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Sir Roger Gale MP
House of Commons
London
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Your Ref:

Our Ref: TR020002_RG_s53

Date: 14 November 2016

Dear Sir Roger Gale

**Manston Airport – Request for Section 53 authorisation for rights of entry
Application by RiverOak Investment Corporation LLC**

Thank you for your letter dated 30 October 2016. RiverOak Investment Corporation LLC (RiverOak) has informed the Planning Inspectorate (the Inspectorate) of their intent to prepare an application for a Development Consent Order (DCO) with an expected submission date of next financial year.

In July 2016 RiverOak made an application in accordance with s.53 of the Planning Act 2008 for rights of entry to carry out a range of surveys and site investigations. The Inspectorate acting on behalf of the Secretary of State is responsible for processing the authorisation in accordance with the relevant requirements of the Planning Act 2008 and statutory guidance produced by the Department for Communities and Local Government¹ (DCLG). The approach adopted by the Inspectorate in dealing with the request for authorisation in accordance with s.53 is explained in our Advice Note 5: 'Section 53 – Rights of Entry', which you can access at the link below:

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Experience to date indicates that s.53 authorisation requests take at least three months to determine, from the date of receipt of the authorisation request(s). Moreover, the length of time required depends on the complexity and number of authorisation requests, the sufficiency of the initial information provided by the applicant and any issues raised in responses from the persons with interest. Applicants will need to be aware of this anticipated timeframe and the potential impact it may have on their overall project programme.

¹ The Infrastructure Planning (Fees) Regulations 2010 guidance, DCLG, June 2013

The statutory guidance states that the Government wishes to ensure that the use of s.53 powers is proportionate. Applicants are expected to act reasonably, first seeking to obtain relevant information or permission to access land directly before seeking authorisation under these provisions. The Secretary of State in determining the request is required to consider Article 1 of the First Protocol of the European Convention² which gives a right to peaceful enjoyment of property. Any interference with this right needs to be lawful and proportionate; interference with the right of individuals to peaceful enjoyment of their property can only be authorised in the public interest. The Inspectorate therefore needs to consider, in relation to each s.53 authorisation request, whether the authorisation of entry onto third party land would be lawful and proportionate. This includes consideration of any existing uses, such as Operation Stack.

Previous s.53 authorisations have been the subject of judicial review. The Inspectorate will always ensure that decisions are underpinned by a robust and proportionate consideration. In this case the Inspectorate has had to make several requests for further information to the Applicant in order to be able to process the application. I can assure you that the Inspectorate is dealing with this authorisation request as expediently as possible and a decision can be made as soon as all necessary information has been received.

With respect to your comments regarding abandonment of the site to use as a housing and industrial estate, the Inspectorate is aware that the site is subject to an extant Town and Country Planning Act (TCPA) application made by Stone Hill Park Limited for mixed use development, which has been submitted to Thanet District Council (TDC) and is available on their website. Interested parties may make representations regarding that application for planning permission made under the TCPA act to TDC. It is for TDC and its members to determine the application, according to the statutory timescales. Any studies, such as the airport viability study prepared by Avia Solutions that the council engage in are strictly at the discretion of the council. We are unable to comment on Stone Hill Park Limited's decision to grant Avia Solutions access to their land, which is a private agreement and the prerogative of the landowner.

Yours sincerely



Sarah Richards
Chief Executive

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

² European Convention on Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms)