

Ms Madeline Homer
Chief Executive
Thanet District Council
P.O. Box 9
Cecil Street
Margate
CT9 1XZ

Your Ref

Our Ref
ADW/166055.0003

Date
16 January 2018

By Email
Urgent

Dear Madam

Extraordinary Council Meeting, 18 January 2018

This letter has been jointly prepared by BDB and RPS who are the legal and planning representatives acting on behalf of RiverOak Strategic Partners (RiverOak) in connection with their proposals to submit a Development Consent Order (DCO) application to reopen Manston Airport as an air-freight hub with some passenger services. It is written further to publication of the officer's report to the 18 January 2018 Extraordinary Council which will consider the Pre-Submission Publication Stage of the new Thanet Local Plan and should be read alongside the letter from RPS to the Head of Strategic Planning at Thanet District Council (TDC) dated 17th March 2017 in connection with the Proposed Revisions to the draft Thanet Local Plan (Preferred Options) (January 2017).

Following our review of the officer's report to the 18th January 2018 Extraordinary Council, it has become necessary to bring several items to your attention. We address these matters below and present them under sub-headings that match those used in the officer's report.

Introduction and Background

The officer's report clearly sets out how important the Local Plan is as a key strategy document that supports the Council's Corporate Plan priorities by seeking to support economic growth and regeneration and seeking opportunities for inward investment and job creation. In its current state, RiverOak do not believe that the Local Plan goes far enough and it is not proactive enough in securing policies that encourage deliver of the corporate priorities – not least in respect of the significant opportunity presented by the possible reopening of Manston Airport site. The 2015 Consultation of the draft Thanet Local Plan rightly acknowledged that "a successful airport has the potential to be a significant catalyst for economic growth" and Policy SP05 supported "retention, development and

16340202.1

50 Broadway London T +44 (0)20 7227 7000
SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria W www.bdb-law.co.uk

expansion of the airport and aviation operations" in full recognition of the opportunity that the airport presented to deliver strategic growth objectives. This policy approach to the airport was widely supported by the general public. To allocate the airport site for anything other than aviation use would be a missed opportunity for the District which should not be lost.

Government Guidance – Key Requirements

Paragraph 2.13 of the officer's report correctly recognises that the new Local Plan should be based on adequate, up-to-date and relevant evidence. RiverOak do not believe that Members of the Extraordinary Council have adequate evidence upon which to make such an important decision on the next stages of the Local Plan.

The officer's report itself identifies examples of where crucial pieces of evidence have not been completed and therefore made available to Members, or the general public. The evidence base to the Local Plan is lacking and incomplete and has not benefited from full scrutiny by way of a full consultation. Members have not seen the following evidence:

- **Avia response to the March 2017 representations** – Avia have already issued a preliminary response to RiverOak's comments from March 2017. However officers indicate that a fuller response, which relates directly to their September 2016 report, will be reported to Members in due course. No date is provided for this response. Additionally, the Avia Report itself has never been subject to scrutiny and comments have never been invited on it. As the principal evidence base for the Council's justification for no longer protecting the airport for aviation use, the Avia Report and any further commentary needs to be fully considered by Members and the subject of proper scrutiny before any definite decision is taken on the future of the airport.
- **Justification for the amount of employment land allocated** – The Council has promised to publish an Economic Development Needs Assessment-style document which will explain the amount of floorspace needed over the Plan period and the employment land supply situation. This is welcomed as the current document is very out of date (2010). The Council's employment strategy and policies are a central part of the Local Plan and in realising corporate priorities. They must be based on the latest information available especially as there are likely to be implications for other elements of the Local Plan if the currently reported land supply situation changes. It is understood that the promised document will be submitted to the Secretary of State alongside the Local Plan, but this will be after Members have made their decision at this week's meeting. RiverOak continue to raise significant concerns about the Council's continued approach and admittance to maintaining a significant oversupply of employment land especially when delivering employment land in Thanet has historically been difficult and failing to properly consider Employment Omission Sites, as doing this may present better options for addressing housing land supply needs thereby reducing the reliance on Manston Airport to meet this supply.
- **Strategic Housing Land Availability Assessment (SHLAA) and Strategic Housing Market Assessment (SHMA)** – the Council acknowledges that these documents are out of date. The SHMA has been revised to provide up to date evidence for the objectively assessed housing need for Thanet and the types and affordability of homes required but it has not been published. This should inform the level, size, type and affordability of housing to be provided for in the Pre-Submission draft Local Plan. The SHLAA will be updated for the Pre-Submission draft Local



Plan. The content of the Pre-Submission draft will be informed by the updated SHMA. Again, this is all crucial evidence which Members will not see before making a decision this week.

