



## Meeting note

<b>Project name</b>	Manston Airport
<b>File reference</b>	TR020002
<b>Status</b>	<b>Final</b>
<b>Author</b>	The Planning Inspectorate
<b>Date</b>	11 May 2018
<b>Meeting with</b>	RiverOak Strategic Partners
<b>Venue</b>	Offices of the Planning Inspectorate
<b>Attendees</b>	See <b>Annex A</b>
<b>Meeting objectives</b>	Project update meeting
<b>Circulation</b>	All attendees

### Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

### Project update

The Inspectorate had called the Applicant's legal representatives (Bircham Dyson Bell (BDB)) on 1 May 2018 to set out its principal concerns in respect of the application documents submitted on 10 April 2018. On 3 May 2018 a teleconference was held between the Inspectorate, BDB and the Applicant (RiverOak Strategic Partners (RSP)). During that teleconference the Inspectorate repeated its principal concerns in the presence of RSP, who confirmed their intention to withdraw the application. Subsequently the application was formally withdrawn by letter dated 4 May 2018.

The Inspectorate and the Applicant convened this meeting in order for the Inspectorate to provide detailed advice to the Applicant in respect of three principal concerns identified:

1. There was considered to be an absence of sufficient information within the application documents upon which to base a decision about whether the Proposed Development constitutes a Nationally Significant Infrastructure Project (NSIP) within the meaning in s23 of the PA2008.
2. There were gaps in the ecological, archaeological and ground investigation survey data presented within the Environmental Statement (ES) accompanying the application, which create uncertainty in the assessment of likely significant



effects. There were also inconsistencies in the noise and vibration assessment, and issues were identified in the Transport Assessment accompanying the ES.

3. It was considered that the Funding Statement did not fulfil the requirements of Regulations<sup>1</sup> and statutory guidance<sup>2</sup>.

A detailed record of the Inspectorate's observations and advice to the Applicant in respect of the application documents mentioned below has been published separately.

The Inspectorate provided further details in respect of its three principal concerns, as follows:

## 1. NSIP justification

In seeking to determine whether the Proposed Development constitutes a NSIP, the Inspectorate sought sufficient information to establish whether the effect of the Proposed Development would be expected to increase the number of annual air traffic movements (ATMs) by at least 10,000 ATMs; as required by s23(5)(b) of the PA2008.

### Need for planning permission

First, the Inspectorate was unable to find satisfactory justification within the application to evidence the Applicant's assertion that planning permission (of any sort) would be required to bring the airport back into use (NSIP justification document, para 15).

Without satisfactory justification, the Inspectorate was unable to establish the number of ATMs that the airport is currently capable of handling **without development** within the meaning of s32 of the PA2008.

Following discussion the Applicant suggested it would provide information identifying precisely what development within the meaning of s32 of the PA2008<sup>3</sup> would be necessary for the airport to provide air cargo transport services for ATMs of cargo aircraft.

### Measure of capability

Second, the Inspectorate would seek for the Applicant to set out an evidenced argument as to why a figure of 83,222 ATMs has been chosen as the measure of capability as opposed to the figure of 17,170 which is the figure that has been assessed as the 'worst case scenario' in the ES. The Inspectorate commented that this was predominantly a matter for examination but recommended that the Applicant address this in its resubmission.

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<sup>1</sup> The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

<sup>2</sup> Planning Act 2008: guidance related to procedures for the compulsory acquisition of land

<sup>3</sup> Reflecting s55 of the Town and Country Planning Act 1990



The Inspectorate considers that if the current capability is anything other than zero to 7,171 ATMs, the effect of the Proposed Development could not be expected to have the effect of increasing ATMs by at least 10,000 movements. In other words, should the number of ATMs be capped in the Development Consent Order (DCO) at 17,170 ATMs in line with the assessment? If the airport is currently capable of handling any more than 7,171 ATMs the Proposed Development may not have the effect of increasing ATMs by at least 10,000 movements and may not be an NSIP.

The Applicant explained that the capability of the Proposed Development ie a figure of 83,222 ATMs was different to the figure of 17,170 ATMs assessed in the ES as these figures serve different purposes. The latter has been assessed in the ES as the likely significant effect of the Proposed Development, whilst the test within s23 of the PA2008 refers to the physical capability of the airport which is a higher number than the likely significant effect. The Applicant did not agree that this suggested a necessity to impose a cap.

