Verifiable Evidence

Verifiable: able to be checked or demonstrated to be true, accurate, or justified.

Evidence: the available body of facts or information indicating whether a belief or proposition is true or valid.

It is clear to propagandists worldwide that telling a lie loud enough and often enough normally fools the public that what you say is truthful. If whilst doing that you can mix in a little truth then the lie becomes more believable.

Tony Freudmann seems to have those skills because for some time it has been obvious that he has fooled a lot of people that he genuinely wants to reopen Manston however it seems to be unravelling during this examination and only those wedded to the idea or those sufficiently entrenched into the idea of this being "houses v airport" that still take any interest.

What Freudmann seems to have forgotten is this is a Public Examination where verifiable evidence has to be produced to support the statements made by his team. (Editor's note "see definition above")

Question F.2.20 to be answered by Riveroak

The Applicant is reminded that the *DCLG Guidance related to procedures for the compulsory acquisition of land (DCLG (2013) Planning Act 2008*: Guidance related to procedures for the compulsory acquisition of land, April) states that:

"*Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of … implementing the project for which the land is required.*"

You stated in F.1.11 that:

"*The Applicant will submit an updated funding statement as soon as the restructuring mentioned in the Deadline 1 cover letter (REP1-001) is complete.*"

The ExA notes that an updated Funding Statement has not been provided at Deadline 5 despite the Applicant's statement in its Response for Deadline 1: Enclosure 1 to Main Letter re s51 Advice on Funding that:

"*…it is anticipated that [the restructuring] will be complete and that further details can be put into the public domain by Deadline 3 (8 February*)."

Explain why you have failed to meet your anticipated deadline of 8 February, and subsequent Deadlines 4 (8 March) and 5 (29 March).

Deadline 6 came and went and many of the ExA's questions were responded to by RSP however their answers were "misleading, disingenuous and unsupported by the evidence" In fact on almost every occasion their answers lead to further anomalies which have then led to more questions, it is as if they are making it up as they go.

Verifiable Evidence

4.2.4 Overall, the failure to address a specific request for information and evidence has also been a consistent theme throughout the examination. Whenever the Applicant is asked by the Examining Authority to provide evidence to support its unevidenced assertions, the Applicant either remains silent on the issue in its next submission, or answers a question that was not asked, rather than correct the factually inaccurate information it has previously submitted to the examination.

4.2.5 The Applicant's repeated failures to provide any detail or evidence to support its assertions is literally incredible. As the Examining Authority made clear in the preliminary hearing, assertion that is not supported by evidence can carry no weight in the examination. In absence of any evidence to support the Applicant's assertions, the application cannot be adequately and fairly tested and there can be no basis on which the Examining Authority could recommend grant of a DCO.

4.2.6 The Applicant continues to approach the examination with the expectation that the burden of proof is entirely on SHP (and other parties) to prove the case against its plans, rather than there being any onus on the Applicant to provide any substantive evidence that can be adequately and fairly tested.

Written Question CA.2.16

Representations from Affected Persons

Provide details of negotiations with those Affected Persons who have submitted representations and who are not covered by other questions and comment on the likelihood of reaching an agreement on this in advance of the end of the Examination on or before 9 July 2019:

RSP's response

"The Applicant can confirm that discussions as to the acquisition of the site continue to take place between the parties. The Applicant will continue to progress discussions with a view to concluding the acquisition before the end of the examination period. It has been and remains the Applicant's preference to acquire the site by agreement rather than relying on powers of compulsion."

Stone Hill Park's response

"As set out in SHP's answer, the Applicant's strategy appears to have been focussed on maintaining a **pretence** to the ExA that it is making **meaningful attempts** to negotiate to acquire SHP's land, **when the opposite is true.**

The Applicant has demonstrated itself to be an unreliable counterparty. From the evidence before the examination it appears clear that the Applicant does not have the ability, willingness or sufficient funding to acquire the land."

Written Question CA.2.25

Acquiring by voluntary agreement

DCLG Guidance related to procedures for the compulsory acquisition of land (2013) advises at paragraph 25 that, as a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.

The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices, submitted at DL5 on 29 March 2019 [REP5–029], states at paragraph 12.3 that:

Verifiable Evidence

"SHP had suggested that the Applicant lease the site for a period. Mr Freudmann inaccurately summarised the offer as being for 25 years. In fact it was for 125 years."

The length of the potential lease appeared from Mr Freudmann's comments to be a clear factor in RSP's decision on this offer. (Editor's note: He stated that 25 years was "absurd")

If this is not the case, set out the reasons for RSP's decision on the suggestion by SHP that the Applicant lease the site.

RSP's response

"The Applicant understood the lease proposed by SHP to be for a period of 125 years at the time the proposal was received. At the CA hearing Mr Freudmann misspoke regarding the length of the proposed lease. The duration of the proposed lease was not a reason for refusing the offer. As noted in the Applicant's Written Summary of Case put Orally – Compulsory Acquisition Hearing [REP5-011], the Applicant's letter responding to the offer and setting out its concerns regarding the offer was included by SHP as an appendix to its Responses to Written Questions. For ease of reference, the letter (dated 21 March 2018) is attached (at Appendix CA.2.25 in TR20002/D6/SWQ/Appendices). It can be seen from the attached that there were a number of issues with the offer raised by the Applicant to which SHP did not respond satisfactorily. It was in light of those unacceptable conditions that the proposal was not accepted. In any event, the Applicant and SHP have been in negotiations regarding the site's freehold for some time. The Applicant is hopeful that these negotiations can be concluded satisfactorily shortly."

