

Issues with funding

As a reminder to the ExA this DCO was accepted for examination in July 2018 and a S51 letter was issued on 14th August 2018 with the following warning:-

“In applying the Acceptance tests to the application documents, the Planning Inspectorate noted some omissions/ discrepancies in the information provided, about which the appointed Examining Authority (ExA) is likely to seek resolution early in the Pre-examination stage.

The Applicant is **strongly** advised to pay close attention to the content of this letter, and **consider carefully how appropriate action might be taken in response to the advice issued within it.**” My bold.

The Funding Statement (Doc 3.2)

As reflected in Box 30 of the Checklist, the Inspectorate considers that the Funding Statement poses substantial risk to the examination of the application. In respect of this, the Applicant is advised to be fully conversant with statute and guidance contained in The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and in Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land.

<https://infrastructure.planninginspectorate.gov.uk>



The issues raised in advice provided by the Inspectorate at the Pre-application stage, in consideration of draft iterations of the Funding Statement provided by the Applicant for review, has only partially been satisfied. On this basis the Inspectorate considers that the following information is very likely to be requested by the appointed ExA early in the Pre-examination stage:

- In the generality, further evidence that adequate funds will be available to enable the Compulsory Acquisition of land and rights within the relevant time period.
- Further information in respect of RiverOak Strategic Partner's (RSP) accounts, shareholders, investors and proof of assets.
- Further clarification in respect of the term "*completion of the DCO*" (Funding Statement para 12, 13, 27).
- Further details of RSP's Directors, staff, auditors etc.
- Further details of the funders who have already expressed interest and others that are likely to come forward (Funding Statement, para 23).
- Further justification as to why Article 9 of the draft DCO is appropriate and provides sufficient security for individuals in consideration of the provisions of the Human Rights Act 1998.
- Further information on the sources and availability of funding for the Noise Mitigation Plan.
- Further information on the joint venture agreement (Funding Statement, para 19 etc).
- Further details of how the costs set out in the Funding Statement at paragraph 15 have been estimated.
- Further evidence to support various statements such as:
 - "*The investors are willing to underwrite the cost of any blight claims or eventual claims in compensation [...]*" (Funding Statement, para 10).
 - "*RiverOak anticipates that it will raise further equity and debt finance following the making of the DCO in order to develop the authorised development to completion*" (Funding Statement, para 11).
 - "*[RiverOak] have drawn down £500,000 from their investors*" (Funding Statement, para 20).

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Clearly PINS had serious concerns whether RiverOak Strategic Partners (RSP) could afford the DCO and further they were concerned who was actually running the show. 90% of RSP is owned by an offshore company M.I.O. Investments allegedly registered in Belize. (I say allegedly as no one has seen the incorporation certificate)

There is also a major concern because 2 attempts have been made by the principals Freudmann, Lawlor and Yerrall to engage with Thanet District Council (TDC) to Compulsorily Purchase the site. These ended in failure as RiverOak failed to convince TDC they had the money each time.

Deadline 1 18th January 2019

You would have thought with such a serious warning “The Applicant is **strongly advised** to pay close attention to the content of this letter, **and consider carefully how appropriate action might be taken in response to the advice issued within it.**” At deadline 1 some 5 months later you would have thought they would have complied whole heartedly with the warning. However this didn’t happen.

I include their responses attached at the end however I highlight some issues:

“Further information in respect of RiverOak Strategic Partner’s (RSP) accounts, shareholders, investors and proof of assets.

Further information on the joint venture agreement (Funding Statement, para 19 etc).”

The answer shows a degree of obfuscation and deflection as they said:

“The Applicant has recognised that the lack of transparency in relation to the Belize entity in particular has given rise to a number of questions. As a consequence, a restructuring of the ownership of RSP is currently taking place with a view to simplifying its ownership. The intention is that RSP’s parent company will be registered in the UK with full transparency as to its directors and shareholders. The restructuring is currently in process and is subject to commercial confidentiality but it is anticipated that it will be complete and that further details can be put into the public domain by Deadline 3 (8 February).”

The response fails to answer the question at all and deflects by saying “we are restructuring” sic, however restructuring doesn’t mean details of MIO couldn’t have been given including the details of the shareholders, Incorporation certificate and articles of association. Most people are assuming this is yet another shell company or Special Purpose Vehicle anyway.

