



RiverOak Strategic Partners

# Applicant's Overall Summary of Case

TR020002/11/OSOC  
Examination Document

<b>Project Name:</b>	Manston Airport Development Consent Order
<b>Application Ref:</b>	TR020002
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**MANSTON AIRPORT PROJECT**  
**PINS REFERENCE TR020002**  
**APPLICANT'S OVERALL SUMMARY OF CASE**  
**DOCUMENT TR020002/D11/OSOC**

**Introduction**

1. This document sets out a summary of the Applicant's overall case for granting development consent for the Manston Airport project, in the light of the evidence supplied and the examination that has taken place.
2. The document is structured as follows:
  - a. A general statement of the for granting development consent;
  - b. A summary of the benefits of the project;
  - c. A summary of the residual adverse impacts of the project;
  - d. A note on need and funding;
  - e. A note on representations by third parties.

**General statement of the case for granting development consent**

3. The benefits of the project strongly outweigh its residual adverse impacts. The position has (SHP) recently been considerably strengthened by the fact that the Applicant and Stone Hill Park Ltd have now exchanged contracts on the sale of the entire airport site, including the Northern Grass. Pursuant to this voluntary agreement, the Applicant will shortly be the freehold owner of over 95% of the land required for this project, and 99% of the land that was originally subject to outright compulsory acquisition. The sale is scheduled for completion on or before 11 July 2019.
4. Apart from the small amount of residual compulsory acquisition and other compulsory land powers (see paragraph 27 below), amounting to less than 1% of the total land required, this means that compulsory acquisition impacts have largely been negated insofar as they were to be factored into the adverse impacts of the scheme.
5. The importance of this is that the benefits of the project and its adverse impacts now rise or fall directly in proportion to each other: in other words, if the project results in fewer flights than are predicted, the impacts will be consequently less than predicted, and the adverse impacts are now much reduced through the additional measures introduced during the examination.
6. Accordingly, it is the Applicant's case that the benefits will inevitably and significantly outweigh the adverse impacts by a considerable margin. Objectors have complained that the project will never succeed and that it will blight the area with environmental impacts, but these arguments

are mutually exclusive. If the project does not succeed, the adverse impacts of which objectors have complained (noise, air quality, traffic etc) will not materialise. The Applicant remains firmly of the view that the project will succeed. The amount of time and money that it has invested in the project, which stood at some £15m before the acquisition of the Stone Hill Park land and now stands at over £30m is testament to its confidence in the viability and deliverability of the project.

7. Given the extent of the compulsory acquisition sought in the application, the Examining Authority rightly subjected the application to a thorough and meticulous scrutiny. The application was also challenged by SHP, a commercial competitor with its own proposals for the land, and a very well-resourced objector who produced considerable volumes of material, prompting many of the oral and written questions of the Examining Authority, as well as the cross-examination of four witnesses. The Applicant was not in a position to discuss openly with the Examining Authority the private discussions that were ongoing behind the scenes with SHP over the very same period in which SHP were publicly and vigorously objecting to the application. The Examining Authority will be aware that it is not uncommon for parties to publically object to DCO schemes with the ultimate aim of securing the best possible deal with the applicant. SHP has now reached agreement with the Applicant and has agreed to withdraw its objection to the scheme on the completion of the land transfer.
8. In light of that significant development, the level of compulsory acquisition sought by the Applicant is now less than 1% of that originally proposed. The Examining Authority will no longer have to consider whether there is a compelling case in the public interest for the compulsory acquisition of the airport land or the Northern Grass and many of the issues about the extent of land required for associated development on the Northern Grass fall away as a result of the voluntary acquisition of the land. Plainly this development significantly strengthens the case for development consent.

## **Benefits**

9. The major benefits of the project are:
  - a. the creation of a large number of high-quality jobs in a deprived part of the country and beyond, by what would become one of the largest employers in the area, and a corresponding commitment to education and training for local people to be able to carry out those jobs. The number of jobs forecast by Azimuth in its report [\[APP-085\]](#) is 3,417 direct jobs by year 20, 6,151 indirect or induced jobs, and 13,668 catalytic jobs, totalling 23,235. This translates to a £1.3bn to GDP and £433m in tax revenues (Azimuth Report Part IV Table 11) and is considered to be a major beneficial socio-economic impact (indeed the threshold for such a conclusion is fewer than half that number). In contrast, Thanet was the 28<sup>th</sup> most deprived local authority out of 326 in England in 2015.
  - b. fulfilling government policy to make best use of existing runways through the retention, re-opening and improvement of a valuable national asset that was in use for 98 years (1916-2014) – in circumstances where airport expansion is in the national interest and yet difficult to achieve and the creation of a new airport almost impossible; and
  - c. a valuable increase in the currently constrained capacity to trade internationally in the south-east of England, at a time when this is particularly important.

