Baldwins Wynyard Park House, Wynyard Avenue, Wynyard, TS22 5TB

Mr Richard Price
Case Manager
The Planning Inspectorate
Room 3/8 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Date 8 March 2019

Dear Richard,

Proposed Manston Airport Development Consent Order
Application ref: TR020002

Please find the submission of Stone Hill Park Limited ("SHP") for Deadline 4 enclosed.

The submission comprises this letter and various enclosures, which cover the following areas;

- Section 1: comments on the Applicant's Responses to the Written Questions from the Examining Authority ("ExA");
- Section 2: comments on Local Impact Reports submitted by Thanet District Council and Kent County Council;
- Section 3: initial comments on the Applicant's first revised dDCO; and
- Section 4: response to Rule 13 and Rule 16 letter issued on 8 February 2019.

1. Comments on the Applicant's Responses to the Exa's Written Questions

1.1 Annex 1 and its appendices comprises SHP's comments (which have been prepared with assistance of its advisory team) on a number of the Applicant's answers to the first round of the ExA's written questions. Please note that SHP has not commented on answers on certain topics where it considers that other statutory bodies are better placed to challenge or correct assertions made by the Applicant.

1.2 In its submission, SHP has provided detailed comments on a number of answers where it considers the Applicant's answers in certain cases have been disingenuous, misleading, incomplete or, at best, ill informed. Where such concerns have been raised, these have been supported by evidence contained within the body of Annex 1 and supporting appendices. For example;

1.2.1 SHP has provided a detailed response to the Applicant/Azimuth Associates' answer to question ND.1.41. As explained in the comments, the Applicant has demonstrated a very serious lack of understanding of the UK freight market and

we have provided a detailed explanatory note to assist the ExA (this is included as appendix ND.1.41).

1.2.2 SHP's comments on the Applicant's answer to question ND.1.46 (with supporting evidence in appendices ND.1.46 (a) and ND.1.46 (b)), demonstrates the degree to which the evidence submitted by the Applicant is misleading, incomplete and highly selective.

1.3 It is apparent from both the Applicant's answers and other submissions made to the examination that the Application is still not "examination ready". The Applicant continues to avoid providing or disclosing information requested by the ExA that is critical to the examination. Examples include; the failure to disclose information on funding structure (or the identity of its investors despite previous commitments to do so) and the continued failure to meet the specific commitment given to the ExA at the dDCO hearing on 10 January 2019 to provide an explanation and justification of the works that comprise NSIP development and associated development. These are only two of many examples.

1.4 It is also apparent that there are material omissions in the Applicant's DCO application and impediments which do not appear capable of being rectified within the time available in the examination. These include, but are not limited to; concerns raised by the Defence Infrastructure Organisation in its Deadline 2 submission; the issues regarding Highways and Transportation as highlighted in KCC's local impact report; the material gaps in the ecology / biodiversity surveys (please also note that the Applicant's rights to undertake surveys under the s53 authorisation has now ceased due to its failure to comply with the Conditions of the authorisation – furthermore the Applicant has not responded to SHP's offer to discuss a voluntary licence arrangement); the failure to consider and assess the effects of Public Safety Zones that will be required (if the Applicant's forecasts are to be believed); the material issues regarding the CAA Certification and Air Space Change processes and the fundamental flaws in the Applicant's forecasts and Need case.

1.5 SHP recognise that the purpose of the Planning Act 2008 is to facilitate the development of infrastructure that is critical to the UK's national interest. However, there is an expectation that applications will be serious, based on a clearly established need and thoroughly evidenced. Without those protections, the legislation does not protect the interests of landowners in SHP's position, who can have their own plans blighted for many years without any testing of the merits of an Applicant's proposed scheme.

1.6 We have consistently raised the fundamental flaws in the Applicant's case over the last two years, yet the Applicant has not, at any time prior to the examination phase, been required to demonstrate that its forecasts or need case have any merit. This has been hugely prejudicial to SHP, which has been forced to expend well in excess of £1m in defending itself against attempts to compulsorily acquire its land.