The other main area of concern is just who is funding the DCO and yet again the answer fails to address this issue.

“As a special-purpose vehicle, RSP does not generally have funds or assets and does not engage in transactions such that it has accounts. The owners of RSP are RiverOak Manston Ltd, a UK registered company of which Lawlor, Yerrall and Freudmann are directors and MIO Ltd, a Belize registered company. As mentioned above, following completion of the restructure, further information will be provided at Deadline 3.”

The question was “Who is funding the DCO?” This was deflected away by RSP.

Deadline 3 8th February 2019

So now we get to deadline 3 some six months after PINS said “The Applicant is **strongly advised** to pay close attention to the content of this letter, **and consider carefully how appropriate action**

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might be taken in response to the advice issued within it.” And still RSP obfuscate and deflect. I post their responses below however to sum up F 1.13 states

“Due to the restructuring mentioned in the cover letter submitted at Deadline 1 (TR020002/D1/Cover), which is still in progress, there is no longer a Joint Venture agreement. Details of the new structure will be provided as soon as possible” In other words”

Again they avoid giving details of whoever is funding this DCO. Further they respond to the question of who their investors are but giving information at F 1.14 so generic as to be worthless in the extreme.

Open Session Discovery Park 20th March 2019

Today the same questions of funding and ownership were asked by the ExA to RSP and Stonehill Park (SHP) and yet again RSP push back on giving any meaningful content until the end of April 2019.

A specific question about their funding was asked and they refer to a letter from Price Waterhouse Cooper said to be available in the appendices to written questions at deadline 3. This document refers:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-003370-RiverOak%20Strategic%20Partners%20Appendices%20to%20Answers%20to%20First%20Written%20Questions.pdf>

Search as I can this document is not within the appendixes.

Conclusion

It becomes apparent that time and time again Freudmann et al have consistently used obfuscation and diversion to avoid detailing who they are financed by and who is running this DCO. The question remains “Who are the investors?” And “where is the proof of funds?”

Finally it is also apparent that the ExA is bending over backwards to allow leniency in dealing with Freudmann and co and sooner rather than later PINS will have to heed its own advise and draw a close to this farce

“The Applicant is strongly advised to pay close attention to the content of this letter, and consider carefully how appropriate action might be taken in response to the advice issued within it.”

Attachments

Deadline 1

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MANSTON AIRPORT PROJECT

S51 ADVICE ON **FUNDING**

RESPONSE FOR DEADLINE 1 ENCLOSURE 1 TO MAIN LETTER

Funding statement comments

During the statutory consultation on the proposed application in 2017 and 2018 and the open floor hearings on 10 and 11 January 2019, there has been concern from some interested parties as to the corporate structure and funding of RiverOak Strategic Partners Ltd (the Applicant). In particular, concern has been expressed that 90% of shares in the Applicant company were owned by a Belize registered company whose ultimate beneficial owners are resident in Switzerland as well as the United Kingdom. This was said to give rise to an absence of transparency.

The Applicant has recognised that the lack of transparency in relation to the Belize entity in particular has given rise to a number of questions. As a consequence, a restructuring of the ownership of RSP is currently taking place with a view to simplifying its ownership. The intention is that RSP's parent company will be registered in the UK with full transparency as to its directors and shareholders. The restructuring is currently in process and is subject to commercial confidentiality but it is anticipated that it will be complete and that further details can be put into the public domain by Deadline 3 (8 February).

In its s.51 Advice of 14 August 2018 the ExA sought further information relating to the funding of the project. It was hoped that the restructure would be complete by Deadline 1 such that the full information sought by the ExA could be provided but unfortunately that has not proved to be the case. The requests from the ExA and the Applicant's responses are set out below. Where it is not yet possible to provide the full information, a note has been included to explain that this will be submitted by Deadline 3.

- *In the generality, further evidence that adequate funds will be available to enable the Compulsory Acquisition of land and rights within the relevant time period.*

This will be provided at Deadline 3.