SHP's Response

There are a number of points to unpack from the Applicant's answer.

Firstly, Mr Freudmann more than "misspoke" regarding the length of the lease, his assertion that a 25 year lease was "absurd" demonstrates the lack of good faith which has characterised any "negotiations".

The Proposal

SHP would be prepared to offer a long leasehold interest of the required land and infrastructure at Manston Airport to RSP on the following terms;

- Term: 125 years (quasi-freehold)
- Payment terms: (i) an upfront Lease Premium payment and (ii) ongoing Annual Rent payable quarterly in advance (current rent receivable from DfT and other tenants would be retained by RSP)
- Rent Reviews: Rent subject to upward only rent reviews
- Security: appropriate comfort as to the covenant strength of the long leaseholder
- Alienation / Forfeiture: standard for a long leasehold lease of this nature but landlord consent matters will be limited to use classes in order to provide for operational flexibility (e.g. only aviation related uses and associated industrial/business space uses will be permitted).
- Night Flights: It is recognised that this is a very contentious issue in the area for which there is little local support. Hence, to provide comfort and protection to the local community we propose that the lease will contain appropriate restrictions over night flights. We envisage these restrictions would either need to be for no night flights or be in line with RSP's public statements regarding their very limited need for night flights.
- Buy Back Option: Should aviation operations not have commenced within a reasonable period (i.e. RSP failing to deliver against appropriate agreed milestones to deliver on its plans), the freeholder will have the right to acquire the long leasehold interest at a price equivalent to the lease premium.

Verifiable Evidence

Secondly, the Applicant did not refuse the offer, **it simply ignored SHP's subsequent letter of 9 April 2018.** In doing so, the Applicant showed it had no regard for its obligations under the DCLG Guidance. (Editor's note: attached as appendix 1)

The Applicant refers to its letter of 21 March 2018, which it asserts sets out its concerns regarding the offer. The Applicant then asserts that SHP did not respond satisfactorily, and in light of the "unacceptable conditions" the proposal was not accepted. This assertion is misleading and not supported by the evidence.

The Applicant has glossed over the correspondence from SHP to BDB dated 9 April 2018, which responded to the BDB letter of 21 March 2018. This letter of 9 April 2018 is, apparently, the unsatisfactory response referred to in the Applicant's answer. The sections of this letter (attached as Appendix CA.2.7 to SHP's Response to First Written Questions [REP3-303]) that are relevant to the lease offer are summarised below;

Section 5:

SHP explained that the framework set out in the letter of 15 March 2018 was a clear framework to move matters forward but that the onus must be on the Applicant to engage with SHP, not the other way round;

SHP requested that RSP explain why it had said "any encumbrances attached to the lease would have to allow the development of the site unhindered and equivalent to owning the freehold"; and

SHP requested clarification whether the Applicant would be willing to accept a specific restriction against any future residential development of the land.

Section 6:

In the Conclusion section, SHP stated the following;

"If RSP is serious about actually delivering its proposals, the potential lease structure we set out is a solution that would provide an opportunity to resolve the issue and draw a line under the position. Ultimately, if RSP fails to engage with us on this basis, it will be even clearer that it is not serious about its proposals. If that remains the case it is clear that your client's failure to comply with paragraph 25 of the Guidance related to the compulsory purchase of land will remain only one of the many reasons why an application for development consent order would not satisfy the requirements of section 55 of the Planning Act 2008."

As explained above, the Applicant did not respond to, or even acknowledge the letter of 9 April 2018. The Applicant clearly believed that it was under no obligation to comply with the DCLG Guidance related to procedures for the compulsory acquisition of land (2013).

Unfortunately, this is just one of the many examples that demonstrates the lack of good faith in which the Applicant has approached the DCO process.

Written Question DCO.2.17

Article 9 - Guarantees in respect of payment of compensation, etc. The Revised 2.1 Draft Development Consent Order submitted at DL5 on 29 March 2019 [REP5-index number to be allocated] includes "a guarantee by a parent company of the undertaker" in Article 9(2)(f).

Verifiable Evidence

Which company will be the parent company of the undertaker?

RSP's response

"The undertaker, i.e. the Applicant, does not have a single parent company, but is 90% owned by RiverOak Investments (UK) Ltd and 10% owned by RiverOak Manston Ltd."

SHP's response

"Based on the publically available information held at Companies House, RiverOak Investments (UK) Ltd and RiverOak Manston Ltd, have called up share capital of £1,000 and £1 respectively, however all the capital remains unpaid.

As noted in SHP's comments on the Applicant's answer to question F.2.19, all funding has been made by the Belize entity, M.I.O. Investments Ltd. Yet, the Applicant refuses to provide any transparency over the ownership, or funding of this company."