1.7 Since September 2017, SHP had made a number of representations to the Planning Inspectorate and the ExA regarding the appointment of a technical assessor that could provide specialist assistance and assist in considering the merits of RSP's proposals. SHP recognises that the ExA has determined that it is not necessary and takes some comfort in the scope of the initial round of questions posed to the Applicant and Azimuth

Associates. In view of the incomplete and flawed answers given by the Applicant, SHP fully expects that the ExA will continue in this vein and will both;

1.7.1 undertake a full, robust assessment of all the assertions made by the Applicant and Azimuth Associates, and to the extent that these are contrary to or unsupported by relevant evidence, give appropriate weight to the submissions; and

1.7.2 fully review and give appropriate weight to the evidence submitted by Stone Hill Park and its highly respected aviation advisers, York Aviation and Altitude Aviation (reports included as Appendices 4 and 5 to SHP's written representations).

1.8 We apologise for displaying our frustrations with the process, however we consider this DCO application to be a gross abuse of process that has required SHP (not to mention the many public sector bodies funded by UK tax payers) to unnecessarily commit enormous resources over the last 2 to 3 years.

2. Comments on Local Impact Reports

Thanet District Council (TDC)

2.1 We note that TDC has highlighted a number of material issues, omissions and concerns within the body of the LIR that are not fully brought out in the brief conclusion sections. We trust that the ExA will consider the full content of the report. However, we would specifically like to comment on, and provide some additional context on, the section on "Draft Thanet Local Plan to 2031 Policies" (paragraphs 4.1.6, 4.1.1, 4.1.2 and 4.1.3 - we note there is a minor discrepancy with the numbering).

2.2 As can be seen from the extract of the TDC LIR below, despite the TDC evidence base showing *"airport operations at Manston are very unlikely to be financially viable in the longer term",* TDC members did not allocate the site for mixed use development (acting against the recommendation of TDC's professional officers) in order that it did *"not prejudice the dDCO process."* At no stage has the blighting impact of RSP's proposals on the land been considered.

> *"4.1.6 As detailed in section 2.6 the draft Local Plan has been submitted for Examination. Manston Airport has not been allocated for any proposed development in the Draft Local Plan.*
>
> *4.1.1 Draft Local Plan paragraphs 1.38 – 1.45 explain the current status of the Manston Airport in context of the plan. A Commercial Viability Report was undertaken by Avia Solutions in relation to Manston Airport which concluded that the airport operations at Manston are very unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031.*
>
> *4.1.2 However, TDC recognises the proposed development being put forward by RiverOak and thus in order to not prejudice the dDCO process TDC did not allocate the Airport site.*
>
> *4.1.3 In the event that a dDCO is not accepted or granted, or does not proceed, the Council will need to consider the best use for this site, in the next Local Plan review after a minimum of two years."*

2.3 We do not agree that the decision not to allocate the site is appropriate, or required, and would refer the ExA to the TDC Report prepared for the Extraordinary General Meeting held on 18 January 2018 to consider the draft Local Plan. At this EGM, Members voted down the draft local plan that had been recommended by TDC's officers. The TDC report referred (in paragraphs 2.128 – 2.130) to the DCLG guidance, confirmed that progressing the draft local plan with a mixed use allocation of the Manston site would not prejudice the DCO or its outcomes, and recommended an allocation of the site for mixed uses. The document extends to 386 pages and a link is provided below to the document on TDC's website.

(https://democracy.thanet.gov.uk/documents/g4872/Public%20reports%20pack%2018th-Jan-2018%2019.00%20Council.pdf?T=10)

2.4 It appeared from the public comments of local politicians supportive of RSP's proposals, such as the local MP Craig Mackinlay, that the rejection of the draft local plan was, at least in part, driven by a fear that removing the policy restricting use of the site to aviation and allocating it for mixed uses would make SHP's land more expensive for RSP to acquire should they succeed in a DCO. In expressing his delight at the members decision to reject the draft local plan at a meeting on 11 February 2018, Mr Mackinlay made the following statement (see first two minutes of the video available on the following link https://www.youtube.com/watch?v=gvVlQt5SSok);

> *"we all know that the DCO would have trumped whatever happened in that local plan, but the fear would have been that had it been redesignated away from aviation for mixed use, it would have instantly inflated the value, possibly to unacceptable levels in the future. That was my great worry."*

2.5 In the period up to July 2018, there were concerted efforts by some TDC Members to retain the airport related policy for the site. This is despite Members being advised that it would be unlawful for TDC to put forward a draft local plan that was not supported by TDC's evidence base.