- *Further information in respect of RiverOak Strategic Partner's (RSP) accounts, shareholders, investors and proof of assets.*

As a special-purpose vehicle, RSP does not generally have funds or assets and does not engage in transactions such that it has accounts. The owners of RSP are RiverOak Manston Ltd, a UK registered company of which Lawlor, Yerrall and Freudmann are directors and MIO Ltd, a Belize registered company. As mentioned above, following completion of the restructure, further information will be provided at Deadline 3.

- *Further clarification in respect of the term "completion of the DCO" (Funding Statement para 12, 13, 27).*

The Funding Statement (ref **APP-013**) refers to commitments that have been made to funding the completion of the DCO. This includes funding sufficient to cover any claims for blight, compulsory acquisition and noise mitigation.

- *Further details of RSP's Directors, staff, auditors etc.*

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The current directors of RSP are Nicholas Rothwell, Rico Seitz and Gerhard Huesler - all residents of Switzerland, Niall Lawlor and George Yerrall, US residents and Anthony Freudmann, UK resident. They have been the directors since RSP was incorporated in August 2016.

The auditors of RSP are Calder & Co, 16 Charles II Street, London SW1Y 4NW.

- *Further details of the funders who have already expressed interest and others that are likely to come forward (Funding Statement, para 23).*

This is generally commercially sensitive particularly during the current restructure, but the funders will be approached for permission for their names to be made known. It is hoped that this information can be provided at Deadline 3.

- *Further justification as to why Article 9 of the draft DCO is appropriate and provides sufficient security for individuals in consideration of the provisions of the Human Rights Act 1998.*

The purpose of Article 9 is to make it a precondition of the development that funds to pay for compulsory acquisition are in place to the satisfaction of the Secretary of State, without which it cannot commence. The type of security that is likely to be proposed as that set out at Article 9(2)(f), a guarantee by a person (in fact a company). It is intended that once the reorganisation is complete by Deadline 3, this guarantee will be provided to the examination, which should provide security for individuals facing compulsory acquisition. As mentioned in the Funding Statement, this article is similar to other articles in other DCOs (e.g. Rookery South, Able Marine Energy Park and Swansea Tidal Lagoon) where the applicant was a similar entity and was felt to be sufficient in those cases. A draft parent company guarantee was provided to the examination in the case of the Able Marine Energy Park.

- *Further information on the sources and availability of funding for the Noise Mitigation Plan.*

This is the same as the funding for land acquisition and further details will be provided at Deadline 3.

- *Further information on the joint venture agreement (Funding Statement, para 19 etc).*

This will be superseded by the reorganisation mentioned above.

- *Further details of how the costs set out in the Funding Statement at paragraph 15 have been estimated.*

The costings have been put together by a major project manager with over thirty years' experience, who has been working with key advisors from RPS, Wood, Osprey and Northpoint as well as with major construction companies.

- *Further evidence to support various statements such as:*

o *"The investors are willing to underwrite the cost of any blight claims or eventual claims in compensation [...]" (Funding Statement, para 10).*

Statements from the investors will be provided once the restructure is complete.

o *"RiverOak anticipates that it will raise further equity and debt finance following the making of the DCO in order to develop the authorised development to completion" (Funding Statement, para 11).*

Interested parties will be approached to see if they agree to be named on an open or confidential basis by Deadline 3.

o *"RiverOak have drawn down £500,000 from their investors" (Funding Statement, para 20).*

The applicant will provide further evidence on this point by Deadline 3 when the restructure is complete.

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Deadline 3

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F.1.3	The Applicant	<p>The Undertaker and availability of funds</p> <p>The Funding Statement [APP- 013] states in paragraph 19 that:</p> <p><i>"Through its joint venture agreement, RiverOak is able to draw down these two categories of funding (£7.5m land acquisition and £5.6m noise mitigation measures) when required."</i></p> <p>Provide a copy of the joint venture agreement showing who is party to the agreement.</p>
		<p>Applicant's Response:</p> <p>Due to the restructuring mentioned in the cover letter submitted at Deadline 1 (TR020002/D1/Cover), which is still in progress, there is no longer a Joint Venture agreement. Details of the new structure will be provided as soon as possible..</p>

