

Manston Airport Enquiry – 17 February 2016

Questions	Proposed S51 advice
<p><i>Question 1 - In thinking about the interaction or relationship between different regimes (particularly the Planning Act 2008 (PA2008) and the Town and Country Planning Act (TCPA)), what would happen to a Nationally Significant Infrastructure Project (NSIP) application if Thanet District Council progressed with finding a suitable indemnity partner to pursue a Compulsory Purchase Order (CPO) of the airfield site?</i></p>	<p>A Development Consent Order can include powers of Compulsory Acquisition in much the same way as a Compulsory Purchase Order can. In both cases, this is a considerable power which has an effect on the rights of other people. It is necessary to demonstrate a compelling case in the public interest to acquire interests and rights compulsorily. The justification for including such powers in a Development Consent Order under the PA2008 is normally that the proposed scheme has a compelling public benefit which could not be delivered without those powers.</p> <p>It is very rare that there are competing proposals to compulsorily acquire land, but if this were to occur the likelihood and desirability of the alternative uses for the land, and their relative public benefits, are likely to be put forward in submissions and would be carefully taken into account by the relevant Secretary of State before deciding whether or not to grant powers of Compulsory Purchase or Acquisition.</p>
<p><i>Question 2 - Has it been decided that the RiverOak proposals are a Nationally Significant Infrastructure Project and that an application will go to The Planning Inspectorate and the Secretary of State rather than to Thanet District Council, and if this decision has not been made, what scrutiny of the application will occur and when will that decision be made?</i></p>	<p>Airports are a category of development that is capable of being a Nationally Significant Infrastructure Project (NSIP), but since no application has yet been made by RiverOak, it is impossible to be sure whether or not any proposal they might make meets the tests in the Planning Act 2008 to be considered an NSIP. If an application is made it will not be accepted for examination unless the Secretary of State is confident that it is an NSIP.</p> <p>The applicant could alternatively apply to the Secretary of State for a direction to the effect that a future application should be considered as an NSIP. (This is called a 'Section 35 Direction'.) This is possible if the proposal is within one of the categories in the Planning Act (such as transport) but might not meet the tests otherwise.</p> <p>Again, the Secretary of State would need to be satisfied that the scheme was of</p>

	<p>national importance and justified being considered as an NSIP before a Section 35 Direction could be made. The applicant would have to supply sufficient information about the proposal to demonstrate this.</p> <p>The Planning Inspectorate is aware of the RiverOak proposals, which are not yet developed to the point where an application could be made. We will continue to offer procedural advice when requested to do so, including to the applicant. All the advice that we give is published on our website at http://infrastructure.planninginspectorate.gov.uk</p> <p>Also on our website is a guide to the different stages of the process should a formal application be made to the Planning Inspectorate and other sources of information in respect of the Planning Act 2008 process and how to get involved: http://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-8-1v4.pdf</p>
<p><i>Question 3 - What would be the implications for an NSIP application, if a separate company bought the site and recommenced operational activity at Manston. Could RiverOak still apply for DCO and Compulsory Acquisition powers?</i></p>	<p>There is nothing to prevent an application being made to use land in a similar way to the way it is being used at the moment; whether or not the proposal was an NSIP would be determined against the tests in the Planning Act 2008, and if it were, that any application should be made for a Development Consent Order.</p> <p>However, Compulsory Acquisition is a considerable power which has an effect on the rights of other people, and for any powers of Compulsory Acquisition to be included in the DCO (even if the DCO is otherwise made as requested) a compelling case in the public interest for the powers to be included would have to be made.</p> <p>The justification for including powers of Compulsory Acquisition in a DCO is normally that the proposed scheme has a compelling public benefit which could not be delivered without those powers. Any consideration of the public benefit of a proposal is likely to include a consideration of the way the land is already being used.</p>