- **Housing Omission Sites (which have not be allocated)** – there were numerous objections from landowners and agents whose sites had not been allocated for housing. The Council is considering the sites individually and on their own merits in line with established assessment procedures set out in the evidence base. The Council has previously promised to publish an Environmental Report to update on this process and to explain why sites had not been allocated. This report has not been published. This evidence needs to be considered in full against the Council's proposed list of housing allocations and especially in light of the proposal to deliver a new settlement on Manston Airport (which was once the Council's least preferred housing solution) and which RiverOak state is not required with reference to the January 2018 RPS Report "*Thanet District Local Plan: Review of Future Housing and Employment Growth and Capacity for Development.*"
- **Final versions of the Infrastructure Delivery Plan, Sustainability Appraisal, Viability Assessment and Transport Modelling Work** – objections were received stating that these documents should have been published as part of the 2017 consultation. The Council has responded by saying it has published evidence base documents and information in the past, and is committed to continuing to do so, as and when evidence is available and at the appropriate stage. The Council recognises that these are important elements of evidence for the Examination. The officer's report states that it is the Council's intention to publish the evidence mentioned at the next stage, if available. This is simply not good enough when we are talking about such important evidence documents which underpin the District's future for the next 20 years.
- **Whole Plan Viability Study** – this document is required to ensure that the development identified in the draft Plan is deliverable in the Plan period to 2031. As this document has not yet been completed and therefore published, there is no certainty that the development being proposed (including the new settlement at Manston Airport) is viable and therefore deliverable. This evidence should be made available to Members now.

The above list is sizeable and contains a number of essential evidence documents that could all have significant implications for the Local Plan which the Council itself recognises as a key strategic document. Members have not been properly informed in advance of being asked to make decision on the next steps. This is not only unfair but irresponsible and could have severe repercussions at the Examination stage if an independent Inspector is not satisfied that adequate evidence has been supplied or that it is out-of-date.

Duty to Cooperate

We suggest that, despite the assurances given in the officer's report (paragraph 2.25), all the evidence suggests that there has not been sufficient co-operation with Dover District Council (DDC) on cross-boundary strategic priorities especially in relation to Manston Airport and that DDC is likely to make this point to the Local Plan Inspector at the appropriate time. A failure to demonstrate evidence of having effectively cooperated to plan for cross-boundary issues in accordance with paragraphs 178-181 of the

NPPF before submitting Local Plans for examination is a serious issue for the Inspector that could lead to the Local Plan not being accepted.

Housing Omission Sites

Paragraph 2.106 of the officer's report recognises that at the last consultation, the Council received a number of proposals for new housing sites that had not been allocated in the draft Local Plan. The Council alleges that the new sites have all been subject to assessment and in the same way as those sites that were submitted earlier on in the Local Plan process at the 'call for sites' stage. There has been no information published to date to evidence or justify the Council's decisions. Consequently, the Council's approach to meeting its housing land supply needs is not fully understood and even less so when considering that there needs to be a clear synergy and integration between the Local Plan housing and employment strategies (with reference to paragraph 158 of the NPPF) – where there is evidently none (see earlier section on Government Guidance – Key Requirements and comments made in relation to the Council's employment land supply assessment).

The overprovision of employment land allocations within the Local Plan (see paragraph's 2.131 to 2.135 of the officer's report) needs to be fully considered alongside the new SHLAA to establish if there is further opportunity for employment sites to be given over to housing (and therefore not having to allocate Manston Airport for a new settlement before the airport's future is properly considered). Additionally, there needs to be a proper consideration of the employment land omission sites (paragraph 2.136 and 2.137 of the officer's report) to see if they represent better examples for employment allocations therefore meaning that existing employment sites could be released for housing. Presumably if Manston Airport is retained in employment use, then other employment sites could be released for housing while maintaining the same amount of employment land.

Future of the Airport Site

There are a couple of points that we need to respond to in relation to paragraphs 2.107 to 2.130 of the officer's report. These are separated out under headings below:

Selective and Inaccurate Reporting of the Planning Inspector's decision on Manston Airport (dated July 2017)

The characterisation of the unsuccessful planning appeals relating to the Manston Airport site at paragraphs 2.119 to 2.122 of the officers' report is wholly misleading. The true picture is as follows:

The Council refused, or did not determine, four applications for changes of use of buildings on the site away from airport use. This was appealed by Stone Hill Park Limited. In December 2016, the Council decided that it would not defend the appeals, relying on the Avia Solutions report for its change of heart.

The Council attended, but did not participate at all in the appeals, which were heard in the Council Chamber in March 2017. The Avia Solutions' report was not introduced to evidence and was not therefore subject to any scrutiny and has as yet not been subject to scrutiny in any other way. In contrast, RiverOak's reports by Dr Sally Dixon and Mr Chris Cain were submitted in evidence and were able to be scrutinised, but were not challenged either by Stone Hill Park Limited nor the Council.



The Inspector decided on 13th July 2017 to dismiss the appeals because there was sufficient prospect of the airport site being brought back into airport use, and he concluded that existing national aviation policy framework and adopted Thanet Local Plan Policy EC4 carry 'significant weight', and that the emerging Policy SP05 carries 'little weight'.