F.1.4	The Applicant	<p>The Undertaker and availability of funds</p> <p>The Funding Statement [APP- 013] states in paragraph 23 that:</p>
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Ref No.	Respondent	Question
		<p><i>"To meet the capital costs of construction, RiverOak will select one or more funders from amongst those who have already expressed interest and others that are likely to come forward, to secure the best deal for constructing and operating the project."</i></p> <p>i. Name those funders who have expressed interest and show audited proof of assets; and/or</p> <p>ii. Provide other evidence to demonstrate that there is a reasonable prospect of the requisite funds for constructing and operating the project becoming available.</p>
		<p>Applicant's Response:</p> <p>ii. Although the identity of the funders who have expressed interest remains confidential at this stage, the Applicant is able to describe them in the following terms.</p> <p>Investor 1.</p> <p>This institutional investor has a global reach in terms of both the ownership of airport infrastructure, and aviation related assets, namely aircraft leasing, engine manufacturing, and avionics technology development. They are joint venture collaborators with all global air frame manufacturers, and are conversant and agreeable with the future requirements of airport capacity in the world's major population centres, particularly the south east of the UK. This investor has in-house assets both on their own balance sheet, but also on a third party assets under management of in excess of \$500 billion.</p> <p>Investor 2.</p> <p>The Applicant has had detailed discussions with a publicly listed global infrastructure institution, which owns and operates a number of major airports in Asia, and has co-invested and participated in numerous financings of airports in the US. This particular investor is keenly interested in expanding its presence into the UK and Europe, and has been involved in the</p>

Ref No.	Respondent	Question
		<p>evaluation of our development plans for Manston since very early in the process. This entity has a market capitalization in excess of \$150 billion.</p> <p>Investor 3.</p> <p>This investor is a UK based asset management company with annual revenues of almost £3 billion and responsible for over £400 billion on behalf of its clients This investor has a major mandate to diversify and seek to support investments into the development of UK infrastructure, and Manston fits its criteria. They have been tracking the Applicant's progress both with the DCO application and the details of the scale of proposed development at Manston.</p> <p>Investor 4.</p> <p>The Applicant has had significant ongoing dialogue with this global private family investment entity. This diversified investment vehicle has extensive interests already in airport and strategic infrastructure assets, and again, have been involved in reviewing and advising on our business case and the thesis we have proffered on Manston from very early on in our investment review. This family office has known assets valued in the region of \$25 billion.</p> <p>Investor 5.</p> <p>The Applicant has strategic relationships with smaller private groups with extensive specific experience in certain sectors that will have good value to the future success of Manston. These groups have partnered with directors of the Applicant previously in other infrastructure investments both in terms of brownfield redevelopment and ground up data centre infrastructure development. One such has executed, in the last three years, the ground up conception, planning approval, construction and delivery, as lead developer, of two major office projects in London with the aggregate value in excess of £700m. One of these projects has since been sold to a major Asian investor for pricing in excess of £330m.</p> <p>Investor 6</p>