10. There are additional benefits including in particular:
- a. a commitment to biodiversity net gain (accepted as such by Natural England);
  - b. the creation of passenger airport facilities to provide an opportunity to boost the local economy through tourism;
  - c. a significant contribution in land and money to Kent County Council's aspiration for a new link road; and
  - d. the retention of some historical airport infrastructure in an airport context.

### **Adverse impacts**

11. It is worth starting this section with a consideration of the principles of environmental assessment. There have been suggestions that the Applicant should have assessed a worst-case scenario, but that is not correct - an Environmental Statement assesses 'likely significant effects'. It has adopted a worst-case approach only where data was not available through inability to survey the site (although this will now be able to re-start) and the worst case within any flexibility that is being sought (the Rochdale Envelope approach).
12. There is also a suggestion that the project must not exceed the effects that have been assessed. While desirable, that is not necessarily correct either. A highway project, for example, will assume a likely number of vehicles using the highway for the purposes of assessment, but is rarely, if ever, required to have no more than that throughput through a condition. The Applicant considers its assessment to be thorough and robust, and to contain the requisite "information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment".
13. Finally, at times there appears to have been a suggestion that the Applicant should eliminate all adverse effects through mitigation. Plainly it is desirable to minimise adverse effects as much as practicable, which the Applicant has sought to do, but the mitigation and avoidance of adverse impacts needs to be balanced against the effects of those measures on the project's benefits and its viability. A major infrastructure project approved under the Planning Act 2008 will inevitably result in some adverse impacts. The question for the Examining Authority and ultimately the Secretary of State is whether the benefits of the project outweigh its adverse impacts.

### **Noise**

14. The impact of aircraft noise must be considered in context. The number of Air Transport Movements (ATMs) for the Manston project is limited to 26,468 per year, flying over a relatively sparsely populated part of the country surrounded by sea on three sides. The number of ATMs at Heathrow Airport in 2018 was 475,624 over one of the most densely-populated parts of the country, and Heathrow is proposing to expand through the creation of a new runway to handle 740,000 ATMs per year. Heathrow's Preliminary Environmental Information Report states that 894,800 people were above the Lowest Observable Adverse Effect Level (LOAEL) ([PEIR](#), table 17.27) in 2013, compared with 16,465 dwellings for the Manston project in year 20 of its operation ([ES](#), table 12.27).

15. Although the number of people impacted by the project is far lower than Heathrow, the Applicant recognises that this will provide little comfort to those impacted people. The Applicant has therefore been at pains to mitigate and minimise the adverse effects of noise on the local population. Taking account of the representations that have been received and discussions at the examination hearings, the Applicant has proposed a range of measures to mitigate the impacts of noise. Those measures include, amongst other things:
- a. A ban on aircraft between 11pm and 6am, other than late arrivals, emergency and humanitarian flights (going beyond that required of Heathrow in the Airports National Policy Statement in both extent and scope);
  - b. A limit on Air Transport Movements (ATMs) of 26,468 in total in any one year, of which no more than 9,298 can be passenger ATMs, and a limit on general aviation movements of 38,000 per year;
  - c. A limit on the size of the 50dB day-time and 40dB night-time noise contours;
  - d. A generous noise insulation and ventilation scheme of £10,000 per affected property and a relocation scheme;
  - e. A reduction in the night-time quota count to 2000 (excluding late-running, emergency and humanitarian flights);
  - f. A ban on night-time flights (i.e. effectively between 0600 and 0700) of aircraft with a quota count of 4 or higher; and
  - g. An annual contribution of £139,000 to be shared between the seven schools within the 55dB daytime contour.
16. The noise mitigation package as now proposed is extremely generous and goes a long way to minimising the effects of aircraft noise. It complies with government policy in the Noise Policy Statement for England and the Airports National Policy Statement (paragraph 5.68).