2.6 We consider that it is also important to bring to the ExA's attention that TDC Members had previously sought to overrule evidence led professional advice from its officer team. The ExA will note that the detailed section 42 consultation response from TDC officers in February 2018 was not taken into account by RSP, so a number of relevant issues raised by officers relating to local impacts and the need for proper mitigation that is appropriately secured and enforceable have therefore not been taken into account as part of (and prior to the submission of) the Application.

2.7 As set out in paragraph 9.13 of the Planning Statement (APP-080) and page 320 of the Consultation Report (APP-075), the reason for this is said to be because Robert Bayford (a councillor at the time and now the leader of TDC), wrote to RSP on 20 February 2018 asking them to disregard the section 42 response as *"unrepresentative and flawed"* as it was written by officers and had not been endorsed by Members. Subsequently, Mr Bayford has recanted that statement on 28 March 2018 and acknowledged that Members at TDC should not seek to fetter officers' exercise of professional judgement. Mr Bayford confirmed that the section 42 response should in fact be considered, as highlighted in the Consultation Report (APP-075) at Table 10.2. Despite this, the Applicant still did not have regard to the feedback from TDC.

2.8 We would therefore encourage the ExA to review the s42 consultation response from TDC officers in conjunction with the LIR, which provides more detail on some of the issues that would affect the local community and the concerns regarding the Applicant's project. This document is enclosed as Annex 2.

Kent County Council

2.9 We note the fundamental issues identified by KCC regarding Highways and Transportation and query whether there is any prospect that these issues are capable of being addressed and rectified within the examination period.

3. Initial Comments on the Applicant's First Revised dDCO

Part 1 (Preliminary): 2. Interpretation:

3.1 The definition of *"maintain"* makes reference to materially new or materially worse environmental effects from those identified in the environmental statement. As the Environmental effects in the Environmental Statements have been presented as the worst case, the inclusion of "materially" in this context is wholly inappropriate. Similarly, the references to "*materially new or materially worse environmental effects"* should be replaced by *"new or worse environmental effects"* in Articles 6 and 14, and throughout Schedules 1 and 2.

Article 9: Guarantees in respect of payment of compensation, etc.

3.2 The drafting of this Article is wholly inappropriate. It is noted that the ExA advised that this Article will be examined through Written Questions and through a Compulsory Acquisition Hearing. SHP will be making representations on the dDCO articles at the hearing, which will be followed up in writing. Accordingly, no further comments are made at this time.

Article 18: Authority to survey and investigate the land

3.3 The wide powers of access sought are inappropriate and are likely to have a blighting impact on land held by SHP and other landowners. In its revised Explanatory Memorandum (paragraph 3.44), the Applicant argues that it is required in order to *"remove the necessity to compulsorily acquire that land and thus reduce the land brought within the Order limits."* Whilst this may be the case for small areas of land, it is certainly not the case for the land interests held by Stone Hill Park Ltd, which are critical for the Applicant's plans. The primary intent of the drafting would be to appear to be delay the point at which the Applicant is required to acquire land, effectively giving itself a 5 year Option. The effect of this Article is one of blighting, as it has the potential to restrict the ability of landowners to undertake commercial operations on its land for many years. At the very least, this Article should not apply to land interest held by Stone Hill Park Ltd.

3.4 It is also worth highlighting that there have been three separate authorisations or agreements (see paragraphs 3.4.1 -3.4.3 below) that provided for access to be taken over the land owned by SHP. In each case, the Applicant has been in breach of the

conditions of the relevant authorisation or agreement - these conditions were necessary to protect the legitimate interests of the landowners.