Editor's note

Further to the restructuring of RSP the above comment by RSP's solicitor is extremely misleading and calls into question their ability to follow the Money Laundering Act from 2007. They are legally obliged to "know their client" and must identify the Beneficial Ownership of any person or legal entity they accept as a client. To this end they MUST know the ultimate beneficial ownership of Riveroak Investments (UK) Ltd as identified in their research. 60% (in other words a controlling interest) of RI(UK)LTD lies with HLX Nominees Ltd based in Tortola (British Virgin Islands) and as such who (or what) controls HLX is unknown and RSP have provided no independent verifiable evidence to back up the assertions

Initial Shareholdings

Name:	**NICHOLAS ROTHWELL**		
Address	**MUNRO HOUSE PORTSMOUTH ROAD COBHAM SURREY UNITED KINGDOM KT11 1PP**	*Class of Shares:*	**ORDINARY**
		Number of shares:	**170**
		Currency:	**GBP**
		Nominal value of each share:	**1**
		Amount unpaid:	**1**
		Amount paid:	**0**
Name:	**RICO SEITZ**		
Address	**MUNRO HOUSE PORTSMOUTH ROAD COBHAM SURREY UNITED KINGDOM KT11 1PP**	*Class of Shares:*	**ORDINARY**
		Number of shares:	**170**
		Currency:	**GBP**
		Nominal value of each share:	**1**
		Amount unpaid:	**1**
		Amount paid:	**0**
Name:	**GERHARD KUNO HUESLER**		
Address	**MUNRO HOUSE PORTSMOUTH ROAD COBHAM SURREY UNITED KINGDOM KT11 1PP**	*Class of Shares:*	**ORDINARY**
		Number of shares:	**60**
		Currency:	**GBP**
		Nominal value of each share:	**1**
		Amount unpaid:	**1**
		Amount paid:	**0**
Name:	**HLX NOMINEES LIMITED**		
Address	**MANDAR HOUSE, 3RD FLOOR PO BOX 2196 JOHNSON'S GHUT TORTOLA VIRGIN ISLANDS, BRITISH**	*Class of Shares:*	**ORDINARY**
		Number of shares:	**600**
		Currency:	**GBP**
		Nominal value of each share:	**1**
		Amount unpaid:	**1**

Written Question F.2.1

Verifiable Evidence

The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-number to be allocated] states at

paragraph 3.1 that:

“restructuring was estimated to be complete by the end of April.”

The Applicant must note that the ExA require that any answers to these second questions to be submitted at DL6 (3 May 2019) must reflect and be informed by that completed restructuring.

RSP's response

"Noted. Restructuring has now been completed."

SHP's response

It is worth noting that in the Applicant’s Response for DL1: Enclosure 1 to Main Letter re. s51 Advice on Funding it stated that:

“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.”

It is **therefore literally incredible** that the Applicant considers the so-called restructuring to have improved the level of transparency. A review of the information submitted by the Applicant at DL6 and other publically available information shows;

1. The only change is that the 9,000 shares in the Applicant (each with a nominal value of £0.0001) that were previously held by MIO Investments Ltd have been transferred to, RiverOak Investments (UK) Ltd ,a new UK SPV incorporated on 23 April 2019. That UK SPV is now owned 60% by a BVI company, HLX Nominees Ltd, on which no information is available (although when undertaking a search on Google, the company is named in the Panama papers leaks).

2. The 9,000 shares that were transferred had a nominal value of only £0.90.

3. It is considered highly unlikely that the transfer price of these shares was anything other than £0.90, as the shares in the Applicant (which have a total nominal value of £1), have no intrinsic value.

4. The true value of the Applicant’s shares is the cumulative sum of the value of the shares in each of its subsidiaries. However, as all the expenses, costs and investments of these entities have been fully funded by loans from MIO Investments Ltd (now claimed by the Applicant to exceed £15m), it is not possible to see how there could be any value in the shares of the Applicant’s subsidiary companies.

5. As explained by Mr Rothwell at the CA hearing on 20 March 2019, the only “assets” held by the RiverOak companies is the Jentex land it acquired in 2018, which is owned by RiverOak Fuels Limited. MIO Investments Ltd, as providers of the loan to RiverOak Fuels Ltd, would require to have its loan fully repaid (with interest, fees and costs), which significantly exceeds the £2.3m paid for the land, before any value would attach to its shares.

6. The same would be true of the other loans claimed to be provided to RiverOak Operations Limited. Based on the Applicant’s recent submissions, these loans appear to be total c.£12.5m. As there are no assets in RiverOak Operations Ltd, the shares have no intrinsic value.

Verifiable Evidence

7. It is important to note that ALL the funding has been provided by the Belize based MIO Investments Ltd on which no relevant information has been provided. The Applicant intends that MIO will continue to provide funding but provides no evidence to support its assertion.

8. In SHP's DL6 6 Submissions in SHP's comments on the Applicant's written summary of oral submissions put at the CA hearing [REP6-052], SHP set out a number of issues / concerns regarding the JV Agreement, why it does not say what the Applicant says it does and why the £15m "loan agreement" is essentially meaningless as any payments are completely at the discretion of MIO Investments under the terms of the wider documentation.

In summary, it is clear that the Applicant has done **nothing meaningfully to improve transparency**.

(Editor's note: This is their statement)

> 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 section 2.3 and 2.10 of SHP's comments on the Applicant's written summary of oral submissions put at the CA hearing [REP6-052], an explanation of the Joint Venture Agreement submitted by the Applicant at DL5 was provided.