### ***Traffic***

17. The Applicant has taken significant steps to mitigate traffic impacts through a number of measures. As a result of those measures, the project will not have any significant impacts on the road network and nor will it compromise highway safety. The measures proposed by the Applicant and secured through the DCO include the following:
- a. Capacity works to junctions around the site that would mitigate any congestion impacts of increased traffic caused by the project and which must be carried out before the project can come into operation;
  - b. Financial contributions to fund the cost of junction works outside the DCO boundary that would mitigate the congestion impacts of increased traffic caused by the project. These contributions are secured through a s106 agreement which requires the sums to be paid by the Applicant to the highway authority, Kent County Council, to spent on junction improvements to mitigate the impacts of the project;

- c. A £500,000 contribution towards Kent County Council's proposed Manston-Haine link road and the safeguarding of land on the Northern Grass to accommodate the link road. The Applicant has agreed to transfer that land to KCC in the event that the Manston-Haine link road comes forward during the lifetime of the draft Thanet Transport Strategy.
18. Highways England has concluded that there will be no significant impact on the strategic road network as a result of the project.

### ***Heritage***

19. There are no designated heritage assets within the DCO boundary. However, the Applicant recognises that the project may give rise to less than substantial harm to the setting of some nearby heritage assets. These are considered in detail in the Heritage Technical Note at Appendix HE.1.2 to the Applicant's response to First Written Questions [\[REP3-187\]](#). Where a proposed development causes less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal (Airports NPS at paragraph 5.205 and NPPF at paragraph 196). The public benefits of the projects significantly outweigh the less than substantial harm to heritage assets. Historic England have no objection as to the impact of the project on designated heritage assets.
20. There are only two residual concerns raised by Historic England and Kent County Council in respect of heritage. The first is the complaint that the development of the Northern Grass is not sufficiently flexible to respond to any potentially significant archaeological finds; however the Applicant has accepted Historic England's latest (Deadline 11) drafting to address this issue.
21. The second concern is that there has not been sufficient protection of non-designated heritage assets on the main airport site. The Applicant will preserving some un-designated heritage assets on the main airport site. Where they are retained, they will stand in the context of an active airfield which will enhance their significance as non-designated assets associated with the former airfield use. The Applicant proposes to remove other non-designated heritage assets in order to bring the project into operation. The affected structures are not of sufficient value or significance to have been listed and the Applicant considers that limited weight should be attributed to their loss. Certainly that loss is significantly outweighed by the public benefits of the project.

### ***Landscape and visual***

22. The Applicant has concluded that there will be no significant landscape effects from the project but that a number of receptors will experience significant visual impacts. It should be noted that there are no local or national landscape designations in the vicinity of the airport. The airport site itself constitutes a largely barren landscape of derelict terminal buildings and unmanaged grassland. The project would introduce a sense of coherence and provide opportunities for enhancement of a degraded landscape.
23. The Applicant has drafted and committed to a Design Guide to control the design of the site and its visual appearance and to secure appropriate mitigation and enhancement.
24. Thanet District Council has raised a residual concern about screening at the south-east of the site. The Applicant considers that the current landscaping proposals provide adequate and appropriate mitigation. However, it should be noted that pursuant to Requirement 10 of the

dDCO, no part of the development can commence until a landscaping scheme has been approved by Thanet District Council, so the local authority will ultimately have control over the landscaping of the site.

### **Ecology**

25. The Applicant considers that there are no significant ecological effects arising from the project. Natural England is generally satisfied with the ecological mitigation proposed. The biodiversity area to the south of the airport site is subject to an option in favour of the Applicant but has not yet been fully secured. Natural England is therefore not able to issue a formal 'letter of no impediment' for a bat licence until the Applicant has acquired the biodiversity area. However, Natural England has confirmed that 'provided the Applicant carries out the necessary surveys .... and follows Natural England's advice and recommendations in making a satisfactory licence application, we will be able to issue the licence.' [Response to question Ec.4.3]

### **Other environmental impacts**

26. There have been no significant residual concerns expressed by statutory bodies in the areas of air quality, climate change, health, waste and water.