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Ref No.	Respondent	Question
		<p>This investor is a global security services group with assets of over £4 billion and annual revenues of £8 billion." They have expressed a strong interest in participating in the airport project and in investing in fire and security infrastructure.</p> <p>Underwriting and capital markets:</p> <p>The Applicant has broad based relationships, both with buy-side institutional investors themselves, but also with the underwriting and financial instrument placement community, both in the US and Europe.</p> <p>The Applicant in the process of reviewing proposals from a number of global investment banking firms on the structuring of financing both equity and debt, for the successful completion of the development plans our scheme proposes under the DCO. These discussions are ongoing and very detailed, and display not just the specific breath of relationships that the Applicant itself has for sourcing funding capital, as outlined above, but the major interest globally by institutional investors, both in terms of infrastructure as a whole, but even specific to Manston, despite the concerns of Brexit on the UK trade and economic outlook.</p> <p>It should be noted that one of the reasons for the confidentiality of the identities of the investors above derives from earlier attempts to secure Manston by CPO via the local authority. The Applicant previously provided detailed letter-headed correspondence from major global financial investors as to their interest in participating in the Manston project. This correspondence found its way into the public domain to the consternation of the authors who had requested that it be treated as commercially sensitive.</p> <p>The Applicant here reiterates the level of detail on funding that is referred to in statute and guidance. The statutory requirement in regulation 5 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) is that where a DCO would authorise the compulsory acquisition of land, the application should be accompanied by "a statement of reasons and a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded". This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required."</p> <p>The clear implication from the statute is that where compulsory acquisition forms part of the DCO, the applicant must include a statement explaining how that acquisition will be funded. The statutory requirement must be given priority over the non-</p>
Ref No.	Respondent	Question
		<p>statutory guidance which appears, in the extract set out above, to go further than the statutory requirements and require a funding statement to cover not only the costs of the acquisition but the resource implications of the project as a whole.</p> <p>In fact, the guidance does not contain an absolute requirement to establish the funding available to cover total project costs, but rather seeks "as much information as is possible" about the "resource implications" of implementing the project, recognising that the information that it is possible to provide may vary across different projects. The 2013 guidance also refers to the further guidance available in Circular 06/2004 which explains that "A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed".</p>
F.1.7	The Applicant	<p>Resource Implications – Implementation of the project</p> <p><i>Paragraph 11 of the Funding Statement [APP-013] states that:</i></p> <p><i>"RiverOak anticipates that it will raise further equity and debt finance following the making of the DCO in order to develop the authorised development to completion."</i></p> <p>The ExA notes the use of the word "anticipates".</p> <p>i. Provide evidence of your ability to raise further equity and debt finance following the making of the DCO in order to develop the authorised development to completion; and</p> <p>ii. Provide an evidenced estimation of the probability of doing so.</p> <p>Applicant's Response:</p> <p>i. The directors of the Applicant have had extensive career experience in the financial capital markets and infrastructure project finance, in terms of equity and debt financings, both in New York and London.</p> <p>On a macro overview, the extent of equity capital raised amongst the directors is in excess of \$1.0 billion, for a variety of infrastructure and longer term asset funds and redevelopment projects. In addition, many of these project finance</p>
Ref No.	Respondent	Question
		<p>investments have had a hands on operational / management involvement and strategic implementation strategies for asset repurposing.</p> <p>One of the directors has spent the formative years of his career in the US Public Finance / Municipal Capital Markets, which entailed raising significant new money and debt refinancing of airport infrastructure across the United States.</p> <p>These debt financing projects included the funding / development of freight facilities, passenger terminals, on-apron aviation fuel storage holding tanks, runway extensions, multi-story passenger parking garages and MRO / aircraft hangar and engineering infrastructure.</p> <p>The Applicant, specific to Manston over the previous number of years, has been willing to invest significant risk capital on the back of numerous discussions with long term institutional funding partners, both in terms of future equity requirements, and debt financing instruments to construct the necessary new infrastructure to meet the required capacity demands, both in terms of the DCO qualifications, but also in accordance with commercial business planning with potential end user entities such as air freight carriers, integrators, freight forwarders and digital retail platforms.</p> <p>ii. The probability of raising this finance is considered to be very high. The Applicant's canvassing of both the long term infrastructural financing community and the broad range of different end users has granted it significant confidence that the repurposing of Manston will be a long term viable addition to the UK's economic and trade sectors. As set out in answer F.1.4 above, there is significant interest in further investment beyond that which has already been secured.</p> <p>In addition to pure at-risk capital the Applicant has expended to outline its scheme of redevelopment under the DCO process, it has interacted with commercial banking institutions, UK and US pension fund investors, the investment departments of potential end users and a series of Asian infrastructure groups with existing airport ownership and operating assets.</p>

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F.1.11	The Applicant	<p>Potential shortfalls</p> <p>The Applicant is reminded that DCLG Guidance related to procedures for the compulsory acquisition of land (2013) advises at paragraph 17 that the Applicant should provide an indication of how any potential shortfalls are intended to be met.</p> <p>Figures in the Funding Statement [APP-013] show the estimated capital cost of the scheme as being £300m. Figures in the Funding Statement show the estimated potential combined cost of compulsory acquisition, the Noise Mitigation Plan and blight to be £13.6m.</p> <p>A letter from PWC AG appended to the funding statement refer to assets of £15m.</p> <p>Show how the shortfalls in funding are intended to be met and by whom.</p>
		<p>Applicant's Response:</p> <p>The Applicant will submit an updated funding statement as soon as the restructuring mentioned in the Deadline 1 cover letter (REP1-001) is complete, which will address how any shortfalls would be met.</p>