In summary, the documentation shows that M.I.O. Investments (as Capital Investor as defined in the JV Agreement) effectively retains veto rights over any material action of the Applicant. As provider of all the funding, over which it has full discretion, in absence of any other funder to replace MIO Investments, MIO Investments has control over the decision making of the Applicant. Yet, no relevant information has been disclosed on MIO Investments.

Editor's note

It is clear that in answer to DCO.2.17 Freudmann is confirming that the Parent company providing the Guarantee is Riveroak Investments (UK) Ltd however this parent is 60% owned by HLX Nominees ltd registered in Tortola with unknown beneficial ownership. RI(UK)ltd has unknown owners, zero worth and is dormant. So of what worth is the Guarantee one should ask?

Written Question F.2.3

The Applicant is reminded that Regulation 5(2)(h) requires that an application be accompanied by a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded. (Editor's note: A very clear warning}

The Applicant is further reminded that DCLG Guidance related to procedures for the compulsory acquisition of land (2013) advises at para. 9 that the applicant should be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.

The Applicant is reminded that information in the public domain at http://rsp.co.uk/news/the-formation-and-funding-of-riveroak-strategic-partners/ states that:

"comprehensive details of our funding partners and investment arrangements will of course be provided to PINS as part of the DCO application, **providing solid evidence of our ability to meet all**

of the financial obligations associated with the acquisition, reopening and operation of the airport."

The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-number to be allocated] states at

paragraph 3.3 that:

"…the investors wished to remain confidential…"

i. Explain how this latter statement conforms to, and supports, a system of Examination which is designed to be open and transparent.

ii. Explain how this latter statement confirms to RSP's own commitment to provide comprehensive details of its funding partners.

iii. Suggest ways in which the ExA may recommend to the Secretary of State on issues surrounding the availability of funding in the face of a desire for confidentiality relating to that issue.

RSP's response

i. and ii. The Applicant acknowledges the Planning Inspectorate's desire for openness and transparency in the examination process. The Applicant has sought to provide sufficient information in all instances to assist the ExA in its examination of this application. However, the ExA will equally appreciate the unavoidable constraints of commercial confidentiality, particularly in the context where private individuals are involved in funding the project and investing in major infrastructure.

A balance must be struck between providing sufficient information to the ExA to enable it properly to consider the application and report to the Secretary of State whilst at the same time protecting the commercial interests of investors.

Plainly it is in the national interest to encourage private investment in infrastructure which is to the benefit of the UK economy. Indeed it was to encourage this kind of investment that Business Investment Relief was introduced in 2012. Business Investment Relief is an HMRC-approved scheme introduced to encourage non-domiciled UK residents to invest in the UK and does not require those using it to be disclosed. For the ExA to insist on full disclosure of those individual investors has the potential to undermine this type of investment in the UK.

iii. If the ExA has any residual concerns as to the funding position following DL6, the Applicant suggests that it provides the ExA with an unredacted statement, identifying the individuals who have invested and are committed to further investment, together with a version where such confidential information is redacted. The ExA then takes the former into account and publishes the latter. If it does not wish to take information into account that is not openly available then it leaves the issue to the Secretary of State to decide (e.g. in the form of a recommendation to grant the DCO subject to the Secretary of State being satisfied as to the availability of funding).

SHP's response

i. and ii. The Applicant's claim that "has sought to provide sufficient information in all instances to assist the ExA in its examination of this application" is disingenuous and is contrary to evidence submitted to the examination.

It is apparent that the Applicant was given section 51 advice well before it submitted its application, and again following acceptance of its application on 14 August 2018 regarding the Inspectorate's

concerns regarding the information on Funding. Yet, the Applicant has consistently failed to provide the examination with the requested information.

(Editor's note: S.51 letter on finance)

"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 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)."

In its answer, the Applicant appears to be advocating for a "Wild West" approach, whereby any legitimate concerns and the ExA's commitments to openness, transparency and impartiality should be put to one side so as not to risk investment in the UK from anonymous "non-dom" investors. These "investors" are seeking to deprive another party of its land.

The Applicant's arguments have no merit, and when considered in the proper context – against a backdrop where the Applicant has continually failed to provide requested information to the examination and other submissions have not been substantiated and shown to lack veracity – appear to be part of the Applicant's strategy to obfuscate and avoid scrutiny of its application.

iii. The Applicant's suggestion that should the ExA not wish to take information into account information that is not openly available, it should leave "the issue to the Secretary of State to decide (e.g. in the form of a recommendation to grant the DCO subject to the Secretary of State being satisfied as to the availability of funding)", is plainly ludicrous and demonstrates an arrogance towards the process. It would be in clear breach of the 'Guidance for the examinations for development consent' (March 2015) and undermine the principles of fairness, transparency, impartiality and proportionality and would be prejudicial to the interests of other parties.

Verifiable Evidence

Written Question F.2.8

Information in the public domain, held at Companies House, shows that note 10 to the Financial Statements for Freudmann Tipple International Ltd for the period ended 30th March 2018 states that:

"During the year, the company held funds in trust for Riveroak Operations Limited, a company of which Mr A Freudmann is a director. At the balance sheet date, the company held £588,906."