Justification to retain the airport designation

It is wholly inappropriate and wrong for the Council to state in paragraph 2.117 that there is insufficient justification to retain the airport designation during the Plan period. The future of the airport has not yet been properly considered or tested through either the Local Plan or development consent processes and to base the new Local Plan on this conclusion would be wholly wrong. In paragraph 2.121 the Council fully recognises that the airport's future is a matter for the Local Plan and DCO process. It is simply too premature to conclude as the Council has on this matter – especially in light of the Planning Inspector's conclusions in July 2017 in connection with the planning appeals by Stone Hill Park Limited (see above).

Paragraph 2.38 says that the Environmental Report (yet to be published by the Council) will make the Council's assessment of the airport site much clearer. This document must be seen by Members and scrutinised before making such an important decision on the airport's future.

Paragraph 2.123 states that there are implications for the Local Plan if the airport site was not allocated for mixed-use development. RiverOak simply does not agree. The implications can be satisfactorily addressed through better consideration of the evidence base. We believe that there are equally implications for the Local Plan (and the Council's Economic Growth Strategy) by not safeguarding the airport for aviation use – this is not something that has been properly considered by the Council.

Prematurity of deciding the airport's future now

Paragraph 2.128 says that DCLG have said that there is no need for the draft Local Plan to be delayed by the DCO. Whilst this is true, it would also be significantly premature for the Council to assume that the DCO will not be successful and that an alternative use for the airport site must be promoted now. The airport should remain protected for aviation uses until such time that the Local Plan review and DCO processes have been completed – a fact that officers themselves acknowledge in the report (paragraph 2.120).

Weight to be given to the draft Local Plan

In paragraphs 2.150 to 2.152, the officer's report suggests that as the draft Local Plan progresses towards Examination, it gradually accrues more weight in development decisions and that when the Local Plan is submitted for Examination, that significant weight can be afforded to the draft policies. Until the Local Plan has been considered by an independent Planning Inspector, little weight can be given to the emerging plan policies and in particular Policy SP05 (Manston Airport) which continues to attract significant outstanding objection.

Consideration by the Overview and Scrutiny Panel

The officer's report also gives a misleading account of the proceedings of the Overview and Scrutiny Panel that took place on 21st November 2017 (paragraphs 1.10 and 2.168). In fact, a motion to

recommend that the Cabinet agree the Local Plan and that it recommend that the Council submit the Local Plan to the Planning Inspectorate for Examination was defeated by nine votes to one. This represents a strong message from elected Members about the concerns surrounding the new Local Plan and the outcome of the vote should be properly reported and accepted.

We have previously expressed concerns about the way that the comments from the Overview and Scrutiny Panel have been recorded. The concerns that they raised at the 21st November 2016 meeting a year earlier, namely the proposed loss of Manston Airport; the shortage of time that the Panel were given to study evidence documents; the lack of considering alternative uses for the airport site other than for housing; and whether the Council was going to look at rejected housing sites before finalising its housing strategy to deal with the need for additional homes, are all matters that are still of concern. The Panel's specific recommendation from that meeting to conduct further reviews in relation to the rejected housing sites to find extra land for housing development in order to minimise the use of greenfield sites still has not been actioned by the Council – over a year on.

Conclusions

For the reasons set out in this letter, and in the RPS letter to the Head of Strategic Planning at the Council dated 17th March 2017 in connection with the Proposed Revisions to the draft Thanet Local Plan (Preferred Options) and contrary to the requirements of paragraph 182 of the NPPF:

- the draft Local Plan has not been positively prepared;
- it is not justified through adequate and up-to-date evidence;
- there is no evidence available to confirm that it will be effective and deliverable over the Plan period;
- there has not been effective joint working on cross-boundary strategic priorities;
- is not consistent with national planning and aviation policy objectives; and
- it has not been prepared in accordance with the Duty to Cooperate or legal and procedural requirements and therefore fails the 'soundness' test.

Consequently, the Plan should not be submitted for Examination.



BIRCHAM DYSON BELL

RiverOak maintain that there should be no new mixed-use settlement promoted at Manston and that there is a clear need, which needs to be captured in the new Local Plan, to safeguard land at Manston Airport exclusively for aviation related uses – consistent with the national policy context. The airport would deliver much-needed infrastructure which in turn would deliver economic growth on a local, regional and national level in addition to wider growth opportunities fully consistent with national planning policy objectives and the Council's own strategic priorities to grow economically.

Yours faithfully

Bircham Dyson Bell LLP

T +44 (0)20 7783 3441

F +44 (0)20 7222 3480

E anguswalker@bdb-law.co.uk

cc All Members invited to the 18th January 2018 TDC Extraordinary Council Meeting
Adrian Verrall, Strategic Planning Manager, TDC
Iain Livingstone, Planning Applications Manager, TDC
RiverOak Strategic Partners
RPS