

BY E-MAIL

FOR THE ATTENTION OF RICHARD HUNT
The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Our Ref 93970597.1\rg7\671983.07000

DDI +44 20 7490 6981

E richard.griffiths@pinsentmasons.com

10 April 2018

Dear Sirs

THE DCO APPLICATION FOR THE AIRPORT SITE FORMERLY KNOWN AS MANSTON AIRPORT

DCO APPLICANT: RIVEROAK STRATEGIC PARTNERS LIMITED

We write further to our letters to you dated 11 October 2017, 13 November 2017 and 15 December 2017 sent on behalf of our client, Stone Hill Park Ltd ("SHP"), the freehold owner of the airport site formerly known as Manston Airport. You have also received correspondence from SHP directly.

In our correspondence we raised a number of material concerns and issues regarding RiverOak Strategic Partners Ltd's ("RSP") application for a development consent order ("DCO") to upgrade and re-open an airport on our client's land. SHP has also raised a number of fundamental issues in correspondence with you and they have sent you a copy of our, and Leading Counsel's, advice concerning the application not meeting the NSIP requirements set out in section 23 of the Planning Act 2008.

In your letters to us of 24 November 2017 and 21 December 2017, you stated that many of the matters raised would be for the Secretary of State to consider at the acceptance stage. Based on RSP's website, we understand that an application was submitted yesterday, following which the Planning Inspectorate has 28 days to determine whether the application is capable of being accepted for examination.

The purpose of this letter is therefore to seek confirmation that all the matters raised in our correspondence, and that of SHP directly to you, will be fully considered as part of any acceptance process. **Please can you confirm that will indeed be the case by return?**

As will be evident from the correspondence, it is clear that the application is not capable of being accepted and being examined as it is fundamentally flawed and stands no reasonable prospect of being granted.

Pinsent Masons LLP

30 Crown Place London EC2A 4ES United Kingdom

T +44 (0)20 7418 7000 F +44 (0)20 7418 7050 DX 157620 Broadgate

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We would also take this opportunity to update the Planning Inspectorate on a few other matters:

1. RSP'S CONTINUED FAILURE TO COMPLY WITH DCO COMPULSORY ACQUISITION REQUIREMENTS AND GUIDANCE

- 1.1 It is important to note at the outset that the c.800 acres of land owned by our client forms almost the entire extent of RSP's proposed project. As such, this is a very different situation from other DCOs whereby the promoter may be seeking compulsory acquisition powers over smaller parcels of land in order to facilitate the delivery of the relevant project. In any DCO that includes compulsory acquisition powers, the onus and responsibility is clearly on the applicant to ensure that it complies with the relevant requirements and guidance, and that is even more so the case when the compulsory acquisition proposed is so enormous. There remains no credible reason given why all of our client's land is required for the purposes of the DCO, and in any event it is very clear that RSP has not complied with the guidance and the below summarises the current position.
- 1.2 Since 15 December 2016 when RSP became the applicant for the proposed DCO, RSP has made no formal attempt whatsoever to engage with our client prior to its legal adviser sending a "proforma" style letter to SHP on 9 February 2018, some 15 months later and only just before the target date for submission of its DCO application. This is clearly wholly inadequate to comply with the guidance that compulsory acquisition powers should only be sought as a matter of last resort. This "proforma" style letter appeared to our clients to be solely a box ticking exercise but our clients sought to engage nonetheless and the subsequent meetings and correspondence, all initiated by our client, appears to confirm this view. For completeness, we have enclosed correspondence sent by our client to BDB, on behalf of RSP, on 15 March 2018 and 9 April 2018, together with a letter sent by BDB to our client on 21 March 2018, as Enclosure 1 to this letter.
- 1.3 As has been made clear by SHP directly, our client has no desire to sell its land and remains entirely committed to its plans to regenerate the site for the benefit for the community. However, in initiating discussions, our client sought to understand whether RSP is serious about its proposals, rather than using the DCO process to effect a "land grab" which appears to be the position. In view of the blighting effect the proposed DCO has had, and continues to have, on our client's plans to develop the site in a way that addresses the national, regional and local need for housing and jobs, our client set out a suggestion to try and make progress and to require the applicant to show it had a serious proposition, but that has been summarily dismissed, apparently from the last meeting had with SHP because RSP has spent so much money on the DCO process to date (in our view, wholly inappropriately), and it wishes to try and see it through as a result. That is patently a failure to comply with the compulsory acquisition guidance in relation to DCOs, in particular paragraph 25.
- 1.4 It will be noted that SHP has sought a commitment from RSP that it would accept a restriction on the site preventing it from being developed for residential or non-airport related uses but that no confirmation of that has been forthcoming. Our client has made clear its very real concerns regarding the true intent behind RSP's motives (i.e. for longer term residential development of the site), and RSP's refusal to accept such a restriction adds further fuel to the fire in that regard.
- 1.5 It is clear from the lack of engagement prior to 9 February 2018, and the subsequent correspondence and discussions since then, that RSP has no real intention of seeking a voluntary agreement. The correspondence from its legal adviser continues to assume or suggest that the onus should be on SHP to set out the structure of any voluntary agreement. This is clearly wholly inappropriate, and contrary to the compulsory acquisition guidance, as it is for RSP to propose a credible offer for SHP



to consider and to demonstrate that it has the necessary resources in place to execute such an offer.