The Applicant's response to ExA question F.1.2 [REP3-195] lists RiverOak Operations Limited as a subsidiary company of the Applicant.

i. Describe the relationship between the Applicant and Freudmann Tipple International Ltd.

ii. State the amount held in trust for Riveroak Operations Limited by Freudmann Tipple International Ltd as at 30th March 2019.

iii. State the purpose for which these funds are held.

RSP's response

i. The relationship between the Applicant and Freudmann Tipple International Ltd relates to the provision of banking services. Pursuant to the trust deed (at Appendix F.2.8 in R020002/D6/SWQ/Appendices) between the Applicant and Antony Freudmann, the Applicant has the exclusive use of the bank account of FTI Limited, referred to at recital A of the trust deed.

ii. The amount varies from the time to time. Funds are drawn down from the investors and then expended on costs associated with the project. As at 30th March 2019 the balance was £250,904.07

iii. These funds are held to cover costs associated with the project.

SHP's response

The relationship between the Applicant and Freudmann Tipple Ltd is highly unusual, with Mr Freudmann required to operate the bank account of a different company at the direction of the Applicant and grant a power of attorney in favour of the Applicant. Under clause 4.1.1 of the agreement attached as Appendix F.2.8 to the Applicant's submission, it states that the arrangement shall continue until the Applicant or RiverOak Operations Limited sets up a bank account in its own name. It is noted that Freudmann Tipple Ltd is not a party to the agreement, raising questions as to whether it has consented to this arrangement as would be required.

It is recognised that the requirements for opening UK bank accounts are much more onerous than in the past as a result of the requirements for banks to undertake detailed identity checks on directors, shareholders and any beneficial owners holding more than 25% of the equity interest in a Company.

Checks are also required to be undertaken as to the likely source and uses of such funds to ensure that the bank is in compliance with 'know your customer' and money laundering regulations.

Having taken advice from a major UK Bank, SHP have been advised that the Freudmann Tipple International arrangement is highly unusual. Whilst the Bank would not completely rule out such an arrangement, the Bank advised that the proposal would be marked as high risk and the Bank's checks would be more extensive than those required to actually open an account in the name of the

Applicant or its subsidiary. The Bank would also need to satisfy itself with the terms of the Trust Deed.

In view of the efforts required to have Freudmann Tipple International's bankers consented to this arrangement, it is not clear why the Applicant did just not open its own bank account. It adds yet another layer of complexity to an already opaque structure.

Editor's Note: Simply put it is pretty clear that the beneficial owners of HLX Nominees Ltd and before them MIO Investments Ltd are clearly not happy in being identified. I wonder what the problem is?

Written Question F.2.20

Explain why you have failed to meet your anticipated deadline of 8 February, and subsequent Deadlines 4 (8 March) and 5 (29 March).

RSP's response

The delay in the submission of a revised Funding Statement is a result of the delay in concluding the restructuring of the company. There are two reasons for the delay to the restructuring. The first being that external parties originally intended to participate in the restructuring were unable to meet the timescales inherent in the DCO examination process. Consequently a modified restricting has taken place which has brought the original MIO ownership onshore as anticipated at the compulsory acquisition hearing in March. That restructure was completed at the end of April. The second related reason concerns the complications surrounding the potential acquisition of the site as set out in response to question F.2.18 above.

RSP's response to F.1.18 "The discussions with Stone Hill Park themselves took longer than expected because the Department for Transport changed the terms of the deemed planning permission in January 2019 from that contained in the Town and Country Planning (Operation Stack) Special Development Order 2015 (as amended by the 2017 Order) to that contained in the Town and Country Planning (Manston Airport) Special Development Order 2019, which made extensive changes to the extent and scope of the permission with consequent effects on the acquisition. The coming into force of the 2019 Order was then accompanied by extensive works at the site by the DfT, as the ExA will have seen on the accompanied site inspection, further complicating the terms of the acquisition.

The progress of discussions with Stone Hill Park indicated that a voluntary disposal was likely. The Applicant has always been committed to acquiring the site by agreement if possible. To that end it has continued to engage with Stone Hill Park during the DCO examination and reached a point at which acquisition by agreement appeared likely. During the course of these discussions a new agreement was reached between Stone Hill Park and the DfT, the implications of which were not immediately transparent to other parties considering investment in the project. They required much more time to consider those implications than was available in the context of the DCO process. Given the urgency of providing the ExA with further information as to the restructure and of bringing ownership of the Applicant onshore an alternative restructure was put in place, Under this restructure, funds continue to be available to complete a negotiated acquisition."

SHP's response to F.1.18 "As noted in SHP's response to this question and SHP's response to the written question CA.2.17 submitted as part of SHP's DL6 submissions [REP6-053], it is SHP's firmly held view, supported by the evidence, that the Applicant's engagement and correspondence with SHP has been purely tactical, and aimed at allowing the Applicant to maintain a pretence to the ExA

that discussions are ongoing. Whilst the Applicant refers to a new agreement with the DfT, the Applicant has misrepresented the position. "

SHP's response to F.2.20

The Applicant's admission that it has not been able to bring on board new investors during the examination process is revealing. However, it is wholly unsurprising given the lack of credibility attaching to the Applicant's proposals that would have been apparent to any credible potential investor that was following the examination closely. It is clear that the Applicant is unable to raise new funding from 3rd parties

What is very clear from the Q&A responses is the devious, disingenuous responses from RSP which provide NO Verifiable Evidence which could be interrogated in the examination and RSP seem to think it doesn't matter.