### **Compulsory acquisition**

27. The voluntary acquisition of SHP's land by the Applicant means that the land subject to compulsory acquisition powers has reduced from 300 hectares to less than 1.5 hectares. On completion of the transfer, SHP will withdraw its objection to the project. The Examining Authority will not need to determine whether there is a compelling case in the public interest for the acquisition of the airport site or the Northern Grass or whether the Applicant was acquiring the minimum land necessary from SHP in order to deliver the project.
28. On completion of the voluntary sale, SHP will withdraw its planning applications for the site, so the Examining Authority will no longer need to have regard to the alleged adverse impacts of frustrating SHP's plans for the land, which, in any event were unrealistic. The table below illustrates the extent of outright compulsory acquisition sought at the time the application was made and at the end of the examination. Note that Mr Spanton has not made a representation objecting to the project or the proposed compulsory acquisition and nor has he responded to any attempts at contact from the Applicant.

<b>Owner</b>	<b>Original area when the application was made (m<sup>2</sup>)</b>	<b>Status</b>	<b>Remaining area at the end of the examination (m<sup>2</sup>)</b>
Stone Hill Park	2,927,158	Acquired by agreement	
Jentex	21,166	Acquired by agreement	
Mr Spanton	10,915	Still outstanding	10,915
Museum	9,210	No longer being acquired	
Kent CC	3,911	Still outstanding	3,911
Mr Chamberlain	2,447	Small quantity still being acquired	196
<b>Total</b>	<b>2,974,807</b>		<b>15,022</b>

29. The Applicant is also seeking subsoil ownership of the pipeline running to Pegwell Bay, and rights in land in four areas: the western approach lights (0.9 hectares), the eastern approach lights (3 hectares), the south west access to the site (0.03 hectares) and access to the pipeline from the public highway at various points along its length (0.75 hectares). These are not considered to have a significant impact on the owners of the land where the rights will be (or are already) situated.
30. Thirdly, the Applicant is seeking temporary possession (which is not compulsory acquisition) of highway land around the site (2.6 hectares) so that it can carry out improvement works.
31. There is a compelling case in the public interest for the airport to be reopened. Section 122 of the Planning Act is satisfied in respect of the relatively limited area of land subject to compulsory acquisition powers.

### **Statutory undertakers**

32. The only statutory undertaker to maintain a significant objection is Network Rail. It objects to the Applicant acquiring the pipeline where it passes underneath a railway. The pipeline is existing infrastructure, the ownership of which is unclear. The Applicant is prepared to take on maintenance responsibilities for it, where currently there are none with legal responsibility. It is not proposing to carry out any works to the pipeline, and therefore does not consider that its acquisition of the pipeline could threaten the railway. It therefore maintains its proposal to acquire the pipeline.

### **Northern Grass**

33. In relation to the Northern Grass Area the Applicant is now simply proposing the development of its own land. The only question for the Examining Authority is whether the development proposed on the Northern Grass can properly be included in the application as 'associated development'.
34. Works 15 – 17 of the dDCO authorise the development of the Northern Grass for 'airport-related development'. Article 2 defines 'airport-related' as "*development directly related to, or associated with, or supportive of operations at Manston Airport...*". The DCO would only permit use of the Northern Grass for development that is related to, associated with or supportive of the principal airport development. The NSIP Justification, together with its Annex 4 [\[REP1-005\]](#) provide further explanation and justification for the proposed development on the Northern Grass. It plainly constitutes associated development within the meaning of the Planning Act and relevant guidance.

### **HRDF**

35. A lot of time has been spent on the 'High Resolution Direction Finder' within the application site to the north of the runway. The HRDF must be moved because the new airport buildings will interfere with its operation.
36. The Applicant has expended considerable effort in engaging with the MoD and has paid its contractor Aquila to consider alternative sites for the HRDF. Its report was issued towards the end of the examination (included as TR020002/D11/AR) and it recommends three sites as being better than the current site, all at some distance above ground: on a mast at the MoD's own fire training school, on the air traffic control tower at the airport and on the radar mast on

the northern grass. As two of these sites are in the Applicant's control and the third is in the MoD's control, the Applicant is confident that the HRDF can be located to one of them without any difficulty.