## **2. Environmental Impact Assessment, including the Construction Environmental Management Plan (CEMP) and Register of Environmental Actions and Commitments; Information to Inform a Habitat's Regulations Assessment and Transport Assessment**

The Inspectorate began by stating that the Applicant's ES had been drafted to a very high standard, but also commented that the Inspectorate had raised some concerns that may affect the acceptance of the application. In particular, these related to inconsistencies in how the worst case scenario had been established in relation to bats and breeding birds such as the Grey Partridge.

The Inspectorate pointed out some further inconsistencies in the ES, although noting that whilst these were not necessarily acceptance issues individually, the combination of issues had a bearing on the sufficiency of the application and recommended that the Applicant may wish to take the opportunity to address before resubmission. Many of these were discussed and detailed commentary and rationale for the approach taken was provided by Wood (the ES authors). It was agreed that the points raised by the Inspectorate would be responded to either in writing or, where necessary by modification of the ES or supporting documents.

These issues included the need for the Information to Inform a Habitats Regulations Assessment to be updated for resubmission due to the recent judgment in *People Over Wind* and *Sweetman*, which had been reported since the application submission.

There were issues identified with the approach to Environmental Impact Assessment (EIA) following review of the Applicant's ES; the Information to Inform a Habitats Regulations Assessment; and the Transport Assessment. In particular, the Inspectorate highlighted several uncertainties which affect the validity of findings in the ES. The uncertainties are a consequence of the approach taken within the ES to establish the baseline; to establish the worst case assessment



approach; to identify mitigation measures; and the approach to securing such mitigation through mitigation documents and the draft DCO.

### **3. Funding Statement**

The Inspectorate stated that the concerns it had in relation to the Funding Statement, identified during the Acceptance stage due to their in combination effect with other noted concerns, were issues that could be dealt with during examination, but that they were giving the Applicant an opportunity to address their concerns before resubmission.

The Inspectorate stated its concern that the Funding Statement provided in support of the application did not provide the Inspectorate with satisfactory assurance that adequate funds would be available to enable the Compulsory Acquisition of land and rights within the relevant time period. The Inspectorate does not consider that Article 9 of the draft DCO (Guarantees in respect of payment of compensation etc.) provides sufficient security for individuals in consideration of the provisions of the Human Rights Act 1998.

The Applicant stated that it did not agree with the Inspectorate's view and considered that its Funding Statement was in line with information provided in previous Funding Statements. Nevertheless, the Applicant agreed to provide further drafting in its Funding Statement.

The Inspectorate offered to provide examples of Funding Statements associated with previous applications that had been found to be of a satisfactory standard at the Acceptance stage. The Inspectorate agreed to provide these post-meeting.

### **Other matters in respect of the application documents**

The Inspectorate provided further details to the Applicant in respect of other identified omissions/ discrepancies in the application documents.

Other application documents referenced were:

1. Consultation Report and Appendices
2. Habitats of Protected Species Plans
3. Environmental Features Plans
4. Heritage Designation Plans.

### **Specific actions/ follow-up required?**

- The Applicant would provide the Inspectorate with further drafts of documents addressing the issues identified above, and the Inspectorate agreed to provide the Applicant with advice on these at a future meeting, the date of which has not been set.



**Annex A**

**Meeting attendees**

<b>Organisation</b>	<b>Name</b>	<b>Role</b>
The Planning Inspectorate	James Bunten	Case Officer
	Richard Hunt	Senior EIA and Land Rights Advisor
	Richard Price	Case Manager
	Susannah Guest	Infrastructure Planning Lead
RSP	Tony Freudmann	Director
	Niall Lawlor	Director
	George Yerrall	Director
	Nick Rothwell	Director
Wood	Toby Gibbs	Technical Director
	Nick Hilton	Partner
BDB Law	Angus Walker	Senior Associate
	Alex Hallatt	Associate
	Monika Weglarz	Director
RPS	Angela Schembri	Planning Director
Viscount Aviation	Tom Wilson	Managing Director