Who controls HLX Nominees Ltd?

Who is funding the DCO?

Why is the sole source of funds MIO Investments Ltd?

Why is Freudmann Tipple's bank account being used to pay all the bills?

Addendum

Finally late RSP have responded to the further questions from the Examining Authority which should have been answered at Deadline 7 and this only after the ExA refused to allow the names of the alleged investors to be removed from any correspondence. Their answers are available here

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-004084-Third%20Written%20Questions%20Answers.pdf

The answers on the funding will now be tested and this correspondent looks forward to hear how the ExA will deal with this blatant refusal to answer legitimate questions. The Applicant believes (from their answers) that they do not have to disclose. A sample of their answers follow:

"There is no requirement in statute or guidance that the funding arrangements of an NSIP must be 'transparent."

"The Guidance does not require the Applicant to satisfy the ExA or the Secretary of State that the funding for the Project is available now."

"..the Applicant is not required to demonstrate that the funding for the Project is from firms, bodies or individuals whose financial and other details are open to public scrutiny in the UK."

" ...the Applicant respectfully suggests that the ExA's remit does not extend to scrutinising the source of funds, but only to ascertaining the likelihood of the funds being available.."

Appendix 1 SHP's letter dated 9th April 2018

Verifiable Evidence

STONE HILL PARK

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

BY EMAIL
Bircham Dyson Bell LLP
50 Broadway
London
SW1 0BL

Your Ref: ADW/166055.0003

Date: 9 April 2018

Dear Sir/Madam,

Proposed Manston Airport Development Consent Order

We write in response to your letter of 21 March 2018, received by email at 17.26 seeking clarification on a number of points relative to the above. We note it was your intention to forward a copy of this letter to Pinsent Masons, and for the record, as of today's date they have not yet received that from you. As you are aware, Pinsent Masons are instructed by us and all correspondence should be copied into them please. We are able to handle some matters directly, with appropriate advice, hence we are corresponding with you directly at this stage (though we are equally happy to write to your client as you prefer).

At the outset, we re-iterate our position. It is clear, based on all the available evidence, that the RSP proposals for aviation use are simply not a credible or viable option at the site and we will continue to strongly defend that position through the DCO process as we wish to promote what we consider to be the most appropriate regeneration mixed use for the site which is in the best interests of Thanet and Kent and will create thousands of much needed homes and jobs for the local community.

Indeed, the aviation evidence from a range of recognised industry experts (including York Aviation, Altitude Aviation and AviaSolutions) against RSP's proposals and an attempted reopening of Manston being viable is so compelling, we continue to believe that RSP's plans are a blatant attempted misuse of the Planning Act 2008, pursued only to secure compulsory acquisition powers over the site and that they can have no credible or real intention of developing out the plans consulted on in January and February 2018.

However, dealing with the various points raised in your aforementioned letter, we would respond as follows:-

1. Negotiations

1.1 Your narration regarding your client's attempts to acquire our site is wholly incorrect. It is a matter of fact and record that your client, RiverOak Strategic Partners Ltd ("RSP"), despite having taken over as promoter of this DCO in December 2016, had not engaged with SHP prior to the pro-forma letter of 9 February 2018. This communication was, we understand, sent to all landowners potentially affected by your Client's DCO. Unlike a number of DCO projects, we are

not the owner of a strip of land that is necessary for a larger infrastructure project, we are the owners of a c.800 acre site that forms almost the entire landmass of your Client's DCO and the pro-forma letter of 9 February 2018 completely fails to recognise this. Recent events have in any event followed on from that letter, as outlined below.

1.2 In an attempt to demonstrate that your client, RSP, has satisfied the procedural guidance under the DCO process you also appear to be seeking to rely on previous communication between RiverOak Investments Corporations LLC ("RIC"), despite you being fully aware that this entity is (and was) operated, owned and managed completely independently from RSP. Indeed RIC themselves have publicly made this point clear in their press release of 24 March 2017 where they state that RSP "is not affiliated with RiverOak Investment Corp., LLC," and confirmed that it will have no ongoing involvement in the project.

1.3 The lack of any attempt by your client, RSP, to acquire SHP's land by voluntary agreement was clearly set out in our legal adviser's letters to the Planning Inspectorate dated 11 October 2017, 13 November 2017 and 15 December 2017 (which are all in the public domain). RSP did not challenge these statements, with your letter to the Planning Inspectorate of 27 October 2017 only noting that RSP "remains open to any approach by SHP to sell the site." That obviously goes nowhere near seeking to acquire the site by agreement and seeking compulsory acquisition powers only as a matter of last resort. There has been no attempt by your client, RSP, to do so.

1.4 Your correspondence continues to assume or suggest that the onus should be on SHP to set out the structure of any voluntary agreement. This is clearly nonsense - it is for RSP to propose a credible offer for SHP to consider and to demonstrate that it has the necessary resources in place to execute such an offer.

1.5 Notwithstanding this, following receipt of the pro-forma letter of 9 February 2018, [redacted], a Director of SHP, contacted [redacted] to establish if this correspondence was anything more than the box ticking exercise we assumed it to be. Indeed, those meetings ended with [redacted] confirming that no offer would be forthcoming from RSP and that potential offers which had been made by him during these meetings would not be forthcoming. No offer has therefore been made to acquire the site by agreement [redacted] reasoning was that he had received advice that RSP's position regarding the DCO was extremely robust and that he was confident they would win the DCO and acquire our site for significantly less than he had previously said he may be prepared to offer in the earlier meeting with [redacted] We discuss this more fully below.