- 1.6 RSP's engagement to date is clearly not credible and goes nowhere near appropriately seeking to acquire the site by agreement and seeking compulsory acquisition powers only as a matter of last resort.
- 1.7 In short, the lack of any meaningful attempt to comply with paragraph 25 of the Guidance related to the compulsory purchase of land is a material deficiency and only one of the many reasons why any application for a DCO at this time could not satisfy the requirements of section 55 of the Planning Act 2008 (the "2008 Act").

2. OTHER UNRESOLVED MATTERS MEANING APPLICATION CANNOT BE ACCEPTED

- 2.1 We also note that there were many other matters raised in our letters that have not been addressed and must be considered unresolved at the acceptance stage. Other than now undertaking a statutory consultation under the 2017 EIA regulations, the other material issues have not been addressed.
- 2.2 Our client wrote to the Planning Inspectorate on 29 March 2018, enclosing advice from us and Leading Counsel, together with a supporting note from York Aviation, setting out clearly how RSP's project does not qualify as a NSIP. This was in response to a note prepared by RSP explaining how it believed its proposed project was a NSIP. This note was only prepared by RSP after it received a direct request from the Planning Inspectorate and followed its failure to set out the capability of its plans to the public and the statutory bodies, as we and our client had been saying. The letter from our client and enclosures are included as Enclosure 2 to this letter for ease of reference.
- 2.3 We also enclose as Enclosure 3, SHP's response, as a consultee under section 42 of the 2008 Act, to RSP's statutory consultation of January/February 2018. In addition to setting out the inadequacy of the consultation, the response further demonstrates that the matters raised in our letters of 2017, and which are relevant to whether an application can be accepted for examination, have not been addressed by the applicant.
- 2.4 SHP's response includes an update note from York Aviation that confirms that Azimuth's forecasts (on which consultees were invited to rely upon) remain based on a wilful misinterpretation of the work carried out by York Aviation for the Freight Trade Association and for Transport for London. This is despite the manifest errors in Azimuth's work being brought to Azimuth and RSP's attention in November 2017. As the Secretary of State would be asked to place reliance on forecasts that remain built on a direct and wilful misrepresentation of York Aviation's work – this is not a simple matter of a disagreement between experts – it is imperative that this matter is considered at the acceptance stage. Further, we would also be obliged if the Planning Inspectorate would please confirm that it has appointed, or intends to appoint, a suitably qualified and experienced aviation adviser to assist it in assessing the applicant's case as the Council's independent expert evidence and our client's own expert evidence is so clear that the application cannot be considered "satisfactory" for section 55 of the 2008 Act acceptance purposes. In this case, the Azimuth position rests on the York Aviation work which has been shown to be wilfully misinterpreted by Azimuth.

3. OVERALL

- 3.1 We consider that any application for a DCO to be submitted in the form currently proposed by RSP would be manifestly incapable of acceptance under section 55 of



the 2008 Act for the reasons set out above and in our previous letters. In summary, these reasons include:

- 3.1.1 RSP's failure to demonstrate that its proposed project constitutes a NSIP within the meaning of section 23 of the Planning Act 2008;
- 3.1.2 RSP's failure to disclose to the public and statutory consultees the capability of its plans, and consequential and misleading impact that this has on the adequacy of the consultation, including the proposals it consulted on in January and February 2018;
- 3.1.3 RSP's failure to provide an explanation and justification, as required by the guidance, as to which elements of its proposed project explain and which components of its plans are claimed to be (i) the NSIP (or part of an NSIP) and (ii) associated development;
- 3.1.4 RSP's failure in inviting consultees to place reliance on work - the Azimuth report – that is built on the misrepresentation of previous work of York Aviation, which fatally undermines the whole supporting evidence base and need case;
- 3.1.5 RSP's failure to comply with Compulsory Acquisition legislative and guidance requirements; and
- 3.1.6 Other material deficiencies in the PEIR and consultation materials set out in our response to the section 42 consultation.

We would be grateful if you could review this letter and the Enclosures in the course of dealing with the application submission as part of assessing whether the application can be accepted.

Yours faithfully



Richard Griffiths
Partner
for Pinsent Masons LLP