002/TR020002-006438-Manston-NMC-Consultation-Publicity-Statement.pdf>

newspapers are not widely available and would only be seen by a small number of local residents. The Applicant's 'Consultation and Publicity Statement' also set out the request it made to the Secretary of State on 24 May 2023 under regulation 7 of the 2011 Regulations for a limited consultation with Interested Parties that may be directly affected by the changes sought through the Application. The consultation list included Interested Parties still subject to compulsory purchase powers, Thanet District Council and Kent County Council. The Applicant also stated in this document that a letter enclosing a copy of the Application notice was sent to consultees by first class post on 11 July 2023, and a letter was sent to parties who are still subject to compulsory acquisition powers in accordance with the list of consultees approved by the Secretary of State. In addition, as set out in paragraph 12 above, the Application was made publicly available on the Planning Inspectorate website so that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

The Secretary of State's Response to the Reduced Consultee Request

19. The Secretary of State is aware that a number of Interested Parties raised concerns regarding the timing of the Department's response to the Applicant's request made under regulation 7 of the 2011 Regulations to limit the consultation on the Application. Interested Parties stated that while the documents relating to the regulation 7 request were submitted to the Secretary of State by the Applicant on 24 May 2023, the letter from the Secretary of State confirming his approval for a reduced consultation was dated 12 July 2023. The Secretary of State responded directly to Interested Parties who raised this concern to confirm that the letter of 12 July 2023 was incorrectly dated due to issues of version control, and to draw their attention to the [correct version of the letter](#)², dated 13 June 2023, which was published on the Planning Inspectorate website.

Security Figure (article 9)

20. The Applicant proposes to reduce the security figure set out in article 9 of the 2022 Order from £13.1 million to £6.2 million. The Applicant is seeking to reduce this figure to reflect its acquisition of the main airport site from Stone Hill Park Limited, which completed in July 2019. Those in support of the Application stated that the security figure of £7.5 million is no longer appropriate following the purchase of the airport site by the Applicant and the securing of other land through voluntary agreements. Representations registering objections to the proposed reduction stated that the reduced sum would not be sufficient to cover the outstanding costs from compulsory acquisition, noise mitigation or relocation, citing increasing inflation, increasing cost of building materials, rise in the cost of living and the housing crises as a particular concern in this regard.

21. The ExA recorded in its recommendation report that the £13.1 million figure is to cover the overall costs that may arise from the exercise of compulsory purchase powers, implementation of noise mitigation measures including relocation and any

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR020002/TR020002-006437-SoS-Regulation-7-Response-12-July-2023.pdf>

blight claims [ER 9.8.137 and 9.8.143]. The Secretary of State notes that in response to a question put by the ExA to the Applicant during the examination regarding the contingency applied to its figures, the Applicant confirmed that its total overall cost estimate for compulsory acquisition, noise mitigation measures (including relocation) and any blight claims is £11.85 million, and the overall figure of £13.1 million secured by article 9 is greater than the 10% contingency allowed for in its business model [ER 9.8.115]. The ExA also recorded that £7.5 million of the £13.1 million figure makes up the potential costs relating to the compulsory acquisition land, and blight claims [ER 9.8.140].

22. The Secretary of State is aware that on the final day of the examination of the application for the 2022 Order, Stone Hill Park Limited and the Applicant confirmed that the Applicant's subsidiary company, RiverOak MSE Limited, had completed the purchase from Stone Hill Park Limited of the land that comprises the airport [ER 9.6.9 and ER 9.6.19]. The Secretary of State notes this land makes up 95% of the freehold ownership of the land [ER 9.8.124] in the 2022 Order limits. The Secretary of State notes that one of the reasons given by the ExA for not reducing the amount of the security to take into account the purchase of the airport site was because no alternative figure had been put forward by the Applicant [ER 9.8.128]. The Applicant has now put forward an alternative figure as part of this Application to take into account the purchase of the airport site. The Secretary of State agrees that it is appropriate for the overall cost figure of £13.1 million to be reduced to £6.2 million to reflect the fact that the Applicant has acquired 95% of the land required for the Development.

23. Further, the Secretary of State notes that no reduction is being made for the part of the security figure of £4.35 million in the proposed revised figure to cover the cost of noise mitigation, which the ExA recorded includes the cost of relocation [ER 9.8.119]. The Secretary of State also notes that the Applicant stated at paragraph 3.3 of its Supporting Statement that it has maintained the contingency figure to the proposed revised figure. In addition, the Secretary of State would point out that article 9 of the 2022 Order prevents the Applicant from commencing the Development or from compulsorily acquiring any land unless the Secretary of State is satisfied that funds are available and secured [ER 9.8.119]. The Secretary of State would also point out that requirement 9 of the 2022 Order requires the Applicant to fully implement the noise mitigation plan to be certified under Schedule 10 of that Order, and that no part of the Development can commence until any required noise insulation and ventilation measures, purchase and relocation measures and other measures set out in the noise mitigation plan and referred to in requirement 9 have been implemented.

24. The Secretary of State has considered the representations questioning the Applicant's land valuations and raising concerns that this information had not been published so that it was made available to Interested Parties. The Applicant explained in its response dated 7 September 2023 that it would not be appropriate for this information to be published as it contains commercially sensitive information related to the valuation of each plot of relevant land. The Secretary of State is satisfied that the withholding of commercially sensitive information is justified.

25. As to the concerns raised by some Interested Parties that the reduced figure did not take into account the current economic landscape and could therefore result in

less security to provide for noise mitigation measures and the compulsory purchase of the outstanding land required for the Development, the Secretary of State is satisfied that the Applicant's response of 7 September 2023 fully addresses these concerns. In this response, the Applicant states that: the amount proposed in article 9(1)(a) does not represent a cap to the payments that it may make but represents a further safeguard for those who may be affected; the figure reflects the scale of the size of payments that are likely to be needed; and 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. In addition, as set out in paragraph 23 above, the Secretary of State draws attention to the fact that no part of the Development can commence until any required noise insulation and ventilation measures, purchase and relocation measures and other measures set out in the noise mitigation plan have been implemented. The Applicant is also required to demonstrate to the Secretary of State that the required funds are available and secured before commencing the Development.

26. The Secretary of State considers, taking into account the reasons set out in paragraphs 20 – 25 above, that the change sought by the Applicant to reduce the security figure is not material.

Extension to the Time Limit (article 21)

27. The Secretary of State notes that several interested parties objected to the extension of time for the Applicant to exercise compulsory purchase powers on the basis that doing so would prolong the impact and distress of the individuals and organisations affected by compulsory purchase. However, he also notes that those who commented in support of the Application stated that because the wording of article 21 is ambiguous it could be interpreted to mean that the Applicant would have to exercise its powers of compulsory acquisition immediately after the end of any legal challenge rather than within one year, and that the proposed change in this respect would clarify the intent of this article.

28. The Applicant's supporting statement submitted as part of the Application states that the reason for extending the time limit is to allow it to operate for a period of one year following the outcome of any legal challenge. The Secretary of State is aware that the time limit for the use of compulsory purchase powers was considered during examination and covered in detail in the ExA's report. The ExA's report makes clear that the intent of article 21 was to allow a one year period which only starts from the expiry of any legal challenge period or the conclusion of any legal challenge to the 2022 Order [ER 9.12.18]. The Secretary of State accepts that this proposed change is to correct a drafting error otherwise article 21 of the 2022 Order as currently drafted means that the compulsory purchase powers would cease following the conclusion of any legal challenge to the 2022 Order. As the Application amends what is clearly a drafting error, the Secretary of State is satisfied that the change sought in this respect is non-material.

Impacts on local residents and Businesses

29. As set out in paragraph 9(d) above, the Secretary of State has concluded that, given the nature of the changes proposed, the potential impacts on local people and

businesses are no greater than those that arise from the Development permitted by the 2022 Order

Other Matters Raised During Consultation

30. The Secretary of State notes the concerns raised in relation to the carbon impact expected from the scheme. The Secretary of State's consideration of the carbon impact expected as a result of the Development is set out in the decision letter of 18 August 2022 granting development consent of the 2022 Order. The proposed changes sought through this Application will not result in an increase in the carbon emissions expected from the Development and is therefore not material to the decision on this Application.