1.6 The first meeting between [redacted] took place on 22 February 2018 and was a meeting prompted by the proforma letter of 9 February 2018. [redacted] made it clear that SHP wished to progress its proposals for a new settlement (and is doing so with a further planning application in final preparation) and, putting to one side the credibility of the RSP DCO case, if RSP wished nonetheless to give consideration to an offer, SHP would obviously examine it.

1.7 A further meeting then took place on 14 March 2018, during which [redacted] s advised that SHP had considered whether a type of long leasehold structure (as was subsequently communicated to RSP - see below) would be worth exploring, and SHP would outline what it had considered - which it did in SHP's letter of 15 March 2018. At this meeting [redacted] explained that RSP's preference was for an outright acquisition, rather than a long leasehold structure, and indicated an offer with a total value to SHP in excess of £25m would be

deliverable by RSP. He, in fact, provided an undertaking to revert by 21 March 2018 to advise whether this offer could be enhanced, after having discussed the position with RSP's investors.

1.8 When [redacted] next met with [redacted] on 27 March 2018, he advised that he was not in fact in any position to make any offer and that the previous offer that had been made was being withdrawn on the basis of its advice that its DCO case was "a slam dunk [redacted] did indicate that RSP could, in the past, have delivered on an offer at the level advised on 14 March 2018 had RSP not spent so much on the DCO process, stating that SHP's professional fees have been far higher "as a result of the Planning Inspectorate using its project as a test case for other airport DCO's".

1.9 As we had thought was likely to be the case, this is exactly the outcome we had expected and confirms all our suspicions set out in our letter of 15 March 2018 that RSP's pro-forma approach on 9 February 2018 was not a serious attempt to acquire SHP's land by agreement, but simply an attempt to undertake a box ticking exercise prior to submission of its DCO application.

1.10 As set out in our letter of 15 March 2018, the suggestion of a long leasehold structure on the basis proposed was for RSP being provided the opportunity to demonstrate their aviation plans are credible and fundable (however unlikely SHP and the array of experts consider that to be), and for SHP, the expectation that it would be able to take forward its plans without the "cargo hub" distraction when RSP failed to deliver, as expected. We made it clear that, given our very real concerns regarding the true intent behind RSP's motives (i.e. residential development), it was entirely reasonable to prohibit any use other than aviation and ancillary use. However, it is clear that this is indeed an issue for your client, as you yourself pointed out in your letter to us of 21st March that any lease "would have to allow the development of the site unhindered." Again, the above outcome was not unexpected to us and again shines a light on RSP's lack of reliability, credibility and its true intentions. It should now be clear to all, including the Planning Inspectorate, that RSP has made no real attempt to engage with SHP on acquiring the land by voluntary agreement and that RSP's true intentions regarding this site are different to those declared.

1.11 Furthermore, you also reference previous communications between [redacted] shareholder of SHP). To be clear these did not include at any time any offer or proposal from RSP to acquire the site. It is noted that [redacted] requested a private meeting with [redacted] in late 2017. However, the subject matter was not disclosed to [redacted] and given the invitation was for a meeting at [redacted]'s private residence in Mayfair, the invitation was declined. [redacted] asked [redacted] to correspond with [redacted] on the purpose of his proposed meeting but nothing was ever forthcoming.

2 Effect of Voluntary Acquisition

2.1 It is actually apparent that neither you nor RSP appear to have fully understood the existing lawful planning use of the site or the triggers/requirements for project to be a DCO. The purported "Justification Note" appended to your letter to us of 5 March 2018 provided a wholly unsatisfactory attempt at explaining how your client's Project meets the tests in section 23 of the Planning Act 2008 to be considered an NSIP. We have written to the Planning Inspectorate in relation to this, appending both a response from our solicitors and advice from Leading Counsel. It is clear that RSP's proposals do not meet the DCO requirements and that the proposed DCO amounts to an attempt to mis-use the Planning Act 2008 to try and seek the benefit of the compulsory acquisition powers that the regime offers.

Verifiable Evidence

3 RSP's Intentions

3.1 Your client's case appears to be wholly reliant on a highly speculative aviation case, that is not evidenced by the facts and relies on an extremely flimsy analysis from Azimuth Associates that has already been demonstrated to lack any real credibility.

3.2 We note your comments, but have yet to see any behaviour or credible evidence (e.g. in the form of clear availability of funding) from RSP that it is serious about delivering an airport project that is consistent with that presented to statutory consultees and the public.

3.3 With reference to your comments on the change of use appeal, the tactics adopted by RSP were clearly designed to try and safeguard the planning status of the site in order to frustrate plans to progress a mixed use proposal at this site which was in accordance with the emerging local plan. Indeed, in addition to the concerted efforts of your client, RSP, there is evidence of certain influential political supporters of your client admitting that they had worked hard to have the council members reject the local plan in order to try and depress the value of SHP's site for the purposes of the use of any DCO compulsory acquisition powers. It is clear that if your client has worked in dogged pursuit of anything, it has been doing everything it can to suppress the value of SHP's land and this has become even more transparent following the recent comments made b[redacted] his meetings with[redacted]

4 SHP's Intentions

4.1 SHP is supported by a team of very highly regarded and experienced advisers working to both deliver our plans to regenerate the site for the benefit of Thanet and to defend against your client's blatant attempted misuse of the Planning Act 2008.

4.2 As explained in our letter, we continue to progress our plans and a further planning application in line with the enhanced masterplan we recently consulted upon, will be lodged shortly.

4.3 We are also surprised by the ill-informed and high-handed nature of your comments regarding both the future use of the site and its market value:

(a) Firstly, on the matter of moving the site away from aviation only use, the Secretary of State for Housing, Communities and Local Government wrote to the leader of TDC on 23 March 2018 confirming that he did not agree that the local debate regarding the future use of the airport site, and related matters, were exceptional circumstances that justified the failure of the Council to produce a Local Plan and that he had made the decision to continue the intervention process. As you will be aware, this follows on from the decision on 18 January 2018 by Councillors to vote against progressing Thanet's Local Plan to the publication stage. In its 31 January 2018 response to the Secretary of State's letter dated 16 November 2017 regarding possible Local Plan intervention, TDC was clear in stating that it had taken *"external planning advice which indicates that the draft Local Plan, as recommended to Council, would meet the tests of soundness"* and that *"[O]fficers have done everything necessary to seek to ensure that a sound plan would be published."*

(b) It is also abundantly clear to us that your letter fails to recognise the options available to SHP in relation to the land, the market value of the land and the basis on which market value would be assessed.

Verifiable Evidence

5. Lease Proposal

5.1 As we set out in our previous letter and re-iterate again, SHP has no desire to sell this site and remains entirely committed to its plans to regenerate the site for the benefit of the community. Our letter of 15 March 2018 suggested a clear framework to move matters forward but it is very clear that the onus must be on RSP to engage with SHP, not the other way round.

5.2 Your letter notes that RSP *"remains willing to acquire SHP's land by agreement, and a lease might be one possible way of achieving this"* but that *"any encumbrances attached to the lease would have to allow the development of the site unhindered and equivalent to owning the freehold."* **Please can you confirm why that is the case?**

5.3 **Also, please can you clarify whether or not your client would be willing to accept a specific restriction against any future residential development on the land.** The RSP team have made number of public statements during their consultation process that they have no interest in pursuing any residential development on the site so this should be a very easy clarification for RSP to make if that is indeed the case.

6. Conclusion

As set out in this and previous correspondence, SHP's team remain very strong believers in the potential of East Kent. Fundamentally that is why they acquired the site at Manston. To date they have invested over £10m in the site's acquisition and operation and then progressing the regeneration of the site. SHP remains clearly of the view, based on all available evidence, that the mixed-use scheme we have been promoting is the best scheme for the site. As we have re-iterated above, we continue to progress these plans and an enhanced planning application for the new mixed-use settlement will be lodged shortly following the recent consultation on the enhanced masterplan.

Finally, to reiterate our position, SHP has no desire to sell this site and remains entirely committed to its plans to regenerate the site for the benefit for the community. If RSP is serious about actually delivering its proposals, the potential lease structure we set out is a solution that would provide an opportunity to resolve this issue and draw a line under the position. Ultimately, if RSP fails to engage with us on this basis, it will be even clearer that it is not serious about its proposals. If that remains the case it is clear that your client's failure to comply with paragraph 25 of the Guidance related to the compulsory purchase of land will remain only one of many reasons why an application for a development consent order would not satisfy the requirements of section 55 of the Planning Act 2008.

We will write to the Council and Central Government re-iterating our position and confirming that we remain committed to the regeneration of the site for a mixed use new community in a manner that is wholly consistent with Government policy and priorities.

Yours faithfully,

[redacted]

On behalf of Stone Hill Park Limited

Cc. The Company Secretary
RiverOak Strategic Partners Ltd
Audley House
9 North Audley Street
London, W1K 6WF

Appendix 2: The lease proposal

The Proposal

SHP would be prepared to offer a long leasehold interest of the required land and infrastructure at Manston Airport to RSP on the following terms;

- Term: 125 years (quasi-freehold)
- Payment terms: (i) an upfront Lease Premium payment and (ii) ongoing Annual Rent payable quarterly in advance (current rent receivable from DfT and other tenants would be retained by RSP)
- Rent Reviews: Rent subject to upward only rent reviews
- Security: appropriate comfort as to the covenant strength of the long leaseholder
- Alienation / Forfeiture: standard for a long leasehold lease of this nature but landlord consent matters will be limited to use classes in order to provide for operational flexibility (e.g. only aviation related uses and associated industrial/business space uses will be permitted).
- Night Flights: It is recognised that this is a very contentious issue in the area for which there is little local support. Hence, to provide comfort and protection to the local community we propose that the lease will contain appropriate restrictions over night flights. We envisage these restrictions would either need to be for no night flights or be in line with RSP's public statements regarding their very limited need for night flights.
- Buy Back Option: Should aviation operations not have commenced within a reasonable period (i.e. RSP failing to deliver against appropriate agreed milestones to deliver on its plans), the freeholder will have the right to acquire the long leasehold interest at a price equivalent to the lease premium.