37. The Applicant has also discovered that the 2017 safeguarding direction issued by the MoD was never sent to the local planning authority so has been entirely ineffective (see the Annex below for evidence of this). The effect of the project will therefore be to improve the location of the HRDF and afford it proper protection.
38. It should be noted that the relocation of the HRDF is not a compulsory acquisition issue; the Applicant cannot acquire the MoD's land compulsorily, and it would not harm the project if the area of land the HRDF occupies remained in the MoD's ownership (albeit without the HRDF). All three sites assessed by Aquila are to the west of the airport and would not interfere with the Manston Green development, nor any other consented applications for that matter.

### ***Other MoD sites***

39. The MoD has two other sites on the airport: an aerial farm and a motor transport unit. They are both on the edge of the site and so can be worked around, but it would be preferable if the airport boundary remained as it is currently. The Applicant awaits a substantive response from the MoD on these sites having been advised that the aerial farm may be redundant and the motor transport unit may be able to be moved. The Applicant will continue to negotiate with the MoD and will update the Secretary of State for Transport as necessary. The Applicant would prefer if the motor transport unit were relocated onto the Northern Grass Area, which it would be prepared to do at its own expense; it would also benefit the MoD, as it would be nearer to the fire training school that it serves.

### ***Public Safety Zone***

40. The issue of the creation of a public safety zone (PSZ) was raised during the examination. This would be an inner and outer triangular area extending from each end of the runway. No development would be permitted in the small inner area and the number of people living or working in the outer area should not be allowed to increase through planning decisions. The creation of a PSZ is not done by the Applicant but by the DfT and local authority. The Applicant estimates that one may need to be introduced by year 15 of the airport's operation, but that would only be if the maximum level of flights anticipated was coming to pass and so the benefits of the project were being maximised, and as it would just be over the PSZ creation threshold it would be small.

### ***Need and funding***

#### ***Need***

41. The demonstration of need for the project, which goes to its likelihood of producing the benefits that have been forecast in the application, is now of less significance given that the adverse impacts will rise and fall in proportion to the benefits (see paragraph 5). However, there is nevertheless a strong need for the project. It has been clearly established by the Applicant and accords with government policy which recognises the importance of air freight to the UK economy. The Aviation Policy Framework (2013) explains that the air freight sector contributed £2.3billion to UK GDP in 2010 and facilitates £11billion of UK exports a year. It recognises that the UK's aviation sector enables productivity and growth by enhancing access to markets and

new business opportunities and by facilitating lower transport costs and quicker deliveries. It identifies a key priority for the Government to continue working with the aviation industry to make better use of existing runways at all UK airports. [Beyond The Horizon: Next Steps towards and Aviation Strategy](#) (April 2018) further recognises the importance of air freight to the economy and includes a lengthy section on ‘Facilitating the air freight market in the UK’ and ‘Supporting Aviation Exports’ (see, in particular, paragraphs 4.26 to 4.36). The [Airports NPS](#) supports airports beyond Heathrow making best use of their existing runways and recognises the importance of air freight to the success of the economy (see, in particular, paragraphs 1.39; 2.2; 2.7; and 3.23), as does the [Aviation 2050](#) consultation document (published in December 2018). The latter document highlights the growing importance of aviation in the transport of freight and its increasing significance to the UK economy (see paragraphs 1.19 – 1.21; 4.45 – 4.50). It explains that “*The government supports continued growth in the air freight sector particularly making best use of existing capacity at airports, to continue to facilitate global trade for UK businesses and consumers*”. This project aligns precisely with those policy objectives. Facilitating air freight in the UK; allowing UK goods to reach new markets; and re-capturing some the significant tonnages of freight that is flown to and from European airports because of capacity constraints in the South East and then trucked to the UK, to the detriment of the UK economy, is particularly important in the context of the UK’s exit from the European market. A consolidated need case document submitted at Deadline 11 (TR020002/D11/OSON), but in summary:

42. There is a significant need for additional cargo capacity in the south-east of England, not least as argued by York Aviation in its 2013 and 2015 reports for TfL and the Freight Transport Association (see paragraph 45) and the Steer Report ([Appendix ND1.13 to the Applicant’s response to 1WQs](#)). Capacity constraints in the South East are a significant hindrance to the operation of air freight and one of the main reasons why so much air freight is flown to mainland Europe and trucked to the UK, in turn causing road and port congestion (Steer report, paragraph 2.34).
43. By definition the fulfilment of unmet capacity will not divert capacity from elsewhere; to the extent that capacity is taken from elsewhere it is likely to be to replace trucking across the English Channel to and from airports in mainland Europe. The trucking of goods produced in or destined for the UK to be flown from European airports represents an inefficiency in the system, to the detriment of the UK economy. Re-capturing some of the freight that is currently destined to or produced in the UK but flown from European airports will benefit the UK economy. To the limited extent that capacity is taken from other airports in the UK, this is likely to be replaced at those airports with additional passenger flights given the need and preference for them.
44. The Applicant is proposing a modern airport that will meet the unmet need that has been demonstrated by offering a specialist cargo airport that will have sufficient capacity to be highly adaptable to its customers’ needs. The airport is in the south east of England close to the country’s largest conurbation and connected to it by dual carriageway or better. Manston will be a modern airport that will meet modern demands such as those associated with the burgeoning e-commerce market, which has a different model from traditional air cargo operations such as the use of fulfilment centres, reducing the need for flight times to match end-user delivery times.
45. York Aviation’s evidence to the examination as a consultant to SHP should be considered in the context that SHP now proposes to withdraw its objection to the project and has agreed to a

voluntary transfer of its land. Reports produced by York Aviation before its association with Stone Hill Park remain supportive of the Applicant's case:

- a. On page 7 of the 2013 report to Transport for London (exhibited on the 278<sup>th</sup> page of Stone Hill Park Ltd's written representation [\[REP3-025\]](#)), it is stated that there will be a capacity shortage of 53,953 freighter movements in 2050 with no additional runways in the south east of England; 33,340 if Gatwick and Stansted both have additional runways; and 26,983 if a four-runway hub in the River Thames is constructed; the report goes on to say that "around 14,000 freighters a year could still be accommodated in the vicinity of London by using capacity at airports such as Manston" (the airport still being open at that point, and the Airports Commission not yet having shortlisted Heathrow for expansion).
  - b. On page 19 of the 2015 report to the Freight Transport Association (exhibited on the 1142<sup>nd</sup> page of the Applicant's appendices to answers to first written questions [\[REP3-187\]](#)), it is stated that there will be a capacity shortage of 79,212 freighter movements with no additional runways, 44,927 with a third runway at Heathrow, 65,186 with a second runway at Gatwick and none with a four-runway hub in the River Thames.
46. Following the acquisition of the SHP land by voluntary agreement, the question of the need for the development has become less of a critical issue, as the Examining Authority no longer needs to consider whether there is a compelling case in the public interest for the compulsory acquisition of the main airport and Northern Grass land. The Applicant remains convinced that there is a demonstrable need for additional air freight capacity in the South East. However, in the event that the Applicant's forecasts were not realised, the adverse impacts associated with the operation of a successful freight airport would not materialise

### **Funding**

47. There has been considerable scrutiny of the Applicant's proposed funding of the project, partly because the ultimate investors in the project are individuals rather than companies. It is for that reason that the Applicant has been reluctant to reveal those private individuals to the public. The government supports and encourages the investment of private funds in UK infrastructure. The National Infrastructure Delivery Plan 2016 – 2021 notes that around 50% of the £483billion project pipeline would be delivered through private investment and outlined the government's strategy to ensure successful infrastructure planning, which included steps to unlock private investment, explaining that "*The government seeks to create the right environment to encourage private investment in infrastructure and is supporting this in a number of ways*". Appropriate checks on all private investment in the UK are carried out by HMRC, which has granted approval for private investment in the Manston project through the Business Investment Relief scheme.
48. The Applicant has offered to reveal details of the private individuals concerned to the Examining Authority on the bases that their identities would be redacted before being placed in the public domain, but the Examining Authority has felt unable to guarantee that it would do so. The same offer is available to the Secretary of State for Transport.
49. To date, the Applicant has spent in excess of £15m on the acquisition of the Jentex fuel site and in pursuing the DCO application. It has now spend a further £16.5m on the acquisition of

the SHP site. In total, a very considerable sum has been raised and spent on this project, in excess of £30m.