3.4.1 Section 53 Authorisation issued to RiverOak Investment Corporation LLC on 16 December 2016: The Applicant unlawfully accessed the land under this authorisation, resulting in all rights to enter the land immediately ceasing;

3.4.2 Voluntary agreement between the Applicant and SHP dated 3 August 2017: The Applicant was in material breach of the agreement as a result of its failure to reimburse SHP for the agreed additional third party security costs SHP incurred to facilitate the 24 hour a day access sought by the Applicant;

3.4.3 Section 53 authorisation granted in September 2018 to the Applicant: The Applicant's rights to enter the land have ceased as a result of its failure to comply with the Conditions (again this related to the failure to reimburse the landowner for the agreed additional third party security costs incurred to facilitate the level of access sought by the Applicant).

3.5 Full details of the circumstances surrounding each breach outlined in paragraphs 3.4.1 – 3.4.3 can be provided on request. The Applicant's failure to comply with these 3 authorisations / agreements is at least part of the reason it has not completed the required ecology and biodiversity surveys.

3.6 It is noted that the Applicant has provided some drafting under sub headings 7 and 8 in Article 18 relating to the temporary suspension of the right of access to survey when Operation Brock or Operation Stack are in place. Firstly, we would note that the purpose is overly restrictive and fails to consider other circumstances where access would need to be restricted under the Operation Stack/Brock agreement (e.g. site preparation or development works). Secondly, as the services are provided by SHP under a Parking Services Agreement, any notification would be required to be delivered by SHP, rather than the Secretary of State. Thirdly, the drafting fails to include the protective Conditions that the Secretary of State for Housing, Communities and Local Government considered necessary to protect the Landowner's and Occupier's legitimate interests under its prior s53 authorisations.

3.7 Given the Applicant's consistent history of breaching the terms of previous authorisations agreements that provided for access to the land and the aggressive tactics it has employed regarding access over the last two years (e.g. including disregarding clear advice from the Inspectorate and DCLG in pursuing its aggressive attempts to access the land under s.172 of the Housing and Planning Act 2016), wide ranging powers of the type sought by the Applicant would be highly prejudicial to any landowners or occupiers of the land.

<u>Schedule 1: Authorised Development</u>

3.8 It is noted that Schedule 1 has been amended so that it now differentiates between the NSIP and associated development works and that a definition of associated development has been added to Article 2. However, we would note that the Applicant completely failed to address the ExA's written question DCO 1.1 and has also failed to fulfil the specific commitment given at the dDCO hearing on 10 January 2019 to provide an explanation and justification of the works that comprise NSIP development and

associated development. We can also find no evidence that the Applicant has fulfilled the commitment provided in paragraph 18 of Annex 4 to its revised NSIP Justification.

3.9 In Annex 1, we provide further detail on these failures by the Applicant. It is now two months since the start of the examination and nearly seven months since the acceptance of the Application yet the Applicant still refuses to provide an explanation and justification of how each element of the proposed works satisfy the criteria for NSIP development or associated development. The only reasonable explanation for this disregard for deadlines set by the ExA, is that the Applicant is unable to provide justification that its proposed development complies with the relevant legislation and guidance, or that the relevant components of the application are actually needed or justified.

Schedule 2 Part 1 (9): Noise Mitigation

3.10 In its response to written questions and in the revised Noise Mitigation Plan, the Applicant proposed to restrict the total annual air transport movements to 26,468. It further notes that this excludes movements associated with General Aviation. It is wholly inappropriate to only include this cap in the Noise Mitigation plan. It is critical to the assessment of the project as a whole, and must be on the face of the dDCO itself.

4. Response to the Rule 13 and Rule 16 letter issued on 8 February 2019.

4.1 We also refer to the Rule 13 and Rule 16 letter issued on 8 February 2019. In line with our previous correspondence, we confirm that SHP wish to attend and speak at the hearings on Compulsory Acquisition and Need and Operations. SHP is unlikely to attend the Open Floor Hearings but may attend the hearing on Noise.

Yours sincerely,

[redacted]

For and on behalf of
Stone Hill Park Ltd