31. The Secretary of State is aware that some Interested Parties raised objections in relation to the granting of the 2022 Order. This Application relates to amendments to that Order and the Secretary of State's reasons for granting the 2022 Order is set out in his decision letter dated 18 August 2022.

32. National Grid's response did not relate to the changes being sought through the Application but to the Development authorised by the 2022 Order. The Secretary of State would draw National Grid's attention to Part 1 of Schedule 9 in the 2022 Order which contains protective provisions for the protection of electricity, gas, water and sewage undertakers. NATS responded to confirm that its position remained unchanged as previously communicated during and following the examination of the 2022 Order. The Secretary of State notes that the Applicant has stated that it will contact National Grid and NATS to discuss their consultation responses.

33. The Secretary of State notes that some Interested Parties highlighted the socio-economic and other benefits expected from the Development such as the capacity that the Development would deliver and the significance of air freight to the economy. The Secretary of State's decision letter dated 18 August 2023 sets out his consideration of the benefits expected from the Development. The Application will not result in a change in those expected benefits.

34. As to the comments from Interested Parties about the need for the Applicant to take into account new housing development in the vicinity of the Development, the Secretary of State would point out that as this is a change to the existing 2022 Order and because there are no significant changes to the impacts assessed for that Order, this is not necessary. Further, the Secretary of State would expect that it is for the developer of these other developments and the relevant decision-maker to consider impacts in combination with this Development.

Late Representations

35. In addition to the responses to the consultations on the Application, the Secretary of State also received a number of late representations which have been published alongside this letter. Unless addressed in this letter above, the Secretary of State considers that these representations do not raise any new issues that are material to his decision on the Application. As such, he is satisfied that there is no new

evidence or information that needs to be referred again to Interested Parties before proceeding to a decision on the Application.

General Considerations

Equality Act 2010

36. The Equality Act 2010 includes a public-sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sexual orientation; sex; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

37. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010, and is satisfied that there is no evidence that granting the changes will affect adversely the achievement of those objectives.

Human Rights Act 1998

38. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the proposed changes to the 2022 Order. The Secretary of State considers that the grant of the Application would not contravene any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

39. In making a decision on the Application for the proposed changes to the 2022 Order, the Secretary of State has had regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021. The Secretary of State notes that there will be no new environmental effects as a result of the proposed changes sought through the Application, and as such considers that no further action regarding the conservation and enhancement of biodiversity is required.

The Secretary of State's overall conclusion and decision

40. The Secretary of State is satisfied that the principle of the Development continues to be supported by relevant national aviation policy, aviation planning policies and other relevant policies as stated in the decision letter dated 18 August 2022.

41. The Secretary of State has considered the nature and effect of the proposed changes, noting that they would have no materially new or materially different likely significant environmental effects. He is satisfied that the conclusions of the Environmental Statement submitted in support of the application for the 2022 Order remain unchanged, and notes that no new powers of compulsory acquisition are sought.

42. The Secretary of State is content that none of the specific indicators referred to in the Change Guidance, or other relevant considerations, suggest that the change sought by the Applicant is a material change and is satisfied that the proposed changes requested by the Applicant are not a material change to the 2022 Order. The Secretary of State has therefore decided under paragraph 2(1) of Schedule 6 to the PA08 Act to make a non-material change in relation to the 2022 Order so as to authorise the changes sought by the Applicant.

Modifications to the draft Order

43. Minor drafting amendments have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms of the draft Order.

Challenge to the decision

44. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached to the Annex to this letter.

Notification of decision

45. The Secretary of State's decision on this application is being notified as required by regulation 8 of the 2011 Regulations.

Yours faithfully,

Gareth Leigh

ANNEX

LEGAL CHALLENGES RELATING TO DECISIONS MAKING CHANGES TO DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the PA08 to make a change to an Order granting development consent, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order making the change is published. The Manston Airport Development Consent (Amendment) Order 2023 is being published on the Planning Inspectorate website at the following address:

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

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).