50. The law requires an application to contain 'a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded', which the applicant has done (for a considerably higher amount than now needs to be provided); and the guidance advises that 'Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.'. The Applicant has more than fulfilled these requirements.
51. Short of naming the investors, the Applicant has provided extensive information about the funding structures of the project far beyond that required of any previous application. Its actions have been entirely consistent with its evidence of the funding it has available – spending over £15m on the development of the project and promotion of the DCO to date, and a further £16.5m on the acquisition of the airport.
52. Article 9 of the dDCO requires the Applicant to demonstrate, to the satisfaction of the Secretary of State, that the funds to cover all compulsory acquisition and noise mitigation are secured before any works can be carried out. That means that unless and until the Secretary of State is satisfied that funding is available and secured, no works can be carried out. Furthermore, the time limit for exercising compulsory acquisition powers has been reduced from the standard five years to one year (see Article 21). The effect is that if the Applicant does not satisfy the Secretary of State of the availability of funding within one year, it will not be authorised to exercise any powers of compulsory acquisition or to implement the project. Article 9 thereby provides to be demonstrated to the Secretary of State before such powers can be exercised; even though the figure needed for compulsory acquisition has been reduced by at least 95% upon acquiring the airport.
53. The Applicant has provided evidence of some of its interested investors during the examination to demonstrate that the project is likely to go ahead if authorised. The Applicant has shown how the project is viable and there are a growing number of investors interested in investing in it.
54. As to the funding of the project itself, there is no requirement, either in statute or guidance, for an applicant to have secured all funds to cover the costs of a project in order to obtain development consent. DCLG Guidance related to procedures for the compulsory acquisition of land (September 2013) provides that a funding statement should provide as much information as possible about the resource implications of acquiring the land and implementing the project. The Guidance recognises that in some cases it will not be possible to finalise funding until there is certainty about the project. It would be extremely rare for an applicant to ever be able to show that all funds to deliver a project were secured and committed prior to the grant of development consent. Infrastructure projects, including this one, are generally funded through debt or equity finance and final funding decisions can inevitably only be made once development consent is secured. The Applicant has made it clear that on the grant of the DCO, funds will be raised from investors, many of whom have expressed interest in funding the project. As explained above, the Applicant has already raised and expended sums in excess of £30m on this project and is confident that the project will secure funding to cover the costs of its delivery. The absence of final funding decisions does not present a risk or impediment to the project. It is entirely

unsurprising and entirely in accordance with the position on the vast majority of DCOs that have been made to date.

55. Despite scepticism from a number of opponents of the project, the Applicant's conduct has been fully consistent with it having available far more than the requisite funds for compulsory acquisition and noise mitigation. Its expenditure on the project generally, purchase of the Jentex site in September 2018 and purchase of the main site in July 2019 provide compelling evidence of the availability of funds. The Examining Authority should be in no doubt that the Applicant has the remaining funds for compulsory acquisition, and that there is sufficient interest in the project that it will go ahead.
56. The project relies upon no public funding and will mean considerable private inward investment in UK infrastructure. The Applicant has cited the [\*Chesterfield Properties\*](#) case, where the judge concluded that 'there are circumstances in which the Secretary of State might lawfully confirm a compulsory purchase order even though he cannot conclude that the related development would, or would probably, go ahead'. Now that over 95% of the land is no longer subject to compulsory purchase, there is even less reason to require a high viability threshold.

### **Third parties**

57. The Applicant recognises that the project has engendered passionate responses from local people, both for and against the project, with substantial levels of representations and other submissions from all points of view. A number of the local people making representations both for and against have participated throughout the examination and have dedicated considerable time and effort in making their submissions. The Applicant thanks its supporters for their dedication and notes that those objecting to the project have caused significant concessions to be made to address their concerns. One group is called No Night Flights – there are now (nearly) going to be no night flights following the examination.
58. While acknowledging the contribution from local people, the Applicant then notes that there was a relatively low level of participation by statutory authorities, and this fact should be given some weight.
59. The following statutory bodies (in the Planning Act 2008 sense) made relevant representations (other than 'no comment'):
  - a. Canterbury City Council,
  - b. Civil Aviation Authority,
  - c. Defence Infrastructure Organisation,
  - d. Dover District Council,
  - e. Environment Agency
  - f. Highways England,
  - g. Historic England,
  - h. Kent County Council,


- i. Met Office,
- j. NATS,
- k. Natural England,
- l. Network Rail,
- m. Public Health England, and
- n. Thanet District Council.

60. Of those, which are a short list of 14 bodies in any event, only the Defence Infrastructure Organisation, Historic England, Network Rail and Kent County Council maintain significant objections at the end of the examination (it is acknowledged that some others do have a series of minor objections, such as Thanet District Council). These are all addressed in the preceding text.

## **Conclusion**

61. In conclusion, there is an overwhelming case in favour of the grant of development consent. Inevitably a major infrastructure project such as this will cause some adverse impacts but those impacts have been minimised and mitigated to a significant degree through careful design and a suite of control mechanisms secured through the DCO. The benefits of the project significantly outweigh its adverse impacts and development consent should be granted.

## **ANNEX – CORRESPONDENCE WITH THANET DISTRICT COUNCIL ON MOD SAFEGUARDING**

 Wed 01/05/2019 12:07  
Iain Livingstone <iain.livingstone@thanet.gov.uk>  
Re: Safeguarding direction [BDB-BDB1.FID9947610]  
To: WALKER Angus

Hi Angus, sorry for the delay, I don't have a copy of an MOD direction about Manston, sorry.

Regards  
Iain

On Fri, 26 Apr 2019 at 11:43, WALKER Angus <AngusWALKER@bdbpitmans.com> wrote:

Hi Iain


Do you have a copy of the Ministry of Defence (Manston) Technical Site Direction 2017?


Many thanks

  
BDB PITMANS

Angus Walker Partner  
T +44 (0)20 7783 3441  
M +44 (0)7973 254187  
W www.bdbpitmans.com

For and on behalf of BDB Pitmans LLP  
50 Broadway London SW1H 0BL

 Wed 01/05/2019 15:58  
no-reply@thanet.gov.uk  
Your Freedom of Information Request Receipt  
To: WALKER Angus

 If there are problems with how this message is displayed, click here to view it in a web browser.


This message confirms receipt of your Freedom of Information Request which will now be processed by Thanet District Council.

Here is a copy of the information you provided:

Question	Response
Full Name:	Angus Walker
Address:	BDB Pitmans 50 Broadway London
Post code:	SW1H 0BL
Please enter your email address:	anguswalker@bdbpitmans.com
Contact phone number:	02077833441
I understand that my details may be passed on to a member of Thanet District Council Staff to gather the required information:	Yes
Information you require:	A copy of the Ministry of Defence (Manston) Technical Site Direction 2017
How would you like to receive the information?:	Email
Would you like to receive a digest or summary of the information?:	No, send me full copies of the information I have asked for
This request applies to documents from (date):	01/01/2017
This request applies to documents to (date):	31/12/2017
I understand that I will not normally be given access to the personal information of another person unless I have obtained the written consent of that person:	Yes
I understand that the Council may not hold the information I am requesting and that the Council may need to consider whether it is appropriate for my application to be transferred to another public body. Where this is the case, I Yes consent to my application being transferred:	Yes
I understand that I may be required to pay a fee for the information and that where a fee applies, the information will not be released by the Council until the fee has been paid:	Yes

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Please do not reply to this email address as the mailbox isn't monitored. If you have any further queries please see our website [thanet.gov.uk](http://thanet.gov.uk)

 Tue 14/05/2019 11:21  
foi@thanet.gov.uk  
FOI Request  
To: WALKER Angus

Dear Mr Walker

Thank you for your Freedom of Information request dated 02/5/2019.

The response to your request is set out below.

Thank you for your patience in this matter.

If you are unhappy with the way your enquiry has been dealt with, you may ask for an internal review by submitting a request within one month of the date of this response. Further information on the internal review process is can be found here: <https://www.thanet.gov.uk/your-services/information-requests/freedom-of-information-foi/appeals-and-complaints/>

Your request should be addressed to the Information Governance Manager, Thanet District Council, PO Box 9, Cecil Street, Margate, CT9 1XZ or by emailing [foi@thanet.gov.uk](mailto:foi@thanet.gov.uk).

If you are still dissatisfied after an internal review, you may appeal to the Information Commissioner, Wycliffe House, Water Lane, Wilmslow SK9 5AF.

Kind regards

Information Governance Officer

Thanet District Council

Margate

CT9 1XZ

01843 577620

This is not something we would have.